

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the <sup>14</sup>18 day of January, 2008

ORIGINAL APPLICATION No.550/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Smt. Mohini Jethwani,  
wife of late Shri Harish Jethwani,  
aged about 55 years  
r/o Plot No.4/235,  
Malviya Nagar, Jaipur,  
lastly working as AAO/EO,  
Employees Provident Fund Organisation,  
Jyoti Nagar,  
Jaipur.

.. Applicant

(By Advocate: Shri Dharmendra Jain )

Versus

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

.. Respondents

(By Advocate: Shri Amit Mathur, proxy counsel for Shri  
R.B.Mathur)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

In this case validity of the order dated 13<sup>th</sup> June, 2003 (Ann.A1) is under challenge whereby the applicant has been retired from service under Rule 56 (J) of the Fundamental Rules on the ground that her services have been curtailed by the respondent in arbitrary manner and the exercise undertaken by the competent authority is vitiated by mala fide.

Chopping of the dead wood/weeding out dishonest and retention in service of only those who are efficient and whose integrity is beyond doubt is the primary object of Rule 56(J) and instructions issued by the Government from time to time in this behalf relating to procedure to be followed in such matters which empowers the Central Government to retire an employee before attaining the age of superannuation. This object can be achieved by the Government/public employer by scrutinizing the records of the employees after a particular age or on completion of the particular year of service with a view to determine whether retention of the particular officer is in the interest of service and/or public interest. The Courts have also recognized the right of the government to weed out those who are inefficient and/or whose integrity is doubtful. Judicial review of an exercise

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undertaken by the Government/public employer to prematurely retire an employee is passed by the authority not competent to do so. However, the case law on the subject has been reviewed by the Hon'ble Apex Court in the case of Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada, 1992 (2) SCC 299 and their Lordships after reviewing a number of decisions of the Apex Court has culled out the following propositions:-

"(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 has 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 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 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

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consideration. That circumstance by itself cannot be a basis for interference."

The issue was again considered by a two-Judges Bench of the Supreme Court in State of Gujarat vs. Umedbhai M.Patel (2001) 3 SCC 314 and the following principles were laid down:-

- (i) Whenever the services of a public servant are no longer useful to the general administration, he can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weight in passing such order.
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive.

In State of U.P. Vs. Vijay Kumar Jain, 2002 (3) S.C.C.641, the Supreme Court considered the ambit and scope of the employer's right to retire an employee and observed as under:-

"If the conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the Government as under FR 56 (c) read with Explan.(2) an

absolute right to compulsorily retire such an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to find out whether a government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll that the government is expected to form its opinion whether an employee is to be compulsorily retired or not."

In Bishwanathn Prasad Singh vs. State of Bihar, 2001 (2) SCC 305, a three-Judges Bench of the Supreme Court highlighted the distinction between compulsory retirement brought about as a measure of punishment and one brought about in public interest in the following words:

"Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field of inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Fundamental Rule 56(j) of the Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his completing a certain number of years of service on formation of an opinion that in public interest it was necessary to compulsorily retire him. In that case it is neither a punishment nor a penalty with loss of retiral benefits. Compulsory retirement in public interest under service rules is like premature

retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being malafide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is to weed out the worthless who have lost their utility for the administration."

The fact whether the order of compulsory retirement was punitive or mala fide, the Apex Court in the case of Purushottam Kumar Jha vs. State of Jharkhand and Ors., 2006 SCC (L&S) 1840 has made the following observations in para 23 which thus reads:-

"23. It is well settled that whenever allegation as to malafides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was malafide and malicious is not enough. In the absence of material particulars, the court is not expected to make "fishing" inquiry into the matter. It is equally well established and needs no authority that the burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be "made than made out" and hence it is necessary for the courts to examine it with extreme care, caution and circumspection. It has been rightly described as "the last refuge of a losing litigant." (Vide Gulam Mustafa vs. State of Maharashtra; Ajit Kumar Nag vs. GM (PJ), Indian Oil Corpn. Ltd.)"

It is in the light of the aforesaid principles culled out by the Apex Court by way of judicial pronouncements that the case of the applicant is required to be considered.

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2. Few relevant facts may be noticed. The applicant was initially appointed as LDC on ad-hoc basis on 25.9.67. She was promoted as UDC in the year 1973. It is further pleaded that the applicant was further promoted to the post of Head Clerk in the year 1983 and in the year 1990 the applicant was further promoted to the post of AAO on ad-hoc basis. In the year 1996 the applicant was chargesheeted and vide order dated 30.3.99 she was punished by withholding of one grade increment. The applicant preferred appeal in the year 2000 and the order dated 30.3.99 was set aside on the ground that the applicant was not given copy of the enquiry report. However, after giving enquiry report, the applicant was given punishment of Censure. The applicant was regularly promoted on the post of AAO on 24.4.2001. It is further pleaded that on 13.6.2002 the applicant was given charge of the post of Assistant Commission for six months. It is further pleaded that on 30.8.2002 earlier punishment was restored by the respondents and on 25.2.2003 and the applicant was given warning. However the applicant was compulsorily retired in public interest by invoking provisions of Rule 56 of the Fundamental Rules vide impugned order dated 13.6.2003. It is also pleaded that she preferred an appeal, which has not been decided so far. The main contention raised by the applicant in this case is that the impugned order of

premature retirement is not sustainable, inasmuch as, the respondents considered the cases of various employees of the department for the purpose of examining whether they should be retained in service or weeded out but the respondents have only chosen the applicant, as such, this is a case of mala fide exercise of powers. According to the applicant, it cannot be said to be a case where the applicant has become dead wood for the respondent organization and there exists absolutely no record against the applicant so as to form such opinion. The applicant has laid great stress about her promotion in the year 1983 and in the year 1990 when the applicant was promoted as AAO on ad-hoc basis. According to the learned counsel for the applicant, if the latest record is seen when promotion in the year 1990 was made, it is evident that there was nothing so adverse as to invoke the provisions of Rule 56(j) of the Fundamental Rules in the case of the applicant.

3. The respondents have filed reply. The fact that the applicant was promoted as aforesaid has not been disputed. According to the respondents, the applicant was rightly retired prematurely from service on the recommendations of Screening/Reviewing Committee constituted for reviewing the case of Group-B officials of Rajasthan region. It is stated that the applicant was served chargesheet in the year 1996 for



committing misconduct which cost heavy financial losses to the department. She was charged that she without following the procedure laid down for compilation of the annual statement of account in Chapter 5 part 2 of the Manual Accounting Procedure of the E.P.F. Organisation Volume-I has approved the due and paid statement and the manual statement of account for the year 1993-94 in respect of M/s Modern School, Jaipur. It is further stated that the applicant was incharge of Accounts Group I also falsely certified in the summary sheet of the annual statement of Accounts various informations in respect of same school has again caused loss approx. Rs. 43,179 to the office, then chargesheet was issued and the penalty of stoppage of one Annual Grade Increment with cumulative effect was imposed upon the applicant. The said order was challenged before the appellate authority and the appellate authority quashed the order of punishment with liberty to initiate afresh enquiry, after conducting the enquiry the penalty of Censure was imposed upon the applicant. The Screening/Review Committees observed that during the entire service career of the applicant she was served several memo of warning for not performing the duty properly, and not supplying the information to the competent authority regarding purchase of material properly, she also proceeded on leave without prior approval or permission for a long period, throughout her service

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which hampered administrative functioning. It is further stated that service history of the applicant shows that she failed to perform efficiently and effectively in the various fields of duty and she always remained indisciplined and her integrity was doubtful. According to the respondents, the Screening/Reviewing Committee was of the opinion that in the public interest it was necessary to retire the applicant prematurely under Rule 56(J) of Fundamental Rules and the competent authority vide order dated 13.6.1003 ordered accordingly. Further, the respondents have disclosed various omissions, commissions and various memos issued to the applicant which were taken into consideration by the Screening/Reviewing Committee as Ann.R1 to R12. The fact that the Screening Committee considered the cases of various employees and after considering the cases, the Screening Committee found that six employees including the applicant are persons in respect of whom serious doubt persist but for those persons adequate material was not available to enable definite judgment, ultimately the committee recommended that three persons may be considered for compulsory retirement namely Shri Satish Jain, Smt. Shanta Bhatia and Smt. Mohini Jethwani (applicant) has not been denied. The screening Committee has also given details of material which was taken into consideration in order to arrive at the aforesaid

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decision. The respondents have also made available record of the Screening/Reviewing Committee for perusal of this Tribunal. In the case of applicant, the Screening Committee has recorded the following findings:-

"3. Smt. Mohini Jethwani, EO/AAO:

Smt. Mohini Jethwani joined service in the EPFO on 25.9.67 and her date of birth is 23.7.48. As such she has attained the age of 50 years on 22.7.98 and has completed 30 years of service on 24.9.97. Hence her case comes under FR 56 (J). On going through all the relevant documents the Screening committee found that she was involved in a case of failure to follow the procedure for approval of annual statement of accounts and has thus caused heavy financial loss to the organization for which departmental proceedings for imposition of major penalty were initiated against her and she was awarded a penalty of "Censure". She has also failed to perform her duty efficiently and effectively but also under cloud with regard to her integrity. She has been served with several memos and warnings for not performing her duties and also for not intimating the competent authority regarding purchase of immovable property. She was also on leave for long periods through out her service and thus greatly hampered administrative functioning. The detailed list of her acts of omission and commission are given in Annexure-MJ)I) attached.

The service history of Smt. Mohini Jethwani presents a dismal picture of not only failure to perform efficiently and effectively in the various field of duty but also gross indiscipline and she is also under cloud with regard to integrity. Taking into consideration all the facts and circumstances of the case and the need to maintain an efficient and clean administration the Screening Committee is of the opinion that it will not be in a public interest to continue Smt. Mohini Jethwani in service and in view of the foregoing the Screening Committee recommends the case of Smt. Mohini Jethwani for compulsory retirement under FR 56 (J)."

The Reviewing Committee has also made the following observations:

"iii. Smt. Mohini Jethwani, EO/AAO

The Screening Committee has placed on record that Smt. Mohini Jethwani has caused heavy loss to the organization due to failure on his part to follow the procedure for approval of annual statement of accounts. Over a period she has not only failed to perform her duty efficiently and effectively but has also come under cloud with regard to her integrity. Several memos have been issued to her for various omissions and failure to perform her duties effectively and efficiently. She has also remained absent from long period hampering the functioning of the office. Besides committing various other grace acts of indiscipline as per details listed by the Screening Committee, the official in violation of the conduct rules had also not intimated the competent authority regarding purchase of immovable property. All his acts adversely reflect on her conduct, reputation and amiability to discipline.

Taking cognizance of above particularly the fact that Smt. Mohini Jethwani does not enjoy a good reputation in the matter of honesty and probity in public life, the Review Committee is of the opinion that Smt. Mohini Jethwani, EO/AAO has not only failed to perform efficiently and effectively in the various fields of duty but besides gross indiscipline she has also come under cloud with regard to her integrity. The Review Committee has accordingly come to the conclusion that keeping in view the need to maintain an efficient and clean administration, it will not be in public interest to continue Shri Mohini Jethwani in service, as the same would seriously hamper discipline, decorum and smooth functioning of the office. The Review Committee accordingly recommends that Smt. Mohini Jethwani be retired prematurely under FR 56 J"

4. We have heard the learned counsel for the parties and gone through the material placed on record. We are of the view that the applicant has not made out a case for our interference. The fact that the applicant was granted promotion upto Group-B level during initial period of her service, as such, this fact itself is no ground to interfere in the matter. The order of

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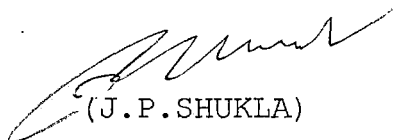
premature retirement is not a punishment order and the order has to be passed by the Govt. on forming the opinion that it is in public interest to retire a Govt. servant compulsorily. The order is based on subjective satisfaction of the Government. The applicant has not made out any allegation of malafide against the members of the Screening Committee as well as the Review Committee. Simply because out of six persons who were initially assessed by the Screening Committee only three persons have been prematurely retired is no ground of mala-fide, more particularly, in the light of the judgment rendered by the Apex Court in the case of State of Gujarat vs. Umedbhai Patel (supra). The formation of opinion is required to be taken after taking into consideration the entire service record. The respondents in the reply filed in the case of Smt. Shanta Bhatia vs. UOI OA No.320/2003 whose case was also considered alongwith the applicant by the Screening Committee/Reviewing Committee have stated that promotion upto the post of Group-B are given on selection-cum-seniority basis and as per the procedure laid down by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), the employees of 'average' benchmark are also included if sufficient number of employees with 'good' benchmarks are less than the number of vacancies, meaning thereby in the cases where mode of promotion is selection-cum-

seniority, the employees with 'average' benchmark could also be given promotion. Thus, according to the respondents on that basis it is not permissible for the applicant to plead that after promotion previous record cannot be scrutinized for premature retirement, as such the impugned order is illegal and arbitrary. The respondents have also placed copy of the memorandum dated 6.11.1998 on record as Ann.R17 in OA No.320/03. Thus, in view of principle No. (iv) as culled out by the Apex Court in the case of Baikuntha Nath Das (supra), such remarks loses its sting if promotion is based upon merit ~~\_\_\_\_\_~~ is not attracted in this case. Promotion upto Group-B level to which category the applicant belongs was based on seniority as such entire service record was to be taken into consideration. This is what the Apex court has also held in the case of State of U.P. vs. Lalsa Ram, 2001 SCC (L&S) 593, while interpreting the principle No. iv) as culled out in Baikuntha Nath Das (supra.

It may also be useful to state here that one Shri Satish Jain who was also retired prematurely alongwith the applicant has also filed OA challenging the validity of the order passed pursuant to the recommendations of the Screening/Review Committee and this Tribunal vide order dated 10<sup>th</sup> May, 2005 in OA No. 412/2003 has upheld the validity of the

recommendations so made by the Screening Committee/Reviewing Committee.

5. Thus, taking into consideration the entire facts and circumstances of the case, and also that the Review Committee has recorded categorical finding that "the Review Committee is of the opinion that Smt. Mohini Jethwani, EO/AAO has not only failed to perform efficiently and effectively in the various fields of duty but besides gross indiscipline she has also come under cloud with regard to her integrity. The Review Committee has accordingly come to the conclusion that keeping in view the need to maintain an efficient and clean administration, it will not be in public interest to continue Shri Mohini Jethwani in service, as the same would seriously hamper discipline, decorum and smooth functioning of the office" and such finding has been recorded after forming opinion bona-fide, we are of the view that the applicant has not made out a case for our interference. Accordingly, the OA is dismissed with no order as to costs.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

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