



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**OA No. 1754/2020
MA No. 2274/2020**

This the 23rd Day of April, 2021

(Through Video Conferencing)

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Ajay Kumar Gupta
S/o Shri Bhanu Prakash
Rt. AE, Age 59 years, Group 'B'
R/o Flat No.7, Pragatisheel Apartment
Sector 9, Rohini, Delhi.

... Applicant

(By Advocate: Shri 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: Shri A.S. Singh for Shri R.V. Sinha)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman :

The applicant joined the service of the Municipal Corporation of Delhi as Junior Engineer in the year 1986. Thereafter he was promoted to the post of Assistant Engineer. On trifurcation of the Municipal Corporation, he was allocated

Item No.12



to the North Delhi Municipal Corporation, the respondent herein. Through an order dated 31.10.2019, the respondents retired the applicant, by invoking FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972. The review filed against the order was also rejected on 17.02.2020.

2. The applicant contends that the impugned order is totally arbitrary and without any reason or justification. He contends that the respondents have adopted a policy not to invoke FR 56(j) against the employees, who are not imposed with a major penalty and in the instant case, the provision was invoked though no major punishment was imposed against him. It was also stated that the order was passed in a mechanical way, without application of mind. Another contention of the applicant is that he is due to retire within one year and invocation of FR 56(j) is wholly arbitrary.

3. The respondents filed a detailed counter affidavit. According to them, the applicant has undergone several punishments from 1992 to 2009 and a Regular Departmental Action (RDA) is in progress. They contend that with a view to ensure transparency and to remove the deadwood in the Corporation, a Committee of 5 seniormost officers was constituted and entrusted with the task of verifying the service records. It is stated that the Committee so constituted



examined the records of various officers, who have crossed 50 years of age and the case of the applicant was also examined in that behalf. It is stated that the Committee recommended the name of the applicant for invocation of FR 56(j). They have also furnished the details of punishments and the cases contemplated against him.

4. Today, we heard Shri Rajeev Sharma, learned counsel for the applicant and Shri A.S. Singh representing Shri R.V. Sinha, learned counsel for the respondents.

5. The order of premature retirement was passed against the applicant by invoking FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972. It is fairly well settled that an order of such compulsory retirement does not amount to punishment and the review in such cases is very restrictive. It is only when *mala fides* are attributed or it is established that there was no material whatever, that the Tribunal may consider the feasibility of interfering with the same. A distinction needs to be maintained here itself, namely, once the Appointing Authority is able to demonstrate the existence of material, the Tribunal would not go into the question of adequacy thereof.

6. The various principles that apply to the case of premature retirement were enunciated by the Hon'ble



Supreme Court in **Baikuntha Nath Das & Another vs. Chief District Medical Officer, Baripada & Another**, 1992 (2) SCC

299. The relevant paragraph 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 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."

7. Reverting to the facts of the case, it is not in dispute that the applicant was imposed several punishments in his career. The details thereof are furnished at page 7 of the counter affidavit, which read as under:

S.No.	RDA No.	Penalty
(i)	1/484/1992	Stopped one increment without future effect dated 19.07.1995
(ii)	1/335/1993	Exonerated Vide Office Order dated 11.03.1999
(iii)	1/409/1993	Stoppage of three increments without future effect dated 03.04.1995
(iv)	2/325/1994	Stoppage of one increment without future effect dated 20.06.1996
(v)	2/62/1995	Stoppage of two increments without future effect dated 26.02.2001
(vi)	2/204/1996	Stoppage of two increments without future effect dated 21.12.2000
(vii)	2/114/2000	Stoppage of one increment without future effect Vide Office Order No. 1309 dated 30.07.2004
(viii)	1/52/2008	Drop vide Office Order No. 1/52/2008/Vig./CPC/2018/513 dated 11.12.2018
(ix)	1/42/2008	Censure Vide Office Order No. 1/42/2008/Vig./P/RSB/2019/244 dated 12.07.2019
(x)	1/127/2009	Exonerated Vide Office Order No. 1/127/2009/Vig./RSB/2019/248 dated 16.07.2019

8. It is evident that the applicant was imposed the punishment of stoppage of increments as many as on six occasions and in certain cases, the stoppage was of more than one increment. The punishment of censure was also imposed

Item No.12



in the year 2008. In addition to these punishments, three more proceedings were initiated but they were dropped. In all, the applicant suffered nine disciplinary proceedings. Another is in the pipeline ever since 01.09.2017. The allegations therein are a bit serious.

9. In the background referred to above, it cannot be said that there did not exist any material for the respondents to invoke FR 56(j) against the applicant. As a matter of fact, the provision is enacted to deal with cases of this nature. The frequent initiation of disciplinary proceedings, leading to imposition of minor/major penalties or exoneration would create a sort of turbulence in the Department requiring various officials to devote their time and energy for this unproductive purpose. We are of the view that the respondents are very much justified in passing the impugned order.

10. We do not find any merit in the O.A. and, accordingly, the same is dismissed. Pending MA, if any, also stands disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/ankit/sd