



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1840/2020

This the 6th day of July, 2021

Through video conferencing

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

Shri V.S. Rai,
S/o Shri Kamala Prasad Rai,
Rt. JE, Age 56, Group 'B',
R/o H.No.24/5, First Floor,
South Phase, Indira Vikas Colony,
Delhi

... Applicant

(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

(Mr. R V Sinha and Mr. Amit Sinha, Advocates)

ΟΡΔΕΡ

Mr. Justice L. Narasimha Reddy:

The applicant joined the service of the erstwhile Municipal Corporation of Delhi (MCD) as Beldar on 01.04.1994. He was promoted to the post of Junior Engineer in November, 2006. On trifurcation of the MCD,



he was allotted to North Delhi Municipal Corporation. Through an order dated 31.10.2019, the respondents retired the applicant from service, before he attained the age of superannuation, by invoking power under F.R. 56 (j). The review filed against that was rejected on 17.02.2020. Hence, this O.A.

2. The applicant contends that his service was without any blemish, except that the disciplinary proceedings were initiated on certain occasions. It is also his case that he was promoted to the post of Junior Engineer on being satisfied about his performance, and that there was absolutely no basis for passing the impugned orders. He submits that no disciplinary proceedings were initiated against him after he was promoted to the post of Junior Engineer and the impugned order cannot be sustained in law.

3. The respondents filed a detailed counter affidavit. It is stated that the applicant no doubt was promoted to the post of Junior Engineer on a consideration of his record for the relevant period, but the fact remains that he faced several disciplinary proceedings. They contend that the Corporation has decided to bring about the transparency



and efficiency, particularly in the Engineering Wing and accordingly, a High Powered Committee was constituted to review the cases of officers, who have crossed 50 years of age. They contend that the entire record of the applicant was taken into account and the Committee recommended the invocation of F.R. 56 (j) against the applicant. The respondents pleaded that the order of premature retirement is not a punishment and the impugned orders do not warrant interference.

4. We heard Mr. Rajeev Sharma, learned counsel for applicant and Mr. R V Sinha & Mr. Amit Sinha, learned counsel for respondents.

5. The applicant challenges the order of premature retirement. The scope of interference by the Tribunal in matters of this nature is bit restricted. Time and again, the Hon'ble Supreme Court held that the premature retirement under F.R. 56 (j) does not amount to punishment and that the Tribunal or the Court cannot function as an appellate authority.

6. The parameters for adjudication of matters of this nature are clearly stated by the Hon'ble Supreme Court. After reviewing the various judgments rendered on the



subject up to that stage, the Hon'ble Supreme Court enunciated the following principles in its judgment in **Baikuntha Nath Das & another v. Chief District 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 F.R. 56 (j) does not amount to punishment and it is a measure to add efficiency and honesty in the Department.

7. In **State of Gujarat v. 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 F.R. 56 (j) cannot be sustained. However, in its subsequent judgments in **Pyare Mohan Lal v, State of Jharkhand**, (2010) 10 SCC 693 and **Punjab State Power Corporation v. Hari Kishan Verma**, (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 compartmentalized to any particular period and the record in its entirety needs to be taken into account while reviewing the case in the context of invocation of F.R. 56 (j).



8. Another principle that was enunciated by the Hon'ble Supreme Court was that there may be a scope of interference if there did not exist any material at all, for premature retirement, but if there exists some material, 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.

9. The applicant no doubt was promoted to the post of Junior Engineer during his service career. The fact, however, remains that he faced three disciplinary proceedings; the details of which are as under:-

S. No.	RDA No	Penalty
(i)	1/312/2010	Exonerate vide O.O. dt. 01.08.2012
(ii)	3/4/2011	Dropped vide O.O. dt. 08.06.2012
(iii)	1/117/2011	Reduction in pay in the present time scale of pay by two stages for a period two years with cumulative effect vide O.O. dt. 16.08.2019.
	Pending RDA Case	
(i)	3/44/2011	Copy of Inquiry Report served to applicant and reply awaited.
(ii)	1/36/2019	Charge sheet issued on 22/10/2019.



Once the applicant was imposed punishments, maybe before he came to be promoted, it cannot be said that there does not exist any material or invocation of F.R. 56 (j).

10. In S. Ramachandra Raju v. State of Orissa, 1994

Supp (3) SCC 424, the Hon'ble Supreme Court held that the very purpose of having a provision like F.R. 56 (j) is to ensure that the situations where the Department may not be successful in punishing an erring employee, would not become a license for such employee to remain in public employment if he is otherwise ineligible and inefficient. It is not as if the applicant was denied any pensionary benefits. For all practical purposes, it is a regular retirement, advanced by few years. No prejudice can be said to have been suffered by the applicant. It is a step towards cleansing the Department, which the respondents have every right.

11. We do not find any merit in the O.A. It is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/