

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

O.A. No.1649/2020

This, the 15th day of June, 2021

Through video conferencing

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

ParmodVashisht
Aged 55 years
Group 'B', Retd. Assistant Engineer (Civil)
S/o Late Bhim Singh Vashisht
R/o F-124, Prashant Vihar
Ohini, Delhi - 110085 ... Applicant.

(Through Mr.AsishNischal, Advocate)

Versus

North Delhi Municipal Corporation
Through its Commissioner
Dr.SPM Civic Centre
Pandit Jawahar Lal Nehru Marg
New Delhi – 110002 ... Respondents.

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

O R D E R (Oral)

Justice L.Narasimha Reddy, Chairman

The applicant was appointed as Junior Engineer in the Municipal Corporation of Delhi in the year 1998. He was extended the benefit of MACP in 2008 and in the year 2009 he was promoted to the post of Assistant Engineer.

On trifurcation of the Corporation, he was allotted to North Delhi Municipal Corporation. It is stated that the applicant was granted the benefit of 3rd MACP on 23.08.2018.

2. The Corporation retired the applicant vide order dated 31.10.2019 by invoking the power under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972. The applicant filed review against his premature retirement and that was rejected on 17.02.2020. The applicant filed this OA, challenging the order of premature retirement and the order of rejection.

3. He contends that his service was satisfactory throughout and obviously for that reason, he was promoted and extended the benefit of 2 MACPs. He contends that though certain disciplinary proceedings were initiated against him, they ended in exoneration or imposition of minor penalties, except in one case. He submits that there was absolutely no basis for the respondents in retiring him before he attained the age of superannuation.

4. The respondents filed a detailed reply. It is stated that the Corporation constituted a Committee of senior officers for examining the cases of the officers of Group 'B' who have crossed the age of 50 years, with a view to bring about transparency and efficiency. According to them, the Committee so constituted, examined the entire service record of the applicant and recommended his case for premature retirement and accordingly the impugned order was passed. They submit that the applicant faced as many as 14 disciplinary proceedings and it is not at all in the

interest of the corporation or the public, to continue the applicant in service.

5. Today we heard Mr. Asish Nischal, learned counsel for the applicant and Mr. R.V. Sinha, learned counsel for the respondents.

6. The applicant joined the service of the erstwhile Municipal Corporation of Delhi way back in the year 1988. On trifurcation of the Corporation, he was allotted to the North Delhi Municipal Corporation. In his career, the applicant earned promotion to the post of AE and the 2nd and 3rd MACPs.

7. In the recent past, the Municipal Corporation of Delhi initiated steps for cleansing the administration, particularly in the Engineering Department. The Committee of high level officers was constituted and it was required to examine the records of the Group 'B' officers who have crossed 50 years of age. The parameters for examination were also determined. The case of the applicant was recommended for premature retirement and accordingly the impugned order was passed by exercising power under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972.

8. The applicant contends that there was no allegation of corruption against him and no disciplinary proceedings were initiated after he was promoted. Another contention is that his service was verified on three occasions by the relevant committees and it was only on being satisfied

about his fitness, that he was extended the benefit of promotion and 2 MACPs, and in that view of the matter, there was no basis for passing the impugned order against him.

9. The Hon'ble Supreme Court had occasion to deal with the cases of this nature from various departments and agencies. The adjudication undertaken in most of the cases was on the facts, relevant for the concerned officers. In **Baikuntha Nath Das & another vs. Chief Distt. Medical Officer, Baripada & another**, 1992 AIR 1020, the Hon'ble Supreme Court examined the issue at length, duly taking into account the judgements rendered in various cases upto that time. It enunciated the principles on the subject, 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 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 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.”

10. The views expressed in earlier judgement which are slightly at variance with those expressed in that case, stood merged, overruled or modified.

11. It is true that in ***State of Gujarat Vs. Umedbhai M. Patel (2001) 3 SCC 314***, the Hon’ble Supreme Court observed that if no disciplinary proceedings are initiated against the official after he was promoted, invocation of FR 56 (j) becomes somewhat impermissible. This view was not followed in subsequent judgements in ***Pyare Mohan LalVs. State of Jharkhand (2010) 10 SCC 693*** and ***Punjab State Power Corporation Vs. HariKishanVerma(2015)13 SCC 156***, and other judgements. Their Lordship’s held that the record of an officer, in its entirety, must be taken into account and the service cannot be viewed in parts or compartments. It was observed that the factors that are taken into account for the purpose of promotion or MACP are substantially different and they are restricted to certain years immediately prior to promotion, whereas the considerations for examining the case with reference to FR 56 (j) are referable to entire service.

12. The applicant no doubt earned one promotion and got 2 MACPs. However, he faced as many as 14 disciplinary proceedings. The respondents furnished the details thereof as under :

<i>Sl.No.</i>	<i>RDA No.</i>	<i>Penalty</i>
(i)	1/426/1990	<i>Censure vide Office Order dated 30.07.1992</i>
(ii)	1/377/1991	<i>Censure vide Office Order dated 15.01.1993</i>
(iii)	1/521/1991	<i>Exonerated vide Office Order dated 09.06.1997</i>
(iv)	1/544/1991	<i>Withholding two increments without future effect vide Office Order dated 14.06.1997</i>
(v)	1/177/1992	<i>Censure vide Office Order dated 22.05.1995</i>
(vi)	1/261/1992	<i>Exonerated vide Office Order dated 09.06.1993</i>
(vii)	1/135/1993	<i>Exonerated vide Office Order dated 01.04.1998</i>
(viii)	1/211/1994	<i>Stoppage of two increments without future effect Office Order dated 01.03.1996</i>
(ix)	2/247/1994	<i>Stoppage of one increment without future effect vide Office Order dated 22.12.1994</i>
(x)	2/252/1994	<i>Stoppage of one increment without future effect vide Office Order dated 10.05.1995</i>
(xi)	1/133/2001	<i>Censure vide Office Order dated 11.09.2003</i>
(xii)	1/09/2006	<i>Reduction in time scale of pay by two stages for a period of two years with cumulative effect vide Office Order dated No.12.04.2006</i>
(xiii)	1/243/2006	<i>Stoppage of one increment without future effect vide Office Order dated 11.06.2007</i>
(xiv)	1/53/2008	<i>RDA dropped and warned to be careful in future vide Office Order No.1683 dated 27.02.2013</i>

13. One can easily understand the undesirability of continuing an officer with such a background in an important department like Engineering. Irrespective of the end result of the each disciplinary proceedings, the very fact that so many proceedings came to be initiated discloses the method of functioning of the applicant. It must be remembered that the administration initiated disciplinary proceedings only when it is felt that the acts and omissions on the part of the employee are very serious in nature. When so many disciplinary proceedings are initiated, the level of hardship undergone by the Corporation cannot be measured. Therefore, the premature retirement of the applicant cannot be found fault with.

14. Reliance is placed upon the order passed by this Tribunal in OA**OA.153/2020 (Ranveer Singh Vs. South Delhi Municipal Corporation of Delhi)**. The basis for allowing that OA was that the applicant therein did not face any disciplinary proceedings after he was promoted. The judgement of the Hon'ble Supreme Court in **Pyare Mohan Lal vs. State of Jharkhand and Punjab State Power Corporation vs. Harikishan Verma** (supra) were not cited before us. Once the Hon'ble Supreme Court held that the service in his entirety must be taken into account, we cannot ignore the same. As observed earlier, the applicant faced as many as 14 disciplinary proceedings.

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

**(Mohd.Jamshed)
Member (A)**

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

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