

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/418/2019

Date of Reserve: 31.07.2019

Date of Order:06.08.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Surendra Singh Bisht, aged about 53 years, S/o. Late Mohan Singh Bisht, presently working as Asst.Commissioner, GST & Central Board of Excise Customs, Rourkela, PIN-769 012.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, North Block, New Delhi-110 001.
2. The Chairman, Central Board of Excise & Customs, North Block, New Delhi-110 001.
3. The Under Secretary to Government of India, Office of the Chief Vigilance Officer, Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, 6th Floor, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110 066.

...Respondents

By the Advocate(s)-Mr.A.K.Mohapatra
Mr.A.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, while working as Assistant Commissioner, GST & Central Board of Excise Customs, Rourkela was issued with the relieving order dated 18.06.2019 (A/2 series) whereby he has been relieved from his duties with effect from 18.06.2019 (AN) on retirement from the Government service in public interest as per the Clause (j) of rule 56 of the Fundamental Rules. This relieving order, as is evident, has been issued in pursuance of order No.82/2019 dated 18.6.2019 issued by the Government of India, Ministry of

Finance, Department of Revenue (Central Board of Indirect Taxes & Customs),
which is extracted hereunder:

“Whereas the President is of the opinion that it is in the public interest so to do so:

NOW THEREFORE in exercise of the powers conferred by clause (j) of rule 56 of the Fundamental Rules, the President hereby retires Shri Surendra Singh Bisht (D.O.B. 14.03.1966), Assistant Commissioner, with immediate effect, he having already attained the age of 50 years. The President also directs that Shri Surendra Singh Bisht shall be paid a sum equivalent to the amount of his pay plus allowance for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement”.

2. Aggrieved with the above relieving order, the applicant has approached this Tribunal seeking for the following reliefs:

- i) To quash the order No.F.No.C-60/49/2019.Ad.II, dtd. 18.06.2019 communicated by Resp.No.3 under Annex.A/2 and consequently direct the Respondents to reinstate the applicant with full salary/pay and continuity of service and all his consequential service and financial benefits.
- ii) To pass any other order/orders as deemed fit and proper.
- iii) To allow this OA with costs.

3. As an interim measure, he has prayed for the following:

“Pending final decision on this OA the Hon’ble Tribunal may graciously be pleased to stay the order No.F.No.C-50/49/2019-Ad.II dated 18th June, 2019 (Annex.A/2) communicated by Respondent No.3 and direct the Respondents to allow the Applicant to continue in service as he was doing prior to the order under Annexure-A/2”.

4. It is the case of the applicant that he is an IRS officer and his date of birth being 14.03.1966, he would have normally retired from service on 31.03.2026. Because of his unblemished service career, he has attained successive promotions in the hierarchy and in such a situation, his compulsory retirement by invoking the powers conferred under the provisions of FR-56(j) is not only bad in law, but an arbitrary and colourable

exercise of powers by the authorities behind his back. According to applicant, this action has been taken by the respondents on the pretext of public interest having regard to pendency of CBI FIR in 2013. It is his contention that mere pendency of a criminal case does not cast any doubt on the integrity of an official thus, necessitating him to compulsorily retire him from Government service.

5. On being noticed, the respondents have filed a short reply on the question of maintainability of this O.A. as well as on interim relief. According to respondents, the O.A. as led by the applicant is not maintainable since before approaching this Tribunal, he has not exhausted the alternative departmental remedy by preferring representation to the competent authority. According to them, Section 20(1) of the A.T.Act, 1985 read with Fundamental Rule (FR) 56 (jj) and OM No.25013/76-Estt.(A) dated 11.10.1976, it was imperative on the part of the applicant to submit a representation ventilating his grievance to the authorities concerned before approaching this Tribunal, if he is aggrieved by the order passed under FR 56 (J) relieving him of his duty on compulsory retirement.

6. Applicant has filed a rejoinder to the short reply in which it has been stated that Office Memorandum dated 11th October, 1976 filed by the respondents and marked as Annexure-R/4 to short reply, does not exist inasmuch as, according to him, the provision of FR-56(j) came into effect by way of amendment only on 11.05.1989 as published in Gazette of India on 27th May, 1989. He has also pointed out that FR-56(j) does not mandate that a person aggrieved must prefer representation against the order of compulsory retirement. According to him, since the order issued under FR-56 (j) is a nullity and non est in the eye of law, being passed without due application of

mind, the question of submitting representation against that order does not arise. The applicant in Paragraph-6 of the rejoinder has submitted as under:

“...The respondents have unnecessarily confused the whole gamut by invoking the provision of Section-20 of the A.T.Act, 1985 alike by exercising the power under a FR-56(j) due to initiation of criminal case and pendency of departmental proceedings. Thus, Section 20 of the A.T.Act, 1985 does not attract or stand in the way for maintaining this O.A. against an order which is non est in the eyes of law”.

7. We have heard the learned counsels for both the sides and perused the records. For the purpose of considering the maintainability of this, we would like to quote hereunder the relevant provisions of Section 19 & 20 of the A.T.Act, 1985:

“19. Applications to Tribunals.—

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.—For the purposes of this sub-section, “order” means an order made—

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation⁴⁵ [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation⁴⁵ [or society] referred to in clause (a).

20. Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available

to him under the relevant service rules as to redressal of grievances,—

- (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
- (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

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8. From the above, it reveals that whereas Section-19(1)(a) and (b) speaks of order which is worthy of being called in question before the Tribunal by a person aggrieved, Section-20 speaks of exhaustion of departmental remedy by said aggrieved person before approaching the Tribunal. Section-20 (2) (a) deals with the nature and character of a final order that has been passed by the competent authority rejecting the appeal preferred or representation made. In this respect, it is pertinent to note that the Government of India, Department of Personnel & Administrative Reforms have issued an Office Memorandum dated 11.10.1976(R/4) on the subject of premature retirement – consideration of representations against – procedure for, the relevant Paragraphs of which are extracted hereunder:

“The undersigned is directed to say that in supersession of the marginally noted Office Memoranda, DP&AR OM No.25013/75-Estt.(A) dt. 23.1.76, No.25013/75-Estt.(A) dt. 12.5.76 and No.25013/75-Estt.(A) dt. 20.7.76, the instructions contained in the succeeding paragraphs will regulate consideration of representations against

order/notice of premature retirement, received from the individuals concerned.

2. These instructions shall apply to representations from Government servants who have been retired prematurely under FR 56(j) or (1) or Article 459(h) or (j) of the Civil Service Regulations or Rule 48 of the CCS (Pension) Rules, 1972, as the case may be.
3. A Government servant who has been given a notice of retirement under the provisions mentioned above, or who has been issued with an order of premature retirement by payment of pay and allowances in lieu of notice, should submit a representation within three weeks from the date of service of such notice/order. This provision may be strictly enforced after the lapse of a reasonable period to ensure that the employees are aware of this provision.
4. On receipt of a representation, the administrative Ministry/Department/Office should examine the same to see whether it contains any new facts or any new aspect of a fact already known but which was not taken into account at the time of issue of notice/order of premature retirement. This examination should be completed within two weeks from the date of receipt of the representation. After such examination, the case should be placed before the appropriate Committee for the purpose of considering the representations against premature retirement shall be as indicated in the Annexure to this Office Memorandum.
5. The Committee considering the representation shall make its recommendations on the representation within two weeks from the date of receipt of the reference from the administrative authorities concerned. The authority which is empowered to pass final orders on the representation (as indicated in the Annexure) should pass its orders within two weeks from the date of receipt of the recommendations of the Committee on the representation.
6. If, in any case, it is decided to reinstate a prematurely retired Government servant in service after considering his representation in accordance with these instructions, the period intervening between the date of premature retirement and the date of

reinstatement may be regulated by the authority ordering reinstatement as duty, or as leave or as dies non, as the case may be, taking into account the merits of each case.

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9. We have given our deep thoughts to the arguments advanced by both the sides on the point of maintainability of this O.A. The ground urged by the applicant that Office Memorandum dated 11th October, 1976 (R/4), as relied upon by the respondents, does not govern the field, inasmuch as the provisions of FR-56(j) came into force by way of amendment on 11.05.1980 as published in the Gazette of India on 27th May, 1989, does not have a firm footing, as in fact, Paragraph-2 of the said Office Memorandum, as quoted above, categorically states that "these instructions shall apply to representations from Government servants who have been retired prematurely under FR 56(j)..." This apart, Paragraph-5 of the Office Memorandum dated 27th May, 1989, as quoted above, indicates that ***the authority which is empowered to pass final orders on the representation (as indicated in the Annexure) should pass its orders within two weeks from the date of receipt of the recommendations of the Committee on the representation.*** The word "**final order**" used in this context, at all events and under all circumstances makes it amply clear that the '*final order*' which is required to be passed by the competent authority means the final order within the scope and meaning of Section-19(1)(a) read with Section-20 (a) of the A.T.Act, 1985. We are unable to accept the argument of learned counsel for the applicant that the OM dated 11.10.1976 is not applicable to the applicant's case since the FR56(j) came into effect after the amendment on 27.5.1989. In fact, the FR 56 (jj) has also provision for such representation. Therefore, it is no doubt a case where the applicant without exhausting the departmental

remedy available to him, has approached this Tribunal. The plea of the applicant relying on Section-20 of the A.T.Act, 1985 that "a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances" is not applicable herein, in view of the fact that no such extraordinary circumstance exists in the instant O.A. inasmuch as, by virtue of the provisions in Paragraph-6 of the Office Memorandum dated 11.10.1976, the competent authority reserves the right and within its prerogative to reinstate the applicant in pursuance of the recommendations made by the Committee on the representation preferred by the applicant against the order of compulsory retirement under FR(j).

10. We have gone through the decisions cited by the applicant in support of his case and since those decisions are concerning merit of the matter and this Tribunal is considering maintainability of the O.A., we are not inclined to discuss the same in detail.

11. For the discussions held in the preceding Paragraphs, we are of the opinion that since the applicant has been given three months' salary with admissible allowances in lieu of three months' notice under FR-56(j) and he has been relieved of his duty on compulsory retirement with effect from 18.06.2019(AN) and that there being a specific provision in the Office Memorandum dated 11.10.1976 requiring him to submit a representation within a stipulated time frame, which he has not so chosen before approaching this Tribunal, he cannot be said to have exhausted alternative remedy under Section 20 of the Administrative Tribunals Act, 1985. Therefore, the O.A. is disposed of at the very threshold with observation that if the applicant submits a representation to the competent authority as per the

DOP&T OM dated 11.10.1976 within three weeks from the date of receipt of this order, then the said authority will consider the said representation against the impugned order under the FR-56(j) in accordance with the law treating it to have been filed within time as in OM dated 11.10.1976 and dispose of the same in accordance with in the OM dated 11.10..1976. It is clarified that no opinion has been expressed by this Tribunal on merit of the case. No costs.

12. Free copy of this order be made over to learned counsels for both the sides.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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(GOKUL CHANDRA PATI)
MEMBER(A)