



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

O.A. No. 504/2020

This the 16th day of June, 2021

(Through Video Conferencing)

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

Shri J.D.Atkaan, s/o Rt. E.E.,
56 years, Group ' A', Shri P.S.Atkaan,
R/o C-1/115-B, Keshav Puram,
Delhi -35.

... Applicant

(through Mr.Rajeev Sharma, Advocate)

Versus

The Commissioner,
North Delhi Municipal Corporation,
Dr. SPM Civic Centre, 4th Floor, J.L Marg,
New Delhi.

... Respondent

(through Mr. R.V.Sinha, Advocate)

ORDER (Oral)**Justice L. Narasimha Reddy, Chairman:**

The applicant joined the Municipal Corporation of Delhi as Assistant Engineer (AE) (Civil) in the year 1998. Thereafter, a regular DPC to the post of Executive Engineer (EE) (Civil), for the vacancy year 2008-09 to 2014-15 was held in UPSC on 26.12.2016, in which the case of the applicant was considered for regular promotion to the post of EE (Civil) along with his seniors and juniors, and same has been notified vide CED's office order dated 12.01.2017. He was promoted as EE (Civil), on regular basis, vide office order dated 21.07.2017. On trifurcation of the Municipal Corporation of Delhi, he was allotted to the North Delhi Municipal Corporation (NDMC), the respondent herein. Through an order dated 17.02.2020, the respondent retired the applicant by invoking the power under Fundamental Rule (FR) 56 (j). This OA is filed challenging the order of premature retirement.

2. The applicant contends that he rendered meritorious service ever since he was appointed, and in recognition of the same, he was promoted to the higher posts. He has also stated that all the charge memo issued and the charges levelled, were concluded

prior to the consideration for promotion against the post of EE by the UPSC and that there are no remarks against him, thereafter. He submits that the impugned order cannot be sustained in law.

3. The respondents filed a detailed reply. It is stated that with a view to bring about transparency and efficiency in their Organization, they constituted a committee of 05 senior most officers to review the case of Group-B officers, who crossed the age of 50 years, and after verifying the entire record of the applicant, the committee recommended his premature retirement. It is stated that the applicant was imposed major and minor penalties in the concerned RDAs, and that such penalties, certainly, are the factors to be taken into account, while reviewing the cases on completion of certain length of service.

4. We heard Mr.Rajeev Kumar, learned counsel for the Applicant and Mr.R.V.Sinha, learned counsel for the Respondents.

5. The applicant was retired from service, before he attained the age of superannuation. It is not a measure of punishment and the order was passed by invoking the power under 56 (j). The parameters for adjudication of the matters of this nature are

clearly stated by the Hon'ble Supreme Court. After reviewing the various judgments rendered on the subject upto that stage, the Hon'ble Supreme Court enunciated the following principles in its judgment in **in Baikuntha Nath Das & another vs. Chief Distt. Medical Officer, Baripada & another**, 1992 AIR 1020. They read as under:-

"32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(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 material; in short, if it is found to be 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. That circumstance by itself cannot be a basis for interfere. Interference is permissible only on the grounds mentioned in (iii) above."

It was clearly observed that the premature retirement made by invoking the power under FR.56 (j) does not amount to punishment and it is a measure, to add efficiency and honesty in the departments.

6. In ***State of Gujarat Vs. Umedbhai M. Patel (2001) 3 SCC 314***, the Hon'ble Supreme Court observed that in case an employee is promoted and no disciplinary proceedings are initiated against him after such promotion, the invocation of the power under FR. 56 (j) cannot be sustained. However, in its subsequent judgements in ***Pyare Mohan Lal Vs. State of Jharkhand (2010) 10 SCC 693***, and ***Punjab State Power Corporation Vs. Hari Kishan Verma(2015)13 SCC 156***, the Hon'ble Supreme Court took the view that consideration of the record of an officer in this behalf, cannot be confined to any particular period and the record, in its entirety, needs to be taken note of.

7. One more aspect, which needs to be taken into account is that the Tribunal can certainly interfere with the order of

premature retirement in case there does not exist anything adverse to the employee in his entire career. However, if some material or facts as such exist, the Tribunal cannot go into the competency thereof. It is with reference to these principles that the case of the applicant needs to be examined.

8. After the applicant joined the service of the Municipal Corporation in the year 1998, he earned promotions to the post of EE etc.,. It is at a time when the applicant was working as EE, that the order of premature retirement was passed. Much argument is advanced by the learned counsel that the applicant faced disciplinary inquiries earlier to 2009, and that after he was promoted to the post of EE, he did not face any such proceedings.

9. The respondents furnished the list of disciplinary proceedings initiated against the applicant. It read as under:

RDA No.	1/16/2003
Charge	
Charge Sheet issued on	21.05.2004
Penalty	Reduction in pay in the present time pay scale of pay by one stage for a period of one year with cumulative effect upon Sh. J.D.Atkaan vide O.O.No.1/16/2003/Vig./P/AM/2030, dated 18.12.2006.

RDA No.	1/151/2003
Charge	Court case of 3604 Katra Dina Bag
Charge Sheet issued on	27.09.2004
Penalty	Reduction in pay in the present time scale of pay by two stages for a period of two years with cumulative effect upon Sh. J.D.Atkaan vide O.O.No.1/151/2003/Vig./P/HB/2014/478, dated 12.02.2014.

RDA No.	1/68/2003
	Comissioner/MCD vide his orders dated 13.03.2009 has restricted the payment of pay and allowances of Sh. J.D.Atkaan, s/o Sh. P.S.Atkaan, to what he has already been paid during his suspension and the suspension period has also been ordered to be treated as 'Dies Non' in RDA No.1/68/2003,vide O.O. No.1/68/2003/Vig./P/AM/2009/969, dated 26.03.2009.

RDA No.	1/68/2005
Charge	U/C in P.No.502, 652, 625, & Ors at Chandni Chowk
Charge Sheet issued on	12.06.2006
Penalty	Stoppage of two increments without cumulative effect vide O.O.No.1/68/2005/Vig./P/HB/14/647, dated 04.08.2014.

RDA No.	1/152/2006
Charge	
Charge Sheet issued on	28.02.2006
Penalty	Reduction in pay in time scale by four stages for a period of

	four years with cumulative effect upon Sh. J.D.Atkaan vide O.O.No.1/152/2006/Vig./P/2006/888, dated 15.05.2006.
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RDA No.	1/26/2009
Charge	
Charge Sheet issued on	10.02.2010
Penalty	Stoppage of two increments for two years without cumulative effect upon Sh. Jaideep Atkaan, AE & further order that the said penalty shall run separately vide O.O.No.1/26/2009/Vig./P/PB/2010/300, dated 16.06.2010.

10. Once the applicant was subjected to so many proceedings and was visited with punishments, it cannot be said that there did not exist any material for the respondents to invoke the power under FR 56 (j) against him.

11. The premature retirement is not a punishment and the employee is assured of the retirement benefits. The only difference is that the retirement takes place a bit earlier. If the Corporation took the decision that the premature retirement of the applicant would be in the interest of itself and the public, the Tribunal cannot find fault with that.

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

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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