

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



**OA No. 1756/2020
MA No. 2276/2020**

This the 10th day of March, 2021

(Through Video Conferencing)

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

Shri Chandra Prakesh Sharma,
Rt. A.E., Age-57, Group 'B',
S/o Shri Ram Phool Sharma,
R/o D-148, Ground Floor,
Anand Vihar, Delhi.

...Applicant

(By Advocate: Mr. Rajeev Sharma)

VERSUS

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

...Respondent

(By Advocate: Mr. R. V. Sinha with Mr. Amit Sinha)

ORDER (Oral)**Mr. Mohd. Jamshed, Member (A):**

The applicant was appointed as Junior Engineer (JE) in the erstwhile Municipal Corporation of Delhi (MCD) in the year 1988. He was subsequently promoted as Assistant Engineer (AE) in the year 2013 on ad-hoc basis. The respondents vide order dated 31.10.2019 retired the applicant from service on compulsory basis under Fundamental Rule (FR) 56 (j) and Rule 48 of CCS (Pension) Rules, 1972, before he attained the age of superannuation. The applicant filed a review against the order dated 31.10.2019 which was rejected vide order dated 17.02.2020. This OA is filed challenging the impugned orders dated 31.10.2019 and 17/02/2020.

2. The applicant contends that he had served in the erstwhile MCD and, thereafter, in North Delhi Municipal Corporation (NDMC) for about 31 years and that his performance for the said period has been graded as 'Good', 'Very Good' and 'Outstanding'. His integrity has also been assessed in his APARs as 'Beyond Doubt'. It is stated that during the service a few disciplinary proceedings were initiated against him and in most of the cases, he was exonerated. It is also stated that in last few years, he has neither been charge-sheeted nor any disciplinary proceeding is pending against him. The applicant, further, contends that there is no basis to



invoke FR 56 (j) against him as the same can only be invoked in cases of 'Doubtful Integrity'. All through, in his APARs, his integrity has been stated as 'Beyond Doubt'. Through this OA, he is seeking quashing of the impugned order of compulsory retirement dated 31.10.2019 and the order of the respondent rejecting his representation dated 17.02.2020.

3. On behalf of respondent a detailed counter affidavit is filed, opposing the OA. The respondent has given details of all the disciplinary proceedings initiated against him including 3 major penalties. It is stated that the Committee constituted to make recommendations on compulsory retirement of the employees under FR 56 (j) has gone into the details of the entire service record of the applicant, the disciplinary proceedings initiated against him and recommended the applicant for compulsory retirement under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972. The representation made by the applicant was considered by the Representation Committee. The applicant was also given an opportunity of personal hearing and the representation of the applicant was rejected vide order dated 17.02.2020. The respondent contends that the action against the applicant is well within the prescribed rules. It is contended that the order of compulsory retirement cannot be treated as punishment and the scope of interference by the Tribunal is limited.



4. We heard Mr. Rajeev Sharma, learned counsel for the applicant and Mr. R. V. Sinha with Mr. Amit Sinha, learned counsel for the respondent.

5. The applicant was appointed as JE in the year 1988 in the erstwhile MCD. He was, subsequently, promoted to the post of AE in the year 2013 on ad hoc basis. During his career a number of disciplinary proceedings were initiated against him for various lapses and irregularities, etc. List of 8 cases of disciplinary action against the applicant has been provided by the respondent in the counter affidavit, which is as under:-

S. No.	RDA Case	Penalty
(i)	1/133/2001	Censure vide O.O. dt. 11.9.2003
(ii)	1/10/2006	Reduction to the lower stage of pay in the time scale by one stage for two years with cumulative effect vide O.O. dt. 13.4.2006.
(iii)	1/64/2006	Reduction in time scale of pay by three stages for a period of three years with cumulative effect vide O.O. dt 31.3.2006.
(iv)	1/259/2006	Reduction in pay in the present time scale of pay by one stage for a period of one



		year with cumulative effect vide O.O. dt. 16.01.2009.
(v)	1/366/2006	Exonerated vide O.O. dt. 26.4.2007
(vi)	4/74/2007	Exonerated vide O.O. dt. 4.6.2007
(vii)	1/35/2008	Exonerated vide O.O. dt. 19.10.2012
(viii)	4/6/2008	Censured vide O.O. dt. 3.11.2009

6. It is obvious from the list of disciplinary proceedings against the applicant that for various lapses and irregularities, the applicant was charge-sheeted on as many as 8 occasions. In 3 cases out of 8, he was exonerated, in 2 cases he was censured and in 3 cases, major penalties were imposed. This indicates that the applicant was held responsible for committing gross irregularities on a number of occasions. Major penalties imposed on the applicant include, reduction to the lower stage of pay in the time scale by one stage for two years with cumulative effect, reduction in time scale of pay by three stages for a period of three years with cumulative effect and reduction in pay in the present time scale of pay by one stage for a period of one year with cumulative effect. It is evident that the charges were proved against the applicant and he was awarded major penalties of reduction in lower stage



with cumulative effect on not one but three occasions during his career in addition to quite a few minor penalties. A service record that is full of disciplinary actions against the applicant could be an important factor for consideration of compulsory retirement by the respondents.

7. Vide letter dated 03.07.2019, the Hon'ble Lieutenant Governor of Government of NCT of Delhi reiterated earlier instructions that measures should be taken by the competent authority in the interest of the administration to weed out the undesirable and tainted officers under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972. It was directed that the guidelines issued by the Government should be scrupulously followed in such cases. In terms of these directions, an Internal Committee and a Review Committee were set up. A detailed exercise was undertaken in this behalf and service records of the employees of different departments were obtained from the vigilance departments along with the details of disciplinary proceedings and other cases/penalties imposed upon such officers of the corporation. The Internal Committee screened the employees based on their entire service record and proposed the names of the employees for consideration for compulsory retirement under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972. The name of the applicant along with others was recommended by the Internal Committee to the Review Committee for



compulsory retirement under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972.

8. The applicant's case was considered by the Review Committee on the basis of his service record, pending and final RDA details/Police case/CBI reports provided by the vigilance department and the name of the applicant was approved for compulsory retirement. This was, thereafter, put up before the Competent Authority for consideration and appropriate orders. The Competent Authority considered these recommendations and decided that the retention of the applicant is not in the public interest and, accordingly, he was retired compulsorily with immediate effect under FR 56 (j) vide order dated 31.10.2019. It is also observed that in order to deal with the representations of such employees, a Representation Committee was also constituted to consider such representations and to make further recommendations to the Competent Authority for passing further/appropriate orders. The applicant was heard personally and the representation made by him was considered by the Representation Committee. It was observed by the Representation Committee that the decision taken by the Competent Authority for compulsory retirement of the applicant vide order dated 31.10.2019 requires no further consideration and, accordingly, his representation is liable to be rejected. The Competent



Authority vide order dated 17.02.2020 rejected the representation of the applicant.

9. The contention of the applicant has all along been that FR 56 (j) and Rule 48 of the CCS (Pension) Rules, 1972 can only be invoked when an employee has doubtful integrity and that in his case his integrity was consistently indicated as 'Beyond Doubt' in his APARs. He has also claimed that although there have been a number of disciplinary proceedings against him, in quite a few of those he was exonerated. He, however, accepts that in three cases major penalties were imposed upon him. The provisions relating to pre mature retirement of a Government Servant under FR 56 (j) or Rule 48 of CCS (Pension) Rules, 1972 is a decision to be taken in public interest. FR 56 (J) prescribes that the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any government servant by giving him notice along with three months' pay and allowances in lieu of such notice. Rule 48 (i) of CCS (Pension) Rules, 1972 and also stipulates that at any time after the Government Servant has completed 30 years qualifying service, he may be required by the appropriate authority to retire in the public interest and in such cases the Government Servant shall be entitled to the retiral benefits. To undertake action in terms of these rules, a Review Committee is required to be set up. In the



instant case, the respondents have also set up an Internal Committee whose recommendations were considered by the Review Committee. The respondent set up a Representation Committee for consideration of the representation and for granting the applicant an opportunity of personal hearing, if required.

10. The applicant and respondent both have relied upon a number of judgments of the Hon'ble Apex Court, Hon'ble High Courts and the Tribunal. Although the compulsory retirement under FR 56 (j) is well settled in law as laid down in catena of judgments by the Hon'ble Supreme Court. Some of these important judgments in this regard are extracted below:-

10.1 In the case of **Union of India vs. Col. J.N.Sinha** [1971 SCR (1) 791], the Hon'ble Supreme Court held as under:-

"Now coming to the express words of Fundamental Rule 56 (j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule.' one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

10.2 In the case of **State of Gujarat vs. Umedbhai M. Patel**, 2001 (3) SCC 314, Hon'ble Court held that —

"The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized thus:



(I) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even un-communicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

10.3 The following observations of the Hon'ble Supreme Court in the case of **S Ramchandra Raju vs State of Orissa** {(1 994) 3 SCC 424}, while upholding compulsory retirement in the case, are also relevant:-

"The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone; the Government should form the opinion that the Government officer needs to be compulsorily retired from service. Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a Government officer."



10.4 The judgement of the Apex Court in the case of **K. Kandaswamy vs Union Of India & Anr**, 1996 AIR 277, 1995 SCC (6) 162 is also relevant here. In this case, the apex court upheld the decision of the Government and held that:-

"The rights - constitutional or statutory - carry with them corollary duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the latter is being overlooked and neglected and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a Government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power."

11. The methodology and certain other principles to be adopted for invoking action under FR 56 (j) have also been clearly laid down by the Hon'ble Supreme Court in **Baikunthanath Das & others vs. Chief District Medical Officer, Baripada & others**, (1992) 2 SCC 299. Relevant para of the judgment, reads 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 a 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 showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

12. The applicant has also relied upon the judgment of this Tribunal in OA No. 153/2020. The facts of this OA are not relevant to the facts of the present case. The above mentioned judgments of the Hon'ble Apex Court amply clarify that APARs or integrity as recorded in the APAR are not the only factors to be considered while deciding on compulsory retirement under FR 56 (j). This Tribunal in a subsequent judgment in OA No. 703/2020 dated 09.12.2020 has also referred to various judgments of Hon'ble Supreme Court and held as under:-

30. Much argument is advanced by the applicant by referring to the ACRs, certain observations made by the Courts in the judgments and the clauses contained in circulars issued from time to time.

31. Even while observing that the ACRs of an employee can be one of the factors to be taken into account in the context of invoking Rule 56 (j), it was clarified beyond any pale of doubt that they are not the conclusive factors to decide the course of action. Even where the ACRs of an officer are outstanding, the propensity to the challenge or to deviate from the ordinary conduct cannot be ignored.

32. One cannot limit the factors that go into the formation of the opinion in this behalf, nor it can be restricted to the developments spread over, as particularly the period. In a way, it is a comprehensive review and evaluation of the history of the officer, after he crosses 53 years of age. He may have earned promotions till 49th year or beyond. If the only course open to



the State to do away the service of employee is by initiating disciplinary proceedings, there would not have been in the necessity to frame Rule 56 (j) at all.

33. It is a facility for the Government to ensure that its energies are not wasted in controlling and otherwise unruling officer who does not permit O.A./100/703/2020 20 himself to be regulated at all or has become a menace for the department. After perusing the entire record and on a consideration of the authoritative pronouncements on the subject that are cited by both the parties, we are convinced that the respondents were within their power to pass the impugned order.”

13. The respondent undertook a review under the prescribed FR 56 (J) and Rule 48 of CCS (Pension) Rules, 1972 to identify officers whose retention in the service in the public interest is no more desirable. Under FR 56 (j) and Rule 48 of the CCS (Pension) Rules, 1972, the appropriate authority has the absolute right to consider and compulsorily retire such officers. The review is not only confined to the APAR and the grading granted therein or the very fact that in the column of integrity in the APAR ‘beyond doubt’ has been mentioned. The Review Committee has to look into the entire service record of such officers including the disciplinary actions taken against them, complaints and views of the CBI/vigilance department as available and decide whether such officers can be considered for compulsory retirement.

14. In the case of the applicant also a thorough review was undertaken by the Internal Committee, Review Committee and the Competent Authority. At a later stage, the representation of the applicant was also considered by the Representation



Committee, which rejected the same. The very fact that on 8 occasions the disciplinary proceedings have been initiated against the applicant in itself builds a strong case for the respondents that the performance of the applicant makes him fit for consideration for compulsory retirement under FR 56 (j). Three major penalties have been imposed on the applicant in the past with reduction in rank with cumulative effect. This also is an indication that he was held responsible for committing gross irregularities, etc. In addition to these 3 major penalties, there have been 5 more disciplinary proceedings against the applicant, in 3 of which he was exonerated and in 2 he was Censured. The disciplinary proceedings and punishment are not the only factors that are considered, however, these are very important factors in addition to the entire service record considered by the Review Committee. These aspects have also been considered at length in the order passed by this Tribunal in OA No. 703/2020 dated 09.12.2020 and in catena of judgments passed by the Hon'ble Apex Court, as quoted above.

15. Therefore, we are of the view that orders passed by the respondent dated 31.10.2019 and 17.02.2020 do not suffer from any infirmity or illegality. In the facts and circumstances of the case the claim of the applicant for setting aside the impugned orders is not tenable. The OA is devoid of merit and

the same is, accordingly, dismissed. Pending MA also stands disposed of. There shall be no order as to costs.



(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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