

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2944/2019

MA No.3239/2019

MA No.3724/2019

Reserved on: 20.01.2020

Pronounced on: 28.01.2020



Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Mr. A. K. Bishnoi, Member (A)

R. R. Meena, EE (Civil), Group 'A'
(Ram Roop Meena), Aged about 51 years
S/o Sh. Ram Sahaya Meena,
R/o Qtr. No. C-6, Vikas Puri,
New Delhi-110018.

... Applicant

(By Mr. M. K. Bhardwaj, Advocate)

Versus

1. South Delhi Municipal Corporation
through its Commissioner,
South Delhi Municipal Corporation,
Civic Centre, New Delhi.
2. Sh. Ramesh Verma,
Addl. Commissioner (Engineering),
Member Review Committee,
South Delhi Municipal Corporation,
6th Floor, Civic Centre, New Delhi.
3. The Addl. Commissioner (Establishment),
Chairman Review Committee,
South Delhi Municipal Corporation,
23rd Floor, Civic Centre, New Delhi.
4. The Chief Vigilance Officer,
Member Review Committee,
South Delhi Municipal Corporation,
26th Floor, Civic Centre, New Delhi.
5. Sh. Umesh Sachdeva,
Engineer-in-Chief,

South Delhi Municipal Corporation,
20th Floor, Civic Centre, New Delhi.

6. North Delhi Municipal Corporation
through its Commissioner,
North Delhi Municipal Corporation,
Civic Centre, New Delhi.
7. The Union Public Service Commission
through its Secretary,
Shahjahan Road,
New Delhi.

... Respondents



(By Mr. R. K. Jain, for Respondents 1 to 4, and Mr. R. V. Sinha with Mr. Amit Sinha and Mr. Vaibhav Pratap Singh, for respondents 6 & 7, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant initially joined the service of the erstwhile Municipal Corporation of Delhi as Assistant Engineer (Civil) in the year 1999. It is stated that he maintained very good record throughout, but there was some bereavement in the family, in the year 2003. He was promoted to the post of Executive Engineer (Civil) on 27.11.2017. When he was transferred to some other department, litigation is said to have ensued. After trifurcation of the Municipal Corporation of Delhi, the applicant was working in the South Delhi Municipal Corporation (SDMC), the 1st respondent herein.

2. The competent authority in the 1st respondent passed order dated 13.09.2019 compulsorily retiring the



applicant from service, by invoking Rule 56(j) of the Fundamental Rules (FR), and Rule 48 of CCS (Pension) Rules, 1972. It was mentioned that a Committee was constituted for the purpose of ensuring probity of Government servants and strengthening of administration, and the Committee which examined the case of the applicant, recommended for his compulsory retirement, and accordingly the order was passed by offering pay and allowances for three months in lieu of the notice period.

3. The applicant contends that he was entrusted with the sensitive duties of overseeing the demolition of unauthorized construction, and that was being overseen by the Hon'ble High Court of Delhi. He submits that some of the higher authorities in the 1st respondent Corporation were determined to get rid of him, and accordingly, the device of FR 56(j) was pressed into service. He submits that his ACRs of the concerned years are rated as 'Outstanding', and though he was imposed punishment on earlier occasions, it was with reference to his functioning in the year 2002-03, and that the same could not have constituted the basis for his compulsory retirement. The applicant states that the decision of the 1st respondent in passing the impugned order, is arbitrary, illegal, *mala fide* and

untenable in law. He further submits that the respondents have violated the procedure prescribed by the DoP&T in this behalf.



4. Respondents 1 to 4 filed a short counter affidavit on 22.11.2019, and a detailed counter affidavit on 16.12.2019. It is stated that the Corporation has undertaken the measures to ensure probity of its servants to strengthen the administration, and for this purpose a Committee of very senior officers was constituted. They contend that the procedure prescribed by the DoP&T, particularly the one in office memorandum dated 22.03.2014 was scrupulously followed, and on an overall consideration of the performance of the officers and their service record, recommendations were made by the Committee. The competent authority is said to have examined the recommendations objectively, and took the decision, which the circumstances warranted.

5. It is stated that the applicant was imposed major punishments on three occasions, and another disciplinary inquiry is in the offing. It is stated that on overall consideration, it was felt that the continuing of the applicant in service is not in the public interest, and accordingly the order dated 13.09.2019, compulsorily retiring the applicant from service was passed. The respondents further submit that the

order of compulsory retirement is not a punishment, and the applicant will get all the retirement benefits. Various grounds urged by the applicant are denied by the respondents.



6. Shri M. K. Bhardwaj, learned counsel for the applicant, advanced extensive arguments. He submits that the measure provided for under FR 56(j) cannot be a substitute for the disciplinary proceedings, and in the instant case, the provision was wrongly invoked against the applicant. He submits that the ACRs of the applicant for the relevant period were above the benchmark, and the very fact that he has been promoted in the recent past discloses that there was nothing adverse, against him. He submits that when the DPC was satisfied for recommending the case of the applicant for promotion to the post of Executive Engineer, and nothing adverse to him has arisen subsequent to the promotion, there was no basis for digging the past record and to put an end to the service of the applicant, much before the age of superannuation.

7. Shri R. K. Jain and Shri R. V. Sinha, learned counsel for the respondents, on the other hand, submit that the case of the applicant was part of the batch of officers whose performance was reviewed and examined at the stage of their



crossing the age of 50 or 55 years, as the case may be. It is stated that the applicant suffered three major punishments and is facing disciplinary action in another matter, and anyone with such a background would not be of any utility to the respondent Corporation. They submit that the decision taken in the case of the applicant was totally objective and on the basis of the record, and the plea raised by the applicant attributing *mala fides* is wholly untenable in law and on facts.

8. The applicant joined the service of the Corporation way back in the year 1999 as AE (Civil), and was promoted to the post of EE (Civil) in the year 2017. FR 56(j) empowers the Government to review the cases of employees who are crossing the age of 50 years to examine their continued utility. If they are found to be not of much use to the department beyond that age, facility exists for retiring them on compulsory basis by extending the retirement benefits and pension. The MCD and thereafter, the 1st respondent, are governed by the Fundamental Rules.

9. Recently, the 1st respondent has taken a decision to review the cases of its officers who are crossing the age of 50 years. The Review Committee comprised of –



1. Addl. Commissioner (Estt) : Chairman
2. Addl. Commissioner (Finance) : Member
3. Addl. Commissioner (Education) : Member
4. Addl. Commissioner (Engineering) : Member
5. Chief Vigilance Officer : Member
6. Sh. Surender Kumar, Law Officer
(Member from Law Deptt & representative of SC/ST) : Member
7. Director (Personnel) : Member Secretary

The particulars provided by them disclose that as against the total number of 38676 employees, 215, covering three categories, were crossing the relevant age limits, and their cases were reviewed in detail. Finally, the Committee recommended invocation of FR 56(j) against 19 employees, which included 3 employees of Category-A, 13 of Category-B, and 3 of Category-C. The applicant is one of them. The details of the employees together with the remarks in their service records are made part of the record, in a compilation. Against the name of the applicant, following was noted:

Disciplinary proceedings	Punishment	Remarks
1. RDA No.1/179/2004 Chargesheet on 08.02.2006 (Not entered in SB)	Reduction in pay in the present time scale of pay by two stages for a period of two years with cumulative effect vide O.O. No. 1/179/2004-Vig./P/Vig./AM/2009/104 dt. 09.06.2009	The service record of the official has been reviewed. He has entered in the Municipal Service prior to attaining the age of 35 years and has completed 50 years of mandatory age for review as per provisions of FR 56(j). As per entries
2. RDA No. 1/358/2006 Charge	Reduction in pay in the present time scale	



Sheet issued on 31.08.2006	of pay by two stages for a period of three years with cumulative effect vide O.O. No.1/358/2006/Vig./P/ OPS/2007/2577 dt. 03.05.2007.	recorded in his service book & Personal File, one penalty has been recorded, however, Vigilance Department has confirmed that two penalties have been imposed during his service. His case qualifies for premature retirement and therefore, the
3. RDA No.1/2/2019 (CVC Case) Charge Sheet not issued	Pending	Committee recommends for approval of Appointing Authority, i.e.,
4. RDA No.1/119/2008 (Not entered in SC)	Stoppage of one increment for one year with cumulative effect vide OO No.1/119/2008/Vig./SDMC/P/2013/325 dated 08.11.2013	Commissioner/SDMC that the official be retired prematurely with immediate effect by giving three months pay and allowances in lieu of three months notice. Also a reference be made to Vigilance Department to ascertain reasons for not entry of penalty in Service Book and to take remedial action thereof.

The same was accepted by the competent authority, and the impugned order dated 13.09.2019 was passed. It reads as under:

“Whereas a Committee has been constituted to ensure probity of Government Servants and strengthening of Administration by undertaking periodic review of all categories of Govt. servants under FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972 as applicable to the employees of a Corporation.

And whereas the Committee constituted for the above purpose has recommended Shri Ram Roop Meena S/o Shri Ram Sahay Meena, Ex. Engineer

(Civil) to consider his compulsory retirement under provisions contained in FR 56(j) and Rule 48 of the CCS Pension Rules 1972.

And whereas the Competent Authority has considered all the facts and circumstances in its entirety and satisfied with the recommendation of the Committee. And is of opinion that it is in the public interest not to retain Shri Ram Roop Meena in Municipal Services and retire him compulsorily with immediate effect under Fundamental Rule 56(j) and Rule 48(i)(b) of CCS Pension Rules 1972.



Now therefore, in exercise of powers conferred under provisions contained in FR 56(j) and Rule 48 of CCS Pension Rules 1972. Shri Ram Roop Meena is compulsorily retired from Municipal Services with immediate effect and order that three months' pay and allowances shall be paid in lieu thereof three months notice period."

10. It is fairly well known that the step taken under FR 56(j) does not constitute punishment. It is in the form of bidding farewell to the employee, who crossed the age of 50 years. That would be, no doubt on the premise that his continued presence in the department is found to be of not much use. However, even while he is made to depart before attaining the age of superannuation, his retirement benefits are ensured. It does visit the employee with a semblance of disadvantage, be it in terms of the remaining part of service, or reputation in the society in general. Therefore, the scrutiny would be whether there existed any valid basis for invoking the provision against an employee. The DoP&T framed guidelines in the year 2014. Para 5 thereof reads as under:

“5. The criteria to be followed by the Committee in making their recommendations would be as follows:-

- (a) Government employees whose integrity is doubtful, will be retired.
- (b) Government employees who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he/she is holding.
- (c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory.

Consideration is ordinarily to be confined to the preceding 5 years or to the period in the higher post, in case of promotion within the period of 5 years, only when retirement is sought to be made on grounds of ineffectiveness. There is no such stipulation, however where the employee is to be retired on grounds of doubtful integrity.

- (d) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.

Ordinarily no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. It is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement.

The above instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest could be



marginal if an old employee, in the last year of service, is found ineffective; but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.”

It is essential to note that the guidelines were framed in the light of the judgment of the Hon'ble Supreme Court in *State of Gujarat & another v Suryakant Chunilal Shah* [(1999) 1 SCC 529].



11. A perusal of the paragraph 5 of the guidelines extracted above, discloses that the Committee which is endowed with the responsibility of examining the cases of the employees with reference to FR 56(j) is required to tread carefully and cautiously. On the one hand, it has to take the entire record into account, and, on the other hand, it has to examine whether the performance of the officer during the preceding five years was free from any blemish. In case the record of the officer during the preceding five years is not found to be objectionable and is free from blemish, the Committee should be slow to recommend his case for premature retirement. However, the bar is not absolute, as is evident from clause (c) of paragraph 5. The various cautions administered in this behalf are confined only to the cases where compulsory retirement is on the grounds of ineffectiveness. If

it is on the ground of doubtful integrity, virtually a free hand is given to the Committee.



12. Reverting to the facts of the case, the record of the applicant discloses that he was imposed major penalties on as many as three occasions. Assuming that the punishments were in relation to the charge sheets which were issued in the year 2006, and orders of punishments were imposed a bit later, it needs to be seen as to whether the record of the applicant subsequent to his promotion in the year 2017 was free from any blemish. Though a charge sheet is not issued to him as yet, the matter is under consideration of CVC in RDA No.1/2/2019. The guidelines, or for that matter, the rules, do not insist that the blemish against an officer must be in the form of any punishment or charge memo subsequent to the promotion. The disciplinary proceedings, even if in the pipeline, after promotion of an officer, and within a period of five years preceding the proposal would get strength from the orders of punishments imposed earlier. What is required to be verified for invoking FR 56(j) is the continued utility of the officer beyond the age of 50 years. The nature of service and the various developments that have taken place up to that period need to be taken into account. Viewed from this angle, it

cannot be said that the order of compulsory retirement passed against the applicant is without basis.

13. Though the applicant made an effort to attribute *mala fides* to some of the officers, we do not find any substance in that.



14. Reliance is placed upon quite a large number of judgments, being – *Swami Saran Saksena v State of UP* [AIR 1980 SC 269]; *Baldev Raj Chadha v Union of India* [AIR 1981 SC 70]; *Brij Bihari Lal Agarwal v High Court of Madhya Pradesh* [AIR 1981 SC 594]; *D. Ramaswami v State of Tamil Nadu* [AIR 1982 SC 793]; *J. D. Srivastava v State of M. P. & others* [(1984) 2 SCC 8]; *Brij Mohan Singh Chopra v State of Punjab* [(1987) 2 SCR 583]; *M. S. Bindra v Union of India* [(1998) 7 SCC 310]; *State of Gujarat v Suryakant Chunilal Shah* [(1999) 1 SCC 529]; *State of Gujarat v Umedbhai M. Patel* [(2001) 3 SCC 314]; *Nand Kumar Verma v State of Jharkhand* [(2010) 3 SCC 580]; *Rajesh Gupta v State of Jammu & Kashmir* [(2013) 3 SCC 514]; *Mukhtar Ahmad v State of UP* [WP No.22786 of 2017, decided on 19.03.2018, Allahabad High Court]; and *Babu Lal Agarwal v Union of India* [order dated 05.04.2018 in OA No.2208/2017, CAT (PB)].



15. The leading judgment in this behalf is the one in *State of Gujarat v Suryakant Chunilal Shah's* case. The only basis for retiring the employee therein, by invoking FR 56(j), was the lodging of FIRs. His service record was otherwise found to be clean and clear. The Hon'ble Supreme Court took the view that the mere filing of FIRs does not constitute the basis for invoking the provision. Paras 23, 24 and 25 read as under:

"23. In order, therefore, to find out whether any government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.

24. The performance of a government servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty or integrity of a government servant is to look at his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorisation of the employee is poor and there is material also to cast doubts upon his integrity, such a government servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "integrity". If this is missing, the whole bundle would disperse. A government servant has, therefore, to keep his belt tight.

25. Purpose of adverse entries is primarily to

forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance.”



From a perusal of para 23, it becomes clear that it is the overall performance of the Government servant up to the age of 50 years, that is required to be taken into account. Virtually, no compartmentalization was made, nor the consideration is confined to the entries in the ACRs.

16. In *Brij Mohan Singh Chopra's* case, the emphasis was much upon the non-communication of adverse entries, and absence of any instances of punishment against the employee. It was also observed that if the performance of an employee during the five years preceding the exercise was free from blemish, it would not be proper to invoke FR 56(j). It has already been pointed out that the applicant has suffered three major punishments, and another set of disciplinary proceedings is in the offing.

17. In *State of Gujarat v Umedbhai M. Patel's* case, an employee who had just two years of leftover service, was retired by invoking FR 56(j), only on the ground that he was

placed under suspension. It was observed by the Hon'ble Court that though there was ample time for the Government to conclude the proceedings, they were kept pending, and the leftover service of the employee was just two years. In these circumstances, the order of compulsory retirement was set aside. Relevant paragraph reads as under:



“12. In the instant case, there were absolutely no adverse entries in respondent's confidential record. In the rejoinder filed in this Court also, nothing has been averred that the respondent's service record revealed any adverse entries. The respondent had successfully crossed the efficiency bar at the age of 50 as well 55. He was placed under suspension on 22-5-1986 pending disciplinary proceedings. The State Govt. had sufficient time to complete the enquiry against him but the enquiry was not completed within a reasonable time. Even the Review Committee did not recommend the compulsory retirement of the respondent. The respondent had only less than two years to retire from service. If the impugned order is viewed in the light of these facts, it could be said that the order of compulsory retirement was passed for extraneous reasons. As the authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the order of compulsory retirement, we are of the view that the Division Bench was right in holding that the impugned order was liable to be set aside. We find no merit in the appeal, which is dismissed accordingly. However, three month's time is given to the appellant- State to comply with the directions of the Division Bench, failing which the respondent would be entitled to get interest at the rate of 18% for the delayed payment of the pecuniary benefits due to him.”

The factual situation in the instant case is substantially different.



18. In *M. S. Bindra v Union of India*, the Hon'ble Supreme Court found that no punishment as such was imposed against the employee, and just by taking into account certain instances which did not lead to initiation of disciplinary proceedings, order of compulsory retirement was passed. At the cost of repetition, we mention that the applicant herein suffered punishments, and another set of proceedings is under consideration before the CVC.

19. The other judgments relied upon by the applicant are almost on the same lines.

20. We are convinced that the Review Committee which considered the case of the applicant examined the entire issue objectively, and there existed valid basis for recommending the case of the applicant for compulsory retirement. The competent authority has also examined the matter carefully and issued the impugned order. The applicant is not able to point out infraction of any provision or violation of any principle laid down by the Hon'ble Supreme Court.

21. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.

Pending MAs also stand disposed of.



(A. K. Bishnoi)
Member (A)

/as/

(Justice L. Narasimha Reddy)
Chairman