(2020) 12 CAT CK 0060

In the Central Administrative Tribunal

Case No : Original Application 100, 703 Of 2020, Miscellaneous Application No. 100, 1931 Of 2020 In Original Application 100, 703 Of 2020

Capt. Pramod Kuamr Bajaj APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 09-12-2020

Acts Referred:

Income-Tax Act, 1961 — Section 12AA, 263
Central Civil Services Conduct Rules, 1964 — Rule 3(1)(ii), 3(1)(iii), 18(2), 21(2)
Central Civil Services (Leave) Rules, 1972 — Rule 7
Constitution Of India, 1950 — Article 311

Citation : (2020) 12 CAT CK 0060

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Pramod Kumar Bajaj, Hanu Bhaskar, Mohd. S Ullah Farman Ali, Ravi Prakash

Final Decision : Dismissed

Judgement

,,,

L. Narasimha Reddy, J",,,

1. The applicant was appointed as Second Lieutenant in the Indian Army in the year 1980, on being selected by the National Defence Academy. He",,,

was promoted to the post of Captain and thereafter was appointed as ADC to the State Governor. On account of the disability suffered by him, he",,,

was demobilized from the Army. He took part in the Civil Services Examination 1989 and was allocated to a 1990 batch of IRS. He held various posts,,,

and was also empanelled as Joint Secretary to the Government in the year 2016. It is also stated that he was selected for appointment as a Member of,,,

the Income Tax Appellate Tribunal (ITAT), but denial of vigilance clearance became the hurdle for the consequential appointment.",,,

2. Departmental inspection was caused into the working of the applicant as Commissioner of Income Tax (Exemption) in the States of Uttar Pradesh,,,

and Uttarkhand. On the basis of that, the applicant was issued with a charge memorandum. He filed OAs in relation to those proceedings.",,,

3. The Government passed an order dated 27.,09.2019 under Fundamental Rule 56 (J) and made the applicant to retire from service, before he",,,

attained the age of superannuation. The applicant filed a review against the order dated 27.01.2019, and the same was rejected. This OA is filed",,,

challenging the order dated 27.01.2019 and the order passed by the reviewing authority.,,,

4. The applicant contends that he had a spot less career, spread over nearly 30 years and he furnished without giving scope to any adverse remarks or",,,

comments. He contends that his ACRs, in the entire service are rated at the level of outstanding, and his integrity was never doubted. It is stated that",,,

the very fact that he was promoted to several higher posts discloses his meritorious service. He contends that his trouble started when he was,,,

selected as a Member of ITAT and the Department went on creating one hurdle or the other.,,,

5. The applicant submits that every step initiated by the respondents be it the one for transfer or denial of vigilance clearance or inclusion of his name,,,

in the agreed list of CBI; were set at naught by this Tribunal and even the charge sheet issued with vague and baseless allegations is under challenge.,,,

He contends that FR.56 (J) was chosen to mar his career, which comes to an end within a matter of few months and the entire exercise is arbitrary,",,,

illegal and unconstitutional. The applicant further states that if one takes into account, his past service record or the nature of service rendered by him,",,,

there was absolutely no basis for retiring him on compulsorily basis. He placed reliance on certain precedents.,,,

6. On behalf of the respondents, a detailed counter affidavit is filed. The various contentions urged by the applicant are contradicted. A detail account",,,

of the circumstances that gave rise to issuance of order of compulsory retirement against the applicant is furnished.,,,

7. The respondents contend that several complaints were received against the applicant as regards his functioning as well as his integrity, and every",,,

attempt made by the department to verify the veracity thereof was thwarted by the applicant one way or the other. They contend that the applicant,,,

did not digest even an order of transfer from one office to another in the same station and he did not submit reply to the notice, issued after conducting",,,

inspection as provided under the relevant provisions of law. They submit that the conduct of the applicant was such that his name was included under,,,

the agreed list of CBI, but the corresponding order was set aside by the Tribunal.",,,

8. The respondents submit that the committee constituted for the purpose of identifying the officers against whom FR.56 (J) can be invoked, examined",,,

the record of the applicant in detail and it has recorded detailed reasons in support of its conclusion to invoke that provision. The respondents further,,,

state that the conduct of the applicant reached a stage that it was no longer feasible for the Government to continue him in service and in fact, he",,,

turned out to b a menace to the department. According to the respondents, the scope of interference with the order passed by invoking FR.56 (J) is",,,

very limited and by referring to a catena of judgments, they contend that no interference is warranted in the instant case.",,,

9. The applicant argued the case in person. He elaborated the various contentions urged in the OA and has also relied upon the relevant precedents in,,,

support of his contentions.,,,

10. On behalf of the respondents, arguments were advanced by Shri Ravi Prakash for Shri Hanu Bhaskar, learned counsel for the Respondents. They",,,

concentrated mostly on the scope of interference by this Tribunal with the orders of compulsory retirement. They submit that the record of the,,,

applicant speaks for itself, and it was no longer in the interest of the department to continue the applicant in service.",,,

11. The service of the applicant started in the Indian Army and he has also worked as ADC to Governor. Thereafter, he took part in the Civil Services",,,

Examination in 1989 and was allocated to Indian Revenue Service. After induction into that service, he earned many promotions. He worked as",,,

Commissioner of Income Tax (Exemption) for the States of Uttar Pradesh and Uttarkhand. He was selected as a Member of ITAT. However, that",,,

could not materialize on account of the denial of vigilance clearance to him, followed by his inclusion in the agreed list by the CBI.",,,

12. The applicant filed OA.No.77 of 2018 challenging the denial of vigilance clearance and O.A.No.137 of 2018 on 06.03.2009, questioning the",,,

inclusion in the agreed list. Both the OAs were decided in his favour on 2.2.2018 and 2.5.2018. We were not concerned with the details thereof or the,,,

consequences that ensued. The result is that the applicant could not make it to the appointment as a Member of ITAT, despite an order passed by the",,,

Lucknow Bench of the Tribunal on 22.05.2018 in OA.No.279 of 2018 directing that vigilance clearance be furnished to the applicant.,,,

13. It is brought to our notice that the orders passed by the Lucknow Bench of the Tribunal, are under challenge before the Honâ??ble Allahabad",,,

High Court, and in some cases they were upheld either by the Honâ??ble High Court or by the Supreme Court.",,,

14. The applicant was issued a charge memorandum dated 17.06.2019. The first charge was that the applicant appeared in person before the Benches,,,

of the Tribunal, the Honâ??ble High Court in various cases and that he did so without obtaining any leave or permission from the competent",,,

authority. The second charge was that the applicant acquired items of immovable property worth Rs.70 to 80 lakhs and settled it in favour of one of,,,

his estranged and divorced wives towards alimony without giving any intimation about the acquisition of such property as required under Rule 18 (2) of,,,

the CCS (Conduct) Rules. The third article of charge is that the applicant married several women, one after the other and it is only in respect of his",,,

first marriage, there was a divorce decree and not when he married the other women.",,,

15. The applicant filed OA.No.330/2019 challenging the charge sheet and this Tribunal dismissed the same. He is said to have filed a Writ Petition,,,

against the order passed in the OA.,,,

16. The applicant was due to attain the age of superannuation on 31.01.2020. The order of compulsory retirement was passed on 27.09.2019. Several,,,

contentions are advanced by the applicant. One of the grounds urged by the applicant is that the order was passed at a time when his case was about,,,

to be considered by the DPC for promotion to the post of Principal Chief Commissioner. The impugned order is almost in a typical format. It does not,,,

refer to any specific event or acts of misconduct. However, it is in the course of judicial review that the connected facts, are placed before the",,, Tribunal.,,,

17. Before proceeding to discuss the issue on merits, certain aspects need to be kept in mind. Through a catena of judgments, the Honâ??ble",,,

Supreme Court held that the order of compulsory retirement is a step to clear the dead wood in the administration, and it cannot be said as a penalty or",,,

punishment, inasmuch as the employee would get all the benefits, which he is otherwise get entitled to, on his retirement. A note of caution was added",,,

to the effect that the provision cannot be invoked as a substitute for disciplinary proceedings or to otherwise get rid of an employee who is otherwise,,,

clean in all respects. Reference in this context can be made to the following judgments.,,,

1. Vinod Kumar v. GNCTD & others â?" in O.A. No.3302/2019,",,,

2. Shyam Lal v. The State of Uttar Pradesh & others, (AIR 1954 SC 369),",,,

3. Union of India v. J N Sinha & others (1970) 2 SCC 458),",,,

4. Union of India & others v. M.E. Reddy & others, (1980) 2 SCC 15),",,,

5. S. Ramachandra Raju v. State of Orissa, (1994) Supp (3) SCC 424),",,,

6. Arun Kumar Gupta v. State of Jharkhand & others, (AIR 2020 SC 1175),",,,

7. Parbodh Sagar v. Punjab State Electricity Board & others (2000) 5 SCC 630),",,,

8. K. Kandaswamy v. Union of India, (1995) 6 SCC 152),",,,

9. Pyare Mohan Lal v. State of Jharkhand & others, (AIR 2010 SC 3753);",,,

10. Nisha Priya Bhatia v. Union of India & others, in C.A. No.2365/2020,",,,

11. Ram Murti Yadav v. State of Uttar Pradesh & others, (2020) 1 SCC 801); and",,,

12. Baikunthanath Das & others v. Chief District Medical Officer, Baripada & others, (1992) 2 SCC 299).",,,

18. We do not feel the necessity to extract the relevant paragraphs of all the judgments.,,,

19. In State of Gujarat v. Umed Bhai M. Patel (2001 (3) SCC 314,) the Honâ??ble Supreme Court summed up the law relating to the",,,

compulsory retirement as under:,,,

â??The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to,,, dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. .... While misconduct and,,,

inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference",,,

that while in the case of retirement State Of Gujarat vs Umedbhai M. Patel on 27 February, 2001 https://indiankanoon.org/doc/893467/ 3",,,

they merely furnish the background and the enquiry, if held -- and there is no duty to hold an enquiry -- is only for the satisfaction of the",,,

authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out",,,

by this Court in Shyam Lal v. The State of Uttar Pradesh & others, (AIR 1954 SC 369,""). In Union of India & Ors. vs. Dulal Dutt (1993) 2",,,

SCC 179, this Court reiterated the view held right from the case of R.L. Butail vs. Union of India (1970) 2 SCC 876 and Union of India vs.",,,

J.N. Sinha (1970) 2 SCC 458 ""that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the",,,

Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on",,,

enquiry by the Court, the Government may disclose the material but it is very much different from the saying that the order should be a",,,

speaking order. No order of compulsory retirement is required to be a speaking order."" In another decision in J.D. Srivastava vs. State of",,,

M.P. & Ors. (1984) 2 SCC 8, in paragraph 7 of the judgment, it was observed by this Court as under: ""But being reports relating to a",,,

remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in the year 1981,",,,

as it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer."" The law",,,

relating to compulsory retirement has now crystallized 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.,,,

20. At the end of the day, an order of compulsory retirement is the result of an administrative exercise undertaken by the concerned authority. Such",,,

orders are no doubt amenable to judicial review.. However, the scope thereof is some what restricted and limited.",,,

21. What the Courts are to be satisfied is about the existence of the material, compared to the nature or content of the material.",,,

22. Reference in this context can be made in the judgment of the Honâ??ble Supreme Court in Tata Cellular v. Union of India (1994 (6) SCC,,,

651). It was held that it is the decision making process than the decision itself, which would be the subject matter of scrutiny. Their Lordships",,,

observed in Para 94 as under:,,,

â??94. The principles deducible from the above are:,,,

(1) The modern trend points to judicial restraint in administrative action.,,,

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.,,,

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be,,,

S.

No.",Name of officer,Complainant,Status

1.,"Sh. P. K. Bajaj,

Addl. CIT Range

-6 (2) Mumbai","Shri S.K.

Jangre / Shri

O.P. Jangre

(father)","Under
examination
2.,"Sh. P.K. Bajaj,
CIT (E),
Lucknow","Complaint
made by
Driving
Training and
Scientific
Research
Lucknow in
January 2015","Under
examination
3.,"Sh. P.K. Bajaj,
CIT (E),
Lucknow","Sh. Dharm
Veer Kapil IFS
Retd dated
17.10.17","Under
examination
4.,"Sh. P.K. Bajaj,
CIT (E),
Lucknow","Sh. Balesh
Singh, through
PMOPG/
E/2017/0597795
dt 17.11.17.","Closed on
22.01.2019
5.,"Sh. P.K. Bajaj,
CIT (Exemption),

Lucknow","Sh. Ashok

Verma,

Lucknow","Closed on

19.07.16

6.,"Sh. P.K. Bajaj,

CIT (Exemption)

Lucknow","Sh. Jagat

Pandey, 28/42,

Civil Lines,

Bareilly, U.P.

Dt. 29.06.16","Closed on

07.10.16.

7.,"Sh. Pramod Bajaj,

CIT (Exemption),

Lucknow","Sh. Ashish

Rastogi, A-70,

Gandhi Nagar,

Prince road,

Muradabad, UP","Closed on

29.08.16.

8.,"Sh. Pramod Bajaj,

Addl. CIT","Ms. Renu Bajaj

w/o Shri P.K.

Bajaj","Report

pending

from Pr.

CCIT

Jaipur

9.,"Sh. Pramod Bajaj,

CIT (Exemption),

Lucknow",Ms. Rakhee,"Under

examination

judicial separation/ divorce from Ms. Sapna thereby allegedly committing bigamy.,,,

xii. Further, Major Penalty Proceedings u/r 14 of the CCS (CCA) ruls, 1965 vide memorandum R.No.A-24012/6/2019-Ad.VI(A), dated 17.06.2019,",,,

were initiated with three Articles of charges against the Applicant relating to violation of Rule 7 of CCS (Leave) Rules, 1972, violation of Rule 3 (1)",,,

(ii), 3 (1 (iii), 18(2) and 21 (2) of CCS (Conduct) Rules, 1964. The details of the misconduct are described at great length in the charge hseet issued in",,,

the aforesaid disciplinary proceding.,,,

xxÂ Â Â Â Â Â Â xxÂ Â Â Â Â Â xxÂ Â Â Â Â Â xxÂ Â Â Â Â Â xxÂ Â Â Â Â Â xx,,,

(Three articles of charge omitted),,,

The Disciplinary Proceedings in the matter are under progress.,,,

xiii. The Applicant has also been placed under suspension vide CBDT order dated 01.07.2019 issued from F.No.C-29016/67/2019-Ad. VIA. Shri P.K.,,,

Bajaj, CIT (90031) challenged his suspension by filing OA no.357/2019 before Honâ??ble CAT, Lucknow Bench. Honâ??ble CAT, Lucknow",,,

Bench disposed of the OA vide order dated 15.07.2019 by directing the applicant to prefer an appeal before the appellate authority.â??,,,

27. Each and every complaint extracted above is also elaborated. It may be true that the applicant was successful in challenging denial of vigilance,,,

clearance, inclusion in the agreed list, and the like. On that basis the applicant made an attempt to argue that all the allegations made against him that",,,

led to denial of vigilance clearance or inclusion in the agreed list, are deemed to have been quashed. We do not agree with him.",,,

28. The applicant was required to submit his explanation to an allegation of misconduct. He challenged the notice itself, after dodging the matter for",,,

quite some time. A Bench of this Tribunal at Lucknow, has no doubt quashed the notice. However, from that fact, it cannot be inferred that the",,,

allegations made against the applicant is held not proved or non existent. The order passed by the Tribunal is the subject matter of the Writ Petition,,,

and we cannot make any comment on them. What, however, emerges from various developments is that the applicant did not permit the",,, Administration to regulate him in whatever form or manner. Every attempt such as transfer from one post to another, in the same place, the conduct",,,

of the inspection were thwarted. More and more the applicant was running away from these exercises, the resolve of the department naturally get",,,

increased. For all practical purposes, the applicant has chosen to challenge the very authority of the department in every form and at every stage. No",,,

department of Government, not to speak of a sensitive one like the Income Tax, can afford to function with such officers at senior positions.",,,

29. The responsibilities attached to the office held by the applicant are highly sensitive and with serious financial and legal consequences. The Income,,,

Tax Appellate Tribunal dealt with the order passed by the applicant and expressed serious concern. The citizens who wanted to get the benefit of,,,

provisions of Income Tax Act in the hands of the applicant, have their own grievances. The personal life of the applicant was not only extraordinary",,,

but also dented the very reputation of the department. When such is the status, which the applicant has acquired for himself, the respondents are left",,,

with no other alternative except to invoke Rule 56 (j).,,,

30. Much argument is advanced by the applicant by referring to the ACRs, certain observations made by the Courts in the judgments and the clauses",,,

contained in circulars issued from time to time.,,,

31. Even while observing that the ACRs of an employee can be one of the factors to be taken into account in the context of invoking Rule 56 (j), it",,,

was clarified beyond any pale of doubt that they are not the conclusive factors to decide the course of action. Even where the ACRs of an officer are,,,

outstanding, the propensity to the challenge or to deviate from the ordinary conduct cannot be ignored.",,,

32. One cannot limit the factors that go into the formation of the opinion in this behalf, nor it can be restricted to the developments spread over, as",,,

particularly the period. In a way, it is a comprehensive review and evaluation of the history of the officer, after he crosses 53 years of age. He may",,,

have earned promotions till 49th year or beyond. If the only course open to the State to do away the service of employee is by initiating disciplinary,,,

proceedings, there would not have been in the necessity to frame Rule 56 (j) at all.",,,

33. It is a facility for the Government to ensure that its energies are not wasted

in controlling and otherwise unruling officer who does not permit,,,

himself to be regulated at all or has become a menace for the department. After perusing the entire record and on a consideration of the authoritative,,,

pronouncements on the subject that are cited by both the parties, we are convinced that the respondents were within their power to pass the impugned",,,

order.,,,

34. The applicant argued that the impugned order is tainted with malice in law. According to him, the proceedings initiated one after the other, support",,,

his contention,. However, if one carefully examines the sequence of events, particularly those in the past 4 or 5 years in respect of the applicant, the in",,,

escapable conclusion is that it is only the applicant, if at all any one, who forced the respondents to take recourse to Rule 56 (j).",,,

35. We do not find any merit in the OA and the same is accordingly dismissed.,,,

36. The MA.No.1931/2020 also stands disposed of. There shall be no order as to costs.,,,

