

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
AJOY KUMAR PATNAIK

DATE OF JUDGMENT 08/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 280 1995 SCC (6) 442
JT 1995 (7) 30 1995 SCALE (5) 490

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal by special leave arises from the order of the Central Administrative Tribunal, Bombay Bench dated July 19, 1991 made in O.A. No.425 of 1986. The respondent's case, while working as Collector of Customs (Appeals) at Bombay, after completing 50 years of service, had come up before a screening committee consisting of senior officers to review the respondent's performance for continuance in service. The committee met on February 11, 1984. On consideration of the entire material placed before it, it recommended to compulsorily retire the respondent from service under Fundamental Rule 56(j) on "doubtful integrity". The competent authority passed the order on February 10, 1986 under F.R.56(j) of the Fundamental Rules compulsorily retiring him in public interest. As stated earlier, the respondent had questioned the correctness thereof in the Administrative Tribunal which by its order had set aside the order on the ground that there are no adverse entry in the Character Rolls of "doubtful integrity" of the respondent and that, therefore, the two instances should not be taken into consideration in compulsorily retiring the respondent from service.

To satisfy ourselves whether the action of the appellant is based on any material, since the Tribunal had given finding that it had perused the record and was not satisfied, we had directed Shri N.N. Goswami, the learned senior counsel for the appellant, to keep the record ready and place before us the Character Rolls as well as the report submitted to the Review Committee, views of the Review Committee made in that behalf. This has been done. We have perused the proceedings of the Review Committee dated December 24, 1985, stating :

"The Review Committee considered the report of the Screening Committee,

forwarded to us under Chairman CBEC's note dated 18.12.1985. The Review Committee considered the report and the records and agrees with the recommendation that Shri D.P. Arya and Shri A.K. Patnaik are fit to be prematurely retired under FR 56(j)."

We have seen the material placed before the Screening Committee, the Review Committee and the competent Authority in the proceedings referred to hereinbefore. It is stated that the department had given classification guidance for classifying Dodecyl Benzene under Heading 17.10(1) as against Heading 38.01/19. The Collector of Customs, Bombay, had issued a Departmental Tariff Advice on the basis of the minutes of the Tariff Conference held at Mangalore in September, 1984 according to which Dodecyl Benzene was to be classified under Heading 38.19. The Advice of the C.C.C. Nomenclature Directorate was mentioned in the Tariff Advice. The date of this advice is 28.12.1984 and the date of the appellate decision bears dated 31.12.1984 which is very close to the date of the advice. Even as late as October, 1985, Shri Patnaik (the respondent herein) continued to classify Dodecyl Benzene as before the issue of the Tariff Advice. They concluded that by the wrong classification, the respondent had given benefit to a single party, namely, M/s. Rajesh & Sons of Bombay alone to the tune of more than Rs. 2 crores. Similarly, in 32 appeals which the respondent has disposed of, he classified Saccharine to be cleared under REP Licence as "Electroplating Brightener", in spite of the fact that the Import Policy in condition No. 5 of Appendix 17 is clear that this cannot be done, as Saccharine has been specifically banned under Appendix 4, and an item allowed on an REP Licence under Appendix 17 of the Policy should either be one which has been specifically named in that Appendix which, Saccharine was not, or it should not be a banned item, which Saccharine was. On the basis of this material, they doubted the integrity of the respondent and had taken decision to compulsorily retire the officer from service.

It is contended by the counsel for the respondent that he was not communicated the instructions regarding the first item. It is also contended with regard to the second item that he was entitled to dispose of the matter on merits and had taken judicial decision on the basis of the material placed before him as an appellate authority and he was not responsible for the clearance of the goods.

We are not concerned with the merits in the matter of disposal or manner of disposal of the appeals or classification. We are concerned with regard to the integrity of the officer in the decision making process. When the authorities had material before them and considered that material to be sufficient to doubt the integrity of the officer, it is settled law that the authority competent to take the decision to compulsorily retire the officer can form an opinion whether continuance of such officer is in the public interest. It has gone into the conduct of the officer and that his conduct in the manner of disposal of the appeals as quasi judicial authority does encompass into misconduct for taking disciplinary action.

In *S. Govinda Menon v. Union of India & Anr.* [AIR 1967 SC 1274], the appellant, an ICS officer was Commissioner of Hindu Religious and Charitable Endowments. He disposed of grant of lease of the endowment lands contrary to the statute. He was charged for misconduct. He questioned the show cause notice by filing a writ petition. Pending writ petition, the enquiry officer submitted his report.

Thereafter, he amended and writ of prohibition was sought. The principal contention raised therein was that his order was quasi judicial. Mathew, J. as he then was negatived the contention while S.V. Pillai, J. accepted the contention that quasi judicial decision having become final and conclusive, the conduct of quasi judicial orders cannot be the subject of an enquiry for misconduct. On reference, Govinda Menon, J. agreed with Justice Mathew and dismissed the writ petition. When appeal was filed, this Court held that although the Commissioner acted as an authority under the Hindu Religious & Endowment Acts and was not subject to administrative control of the Government as a master and servant, still the proceeding for such acts can be instituted against him, if there is prima facie material to show recklessness or misconduct on his part. It is not necessary that the appellant should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject matter of disciplinary proceedings. If the act or omission is such as to reflect on the reputation of the officer or his integrity or good faith or devotion to duty, there is no reason why disciplinary proceeding should not be taken against him for that act or omission relating to an activity in regard to which there is no actual master and servant relationship. To put it differently, this Court said that the test is not whether the act or omission was committed by the appellant in the course of his discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for doubting integrity or devotion to duty as a public servant.

In V.R. Katarki v. State of Karnataka [C.A. No.4392/86, dated March 22, 1990], a Bench of this Court to which one of us (K. Ramaswamy, J.) was a member, the appellant was imputed with misconduct in fixing, in his capacity as Civil Judge at Baglkot, "higher valuation than was legitimate of the lands." After conducting an enquiry and finding guilty of misconduct, he was dismissed from service which was confirmed by the High Court on judicial side. When the appeal had come up, this Court was requested not to go into the question of the valuation since that was subject matter of an appeal in the High Court. This Court disposed of the appeal holding thus: "We would like to make a special mention of the position that even if the assessment of valuation is modified or affirmed in an appeal as a part of the judicial process, the conduct of the judicial officer drawable from an overall picture of the matter would yet be available to be looked into. "In appropriate cases it may be opened to draw inferences even from judicial acts". Thus the appeal was dismissed confirming dismissal from service. This ratio was followed in Periyar and Pareekanni Rubbers Ltd. v. State of Kerala [AIR 1990 SC 2192 at 2198] to which one of us (K. Ramaswamy, J.) was a member, and this Court held that "The rule of conduct spurned by this Court squarely put the nail on the official act as a refuge to fix arbitrary and unreasonable market value and the person concerned shall not camouflage the official act to a hidden conduct in the function of fixing arbitrary or unreasonable compensation to the acquired land."

It would thus be clear that an officer though performs official quasi judicial functions, his conduct in the discharge of the quasi judicial act or omission relates to the activity in the course of the discharge of his duties as

a servant of the Government and bears reasonable relation or nexus with the nature and conduct of the service and when it casts reflection upon his reputation, integrity or devotion to duty as a public servant, that would be squarely referable to the conduct of the public servant amenable to disciplinary proceeding. When it is a misconduct, the competent authority is equally entitled to take a decision whether an officer has impeccable integrity and absolute devotion to duty for further continuation in service. The competent authority would be free to consider the material, particularly the latest one, and form a bona fide decision in the public interest to compulsorily retire an officer from service.

Since the competent authorities at different levels had considered the material and ultimately had decided to compulsorily retire the respondent from service, it cannot be said that it is an arbitrary decision. It is true that pending the proceedings the respondent has already retired from service on attaining the age of superannuation, but that would not provide a ground nor to dispose of this matter without giving any finding on the action taken by the competent authority. Otherwise, in all cases it would cause grave damage to public justice. The employee would get away with it due to pending proceedings. Therefore, it needs to be considered and decision rendered thereon whether the action taken by the Government or the competent authority is valid in law. In that perspective, mere retirement of the officer by efflux of time pending proceedings would not be a ground to close the matter.

The appeal is accordingly allowed and the order of the Tribunal is set aside and that of the appellant is upheld. But in the circumstances without costs.