



Central Administrative Tribunal Jammu Bench, Jammu

TA No.5896/2020
MA No. 1523/2020
(SWP No. 1385/2015)

Monday, this the 17th day of May, 2021

(Through Video Conferencing)

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

Altaf Ahmad Mistry (Age 57 years)
S/o Ghulam Qadir Mistry
R/o Sambora Tehsil Pampore
District Pulwama.

...Applicant

(Mr. Aftab Ahmad, Advocate)

VERSUS

1. State of J&K
Through Chief Secretary
Government of J & K State
Civil Secretariat, Srinagar.
2. Commissioner Secretary to Government
General Administration Department
Civil Secretariat, Srinagar.
3. Commissioner Secretary to Government
Revenue Department
Civil Secretariat, Srinagar.

...Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)



ORDER (Oral)

Mr. Justice L. Narasimha Reddy:

The applicant was holding the post of Naib Tehsildar in substantive capacity, by the year 2015, in the Revenue Department of the State of Jammu & Kashmir. He was also holding the post of In-charge Tehsildar, Aripal (Pulwama). Through an order dated 30.06.2015, the General Administration Department retired the applicant by invoking power under Rule 226 of the Jammu & Kashmir Civil Service Regulations (for short 'Regulations'). The applicant filed SWP No. 1385/2015 before the Hon'ble High Court of Jammu & Kashmir, challenging the order of premature retirement. He stated that there was absolutely no blemish in his entire service and his ACRs are rated above satisfactory level. He contends that there was absolutely no justification to invoke extraordinary provision, like Rule 226 of the Regulations.

2. The respondents filed a detailed counter affidavit. It is stated that a Committee was constituted to consider the cases of the officers, within the age groups, referable to Rule 226 of the Regulations and on verification of the records of the applicant, it emerged that he was caught red handed while receiving a bribe of

Item No. 4



Rs.1,000/-, It is stated that the incidents, dents the image of the Department and accordingly, it has been decided to retire him by invoking the said provision.

3. The applicant filed a rejoinder. According to him, the so-called incidence of acceptance of bribe was a fake one and in the subsequent inquiry, the complainants were not able to prove it at all.
4. The SWP has since been transferred to the Tribunal in view of the reorganisation of the State of Jammu & Kashmir and renumbered as T.A. No. 5896/2020.
5. Today, we heard Mr. Aftab Ahmad, learned counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.
6. The applicant was holding the substantive post of Naib Tehsildar and was functioning as In-charge Tehsildar, by June, 2020. Rule 226 of the Regulations is *akin* to FR 56 (j). Both the provisions are almost *verbatim*. In matters of this nature, the basis for invoking the provisions is spelt out in the counter affidavit. The orders of premature retirement virtually bereft of reasons and are cryptic in their content.



7. The respondents took the plea that the record of the applicant is not without any blemish and on the other hand, he was caught red handed while accepting a bribe of Rs.1,000/- from the owner of the tipper on 07.05.2014. The record also discloses that the applicant was arrested in connection with that case and was also placed under suspension.

8. The parameters, that govern the cases of this nature, are spelt out 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."

Many judgments rendered thereafter have taken note of these parameters and reiterated them.

9. Assuming that the record of the applicant was otherwise clean, the very fact that he was caught red handed while accepting bribe of Rs.1,000/- in the year 2014, so much so, that he was arrested and suspended thereafter, would certainly constitute the basis to invoke such provision. It must not be forgotten that the order of premature retirement is not a punishment and at the most, the employee is retired a bit early. It was also held by the Hon'ble Supreme Court that once there

Item No. 4



exists material for invoking the provisions *akin* to FR 56 (j), the Court or Tribunal cannot go into the adequacy thereof.

10. Though the learned counsel the applicant made the efforts to convince us that the whole episode, including the arrest of the applicant, was a stage and managed one, we just cannot go into that aspect at all. At any rate, the applicant has crossed the usual age of superannuation.

11. We do not find any merit in the T.A. It is accordingly dismissed. Across the Bar, it is stated that the pension of the applicant is reduced. If that is so, he can work out his remedy separately.

There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 17, 2021
/sunil/jyoti/sd/dsn/