



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

O.A. No. 1744/2020

Orders reserved on: 21.06.2021

Orders pronounced on: 16.07.2021

(Through Video Conferencing)

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

Shri Ankur Tyagi, S/o Shri Amar Singh Tyagi,
r/o G-206, Styashanti Apartment,
Ekta Apartment, Sector 13, Rohani,
Delhi. ... Applicant

(through Mr. Rajeev Sharma, Advocate)

Versus

The Commissioner,
North Delhi Municipal Corporation,
Dr. S.P.Mukherjee Civic Centre, 4th Floor,
J.L. Marg, New Delhi.
... Respondent

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

ORDER

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 with effect from 13.09.2018. 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 respondents retired the applicant, by invoking the power under Fundamental Rule (FR) 56 (j) and Rule 48 of the CCS (Pension) Rules, 1972, 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 assigned additional charge of various important posts. He further contends that though he had been issued number of charge sheets, he was exonerated in most of them. He further submits that his ACRs for 31 years are not only Very Good, but also Outstanding in certain years, and that he is not involved in any departmental case in which any penalty was imposed, after his promotion in 2018, and that the impugned order cannot be sustained in law.



3. The respondent 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 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 punishments of various kinds under DMC Services (Control and Appeal) Regulations 1959, and that is certainly a factor to be taken into account, while reviewing the cases on completion of certain length of service. Moreover, the Corporation has not opted CCS (CCA) Rules, 1965. The respondent had also given a brief background of the penalties imposed on the applicant.

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

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 FR56 (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 **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.

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. 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 note of.





7. Another 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.

8. After the applicant joined the service of the Municipal Corporation in the year 1988, he earned promotion to the post of AE (Civil) and was assigned additional charge of various important posts. At that stage, the order of premature retirement was passed. Much argument is advanced by the learned counsel that though the applicant was issued number of charge memo, most of them ended in exoneration of the applicant, and after he was promoted to the post of AE, he did not face any such proceedings.

9. The respondents furnished the particulars of the disciplinary proceedings initiated against applicant. They

read as under:-



“Penalty in RDA case

Sl. No.	RDA No.	Penalty
(i)	1/95/1992	Warning to be careful in future, vide Office Order dated 14.12.1995.
(ii)	1/207/1992	Censure vide office order dated 19.1.1994
(iii)	1/264/1992	Stoppage of three increments without future effect vide Office Order dated 1.2.1995.
(iv)	1/434/1992	Exonerated vide office order dated 12.2.2018
(v)	1/28/1993	Censure vide office order dated 1.9.1999.
(vi)	1/184/1993	Stoppage of two increments without future Effect vide Office Order dated 6.7.1995.
(vii)	1/335/1993	Censure, vide Office Order dated 1.9.1999.
(viii)	1/424/1993	Stoppage of three increments without cumulative effects, vide Office Order dated 16.6.2003.
(ix)	1/66/1994	Exonerated vide Office Order dated 26.0.2002.
(x)	2/171/1994	Stoppage of two increments without cumulative effect vide Office Order dated 25.4.1997.
(xi)	1/204/1994	Reduction in the time scale of pay by one Stage for a period of one year without cumulative effect, vide office order 1237 dated 19.12.2001.
(xii)	1/259/1994	Reduction in the time scale of pay by two stages for a period of two year without cumulative effect, vide office order dated 8.4.2003.
(xiii)	2/325/1994	Stoppage of one increment without future Effect vide office order dated 20.06.1996.
(xiv)	1/348/1994	Exonerated vide office order dated 05.04.2008



(xv) 2/202/1995 Stoppage of three increments for three years without future effect vide office order No.312, dated 17.4.2001.

(xvi) 2/308/1995 Cautioned to be more careful in future, vide office order No.758, date 15.09.1997.

(xvii) 2/37/1996 Stoppage of two increments without cumulative effect vide office order dated 30.11.1999.

(xviii) 1/88/1998 Exonerated vide office order dated 20.08.2017.

(xix) 1/104/99 Exonerated vide office order dated 12.12.2003.

(xx) 1/168/2001 Dropped vide office order dated 9.3.2006.

(xxi) 1/293/2001 Reduction in pay in the present time scale of pay by two stages for two years with cumulative effect, vide office order dated 20.9.2007.

(xxii) 1/58/2006 Reduction in the time scale of pay by two stages for a period of three years with cumulative effect, vide office order dated 5.5.2006.

(xxiii) 1/145/2007 Reduction to lower stage in the time scale of pay by two stages for the period of two years with cumulative effect not affecting his pension vide office order no.289, dt. 1.6.2010 and office order dated 21.9.2010.”

10. The applicant faced more than 20 proceedings. The amount of hardship undergone by the Corporation can easily be imagined. The respondents thought it fit to retire the applicant prematurely than to keep him on their rolls. 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. The fact that he was promoted, makes no difference.

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

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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