

**Central Administrative Tribunal
Principal Bench**

OA No.1812/2020

**Reserved on : 25.03.2021
Pronounced on : 19.04.2021**

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

Avinash Kumar Gupta
S/o Shri Satya Prakash Gupta
R/o E-2, MCD Quarters,
Rt. A. E.,
Age 55 years, Group 'B',
Kamla Nagar,
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 Advocates : Shri R. V. Sinha and Shri Amit Sinha)

: O R D E R :

Justice L. Narasimha Reddy, Chairman:

The applicant joined the service of the Municipal Corporation of Delhi as Junior Engineer in the year 1993. He was promoted to the post of Assistant Engineer on 20.04.2010. On trifurcation of the Municipal Corporation, he was allotted to the North Delhi Municipal Corporation (NDMC) in the year 2012. He was also extended the benefit of MACP on 31.03.2014.

2. The NDMC has taken up an exercise of weeding out the officers, whose integrity was doubtful or who were not of any utility to the organization. A Committee of five senior officers was constituted. The case of the applicant was also considered, since he completed 50 years of age, provided for under FR 56(j). On the recommendations made by the Committee, the Appointing Authority passed an order dated 31.10.2019 retiring the applicant on compulsory basis by invoking FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972. The review sought by the applicant was rejected through order dated 17.02.2020. He filed this OA challenging the order of compulsory retirement and the one, passed in review thereof.

3. The applicant contends that his service was without much blemish, and though certain disciplinary proceedings were initiated against him more than a decade ago, he was exonerated in 4 of them, Censured in one of it, penalties of stoppage of increments were imposed in the year 2001 and 2006, and major penalty of reduction in the scale of pay by two stage for two years with cumulative effect, was imposed in the year 2006. He submits that the punishments have already worked out and the DPC, which considered his case for promotion recommended his name in the year 2010. He submits that after the year 2006, there is not even a whisper or complaint against him and that he was also promoted to the post of Assistant Engineer in the year 2010.

4. The applicant further contends that there was no basis for the respondents to invoke FR 56(j) against him, particularly when, nothing adverse is noticed against him after the promotion.

5. The respondents filed a detailed counter affidavit. It is stated that with a view to ensure transparency in the functioning of the officers and to encourage efficiency, it has been decided to review the cases of the officers, who have crossed the age of 50 Years, and for this purpose, the Committee of senior most officers was constituted. It is also stated that the Committee has fixed its own parameters for recommending the cases for invocation of FR 56 (j), and the name of the applicant was also recommended therein. They contend that the applicant faced several disciplinary proceedings and the NDMC felt that it would not be in its interest, to continue the applicant in service.

6. The respondents contend that the compulsory retirement is not a punishment, and the applicant cannot be said to have suffered any grievance.

7. We heard Shri Rajeev Sharma, learned counsel for the applicant and Shri R. V. Sinha with Shri Amit Sinha, learned counsel for the respondents.

8. In the recent past, the NDMC has invoked FR 56 (j) against many officers, particularly from the Engineering Department. The screening in this behalf was done by a

Committee, comprising of Additional Commissioner (Concerned), Additional Commissioner (Finance), Chief Law Officer and Director (Personnel)/HOD. The Committee is said to have taken note of the fact that as many as 9 disciplinary proceedings were initiated against the applicant, and though he was exonerated in 4 of them, punishment was imposed in 5-6 proceedings. The particulars thereof are furnished.

9. The scope of interference with the orders of compulsory retirement is very limited. The reason is that the compulsory retirement is not a punishment and the employee would be extended all the retirement benefits. The only difference is that the length of his service is cut short.

10. These and other principles, that are applied in matters of this nature, are enunciated by the Hon'ble Supreme Court in **Baikuntha Nath Das & another v. 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."

These principles were reiterated in the subsequent judgments.

10. In K. Kandaswamy vs. Union of India. (1996) 6 SCC 162, the Hon'ble Supreme Court observed that:-

"While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in

public interest. The Government is given power to energise its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them for service. When the appropriate authority forms bona fide opinion that compulsory retirement of the government employee is in the public interest, court would not interfere with the order."

It was, however, added that the opinion must be based on the material on record, and in the absence thereof, it would amount to arbitrary or colorable exercise of power. It was also held that the decision to compulsorily retire an employee can, therefore, be challenged on the ground that requisite opinion was based on no evidence or the decision was based on collateral grounds, leading to arbitrariness.

11. In S.R. Venkataraman vs. Union of India, (1979) 2 SCC 491, the Hon'ble Supreme Court held the order of compulsory retirement as a gross abuse of power as there was nothing on the record to justify and support the order.

12. In Baldeo Raj Chaddha vs. Union of India, (1980) 4 SCC 321, it was held that although the purpose of FR 56 was to weed out worthless employees without punitive extremes, if, under the guise of "public interest", an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and "disguised dismissal".

13. The ratio of **Baikuntha Nath's case** (supra) was applied by this Court in M.S. Bindra vs. Union of India & Ors. JT 1998 (6) SC 34 and it was observed as under:

"Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into."

It was further observed as under :

"While viewing this case from the next angle for judicial scrutiny, i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. In order, therefore, to find out whether any Govt. servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that Govt. servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.

14. In the instant case, it is no doubt true that the applicant was imposed 3 minor penalties and one major penalty. That, however, was up to the year 2006. He was promoted to the post of Assistant Engineer in the year 2010, on being recommended by the DPC. Had anything adverse against him was noticed subsequent to the year 2010, the order of compulsory retirement would certainly have been upheld. It is

evident that the record of the applicant subsequent to his promotion is without any blemish. Compulsory retirement *albeit* under Rule 56 (j) tends to become a penalty, it is invoked in the absence of proper material. The exceptional provision that enables the government to cut short the service of the employees without the necessity of conducting any inquiry cannot be invoked unless there exists any basis. Though the punishment imposed against the applicant would certainly constitute the basis, the relevance or impact thereof ceases once he was promoted.

15. We, therefore, allow the OA and set aside the impugned order. The applicant shall be reinstated into service. If any retiral benefits were extended to him, the applicant shall be under obligation to refund the same at the time of his reinstatement. The exercise in this behalf shall be completed within a period of three months from the date of receipt of a copy of this order.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/joshi/dsn