

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT  
HYDERABAD

MONDAY THE SIXTH DAY OF OCTOBER  
ONE THOUSAND NINE HUNDRED AND EIGHTY SIX

!! PRESENT:

THE HONOURABLE MR. B. H. JAYA SIMHA, VICE-CHAIRMAN  
AND

ORIGINAL APPLICATION NO.16 of 1986

Between:

A. Mohan Rao

... Applicant

and

The Commissioner of Income-Tax  
Andhra Pradesh-I  
Hyderabad

... Respondent.

Application under Section 19 of the Administrative Tribunal Act, 1985 praying that in the circumstances stated therein the Tribunal will be pleased to quash or set aside the order passed in con.No.29/85 of the Commissioner of Income-Tax, Andhra Pradesh-I, Hyderabad.

The application coming on for hearing upon perusing the Application and upon hearing the arguments of Mr.Y.Suryanarayana Advocate for the Applicant, and of Mr.M.Suryanarayana Murthy standing counsel for Incometax on behalf of the respondent the tribunal delivered the following Judgement:-

ORIGINAL APPLICATION 16 of 1986

This application is filed under Section 19 of the Administrative Tribunals Act 1985 seeking to quash the Proceedings Con. No: 29-85 dated: 4-2-1986 issued by the Commissioner of Income-tax, Andhra Pradesh-I, Hyderabad whereby the applicant is retired from service prematurely by exercising powers conferred by Clause J(1) of Rule 56 of the Fundamental Rules.

The case of the Applicant is that he was directly recruited as Inspector of Income Tax through Order No.203 dated:13-12-58 that through Proceedings C.R.No.2/78 dated: 18-11-1978 issued by the respondent, he was appointed as officiating Income Tax Officer, Group-B(Class-II) and put on probation for a period of two years; that during the year 1983-84 he served as Income tax Officer, Special Audit party, which post could be occupied, according to the applicant, by persons who have an aptitude for work, and carries a Special pay of Rs.100/- per month and that he had an unblemished record of service during his tenure as Income Tax Officer. However, through the impugned order, for no fault of his, he has been prematurely retired from service and relieved from the post of Income Tax Officer forthwith.

The Applicant contends that there is no material for the authorities to issue the impugned order, principles of natural justice have not been observed while issuing the impugned order, and the same is violative of Articles 14 and 16 of the Constitution, as such, liable to be quashed/set aside.

In the counter-affidavit filed on behalf of the respondent, the averment made by the applicant that he is efficient and as such he was posted as Income Tax Officer, Special Audit party, has been denied by the respondent. It is further stated therein that the Screening Committee at its meeting held at New Delhi on 5-3-1985 considered the case of the Applicant alongwith the cases of others who had attained the age of 50 years, in order to examine their suitability or otherwise to be continued in the Service, in view of the provisions of Fundamental Rule 56(j), and ultimately the Screening Committee found the Applicant unfit for being continued in Service and recommended for his retirement in public interest.

Thereupon, the Review Committee at its meeting held on 23-1-1986 considered the minutes of the Screening Committee and the annual confidential reports etc., and expressed the view that the Applicant's continuance is not desirable and he may be retired in public interest under Fundamental Rule 56(j). Eventually, the Government approved the recommendations of the Review Committee and the applicant was accordingly retired with effect from 4-2-1986. While so doing, the prescribed procedure has scrupulously been followed. As such, the order in question is just and is not violative of Articles 14 and 16 of the Constitution.

The learned counsel for the applicant Sri V.Suryanarayana has relied on various Judgements wherein certain principles of law were laid down in regard to premature retirement of Govt. Servants under Rule 56(j) of the Fundamental Rules. The earliest decision relied upon by him is the unreported decision of High Court of Andhra Pradesh dated 20-7-1976 rendered by Mr. Sambasiva Rao and Mr. Sheth J.J. wherein after a review of the earlier decisions of the Supreme Court, Calcutta High Court and Allahabad High Court it was held as follows:

" A review of these decisions clearly shows that the question is whether an order made under Rule 56(j) of the Fundamental Rules is a bonafide order of a malefide one or whether it is based on collateral extraneous or irrelevant grounds or issues germane to compulsory retirement".

The next decision relied on is 1980(3) SLR.583 ( at 580) in support of the proposition that assessment of performance of an Officer on the basis of an uncommunicated adverse remarks would

render invalid the order of compulsory retirement. In A.E.R. 1981 S.C. page 70, it was held that an Officer whose continuous service was good for 14 years, and who reached the maximum salary in the scale with no adverse entries for atleast five years immediately before compulsory retirement could not be cashiered on the score that long years ago his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. The order of Compulsory retirement was set aside as vital material relevant to the decision had been ignored and absolute less relevant material had influenced the decision. Again in 1984(1) S.L.R.342 it was held that stale adverse entries in the confidential roll cannot be relied upon to compulsory retire an employee and that a decision based upon entries made 20 years earlier is an arbitrary decision.

Based upon the above decisions and on the facts of the case viz., that there is only one adverse factor in the service record of the applicant viz., that in 1969 there was a punishment of stoppage of increment and that no other adverse confidential remark was ever communicated to the applicant. It is

- ~~Learned Counsel Sri Y.Suryanarayana:~~
- i) That the premature retirement of the applicant is arbitrary as it is not based on any material and therefore violative of Articles 14 and 16;
  - ii) The penalty of stoppage of increment in 1969 had become stale and was washed away by the subsequent promotion given to the applicant in 1978.

Learned Counsel for the Department, Shri M.Suryanarayana Murthy, has cited AIR 1971 S.C.2151, in support of the proposition that if the order of retirement does not contain any imputation or stigma then the Court cannot look into the Government file. He

has relied upon the decisions referred to in 1970(2) Supreme Court cases, 876 AIR 1980 S.C.563 and AIR 1981 S.C.594, in support of the proposition that the Confidential reports can be looked into by reviewing authority even if they are not communicated. The Learned Standing Counsel also relied on AIR 1981 S.C.P.70(at page 72) for the proposition that the court can examine the material and interfere with order of compulsory retirement only if the material does not satisfy a reasonable man reasonably instructed in law and that Judicial power is confined to an examination of the material necessary to see whether a rational man may conceivably be satisfied that the compulsory retirement of the Officer concerned is necessary in public interest. It is contended by the learned Counsel that no malafidies have been attributed in the instant case that the record of the case will disclose that there are sufficient reasons for ordering the compulsory retirement of the Officer and that the decision is not an arbitrary decision. It is also contended that order of compulsory retirement is not based on adverse confidential reports which have not been communicated to the officer or on the basis of stale or adverse confidential entries, and as such the decision relied upon by the learned Counsel for the applicant are not relevant. It has been contended that the order of compulsory retirement is based upon the fact that the applicant is not useful to the department and for all purposes he must be treated to be dead-wood. The decisions cited for and against the applicant disclose that while some benches have declined to sit in Judgment over the the decision of the competent authority, other have chosen to examine the record of the Officer more meticulously in order to see whether the order was justified on that material. Judicial review of individual cases thus discloses a flexibility of approach depending mainly on circumstances of each case. For this purpose it will appear necessary to examine the record and go into the reasons as to why the order of compulsory retirement has been passed.

The record was produced for the Income Tax Department to order of compulsory retirement was material. We have perused the minutes of the Review which disclose that there was a downward trend in the performance of the Officer in 1983-84 as against the good reports for the earlier years. This, however, was not the only consideration. The Committee was of the opinion that the Officer was reluctant to leave Guntur a station close to his home town in Krishna District and was seeking to avoid postings involving work other than assessment work. The Committee cited as instances from Guntur to Bapatla in 1982; (ii) His going on leave from 21-5-83 to 15-9-83 when in May 1983 he was transferred from a non-assessment post in Guntur to Audit work; (iii) His going on computed leave from 11-6-1984 and (iv) His not joining duty at Vijayawada to a Tax Recovery post, his making a representation against the transfer order and when the representation was rejected his not joining at the new post but proceeding on leave till the date of committee meeting. The Committee was of the view that the Officer was exhibiting lack of dedication to duty by taking leave whenever he was posted to a post involving non-assessment work and that as such he has lost his utility to Government. The Committee also felt that his not joining a non-assessment post was not due to sickness but due to his desire to make money which reflects adversely on his integrity. From the minutes of the Committee it would follow that the decision to retire the applicant is supported by reasons and that it was not made without material. The next question is whether the order of retirement can be termed arbitrary. The record of postings from 1982 disclose that the Committee was justified in coming to a conclusion that the Officer was avoiding postings out of Guntur and that he was also reluctant to do work in a non-assessment post. In 1982 when he was posted out

of Guntur to Bapatla he went on leave. In between in 1983 when he was retained at Guntur and given Audit work he proceeded on leave. His making a representation when he was posted to Vijayawada for tax recovery work and his going on leave when his representation was rejected gives the definite impression to a rational mind that the Officer was avoiding certain stations and that he was also avoiding non-assessment work. As stated in the decision reported in AIR 1971 S.C.40(Union of India Vs J.N.Sinha) in certain key posts public interest may require that a person of undoubted ability and integrity should be there. This is particularly so in regard to sensitive departments like the judiciary, Income Tax and other departments where quasi judicial functions are to be performed and where disputes raised involve large stakes. If Officers tend to give the impression that they are developing vested interests either in a particular place or in a post doubts are raised as to their usefulness to the Department or to the Government. Such conduct on their part also gives rise to a reasonable apprehension as to their integrity. We are not satisfied that there is any cause for interference in the instant case. The order of compulsory retirement does not visit the applicant with any civil consequences. No stigma is attached to the order of retirement. The authority concerned has taken into consideration relevant circumstances and come to the conclusion that the applicant has outlived his usefulness to the Department. The opinion formed is both objective and bonafide and is not vitiated by malafides or arbitrariness. The application is accordingly dismissed, but in the circumstances, without costs.

Sd/-T.N.Reddy  
for Dy.Registrar.

//True copy//

To

Sd/-  
for Dy.Registrar.

1. The Commissioner of Income-Tax, Andhra Pradesh-I, Hyderabad.
2. One C.C.to Mr.Y.Suryanarayana, Advocate.
3. One C.C. to M.Suryanarayana Murthy,S.C for Income-Tax
4. One spare copy
5. One C.C. to Dy.Registrar(J), Principal Bench, Central Administrative Tribunal, New-Delhi.110003.
6. One C.D.Copy.

//True copy//

*[Handwritten signature]*