

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.238/2020

This the 22nd day of October, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Ajay Kumar Sharma S/o Shri J.P. Sharma
R/o 9/80, Sector-3, Rt. A.E. Age 53 Group 'B'
Rajinder Nagar Sahibabad,
Ghaziabad.

...Applicant

(By Advocate: Sri Rajeev Sharma)

VERSUS

1. The Commissioner,
South Delhi Municipal Corporation,
Dr. S. P. Mukherjee Civic Centre, 9th Floor,
J.L. Marg, New Delhi.

2. The Addl. Commissioner (Engg.),
South Delhi Municipal Corporation,
Dr. S. P. Mukherjee Civic Centre, 6th Floor,
J.L. Marg, New Delhi.

...Respondents

(By Advocate: Sri Ravi Kant Jain)





ORAL ORDER
{By Hon'ble Sri Justice L. Narasimha Reddy, Chairman}

The applicant joined the service of the erstwhile Municipal Corporation of Delhi in 1993, as Junior Engineer (JE). Thereafter, he was promoted as Assistant Engineer (AE) in the year 2009. Recently, on trifurcation of the Municipal Corporation, he was allotted to South Delhi Municipal Corporation (SDMC). Through an order dt. 13.09.2019, he was compulsorily retired from service by invoking Fundamental Rule 56(J) and Rule 48 of CCS (Pension) Rules, 1972. That was on the basis of the recommendation by a Review Committee constituted for that purpose. The applicant filed a review before the Representation Committee. The review was rejected through an order dt. 13.12.2019. This OA is filed by the applicant challenging the Office Orders dt. 13.09.2019 and 13.12.2019.

2. The applicant contends that he rendered meritorious service, spread over decades and the order of compulsory retirement was passed against him without any basis. He submits that though two punishments were imposed against him in 2007 and 2019, they were of very insignificant nature and hardly they constitute the basis for passing the impugned order. He placed reliance upon certain precedents.

3. On behalf of the respondents, a detailed counter reply is filed. It is stated that, a policy decision was taken in the recent past to retire the employees, whose integrity is doubtful and whose services are proved to be not of any utility to the organization, and detailed guidelines are also stipulated for that purpose. It is stated that the Committee of senior officers of the Corporation was constituted and the cases of various employees who crossed 50 years of age were considered with reference to their service records.



4. As regards the applicant, it is stated that he was issued charge memo on 23.08.2006 and it resulted in imposition of penalty of stoppage of two increments with future effect, vide order dt. 08.06.2007, and that, another charge memo was issued in the recent past on 05.04.2016, and it gave rise to imposition of penalty of reduction to a lower stage in the time scale of pay by one stage for a period of 2 years with cumulative effect, vide order dt. 11.06.2019. It is also stated that there existed material for issuance of the charge sheets in two other cases and at that stage, the impugned order was passed. They contend that effort is only to ensure that transparency exists in the organization and that no exception can be taken to the orders passed by the respondents.

5. We heard Sri Rajeev Sharma, learned counsel for the applicant and Sri Ravi Kant Jain, learned counsel for the respondents.

6. The applicant was subjected to compulsory retirement through order dt. 13.09.2019. FR 56 (J) and the Rule 48 of CCS (Pension) Rules, 1972 were invoked. The impugned order was passed on the basis of recommendation made by the Committee constituted for that purpose. The Committee comprised of senior most officers of the Corporation. Certain parameters were also fixed for that purpose. For invoking FR 56 (J), it was decided to apply to such of those officers in Group 'A' & 'B', who have entered the service before 35 years of age and have attained the age of 50 years. As regards, Rule 48(1) (b) of CCS (Pension) Rules, the requirement is that the officer must have completed 30 years of qualifying service. The exercise done in respect of the applicant was mentioned in the reply, in paras (iii) (iv) & (v) of Preliminary Submissions, which read as under:



“iii. That after collecting all the data from respected Cadre Controller and HoDs, a meeting was convened in the office of the Chairman Review Committee i.e. Additional Commissioner (Estt.) on 13.09.2019 (Annexed herewith as Ann. R-2), in which 08 Officers/ Officials out of 19, were found fit for compulsory retirement, as per the provisions contained under FR 56(J) and Rule 48(I)(b) of CCS (Pension) Rules, 1972. The name of the applicant was also in the list.

iv. That the case of the applicant was considered by the Committee. It was found that following punishments were imposed upon him:-

- (a) RDA No. 1/53/2012, Charge sheet issued on 05.04.2016.
Reduction to a lower stage in the time scale of pay by one stage for a period of two years with cumulative effect, vide O.O. No. 1/53/2012/Vig./P/Vig./2019/479, dt. 11.06.2019.*
- (b) RDA No. 1/409/2006, Charge sheet issued on 23.08.2006.
Stoppage of two increments with future effect, vide O.O. No. 1/409/2006/Vig/P/NK/2007/2739 dt. 08.06.2007.*
- (c) RDA No. 1/14/2004 (CVC Case), Charge sheet not issued.
Pending.*
- (d) RDA No. 1/27/2018 (CVC Case), Charge sheet not issued.
Pending.*

v. That after considering the above, the Committee recommended as follows:-

Recommendation of Review Committee:-

“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 (j). As per entries recorded in his service book & Personal File, aforesaid penalties have been imposed during his service. In view of aforesaid penalties, his integrity is indeed doubtful and therefore, he is a fit case for premature retirement and therefore the Committee recommends that the official be retired prematurely as per FR 56(j) with immediate effect by giving three months pay and allowances in lieu of three months notice.”

7. The principles, with reference to which the cases of compulsory retirement are to be decided, were enunciated by the Hon'ble Supreme Court in ***Bhaikuntha Nath Das v. Chief District Medical Officer, Baripada [1992 (2) JT (1) SC]***. Their Lordships have summarised the manner in which the cases of compulsory retirement are to be examined. It was observed that an order of compulsory retirement is not one of punishment and it is not liable to be quashed simply on the ground that uncommunicated adverse remarks were taken into consideration. At the same time, a note of caution was also added that the provisions cannot be pressed into service, indiscriminately.



8. An order of compulsory retirement cannot be justified solely on the ground that an employee was imposed the penalty or punishment at some stage or the other. However, the instances of imposition of punishment in the years immediately preceding the review would certainly constitute the basis. In addition to that, even if no disciplinary proceedings are pending as such, the existence of material sufficient for initiation of such proceedings can also be treated as a factor. In the instant case, even if we ignore the punishment that was imposed upon the applicant in the year 2007 with reference to the charge sheet dt. 23.08.2006, the one imposed through order dt. 11.06.2019 with reference to the charge sheet dt. 05.04.2016 cannot be disregarded. It was a major penalty imposed after the applicant was promoted to the post of Assistant Engineer. Though the applicant filed OA challenging the order of punishment, it hardly constitutes a circumstance to interdict the invocation of FR 56(J). In addition to that, two CVC cases were pending against the applicant. Though they did not lead to issuance of charge memo, the factors would certainly tell upon the functioning of the applicant.

9. Hence, we do not find any merit in the OA and the OA is accordingly dismissed.

10. There shall be no order as to costs.

ARADHANA JOHRI
MEMBER (ADMN.)

JUSTICE L. NARASIMHA REDDY
CHAIRMAN