

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR****Original Application No.200/00449/2015**

Jabalpur, this Thursday, the 30th day of January, 2020

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

D.R. Kathotia, aged about 55 years, S/o late Ram Prasad Kathotia, Postal Assistant, posted at Sohagpur R.S. District Hoshangabad (M.P.001) **-Applicant**

**(By Advocate – Ms. Anjali Shrivastava, proxy counsel of
Shri Saurabh Singh)**

V e r s u s

1. Union of India through Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi 110001.

2. Chief Post Master General, Department of Posts, M.P. Circle, Bhopal (M.P.) 462012.

3. Senior Superintendent of Post Offices, Hoshangabad Division, Hoshangabad (M.P.) 461001 **-Respondents**

(By Advocate – Shri D.S. Baghel)

(Date of reserving order : 09.01.2020)

O R D E R

By Navin Tandon, AM.

The applicant is aggrieved that he has been compulsorily retired on 10.03.2015 under Rule 56(j) of Fundamental Rules.

2. The applicant has made the following submissions:

2.1 He was initially appointed as Postal Assistant vide order dated 21.03.1983.

2.2 Vide order dated 04.06.1999 (Annexure A-5), the applicant was promoted to the next higher pay scale of 4500-7000 after completing 16 years of service.

2.3 The Review Committee held a meeting on 13.01.2014 and vide its memo dated 5/6.01.2015 (page 20 and 21 of Annexure A-2), have not recommended for retention in service of the applicant.

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

“8. RELIEF SOUGHT:

Applicant, therefore, humbly prays that this Hon'ble Court may kindly be pleased to:

i) that an order in the appropriate nature may kindly be issued to quash order Ann-A/1 dt. 10.03.2015 passed by respondent no.3 as also order/notice dt.05.03.2015 contained in Ann/A/2 with a direction to continue the applicant till the age of superannuation of 60 years with all consequential benefits;

ii) an order in the appropriate nature may also be issued that if the applicant is retired compulsorily, after quashing the orders Ann-A/1 & A/2, he be reinstated back in service with all consequential benefits including pay and seniority;

iii) Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

iv) Award the cost of the instant lis to applicant."

4. The respondents have filed their reply and have submitted that the applicant has rightly been compulsorily retired under Rule 56(j) of the Fundamental Rules.

5. Heard learned counsel for the parties and perused the pleadings and the documents available on record.

6. The Review Committee meeting minutes dated 5/6.01.2015 (Annexure A-2) is reproduced as under:

"While reviewing the 30/55 years cases of officials, the Review Committee in its meeting held on 31-12-2014 as per the provision contained in Rule 56(j) of Fundamental Rules, has **not recommended** for the retention in service of following officials who will be attaining the age of 55years during the period 01.04.2015 to 30-06-2015 due to the below mentioned observations/adverse remarks found in service records of the official.

1. Shri D.R. Kathotiya PA Sohagpur R.S.
(Hoshangabad Division)

Observations

A. Details of Punishments awarded to Shri D.R.Kathotiya-

1. Recovery of Rs 6000/- from the Pay in equal 06 ins @Rs 1000/- each Vide SSPOs HSD Memo no F7-1/93-94 dated 31-8-98

2. Reduction of Pay to the State of Rs 4500/- from Rs 5125/- for One Year without cumulative effect Vide SSPOs HSD Memo no F2-1/99-2000/12 dated 7-6-2000 this punishment is modified as DE NOVO from the State

of framing the charges vide CPMG Bhopal memo No. STA 3-33/2000 dated 26-6-2001

3. Compulsorily retired vide SSPOs Hoshangabad memo No. F5-1/99-2000/191 dated 22-8-2001. This punishment is modified as reduction of pay at the minimum in the pay scale 4000-100-6000 for a period of 5 years vide DPS (HQ) Memo No. STA/3-2/02 dated 17-9-2002.

4. Recovery of Rs.3700/- from the pay of the official in 4 equal installments @ of Rs.925/- vide SSPOs memo No. F7-1/08-09/III/26 dated 28-7-11.

B. Particulars of Disciplinary/Court case pending against Shri Kathotiya -

1. The official was subsidiary offender in fraud committed by Shri B.R. Lahase on MPCM in booking of Regd article and he was awarded punishment of reduction of pay to the stage of Rs.4500 from Rs.5125 for one year without cumulative effect vide SSPOs HSD Memo No. F2-1/99-2000/12 dated 7-6-2000. DENOVO proceedings were ordered from the stage of framing the charges vide CPMG Bhopal memo No. STA 3-33/2000 dated 26-6-2001 which is still pending.

2. One Court case No. 5/2005 pertaining to the fraud of Rs.59700/- is pending in the court of CJM Itarsi.

C. Particulars of Loss and Fraud cases in which Shri kathotiya is involved as Main Offender and action of Disc cases in contemplated :-

1. The official was main offender in fraud case of Rs.59700/- and was awarded punishment of compulsory retirement vide SSPOs HSD Memo No. F-5-1/99-2000/191 dated 22-8-2001. This punishment was modified as reduction of pay at the min. in the pay scale 4000-100-6000 for a period of 5 years vide DPS (HQ) Memo No. STA/3-2/02 dated 17-9-2002.

2. The integrity of the official is doubtful. He was main offender in fraud case of Rs.59700/- and subsidiary offender in fraud committed by Shri B.R. Lahase on MPCM in booking of Regd articles.

D. Observations regarding ACRs remarks

1. The ACR of the official has reviewed for the entire service period and observed that the official has obtained only the 'AVERAGE' grading for most of the service period.

2. Further the employee has throughout his service failed in satisfactorily observing duties assigned to him. Most recent example of this is of 2011 when he was subsidiary offender in fraud case committed by the BPM Dodalpur and was awarded punishment of Recovery of Rs.3700/- in 4 equal Instt. @ Rs.925/- vide SSPOs memo No. F7-1/08-09/III/26 dated 28-7-11.

The Sr.Suptd of Post Offices Hoshangabad Division Hoshangabad should take appropriate action as per Provision of FR 56(J)."

7. During argument stage, learned counsel for the applicant brought out that all the punishments under Item A.1, A.2 and A.3 are very old of the year 1998, 2000 and 2001. After the first punishment, the applicant has been granted promotion, therefore, the same should not be considered. She also argued that the punishment under Item A.2 was ordered to be initiated de novo by the Appellate Authority. Further, the recovery of Rs.3,700/- on 28.07.2011 was not an individual penalty. It was as a consequence of embezzlement of Rs.1.41 lacs by another Postal Assistant and who has absconded from office.

7.1 Regarding the disciplinary/courts cases pending against the applicant are concerned, the disciplinary action against Item B.1 is pending since 26.06.2001. As far as Court Case

No.54/2005 is concerned (Item B.2), the applicant has already been acquitted on 21.12.2015 by the competent Court of law.

7.2 Regarding the particulars of loss and fraud cases (under Item C.1 and C.2 of the memo) are concerned, it was averred by learned counsel for the applicant that the punishment was already reduced. As regards the doubtful integrity is concerned, the Review Committee has relied upon the FIR lodged in the matter. She places reliance on a decision of Hon'ble Supreme Court in the matters of **State of Gujarat and another vs. Suryakant Chunilal Shah** (1999) 1 SCC 529 to aver that this insinuation is not as per law.

7.3 As far as the observations regarding the ACR is concerned, learned counsel for the applicant submitted that no adverse remarks have been communicated to the applicant.

7.4 Summarising the above argument, learned counsel for the applicant submitted that there was no case for compulsorily retiring the applicant invoking Rule 56(j) of Fundamental Rules.

8. Learned counsel for the respondents vehemently argued that the Review Committee has considered the entire service of the applicant. A large number of disciplinary cases against the applicant prove that his conduct was not satisfactory. Further,

his integrity was doubtful. He has been acquitted by the Court only because of technical lapses and his performance, as reflected by ACRs, were average. Therefore, the respondents have taken action as per law.

9. We have considered the matter.

10. The Hon'ble Supreme Court in the matters of **Suryakant Chunilal Shah** (supra) has held as under:

“.....The material which was placed before the Review Committee has already been mentioned above. To repeat, the respondent was promoted in 1981; the character roll entries for the next two years were not available on record; there were no adverse entries in the respondent’s character roll about his integrity; he was involved in two criminal cases, in one of which a final report was submitted while in the other, a charge-sheet was filed. Although there was no entry in his character roll that the respondent’s integrity was doubtful, the Review Committee on its own, probably on the basis of the FIRs lodged against the respondent, formed the opinion that the respondent was a person of doubtful integrity. The Review Committee was constituted to assess the merits of the respondent on the basis of the character roll entries and other relevant ~~543~~material and to recommend whether it would be in public interest to compulsorily retire him from service or not. The Review Committee, after taking into consideration the character roll entries and noticing that there were no adverse entries and his integrity was, at no stage, doubted, proceeded, in excess of its jurisdiction, to form its own opinion with regard to the respondent’s integrity merely on the basis of the FIRs lodged against him. Whether the integrity of an employee is doubtful or not, whether he is efficient and honest, is the function of the appointing authority or the immediate superior of that employee to consider and assess. It is not the function of the Review Committee to brand, and that

too, offhand, an employee as a person of doubtful integrity.....”

10.1 It is clear from the above that judgment of the integrity is to be done only by the Appointing Authority or the immediate superior of the employee. The Review Committee cannot offhand brand an employee as a person of doubtful integrity. Therefore, regarding the remarks of the Review Committee in Item C.2 of the memo, wherein the Review Committee has termed the integrity to be doubtful, cannot be said to be legitimate.

11. In **State of Gujarat v. Umedbhai M. Patel**, AIR 2001 Supreme Court 1109, the Hon’ble Apex Court, while following the ratio laid down in **Baikuntha Nath Das v. Chief District Medical Officer, Baripada**, (1992) 2 SCC 299, has held in Para 7 as under:

“7. In Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (1992) 2 SCC 299: (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945), following the decision in Union of India v. J.N. Sinha, (1970) 2 SCC 458 : (AIR 1971 SC 40 : 1971 Lab IC 8) this Court held thus (Para 32 of AIR SCW, AIR and Lab IC):

- (i) *An order of compulsory retirement is not a punishment. It implies no stigma or any suggestion of misbehaviour.*
- (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to

retire a Government servant, compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) **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 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 materials; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. The circumstances by itself cannot be a basis for interference.”

(emphasis supplied)

12. The Review Committee in Item D.1 has very categorically stated that for the entire service period, the official has obtained only average grading for most of the service period. This in itself would be sufficient to retire the applicant

under Rule 56(j) as per the guidelines laid down by the Hon'ble Supreme Court in **Umedbhai**.

13. Applying the test of **Umedbhai** (supra) in the instance case, we find that no illegality has been done by the respondents in retiring the applicant under Rule 56(j) of the Fundamental Rules.

14. Accordingly, the Original Application is dismissed being devoid of merits. No costs.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member