A M.S. BINDRA

v.

UNION OF INDIA AND ORS.

SEPTEMBER 1, 1998

B [S. SAGHIR AHMAD AND K.T. THOMAS, JJ.]

Service Law :

Compulsory Retirement—Grounds for—Government Officer held in C *high esteem suddenly dubbed as a person of doubtful integrity and compulsorily retired from service—Validity of—Held, conclusions arrived at by Screening Committee not supported by available records—Doubting one's integrity should not be based on surmises and hunches—But should be based on preponderance of probability from the point of view of a reasonable man—Overall estimation of the delinquent officer should not be overlooked* D *while judging his integrity—In the circumstances of the case, the delinquent officer's tenacity towards his duties does not warrant him to be castigated as one with "doubtful integrity"—Fundamental Rules, FR 56(j).*

Compulsory Retirement—Judicial Review of—Grounds for—Held, E *judicial review is permissible if the order is arbitrary or mala fide or based on no evidence.*

Compulsory Retirement—Natural justice—Inapplicability of—Explained—Version of delinquent officer—When to be considered—Stated.

F *Administrative Law :*

Administrative action—Judicial function—Written Judgment—Prompt delivery of—Revenue Officer passed an order of adjudication running into 100 pages on the day following the last day of hearing—Superior authority dubbed the Officer as one with "doubtful integrity" because it was suspected that the G *order must have already been written before hearing was complete—Held, the Officer instead of, being doubted should have been appreciated for his promptitude—There was nothing wrong if the Officer had prepared the prefatory portion and summary of evidence, leaving out crucial discussion to be decided after conclusion of hearing—Hence, doubting the Officer's integrity* H *is unjustified.*

Judicial Review—Overruling of decision of lower court or administrative authority—Implication of—Held, does not amount to doubting the calibre, or casting stigma on such judicial officer or authority : A

Words and Phrases :

"Integrity"—Meaning of B

Maxim :

"Nemo finit repente turpissimus" (no one becomes dishonest all of a sudden)—Meaning of—Held, the maxim is not unexceptional but still is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. C

The appellant was an Indian Revenue Service Officer and had a steep rise in his career and was held in great esteem. But suddenly at the age of 52 years the appellant's integrity was doubted and he was compulsorily retired. D

The Screening Committee arrived at the conclusion that the appellant's integrity was doubtful on the basis of the following three cases handled by the appellant -

(a) In the first case, the appellant imposed a penalty and fine of Rs. 10 crores on a Mill. According to the Committee the appellant committed the following lapses while proceeding against the Mill : E

(i) The order of adjudication ran into nearly 100 pages and it was passed on the day following the last day of the hearing. It indicated that the order must have already been got ready even before the hearing was complete. F

(ii) A penalty of Rs. 50 lakhs was imposed on the proprietor of the Mill without issuing show cause notice to him.

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(iii) Huge sums of duty have been demanded in respect of unaccounted production in the factory without fully going through the claims of the party that those accounts were wastage claimed by him.

(b) In the second case, the appellant's subordinate gave instructions for keeping an investigation in abeyance. The Committee came to the H

A conclusion that such instruction must have been given at the appellants behest.

(c) In the third case, it was alleged that the appellant demanded a bribe of Rs. 10 lakhs from a party and when the amount was not paid, he took steps for cancellation of bail granted to the party and also invigorated
B the steps against that party.

The appellant filed an application before the Central Administrative Tribunal, which was dismissed. Hence this appeal.

C Allowing the appeal, this Court

HELD : 1.1. Want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently.
D The maxim "*Nemo Firut Repente Turpissimus*" (no one becomes dishonest all of a sudden) is not unexceptional, particularly in the filed of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To declare an officer to be
E of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere probability is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justifica-
F tion to ram an officer with the label "doubtful integrity". [241-A-D]

2.1. In the first case, it was the appellant who headed the operation and unearthed huge sum of concealed excise duty. This work should have won the appellant appreciation but what was noted against the appellant is that he willfully created lacunae in the confiscation proceedings for provid-
G ing an escape route to the defaulter. One of the reasons for this allegation is that the confiscation order contains nearly 100 pages and the period was too short for preparing such an order. Normally it is an achievement that an order of 100 pages was made during such a short period. There is a possibility that the officer hearing the adjudication case for several days
H would have prepared its prefatory portion as well as statement of

summary of evidence during the days when arguments were proceeding and before conclusion of the hearing, leaving out the crucial discussion to be dictated after conclusion of the hearing. That is not an objectionable course. If so, the achievement in preparing an order of confiscation within such a short span should not have been frowned at, instead there is scope to pay admiration for its promptitude. It is farfetched to conclude that the appellant's omission to issue show cause notice before imposing penalty and fine was a deliberate attempt on the part of the appellant to help the defaulter Mill because it was open to the appellate authority to set aside the order and direct the appellant to pass fresh order after issuing the show cause notice. [241-E-H; 242-A-B]

2.2. In the second case, the inference made against the defaulter is too tenuous. The minimum thing, which should have been done, was to ascertain from the appellant's subordinate officer the circumstances under which instructions were issued by him to keep the investigation in abeyance. Attributing a sinister motive to the appellant for what his subordinate had done was seemingly unfair, without adopting such a minimum precaution. [242-D-E]

2.3. In the third case, the steps taken by the appellant to cancel the bail granted to the defaulters were not objectionable. This is a *prima facie* point in favour of the appellant's tenacity. The role played by the appellant was that of a dutiful and efficient officer of the department. The Screening Committee came to the conclusion that the appellant's integrity was doubtful on the basis of the statements made by the defaulters that some person told them that the appellant was to be paid Rs. 10 lakhs to save them from the proceedings. Nobody had checked up the truth from that person. If integrity of senior officers, who established unblemished reputation and earned encomiums from all concerned till then, is proclaimed as doubtful merely on the strength of statements of persons prosecuted by such officers, what is the safety of such officers more so when they have to embark on hazardous operations risking their lives against big business houses? [242-F-G; 243-B]

Union of India v. *Col. J.N. Sinha,* [1970] 2 SCC 458; *Baikuntha Nath Das* v. *Chief District Medical Officer,* (1992) 2 SC 299 and *Posts and Telegraphs Board* v. *C.S.N. Murthy,* [1992] 2 SCC 317, relied on.

3. Therefore, there is utter dearth of evidence for the Screening Committee to conclude that the appellant had doubtful integrity. Such a

conclusion does not stand judicial scrutiny even within the limited permissible scope. [243-D]

4. Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or *mala fide* or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into. [240-F]

5. Members of the Screening Committee may be reputed persons. Declining to agree with their conclusion does not mean that their calibre is doubted or a stigma is cast on them. If the decision of a lower court is overruled it does not mean that a stigma is cast upon the judicial officer concerned. [243-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5583 of 1993.

From the Judgment and Order dated 3.12.92 of the Central Administrative Tribunal, New Delhi in O.A. No. 588 of 1986.

Raju Ramachandran, Manmohan, B.L. Wali and Maninder Singh for the Appellant.

N.N. Goswami, Hemant Sharma, V.K. Verma and (Ms. Sushma Suri) (NP) for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. Appellant had a steep rise in the hierarchy of Indian Revenue Service and was held in great esteem by his superiors until the dawn of 1985 which marked the beginning of his downfall. He suddenly fell from grace as his integrity was eclipsed by the dark clouds of doubts entertained by his superiors. Consequently at the age of 52 he was asked to quit the department by terming the action as "compulsory retirement". If appellant's stand is correct he would have felt the same way as Cardinal Thomas Wolsey had lamented four centuries ago when his master Henry VIII King of England suddenly stripped him of his high office and indicted

him to face a trial. "If I had served God as diligently as I have done the King, He would not have given me over in my grey hairs". A

On 9-10-1985, Government of India (Ministry of Finance) axed the appellant down by serving an order of compulsory retirement. Though he challenged the order before Central Administrative Tribunal (New Delhi Bench) he was unsuccessful. Hence he has filed this appeal by special leave. B

A resume of facts which led to the said necking off is the following:

Appellant joined Indian Revenue Service in the year 1958 and was absorbed in the Excise Department. He had a quick rise in the ladder which in 1980 reached him to the level of Director Enforcement and in 1983 as Appellate Collector of Customs and Excise since he earned a high standard of reputation by then as "a very good officer all round". As he proved to be efficient and trustworthy he was entrusted with the high sensitive post of Director of Anti Evasion Wing in 1984 which post he held till June 1985. During the said period a series of raids was conducted by Anti Evasion Squad headed by the appellant and a whopping sum of escaped excise duty was unearthed through such raids. This became the subject matter of extensive media coverage and praises were showered on the department for carrying out such daring operation in big business houses and hoarding places. But the above raids became the commencement of a volte face in the official career of the appellant. C D E

A Screening Committee which considered the cases of several officials of the Revenue Department found that in the interest of the department some officials should be weeded out. On 9-4-1985, the committee delved into the files relating to such persons including the appellant and in the case of appellant they focussed on three specific instances which are the following: F

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(1) Pursuant to search made in the premises of M/s. Orkay Silk Mills Ltd. adjudication proceedings were initiated and in the end a penalty and fine of Rs.10 crores have been imposed on the said Mills. But certain derelictions were noted as against the appellant in the above operations. They are: H

A (a) The order of adjudication ran into nearly 100 pages and it was passed on the day following the last day of the hearing. It indicated that the order must have already been got ready even before the hearing was complete.

B (b) A penalty of Rs.50 lakhs was imposed on the proprietor of the Mills without issuing a show cause notice on him.

(c) Huge sums of duty have been demanded in respect of unaccounted production in the factory without fully going through the claims of the party that those accounts were wastage claimed by
C him.

(2) Important cases relating to M/s. Golden Tobacco Co. were lying unattended for a very long time and instructions were issued by the Deputy Director Shri Bhattacharjee to the units under him to keep further investigation in abeyance. The Screening Committee held that Shri Bhattacharjee would have given such instructions at the behest of the Director.

(3) One Ashok Jain and his brother imported components of Honda cars from abroad and assembled them in India in violation of Central Excise Laws. On 1-12-1984, officers of the Anti Evasion Wing raided the
E premises where those cars were garaged and the Jain Brothers were subjected to interrogation. They were arrested and produced before the court. When they were released on bail the appellant persisted with the steps and moved for cancellation of their bail order. In this operation what was viewed against the appellant was that he had demanded Rs.10 lakhs from Jain Brothers and when it was not paid he invigorated the steps
F against those two brothers.

The Screening Committee after considering the files relating to the aforesaid three instances (which were recorded in a document marked by the department as Annexure IV) reached the following conclusion:

G "On the basis of the specific cases and other material at Annexure IV hereto, he is found to be of unreliable integrity and unfit to be entrusted with any position of responsibility in the Government service as he has widely and systematically indulged in extortion of money from the parties and adopted methods which have the effect of
H bringing down the esteem of the Government in the public eye."

The Revenue Committee upheld the said conclusion and thereafter Government of India passed the order prematurely retiring the appellant.

Appellant made a scathing attack against the aforesaid order mainly on three premises.

(1) The big business houses whose premises were subjected to series of raids were so influenced as to spread canards about the appellant as part of a retaliatory measure against him.

(2) The Screening Committee was actuated by *mala fides* as one of its members (Shri M.L. Wadhawan) who was a member of Central Board of Excise and Customs had been inimical to him on account of serious differences which can be discerned from a file (number of which appellant has cited in the Special Leave Petition).

(3) The conclusion made against the appellant by the Screening Committee is perverse in the sense that the material on which that conclusion was reached could never have afforded scope to reach such conclusion to any reasonable person. In other words, there was utter dearth of evidence for the Screening Committee to conclude that appellant was a case of doubtful or unreliable integrity.

A two Judge Bench of this Court has held in *Union of India* v. *Col. J.N. Sinha and Ors.*, [1970] 2 SCC 458, that "If the appropriate authority forms the requisite opinion *bona fide* its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision."

Approving the above principle, a three Judge Bench of this Court has laid down in *Baikuntha Nath Das and Anr.* v. *Chief District Medical Officer and Anr.*, [1992] 2 SCC 299 that five principles should be borne in mind while considering a case of compulsory premature retirement. It is not necessary to extract all the five principles here except No. (iii) which reads thus:

"Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may

A interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order."

B This was reiterated very soon by another three Judge Bench in *Posts and Telegraphs Board and Ors.* v. *C.S.N. Murthy*, [1992] 2 SCC 317 in which their Lordships further added thus:

"An order of compulsory retirement is not an order of punishment. F.R. 56 (j) authorises the Government to review the working of its
C employees at the end of their period of service referred to therein and to require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency
D and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, *if arrived at bona fide and on the basis of material available on the record.*"

E (emphasis supplied)

Therefore, judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or *mala fide* or if it is based on no evidence. The observation that principles of
F natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into.

G In this case, appellant made an endeavour to show that the order is tainted by *mala fides* as one of the members of the Screening Committee (M.L. Wadhawan) had some axe to grind against him. But we are not persuaded to believe that merely because appellant has such a version against either that member or other members of the Screening Committee, the Committee would have gone against the appellant on account of that
H reason. So we repell the contention based on the allegation of *mala fides*.

While viewing this case from the next angle for judicial scrutiny i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "*Nemo Fiut Repente Turpissimus*" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

Here, out of the three instances on which the Screening committee relied to dub the officer as a case of "doubtful integrity" the first is his action against M/s. Orkay Silk Mills. The fact is that it was the appellant who headed the operation. A task which unearthed such a huge sum of concealed excise duty would normally evoke appreciation for his work. But what was noted against him in that affair is that he willfully created lacunae in the confiscation proceedings for providing an escape route to the defaulter. One is that the confiscation order contains nearly 100 pages and the period was too short for preparing such an order. What is the inference to be drawn? Normally it is an achievement that an order of 100 pages was made during such a short period. So what is then to be thought of against it? Is it that he would have taken too much pain to finish his work or is it that he would have caused it to be written by somebody else? Is there not a clear possibility that the officer hearing the adjudication case for several days would have prepared its prefatory portion as well as statement of summary of evidence during the days when arguments were proceeding and before conclusion of the hearing, leaving out the crucial discussion to be dictated after conclusion of the hearing? That is not an objectionable course. If so, the achievement in preparing an order of confiscation within

A such a short span should not have been frowned at, instead there is scope to pay admiration for its promptitude.

Another lacuna is that he imposed a huge penalty and fine without issuing a show cause notice. To say that he did it for helping the defaulter is too far-fetched. The appellate authority which may be persuaded to set
B aside such an order on that ground could as well direct the authority to pass a fresh order after issuing the show cause notice. So it is unreasonable to conclude that the imposition of penalty was made calculatedly to have it upset by the superior authority.

C We feel that the two lacunae ferretted out from the proceedings relating to M/s. Orkay Silk Mills are grossly insufficient to reach a conclusion that the delinquent officer was trying to help the defaulting manufacturer.

'In the second instance concerning the file of M/s. Indian Tobacco
D Company the inference made against the defaulter is too tenuous. The minimum thing which should have been done was to ascertain from Shri Bhattacharjee, the Deputy Director, the circumstances under which instructions were issued by him to keep the investigation in abeyance. Attributing a sinister motive to the appellant for what Shri Bhattacharjee had
E done was seemingly unfair, without adopting such a minimum precaution.

The third is the case relating to import of spare parts which the Jain Brothers assembled for making Honda cars. In that case the ostensible role of the appellant was to detect the offence through investigation and then to follow it up seriously. When the defaulters were granted bail the appel-
F lant moved for cancellation of the bail it is *prima facie* a point in favour of the appellant's tenacity to pursue the steps adopted. Thus far the role played by the appellant was that of a dutiful and efficient officer of the department. But the reason for the Screening Committee to doubt the integrity of the appellant in the aforesaid case is that the Jain Brothers have
G alleged that one Mr. Kapoor told them that appellant was to be paid Rs.10 lakhs to save them from the proceedings.

We perused the statement of Jains. They never said that appellant made the above demand to them at any time. The only material before the Screening Committee was that the two accused had stated that Kapoor
H gave them such an impression. It must be noted that nobody had checked

up the truth of it with the person to whom it was attributed. The most unfortunate feature is that nobody has checked it up even with Mr. Kapoor who is alleged to have told like that to the Jain Brothers. If integrity of senior officers, who established unblemished reputation and earned encomiums from all concerned till then, is proclaimed as doubtful merely on the strength of statements of persons prosecuted by such officers, what is the safety of such officers more so when they have to embark on hazardous operations risking their lives against big business houses.

Shri N.N. Goswami, Senior Advocate arguing for Union of India submitted to us that members of the Screening Committee are very reputed persons and hence their conclusion must be given full weight. It is not a question of doubting the calibre of the members of the Screening Committee. While declining to agree with their conclusion no particle of mud is slung on any member of the Screening Committee. Even if such a conclusion was made by a judicial personage the higher court which overrules it does not cast any stigma on the judicial officer concerned.

We have no doubt that there is utter dearth of evidence for the Screening Committee to conclude that appellant had doubtful integrity. Such a conclusion does not stand judicial scrutiny even within the limited permissible scope. We, therefore, allow this appeal and set aside the order under attack including the order by which premature compulsory retirement was imposed on the appellant. The department concerned shall now work out the reliefs to be granted to the appellant as sequel to this judgment.

V.S.S. Appeal allowed.