

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

**OA No.1974/2020**

**Reserved on: 16.03.2021**

**Pronounced on: 09.04.2021**



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**  
**Hon'ble Mr. A.K. Bishnoi, Member (A)**

S.K. Chauhan  
S/o Shri M.S. Chauhan  
House No.265, First Floor,  
Double Storey, New Rajinder Nagar,  
New Delhi-110 060

...Applicant

(By Advocate: Shri Sanjiv K. Jha)

**Versus**

North Delhi Municipal Corporation  
4<sup>th</sup> Floor, Dr. SPM Civic Centre  
JLN Marg, New Delhi-110 002  
[Through its Commissioner].

.....Respondent

(By Advocate: Shri R.V. Sinha with Sh. Amit Sinha)

**ORDER**

**Mr. A.K. Bishnoi, Member (A):**

The brief facts of the case as gleaned from the pleadings on record and submissions of the learned counsels are as follows:



(i) The applicant was appointed as Assistant Engineer (Civil) on 17.09.1998 in the Municipal Corporation of Delhi (MCD). During the course of his career, certain disciplinary proceedings were initiated against him leading to imposition of penalty in two cases and in one matter the charge sheet issued on 20.09.2019 is pending. Meanwhile, the applicant was promoted to the post of Executive Engineer (Civil) in an adhoc capacity on 24.08.2009 and regular promotion was granted on 12.01.2017.

(ii) Vide order dated 31.10.2019, the applicant was compulsorily retired from service on the recommendation of the Review Committee constituted for this purpose in exercise of powers under FR 56(j) of Fundamental Rules and Rule 48 of the CCS (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules'), as stated in the order. The applicant filed a representation dated 21.11.2019 which was rejected by the competent authority through office order dated 17.02.2020.

2. Aggrieved by the action of the respondents, this OA has been filed by the applicant seeking the following relief(s):

- “(a) Allow the OA with costs.
- (b) Set Aside the order dated 31.10.2019 by which the applicant was compulsorily retired from service, and
- (c) Direct the respondent to reinstate the applicant into service from the date of the impugned

order i.e. from 31.10.2019;

- (d) Direct the respondent to grant full pay and allowances for the period from 31.10.2019 till he is reinstated and treat him as having spent the period on duty for all intents and purposes; and
- (e) Pass any other and further orders that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case."



3. Mainly, it has been contended that the applicant has an unblemished service record and his integrity is 'beyond doubt', as is borne out from his ACR records. The gradings in his service record from the year 2014 to 2019 have always been 'very good' or 'outstanding'. It has also been represented that the applicant is a capable and effective officer as the remarks of his Reporting and Reviewing Officers in his service records would indicate. In this connection, the applicant has also referred to his promotion as Executive Engineer (Civil) on ad hoc basis on 24.8.2009 and on a regular basis on 12.01.17, and has mentioned that no charge sheet has been issued to him subsequent to his promotion. In view of the same, it is the assertion of the applicant that it cannot be said that he is a 'deadwood'.

4. It has also been contended that the applicant was not provided any material to substantiate action under Rule 56(j) of Fundamental Rules and Rule 48 of Pension Rules and that the

respondent - Commissioner was not competent to invoke the provision of FR 56(j) and this decision needed to be approved by the House of North Delhi Municipal Corporation (NDMC). The applicant has also contended that since he has not completed 30 years of service, Rule 48 of the Pension Rules cannot be applied in his case.



5. A counter affidavit has been filed on behalf of the respondents in which the various contentions made by the applicant in the OA are controverted. It has been stated that the action of the respondents is sound in law and is a part of an exercise conducted for a large number of employees who fell in the defined category and not for the applicant alone. It has been undertaken following the due process, after review of the records by the Internal Committees followed by Review Committee and Joint Review Committee constituted for this purpose. Further, subsequent to the order of compulsory retirement, the representations made, including that of the applicant, were duly considered by the Representation Committee constituted for the purpose, which taking into account the representation made as also the recommendations made by the Internal Committee and the Review Committees, recommended further course of action.

Taking into consideration the relevant facts, the Competent Authority took its decision.



6. It has further been stated that the applicant had attained the age of 50 years on the date of passing of the order of compulsory retirement and as such is fully covered under Rule 56 (j) of Fundamental Rules. It has been denied that Commissioner, NDMC was not competent to pass the order and that it required the approval of the House of NDMC. Details of departmental action initiated against the applicant and imposition of penalties have also been submitted to put forward the case that the applicant had doubtful integrity. In about twenty one years of service, charge sheets have been issued to him on eight occasions.

7. Further, it has been contended that in the case of compulsory retirement, the entire record of the employee concerned has to be scrutinized and it cannot be restricted to a particular period. The same holds true in relation to the ACRs also.

8. The applicant has filed a rejoinder giving details of penalty imposed on certain officers of NDMC claiming that no



action has been taken against them. It is stated that the benchmark of one major penalty created by NDMC was arbitrary and inconsistent with the benchmark of two major penalties which exists in South Delhi Municipal Corporation (SDMC). It is claimed that since North, South and East Delhi Municipal Corporations have common seniority list and same service rules, the benchmarks cannot be different. The other contentions raised in the rejoinder are more or less on the same lines as the ones made in the OA.

9. Sh. Sanjiv K. Jha, learned counsel appearing on behalf of the applicant submits that the applicant has good service record and that there is no justification for him being compulsorily retired. During the course of his career, he has been awarded one major penalty and one minor penalty and that in the ACRs for the last five years, his integrity has always been certified as 'beyond doubt'. He referred to the service record of certain other employees of NDMC arguing that though those employees have been imposed penalty on much more serious issues, no similar action was taken against them and they still continue to be in service. It was further argued that SDMC has fixed the norm of two major penalties for a person to be

compulsorily retired and the same norm should be followed by NDMC.



10. It was further argued that in the year 2017, the applicant was promoted to the post of Executive Engineer (Civil), hence any previous action against him cannot be held as a valid ground for the order of compulsory retirement. Regarding the information provided in the counter reply on departmental action, he emphasises the fact that most of such matters had been dropped. It is further argued that the approval of the House was not taken, as has been the practice earlier.

11. Learned counsel for the applicant also submitted that Rule 48 of Pension Rules, cannot be invoked against the applicant since he had not put in 30 years of service as required under the Rules.

12. Sh. Amit Sinha, learned counsel for the respondents, referring to the counter reply pointed out that the applicant had a number of departmental actions initiated against him and there were also reports from the vigilance section relating to his doubtful integrity. Reference was also made to the DoP&T OM

dated 21.03.2014 to emphasise the point that while considering the case of compulsory retirement, the entire service record of the employee concerned has to be taken into account.



13. We have heard learned counsels for the parties at length and perused the pleadings on record.

14. A plea has been raised that since the applicant has not completed 30 years in service, provisions of Rule 48(1)(b) of the Pension Rules cannot be invoked against him to retire compulsorily. We find this rather superficial. Provisions of Rule 56(j) of Fundamental Rules pertain to attainment of the age of 50 years whereas provisions of Rule 48 of Pension Rules relate to numbers of years of service, for action of compulsory retirement to be taken. Nothing has been adduced to show that both the conditions have to be satisfied i.e., those prescribed in Rule 56(j) of Fundamental Rules and those referred to in Rule 48 of the Pension Rules. It is amply clear from a comprehensive reading of the said provisions that both operate independently of each other and there is no infirmity in the order of compulsory retirement if both conditions are not simultaneously applicable. Though the order issued by the competent authority mentions both the provisions while referring to the action of compulsory



retirement, it cannot have the effect of negating its validity merely because one of the rules mentioned does not apply. The order stands on a sound footing on the strength of the applicability of Rule 56(j) of Fundamental Rules alone.



15. Though an argument has been advanced that the order of compulsory retirement required the approval of the House, no such provision under Rules has been brought to our notice. Hence, this is not an acceptable ground for interfering with the said order.

16. Before proceeding further, for clarity of perspective, relevant portions of DoPT OM dated 21.03.2014 are reproduced below. Paras 4 and 5 of the said OM read as under:-

“4. In order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily, following procedures and guidelines have been prescribed for reviewing the cases of government employees covered under the aforesaid rules:

- The cases of Government servants covered by FR 56(j) or FR 56(I) or Rule 48(1)(b) of the CCS (Pension) Rules should be reviewed six months before they attain the age of 50/55 years or complete 30 years service/30 years of qualifying service, whichever occurs earlier.
- Committees shall be constituted in each Ministry/ Department/ Office, to which all such cases shall be referred for recommendation as to whether the Officer concerned

should be retained in service or retired from service in the public interest.

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 employees 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 of 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 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 task he is duty bound to perform.”



17. The accepted and established position under law is that cases relating to various officers have to be evaluated on the basis of their own merits. It is evident that comparative evaluation is not contemplated and, as such, has nowhere been provided for. The applicant has failed to demonstrate, even remotely, that this could be a consideration in the legal and procedural framework created for the purpose of compulsory retirement. This contention, relating to the service records of other officers and comparison with that of the applicant, therefore, merits no further discussion.

18. It has been contended that the applicant was promoted in the year 2017 and this establishes and underscores the fitness of the applicant to be continued in service. As has been stated in the DoPT OM referred above, the entire service record has to be taken into consideration while assessing the case of an officer, though greater reliance may be attached to the recent past 5 years. This, however, comes with the rider that it is only when

ineffectiveness is the issue and does not extend to cases relating to integrity.



19. It has been forcefully contended on behalf of the respondents that the applicant's case was of doubtful integrity. To elucidate, the record of the applicant relating to departmental proceeding is reproduced as below:

Pending RDA case	1/48/2019	Charge sheet issued on 20.09.2019 Penalty in RDA case
Penalty	1/130/2006	Drop vide OO No. 1/130/2006/Vig./P/AM/2008/231 dt. 14.5.2008
Penalty	1/361/2006	Reduction in the present time scale of pay by one stage for a period of one year with cumulative effect vide OO NO 1/361/2006/Vig./P/NK/2007/4082 dt. 10.12.2007.
Penalty	1/385/2006	Withholding of two increments for two years without cumulative effect vide OO No. 1/385/2006/Vig./P/NK/2008/789 dt. 18.11.2008.
Penalty	1/11/2007	The Commissioner has ordered to drop the RDA No. 1/11/2007 pending against Sh. S.K. Chauhan, AE Vide OO No. 1/11/2007 & 1/385/2006/Vig./P/NK/2007/4131 dt. 20.12.2007.
Penalty	1/36/2008	Dropped vide OO No. 1/36/2008/Vig./P/RBS/2009/91 dt. 27.5.2009
Penalty	1/118/2011	Dropped vide OO No. 1/118/2011 ADOV-I/Vig./2012/322 dt. 13.1.12.
Penalty	2/112/2011	Dropped vide OO NO. 2/112/2011/vig./P/SM/2011/176 dt. 16.11.2011.



20. As argued on behalf of the respondents, and borne out by facts on record, in a career spanning about twenty one years, eight departmental actions have been initiated against the applicant resulting in imposition of major penalty in one matter and minor penalty in another. Five cases were dropped, and one case is pending. Most of these cases, if not all, related to integrity issues. We make it clear that we are not indicating our opinion regarding the integrity of the officer. Any reference made in this regard is for the sole purpose of negating, on the basis of facts on record, any argument that the competent authority was not justified in coming to the conclusion that the applicant had doubtful integrity. The decision cannot be faulted on the ground of absence or inadequacy of basis.

21. The argument relating to benchmarks or the nature of penalties and their numbers in the context of action of compulsory retirement is also of little significance. Action under Rule 56(j) of Fundamental Rules cannot be a mechanical exercise. Various factors have to be taken into account and it is for this purpose that safeguards like having Committees, and, at different levels, have been inbuilt into the system. The affected officer has the right to represent too. The concept is clearly, to

prevent misuse or arbitrariness. There could be guidelines, and safeguards, but no system of decision making in the field of human resources can entirely be algorithm driven.



22. Our attention has also been drawn to the ACRs of the applicant for the last five years and the fact that the ratings are 'outstanding' or 'very good' and integrity has been certified as 'beyond doubt'. It has been informed by the respondents that they had other negative inputs about the applicant. Though ACRs serve as useful input in relation to the evaluation of performance of an officer, they cannot be held as the be all and end all for his overall assessment. The comments in the ACRs naturally, cannot be exhaustive though they may be useful indicators. Hence, if the competent authority had inputs about the concerned officer which went beyond what was recorded in the ACRs by officers restricted by the limited knowledge under their command, the same cannot be ignored. Further, the decision making is not confined to a single authority and there are several inbuilt safeguards. For these reasons, contention to such effect too, does not find favour with us.



23. In such matters, the scope of judicial review is somewhat limited as has been held in a series of pronouncements by the Hon'ble Apex Court, Hon'ble High Courts and this Tribunal. The main test is, that the order of compulsory retirement should not suffer from *mala fide*, of no evidence or arbitrariness. No such aspect exists in the present case.

24. Having examined the present case in the light of these broader principles, we are of the view that the record of the applicant was duly examined by the Committees constituted for the purpose and a conclusion was reached that the applicant requires to be compulsorily retired. He was given the opportunity to make a representation, which after due examination was rejected. There are, thus, no factors in the present case which would merit our intervention.

25. In view of the discussion above, the OA is dismissed.

There shall be no order as to costs.

**(A.K. Bishnoi)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**