

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 10th day of May 2005

ORIGINAL APPLICATION NO. 412/2003

CORAM:

HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)
HON'BLE MR. A.K. BHANDARI, MEMBER (ADMINISTRATIVE)

Satish Jain son of late Shri D.R. Jain, aged about 56 years, resident of House No. 122, Kirti Nagar, Tonk Road, Jaipur.

.....Applicant

By Advocate: Mr.P.N. Jatti

versus

- 1 Union of India through the Central Provident Fund Commissioner, Employees Provident Fund Organisation, Ministry of Labour, Govt. of India, Bhavishya Nidhi Bhawan, 14. Bhikaji Kama Place, New Delhi.
- 2 The Regional Provident Fund Commissioner, Nidhi Bhawan, Jyoti Nagar, Jaipur.

....Respondents.

By Advocate : Mr. R.B. Mathur

ORDER

PER HON'BLE MR. A.K. BHANDARI

This OA u/s 19 of the AT Act has been filed to seek for redressal of following grievances:-

- (i) By an appropriate order or direction, the

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impugned order dated 13.6.2003 (Annexure A/1) may kindly be quashed and set aside.

(ii) By any appropriate order or direction, the respondents may further be directed to deem the applicant to be continued in service with all consequential benefits and if interim order is not granted, the arrears of salary should be paid alongwith interest at the rate of 15% per annum.

(iii) Any other appropriate order which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may be passed in favour of the appellant.

(iv) Cost may also be awarded to the applicant.

2 Briefly stated, the facts of the case are that the applicant was initially appointed on 26.6.1967 on the post of LDC and since then he has been continuously working in the Department having got promotion on the post of UDC in 1973 and on the post of Head Clerk in the year 1981. He also worked as Assistant Accounts Officer in 1993. However on 24.9.1999, a charge sheet was served upon him under Rule 10 of the Employees Provident Fund Staff (CCA) Rules, 1971 but the same was finalised as charges not found proved by the Inquiry Officer vide his order dated 21.5.2003 (Annexure A/3) and the proceedings were dropped. The applicant feels that his performance was upto the mark and to the satisfaction of the superior authorities. According to him, it is borne out by the fact that he was given extra responsibility by superior officer during this period. The Sub Regional Office at Kota was adjudged as model office for all round excellent performance during his tenure. Although the applicant was given advisory remarks

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in the ACR in the year 2001 the same were neither in the form of warning nor were they to stick as a permanent adverse mark on his carrier. This was proved in the year 2002-2003 when the applicant was given higher responsibility of officiating as Assistant Commissioner in different stretches for almost nine months. Further that on 31.3.2003, his office achieved the rare distinction of having zero claims in Jaipur Region and Jaipur Region was placed at the second position on All India basis. However vide order dated 13.6.2001 (Annexure A/1), an order was issued under provisions of Rule 56(J) of the Fundamental Rules and ^{Re} _h has been compulsorily retired on attaining the age of 56 years. This order is violative of rules; firstly because ^{it is} _h punitive in nature, secondly at the time of issuance of this order, he had attained the age of 55 years. Thirdly there is no material whatsoever on record to justify the issuance of such an order in public interest because the applicant has never been punished or given adverse remarks. Rather other officers with punishments and having bad record of service have not been issued such order which shows their bias and discriminatory attitude towards the applicant. Aggrieved by this action, applicant had submitted a detailed representation dated 29.6.2003 (Annexure A/4) in which all the above facts were mentioned and it was requested that the matter may be re-considered in view of the adverse family circumstances of the applicant. But no reply to this representation has been received. Therefore, he has filed this OA.

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3 In the grounds, action of the respondents has been assailed as arbitrary and discriminatory and violative of Articles 14 & 16 of the Constitution because respondents have vindictively decided to give retirement to the applicant without accounting for the fact that there is no adversity in his service record and as such he has not become dead-wood for the department. He has been given higher responsibility although as make shift arrangement but due to this he cannot be considered inefficient or ineffective. Therefore action of the respondents could not be said to have taken in public interest. The review which respondents say was done before issuance of this order should have been done when the applicant crossed the age of 50 years. They are doing the same when he has reached 55 years. This action of the respondents is illegal because in the meantime, he has got promotion and has been assigned higher responsibility which also make the respondents action self contradictory. That close scrutiny of service record of the applicant would show that applicant was served charge sheet in the year 1999 but the same was finalised as charges not proved and dropped on 13.3.2001 and after that no inquiry of disciplinary action have been initiated against him but on 13.6.2003, the impugned order of compulsory retirement has been passed which would clearly show malice on the part of the respondents.

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4 The respondents have submitted a detailed reply. In the preliminary submissions, the respondents have stated that this OA is misconceived because the applicant has not been compulsorily retired as a punishment but he has been prematurely retirement under Rule 56(J) of the fundamental rules and after due consideration of the service record by the Reviewing Committee. It recommended that in the public interest, such an action is desirable. In the parawise reply, facts from initial appointment to promotion upto Head Clerk and various transfers have been admitted. However, it is explained that applicant was served Memo No.RC/F&A/93/Vig.Cell/82 dated 29.9.1999 under Rule 10 of the EPF Staff (CCA) Rules, 1971 in connection with carelessness and negligence on his part. The charges pertains to losing of two important documents by him, which were required to be seen by the Hon'ble High court in a Writ Petition. But they could not be produced. Therefore, the Hon'ble High Court ordered that an appropriate departmental action should be taken against the official who was responsible for the loss. An internal inquiry revealed that either the applicant or one Shri Pawan Kumar, dealing assistant, was responsible. However, due to some technical objections, the Inquiry Officer submitted report on 21.4.2003 holding that neither can be held responsible, even though it was not disputed that the documents were in the possession of the applicant. However, due to the technical hitch, the Inquiry officer closed the inquiry and the applicant was not punished.

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5 Further, the record of service of the applicant shows that his integrity had been doubted and he has been issued recordable warning issued under Rule 10 for his failure to ensure correct compliance of P.F. Rules from M/s. Central Academy, Bikaner bearing code No. RJ-7485. In spite of this recorded warning, the carelessness towards his work did not change. It is also denied that the recognition for good work received by the applicant's office in the year 2003 was due to his good performance, because his service record reveals that his performance personally was barely satisfactory. Due to these reasons, it was not in the public interest to continue the applicant in service. In fact the Screening Committee and the Reviewing Committee recommended that due to just satisfactory performance, applicant's services were no longer required in public interest. Even the departmental inquiry against him was dropped on technical grounds and thereafter recorded warning was issued to him in the year 2001. Even during his posting as AAO in the Sub Regional Office at Udaipur, he was involved in wrong payment of pension in respect of PF Account No. RJ-1775/530. The applicant's contention that other employees who are having more adverse remarks in service record have been retained is of no consequence because the applicant cannot run away from his own responsibility. It is also stated that there is no rule under which persons having crossed the age of 50 years cannot be reviewed for premature retirement and that the

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review at age of 55 years was ^{not} done only in the applicant's case. Since the Screening Committee have considered the service record of the applicant objectively and have come to the conclusion that he had failed to performed his duties effectively and also that he had come under cloud for integrity., related reasons, the retention of such a person in service would have seriously hampered the discipline, decorum and smooth functioning of the office as other employees would have drawn wrong meaning from it. The representation of the applicant was also very much under consideration but the applicant has approached the Tribunal in the meantime.

6 The grounds of arbitrariness, illegality and violation of Articles 14 & 16 of the Constitution of India are denied on the ^{basis of facts} above ~~grounds~~. It is stated that the action of the respondents is also correct because the Screening Committee's recommendation that his service record justified premature retirement was agreed to by the Reviewing Committee and it was felt that his continuance in service was not in public interest. It is also stated that provisions of 56 (J) of the Fundamental Rules do not bar the respondents to take action in public interest against employees who have crossed the age of 50 years and whose integrity is doubtful.

7 Applicant has also filed rejoinder and in it, pleadings of the OA are reiterated. The applicant has also

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tried to say that the respondents had taken action under Rule 56(J) of the Fundamental Rules in a pre-meditated manner because they were unable to take action against him through disciplinary inquiry because they had no basis for it. He has also tried to show that no action could be taken against him for any of the three conditions namely; ineffectiveness, inefficiency and charges of corruption under Rule 56(J) of Fundamental Rules. With the rejoinder, he has placed copies of letters as Annexures by which he was asked to perform the duties of higher officials i.e. the APFC without any extra remuneration till the joining of the APFC vide order dated 12.6.2002, 18.9.2002, 31.1.2003 etc. It is contended that this proves that his performance was above satisfactory without which he could not have been given higher responsibility.

8 The matter was heard at length during arguments. Counsel for the applicant ^{emphasized} placed his contention that the applicant was getting timely promotions and has been considered suitable for higher responsibility before the impugned order of premature retirement was served upon him. Therefore, pre-mature retirement has been passed in an illegal manner. It was also stated that alleged allegation of lack of integrity was not found proved in departmental inquiry or otherwise and that after dropping charges on 21.4.2003 no other action was initiated against him, due to which reason the impugned order is bad in law.

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9 Per contra, counsel for the respondents produced the copy of minutes of the meeting of the Screening Committee for review of cases of Group 'B' officials of Rajasthan Region who attained the age of 50 years/30 years of service as on 30.9.2003 under FR 56(J) of CCS (Pension) Rules, 1972. In this document, applicant's unsuitability for further retention is adjudged as under:-

Shri Satish Jain joined the organisation on 26.9.1967 as LDC. His date of birth is 13.3.47. He has attained the age of 50 years on 12.3.97 as well as completed 30 years as on 25.9.97 and hence his case comes under purview of FR 56(J). On going through all the relevant records the Screening Committee found that the service history of Shri Satish Jain is full of serious and gross dereliction of duty and doubtful integrity in as much as disciplinary proceedings under Rule 10 was initiated against him on 29.9.1999 for having failed to keep in his safe custody the Enforcement file of RJ/2678 and the proceedings are presently in progress. Moreover, a recordable warning was issued to him in the year 2001 for his failure in ensuring correct compliance from M/s Central Academy School, Bikaner (RJ/7485). While working as AAO, SRO, Udaipur, he was involved in wrong payment of pension in respect of RJ/1775/530 and released an amount of Rs.81017/- which matter is under investigation. His performance report also shows that during the year 1995-96, 96-97 and 1997-98 his performance has been found to be simply satisfactory/fair.

Taking into consideration all the aforesaid facts and circumstances it is seen that Shri Satish Jain has not only failed to perform efficiently and effectively in the various fields of his duty but he has also come under cloud with regard to his integrity and hence the Screening Committee is of the opinion that it will be not in public interest to continue Shri Satish Jain in service. His continued retention in service would seriously hamper discipline, decorum and smooth functioning of the office of EPFO and hence the Screening Committee recommends the case of Shri Satish Jain for consideration of the review committee for compulsory retirement under FR56(J).

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It was further argued that applicant has tried to mislead the issue by stating that he was compulsorily retired under the disciplinary rules but in fact he has not been punished but he has merely been considered unfit for further retention in service in public interest under Rule 56(J) under which rule the competent authority has power to issue such orders if he accepts the recommendation of the Reviewing Authority. There is no dispute that Commissioner Central Provident Fund is the competent authority for taking such an action. . He has exercised his power as per the rules and the findings of the Screening Committee are based on the perusal of the entire service record which reveals doubtful integrity of the applicant. The learned counsel for the respondents also argued that in cases when allegation of lack of integrity is noticed or integrity of the employee is doubtful, the competent authority is well within his power to issue orders under Rule 56(J) of the fundamental rules. To this effect, he cited four cases of Hon'ble Supreme Court namely;

- (i) Kanwal Singh Daulta vs. the state of Haryana & Another 2002(3) SLR 57.
- (ii) Union of India vs. Ram Lochan Ram 2002(6) SLR 509
- (iii) G.S. Jhaj vs. State of Punjab & Others 2001(2) SLR 653
- (iv) Jugal Chandra Saikia vs. State of Assam & Another 2003 SCC (L&S) 394

He also argued that performing duties of senior posts in addition to own work in office when permanent incumbent

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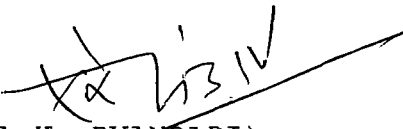
is on leave or required elsewhere does not mean that an employee cannot be wedded out in public interest if his work and conduct are not upto the mark, after attaining the age of 56 years or having put in 30 years of service, whichever is earlier.

⑩ We have given careful consideration to all the arguments and pleadings. We have also perused the minutes of the meeting of the Screening Committee on the basis of which the impugned order dated 13.6.2003 has been passed. We feel that on the basis of objective assessment of his performance, the competent authority was well within his right to order premature retirement under Rule 56 (J) inasmuch as during preceding five years, the applicant's ~~his~~ performance was just satisfactory or fair. As per ACR record, he had been issued recorded warning in the year 2001 because he had failed to perform his duty effectively and his integrity had also come under clouds during the same period. On the basis of these findings, the Screening Committee felt that retention of the applicant would not only hamper discipline but also disturb the decorum and smooth functioning of the Department. In compliance of the extant rule, he was issued a cheque of Rs. 41,118/- in lieu of three months notice. We are in agreement with the learned counsel for the respondents that in case where integrity of the employee is in doubt, action under Rule 56(J) of Fundamental Rules is fully justified as has been held by the Hon'ble Supreme court in a series of cases,

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brought to our notice by him, mentioned in Para 9 of this order.

10 In view of what has been stated in the foregoing paragraphs, we feel that the impugned order is just and valid and no relief can be granted to the applicant. Accordingly, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

MEMBER (A)


(J.K. KAUSHIK)

MEMBER (J)

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