



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

O.A. No. 1716/2020

This the 18th day of June, 2021

(Through Video Conferencing)

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

Suraj Prakash Sagta, Aged 53 years,
Group 'B', Retd. Assistant Engineer (Civil),
S/o Shri I D Sagta, R/o 31, Lotus Enclave,
Parwana Road, Pitampura,
New Delhi-110 034. ... Applicant

(through Mr. Asish Nischal, Advocate)

Versus

North Delhi Municipal Corporation,
Through its Commissioner,
Dr. SPM Civic Centre, Pandit Jawahar
Lal Nehru Marg, New Delhi-110 002.

... Respondent

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

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman:



The applicant joined the Municipal Corporation of Delhi as Junior Engineer (JE) (Civil) in the year 1988. Thereafter, he was promoted to the post of Assistant Engineer (AE) (Civil) on ad hoc basis on 23.07.2009 and in the year 2010, he was granted 2nd MACP in 2010. 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 31.10.2019, the respondent retired the applicant by invoking the power under Fundamental Rule (FR) 56 (j), before the latter attained the age of superannuation. The representation made by the applicant was rejected on 17.02.2020. This OA is filed challenging the order of premature retirement and the order of rejection of representation.

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. It is stated that though he was imposed some penalties earlier, he did not face proceedings after promotion. The applicant further contends that some of disciplinary proceedings ended up in dropping charges, and there are no remarks against him. 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 Corporation, they constituted a committee of 05 senior most officers, to review the cases 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 penalties of reduction to a lower time scale or to a lower stage in a time scale as per the DMC Services (Control and Appeal) Regulations, 1959, vide office order dated 21.02.2000. The respondents have also given a brief background of the penalties imposed on the applicant. The respondents stated that the punishments are certainly, the factor to be taken into account while reviewing the cases on completion of certain length of service.

4. It is also stated that the administration has taken a decision to institute the regular departmental proceedings against the applicant and a RDA bearing No.1/26/2015 was commenced, and is pending before the Director of Inquiry. They submit that the further proceedings did not take place in view of the premature retirement of the applicant.

5. We heard Mr. Asish Nischal, learned counsel for the Applicant and Mr. R.V. Sinha, learned counsel for the Respondents.



6. In the course of the arguments, the learned counsel for the Applicant submitted that the authority, which recommended his case, is not competent inasmuch as the applicant was holding the post of Group 'C' in whose case, the relevant age is 53 years.

7. This contention is opposed by the learned counsel for the Respondents by stating that the applicant was already holding the post of Assistant Engineer, may be on ad hoc basis and he was also extended the benefit of MACP and thereby he deserves to be treated as Group 'B' officer.

8. Basically, this contention was not raised in the OA. Secondly, once the applicant was discharging the functions of Assistant Engineer and drawing the salary attached to that, the plea becomes virtually insignificant.

9. 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 FR 56 (j). The parameters for adjudication of the matters of this nature are laid down by the Hon'ble Supreme Court from time to time. 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 ***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 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."

It was clearly observed that the premature retirement 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.



10. 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. HariKishanVerma(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 into account.

11. 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 adequacy thereof. It is with reference to these principles that the case of the applicant needs to be examined.

12. After the applicant joined the service of the Municipal Corporation in the year 1988, he earned promotions to the post of AE etc., It is at a time when the applicant was working as AE that the order of premature retirement was passed.



Much argument is advanced by the learned counsel that though the applicant faced disciplinary inquiries from 1989 to 1990, the same were closed or dropped subsequently and presently he is facing only one disciplinary inquiry registered vide RDA No.1/26/2015, and after he was promoted to the post of AE, he did not face any such proceedings.

13. The respondents furnished the particulars of disciplinary proceedings instituted against the applicant. The list runs as under:

“Penalty in RDA case

Sl. No.	RDA No.	Penalty
(i)	1/425/1989	Censure vide office order dated 11.5.1993.
(ii)	1/441/1990	Stoppage of two increments without cumulative effect vide office order 856, dated 28.10.1999.
(iii)	1/19/1990	Recordable warning vide office order Dated 23.9.1992.
(iv)	1/26/1990	Censure, vide office order dated 11.5.1993.
(v)	1/31/1990	Stoppage of one increment without further effect vide office order No.404, dated 11.5.1983.
(vi)	1/62/1990	Censure vide office order dated 2.6.1994.
(vii)	1/198/1990	Stoppage of one increment without future effect vide office order dated 14.1.1994.
(viii)	2/213/1994	Censure vide office order dated 2.9.1998.
(ix)	3/339/1995	Reduction in the present time scale of pay by two stages for two years which shall not have the postponing effect upon the future increments vide office order dated 21.2.2000.
(x)	1/25/1996	Stoppage of one increment without future effect dated 19.7.2000.
(xi)	2/171/1996	Stoppage of two increments without future effect dated 27.7.1999.
(xii)	1/173/1996	Stoppage of one increment without cumulative effect dated 18.8.1998.



- (xiii) 1/118/2001 Exonerate vide office order dated 6.2.2004.
- (xiv) 1/16/2003 Dropped vide office order dated 27.7.2004.
- (xv) 1/159/2003 Closed vide office order No.ALO/Vig./P.2010/411, dated 23.8.10.
- (xvi) 2/154/2004 Censure vide office order dated 21.11.2005.
- (xvii) 3/206/2009 Dropped vide office order dated 4.5.2010.

Pending RDA case

- (xviii) 1/26/2015 Pending before Director of Inquiry."

14. The Plea that no charge sheet was issued against the applicant, is not correct. The record discloses that a RDA was registered against him bearing No.1/26/2015. The respondents thought it fit to retire the applicant prematurely and then to proceed with the disciplinary inquiry. As observed by the Hon'ble Supreme Court, the record of the employee, in its entirety needs to be taken into account and it cannot be compartmentalised.

15. Once the applicant was subjected to as many as 18 disciplinary proceedings and a fresh set of disciplinary proceedings were instituted, it cannot be said that there did not exist any material for the respondents to invoke the power under FR 56 (j) against him.

16. The premature retirement is not a punishment and the employee is allowed the retirement benefits. The only difference is that the retirement takes place a bit earlier. If the concerned Authority felt that the premature retirement of the applicant



would be in the interest of the Corporation as well as public, the Tribunal cannot find fault with that.

17. 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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