

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00985/2016

Jabalpur, this Wednesday, the 10th day of April, 2019

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

**Raj Kumar Bhatia, S/o Shri M.L.Bhatia, Aged about 50 years,
R/o 115, Chhikitshak Nagar, Near Bombay Hospital,
Indore (M.P.)**

- APPLICANT

(By Advocate – Shri Manoj Sharma)

Versus

1. Union of India through its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110 001.

2. Central Board of Direct Taxes, Through its Chairman,
North Block, New Delhi-110 001.

3. Principal Chief Commissioner of Income Tax (Cadre
Controlling Authority M.P. & C.G.), 48 Arera Hills,
Hoshangabad Road, Opposite Maida Mill,
Bhopal (M.P.)

-RESPONDENTS

(By Advocate – Shri Sanjay Lal)

(Date of reserving the order: 28.02.2019)

O R D E R

By Navin Tandon, AM.-

The applicant is aggrieved by his premature retirement from service.

2. The brief facts of the case as narrated by the applicant are as under:-

2.1 He initially joined the Department of Income-Tax as Inspector in the year 1989 and was promoted as Income Tax Officer in the year 1992.

2.2 His work has been appreciated by his superior authorities and he has been rated as 'very good' except in the year 1996-97. In his ACR of 1996-97, the then Deputy Commissioner of Income Tax had given him adverse remarks. A detailed representation has been given by him against adverse remarks on 18.02.1998 (Annexure A-4).

2.3 The various allegations against the applicant were looked into by Commissioner Income Tax, who in his report dated 10.12.1998 (Annexure A-6) has concluded as under:-

"I have submitted my comments allegation wise. In my humble opinion, no allegation appears to have been proved. On the other hand I found Sri Bhatia a good and hard working officer who is also a man of courage and conviction."

2.4 Meanwhile, vide order dated 26.11.2001 he was promoted as IRS after consultation with UPSC.

2.5 A charge sheet was served upon him on 24.07.2002 by imputing allegations pertaining to the year 1996-97. After enquiry, the enquiry officer has concluded that none of the charges are proved vide report dated 30.10.2009 (Annexure A-7). However, the

disciplinary authority in his disagreement note dated 13.12.2011 (Annexure A-8) has held three of the fourteen articles of the charges, as partially proved and proposed minor penalty. The applicant has submitted his reply.

2.6 In the meantime he had approached this Tribunal by filing Original Application No.786/2006, which was disposed of vide order dated 01.05.2008 (Annexure A-10) with a direction to the respondents to expedite enquiry and pass final order on the enquiry report within six months.

2.7 Without passing a final order on the charge-sheet dated 24.07.2002, the disciplinary authority issued order dated 23.01.2014 (Annexure A-11) confirming the earlier charge-sheet dated 24.07.2002. The order stated that this was done in view of judgment of Hon'ble Apex Court in the case of **Union of India vs. B.V. Gopinath & others** (SLP 6348 of 2011, decided on 05.09.2013)

2.8 When he was posted as Assistant Commissioner of Income-Tax, Mumbai during August 2005 to November 2009, a vigilance search was made by the CBI, Mumbai in applicant's office as well as at his residence at Indore and Mumbai. Thereafter he was placed under deemed suspension because of his retention under police

custody for more than 48 hours. However, his suspension was revoked by the department on 01.04.2010.

2.9 A fresh charge-sheet was issued to him on 24.09.2009 on the basis of the search conducted by the Anti Corruption Bureau, CBI Mumbai in January, 2009. After departmental enquiry, the enquiry officer submitted his report. However, no final order has been passed, in spite of the fact that the applicant had submitted his representation on 15.02.2016 (Annexure A-13).

2.10 Without concluding the departmental enquiry as mentioned above, vide order dated 08.06.2016 (Annexure A-1) the impugned order of compulsory retirement has been passed by the respondents under Rule 56(j) of the Fundamental Rules.

3. The applicant has, therefore, prayed for the following reliefs:

“(8.1) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.

(8.2) Quash and set aside the order dated 08.06.2016 (Annexure A/1)

(8.3) After quashing the impugned order dated 08.06.2016 (Annexure A/1) direct the respondents authorities to reinstate the applicant alongwith all consequential benefits of pay, perks and status;

(8.4) To kindly Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper;

(8.5) Award the cost of the instant lis to applicant”.

4. The respondent No.3 in his reply has submitted as under:-

4.1 The applicant has been retired from the Government service under FR 56(j) after review of his entire service records in terms of instructions issued by the Department of Personnel & Training (for brevity ‘**DoP&T**’) vide OM dated 11.09.2015 (Annexure R-1)

4.2 The DoP&T’s instruction dated 11.09.2015 also empowers the Secretary of Department to constitute Internal Committee to assist Review Committees in reviewing the cases. With approval of Secretary (Revenue), Internal Committee so constituted/notified has following composition:-

“(i) Pr.DGIT(HRD), New Delhi- Chairman
(ii) ADG(HRD)-1 New Delhi- Member Convener
(iii) ADG(Vig.) HQ-1, New Delhi – Member”

4.3 The Internal Committee chaired by Pr.DGIT(HRD) met on 29.12.2015 and identified 29 officers, who are Gr.A, Non-ACC appointees, who will be completing the age of 50 years during April-June,2016. Their overall service details such as; APAR of last 10 years, Vigilance inputs from Pr.DGIT(Vigilance), CBDT inputs regarding administrative misdemeanors, etc. were scrutinized and facts sheets prepared individually for 29 officers which were placed before the Review Committee.

4.4 The meeting of the Review Committee for Non-ACC appointees was held on 09.02.2016 under FR 56(j). After reviewing entire service records, vigilance profile and work performance of the applicant as well as one another officer, the Review Committee found their continuance in the service as undesirable and recommended their names for action under FR 56(j). Accordingly, vide order dated 08.06.2016 the applicant was retired with immediate effect by giving him three months' pay in lieu of notice period.

4.5 The applicant did not submit any representation against the order of his retirement. Therefore, he did not exhaust all the remedies available to him before approaching this Tribunal.

5. In his rejoinder, the applicant has submitted as under:-

5.1 The respondents in their letter dated 31.09.2017 (Annexure RJ/1) have furnished a tabulated statement of APAR gradings given by Reporting Officer as well as by Reviewing Officer and Integrity remarks from 2001-02 to 2015-16. While passing the impugned order of compulsory retirement the respondents have not considered the excellent service record of the applicant.

5.2 Respondents in reply to para 4.2 to 4.17 have asked the Tribunal to obtain the remarks from different authorities. This

indicates respondent No.3 has no material to rebut the contents of the O.A, and are evading the reply.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. The learned counsel for the applicant has vehemently argued that in the present case nothing adverse has been found against the applicant and the impugned order of premature retirement has been passed as a short cut to avoid completion of pending departmental enquiry.

7.1 The applicant was inducted in the year 2001 to IRS after consultation with CVC and UPSC. Therefore, after his promotion, all preceding adverse remarks were washed out. He was the youngest ITO elevated to the cadre of Indian Revenue Service at the age of 35 years.

7.2 After getting promotion as ACIT, applicant had received a charge sheet on 24.07.2002 containing allegations which were levelled in adverse ACR of 1996-97 and preliminary vigilance inspection report dated 10.12.1996.

7.3 The enquiry officer in his report dated 30.10.2009 (Annexure A-7) has clearly held that none of the charges as per the Memorandum of Articles against the applicant gets proved. However, in spite of the directions of this Tribunal in OA No.786/2006 dated 01.05.2008 (copy

enclosed with Annexure A-10) to pass final order on the enquiry report within two months of submission of enquiry report, the disciplinary authority has not passed the final order even after lapse of almost 9 years.

7.4 Despite the excellent career and performance of the applicant as reflected from his ACRs, the department has grossly harassed and mentally tortured the applicant by not giving him his due promotion from 2006 as Deputy Commissioner, 2011 – as Joint Commissioner and from 2014 as Additional Commissioner of Income Tax.

8. Learned counsel for the respondents submitted that the relevant rules have been correctly followed and there is no irregularity in retiring the applicant on completing 50 years of age.

9. It is a settled proposition that if the services of an officer are not useful, he may be prematurely retired. However, in the instant case, we find that the respondents have not brought out any material explaining the basis on which they have come to the conclusion that the applicant's services were not useful. We find that all the grading and integrity column in the service record of the applicant after his joining the Indian Revenue Services in the year 2001 from 2001-2002 to 2015-2016 (Annexure RJ/1) is without blemish.

10. Perusal of the APARs from 2010-11 to 2015-16 (Annexure A/12 colly.) gives the following picture:-

10.1 Year 2010-11

Integrity : Beyond doubt

Grading : 7.3

Pen Picture : The officer's attitude towards everyone is warm and cordial. He has a positive attitude and is helpful by nature. He is compassionate to the subordinates. He has attended to the grievances of the senior citizens promptly, by contacting the concerned ITO's to solve their problems. He has interest in Hindi literature. He has written a few articles in Hindi and contributed for the Dept's magazine. In the office of headquarters he has contributed remarkably for extensive use of Hindi in the day to day performance. He has also conducted training for stenographers to facilitate typing in Hindi, which is commendable. He is intelligent, resourceful and knowledgeable.

10.2 Year 2011-12

Integrity : Beyond doubt

Grading : 7.8

Pen Picture : The officer's attitude towards subordinates & colleagues from SC, ST & other weaker sections and women is cordial. He maintains good relations with all of the staff and officers. He is helpful to the public who come with grievances. He is good in drafting letters/communication, Notice boards in Hindi. He has rendered his services in implementation of Hindi in day to day working of this office. It is largely due to his sustained efforts made in writing order sheets, correspondence etc. in Hindi Language, in motivating the officers to write in Hindi, that this charge of CIT 28 received the second prize in the Rajbhasha Vaijayanti Yojna.

10.3 Year 2012-13

Integrity : Nothing adverse to my notice.

Grading : 8.61

Pen Picture : The officer is energetic and hardworking. He is sincere and amenable to discipline. Always helpful to his subordinates be it personal or official. No bias noticed

towards Subordinates and colleagues from SC/ST and other weaker section and Women. Habit of helping others is his strength.

10.4 Year 2013-14

Integrity : Nothing adverse during the Reporting period.

Grading : 7.97

Pen Picture : The officer is intelligent. His attitude towards Subordinates & colleagues from SC/ST and other weaker sections and woman is very good.

10.5 Year 2014-15 – APAR not attached.

However, from Annexure RJ/1, the following information is available;

Integrity : Nothing adverse known to my knowledge during this period.

Grading : 8.00

10.6 Year 2015-16

Integrity : Not doubtful

Grading : 7.0

Pen Picture : Attitude towards SC/ST and others was found cordial.

11. DoPT has issued O.M. dated 11.09.2015 (Annexure R-1) regarding periodical review under Fundamental Rule 56 or Rule 48 of CCS (Pension) Rules. It has relied on judgment of Hon'ble Apex Court in **State of Gujarat vs. Umedbhai M. Patel** (2001) 3 SCC 314, wherein it has been held as under:-

“**11.** The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

- (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.”

12. Hon’ble Supreme Court in **Umedbhai M. Patel** (supra) has very clearly held that the order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry, when such course is more desirable. In the present case, two chargesheets are pending, but the respondents have decided not to bring it to the logical conclusion, which is not attributable to the applicant.

13. The integrity column in the APARs, right from 2001-02 to 2015-16 (Annexure RJ/1), does not have even a word which may cast aspersions on the integrity of the applicant.

14. The grading in the last 10 years has been “very good” and above.

15. The pen picture depicts him as intelligent energetic, hardworking officer having cordial relations with all.

16. Applying the principles detailed by Hon'ble Supreme Court in **Umedbhai M. Patel** (supra) in the instant case, we come to the conclusion that the rules of compulsory retirement have not been correctly applied in the present case. We are guided by the judgment of Hon'ble Apex Court in **Shobha Ram Raturi vs. Haryana Vidyut Prasaran Nigam Limited and others** (Civil Appeal No.11325 of 2011) regarding payment of back wages

17. In the result, the Original Application is allowed with the following directions:

- (i) Impugned order dated 08.06.2016 (Annexure A-1) is hereby quashed.
- (ii) As a consequence of quashment of the impugned order, the applicant is directed to be reinstated in service immediately.
- (iii) The applicant shall be entitled to consequential benefits, including arrears of salary.
- (iv) The quashment of the impugned order will not be an impediment for initiating appropriate disciplinary proceedings, if so desired by the competent authority.
- (v) No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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