

Reserved
(On 27.03.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
CIRCUIT SITTING AT NAINITAL

Dated: This the 23rd day of April 2019

Original Application No 331/01419 of 2017

Hon'ble Mr. Justice Bharat Bhushan, Member – J
Hon'ble Ms. Ajanta Dayalan, Member – A

Shri Dhruva Jyoti Das, S/o Shri Tolan Chandra Das, Presently posted as Additional General Manager, Opto Electronic Factory, Dehradun.

. . . Applicant

By Adv: Dr. Kartikey Hari Gupta

V E R S U S

1. Union of India through the Secretary, Ministry of Defence Production (DDP), New Delhi.
2. Director General, Ordnance Factories, Ministry of Defence, Govt. of India, Ordnance Factories Board, 10-A, Shahid Khudi Ram Bose Road, Kolkata – 700001.
3. General Manager, Opto-Electronic Factory, Raipur, Dehradun.

. . . Respondents

By Adv: Sri P.K. Rai

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

The present OA has been filed by the applicant, Dhruva Jyoti Das seeking direction to quash the compulsory retirement orders dated 09.08.2017 and 07.09.2017 (Annexure No. 1). He has also sought quashing of connected orders dated 30.05.2017 and 03.08.2017.

2. The applicant was initially appointed as Assistant Works Manager on 15.03.1988 in Ordnance Factories Organization. He was promoted to SAG grade on 13.04.2012 in Indian Ordnance

Factories Services. The applicant was also given long service medal by the department for successful completion of 25 years of service on 31.12.2013. Thereafter, suddenly he received order dated 09.08.2017 followed by order dated 07.09.2017 compulsorily retiring him from service after attaining the age of 50 years under Rule 56 (j) of Fundamental Rules. In this OA, he is challenging these orders alongwith other connected orders.

3. The case of the applicant is that he had an unblemished career of over 28 years and had also received long service medal. Considering his services, he was promoted as SAG on 13.04.2012 and there was no blame in his service career. He received 'Very Good' and 'Outstanding' grading in his last postings as can be seen from his APARs of 2015-16 and 2016-17 (Annexure No. 2). Learned counsel for the applicant admitted that for 2 years earlier to his period, he got only 'Good', but this was due to medical reasons when the applicant was compelled to be absent from duty. But all these leaves were sanctioned by the competent authority based on medical certificates and he was never absent without leave. The applicant regained his health and his APAR grading for subsequent years i.e. 2015-16 and 2016-17 improved. According to the applicant, during the service period he was severely unwell and could not attend to his duties properly. According to him, these cannot be made grounds for his premature retirement under Fundamental Rules 56 (j). It is also argued that his premature retirement is not for public interest as provided in Fundamental Rule 56 (j) but is only due to bias. He has also stated that he was never given any opportunity of hearing or defending himself before passing

of compulsory retirement order. He has also averred that many of the connected orders including copies of Ministry of Defence minutes dated 30.05.2017 and 03.08.2017, vide which approval of the competent authority for his compulsory retirement was conveyed, have not been provided to him. Learned counsel for the applicant, therefore, concluded that the impugned order is illegal and arbitrary and needs to be quashed. The applicant has also pleaded that his sudden retirement has led to financial difficulties as his sons are pursuing higher education at IIT Chennai and University of Buffalo, New York.

4. Learned counsel for the applicant has quoted the order of Hon'ble Supreme Court in the case of ***State of Gujarat vs. Umedhbhai M. Patel*** reported in ***2001 (3) SCC 314*** and several judgments in support of his contention.

5. The respondents have contested the claim of the applicant. They have stated that the service record of the applicant was not unblemished. In the APAR for the period 2013-14, the Reporting Officer remarked that "The Officer is found to be very casual in his approach as well as in his work areas". It is further stated that he had to be given "at least 6 written reminders apart from numerous verbal reminder to him to submit his ACR for the period 2013-14, which was ultimately received on 30/07/2015 [after 15 months]". It is further noted that he is "devoting his major time in doing petty routine works rather than undertaking policy decisions". It is further recorded that "He has been absenting himself on very silly / casual reasons at any time without prior information. He has not completed

any B of E / C of E entrusted to him. His above actions / approach has made him unreliable to the Management”.

6. The learned counsel for the respondents further stated that in the APAR for the period 2014-15, the Reporting Officer remarked that the applicant was “found to be very casual in his approach to the work areas under his control”. Further, “The officer has been found to be taking decisions in a very casual manner”. The respondents have enclosed copies of APAR for these years as Annexure CA-1.

7. The respondents have pleaded that long service medal has no relevance with the performance, attributes and efficiency of an employee. It is given purely on the length of service rendered.

8. The learned counsel for the respondents further stated that the applicant was considered by duly constituted internal Screening Committee in its meeting held on 26.08.2016 when his entire service record were reviewed alongwith other 192 Group ‘A’ officers. Trend of ACR (APAR) was also reviewed therein and the performance of the applicant was not found satisfactory and after careful analysis, the Screening Committee recommended that the applicant was not found fit for retention in service and that he be retired in public interest under the provisions of Fundamental Rule 56 (j). These recommendations were approved by the competent authority and consequently the applicant was served with three months notice dated 09.08.2017 and was later prematurely retired from service in public interest vide order dated 07.09.2017.

9. The learned counsel for the respondents also stated that the applicant was found responsible in committing irregularity in processing the case of appointment of a candidate at Ordnance Factory, wherein Chief Vigilance Officer had recommended action for major penalty against him.

10. The learned counsel for the respondents argued that there is no provision for making available to the applicant, copy of the approval conveyed by the competent authority on the recommendations of the Review Committee or Screening Committee. The officer has already been served with three months notice for compulsory retirement as well as his compulsory retirement order, which should suffice. He also stated that notice issued is keeping in view observations by the Hon'ble High Court in the case of ***State of Gujarat vs Umedbhai M. Patel*** (supra).

11. The learned counsel for the respondents further argued that there is a sudden and steep fall in the competence and efficiency of the applicant as observed in the APARs for the period 2013-14 and 2014-15. However, no representation was preferred by the applicant against the adverse entries made in the above APARs which implies that the applicant had accepted the remarks and the grading given by his superiors. According to them, the instant case is a clear and glaring example of the provisions contained in para 5 (d) of DoP&T OM dated 21.03.2014 which states as under:-

“.....It is clarified that in the case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement.”

12. The respondents have further argued that the above OM also clearly stipulates in para 5(a) that "Government employees whose integrity is doubtful, will be retired". In the instant case, the Screening Committee observed that a major penalty proceedings was recommended by the Chief Vigilance Officer against the applicant and as such his integrity was also in doubt. Keeping in view all above facts, the Screening Committee recommended his compulsory retirement.

13. The learned counsel for the respondents, therefore, concluded that premature retirement of the applicant from service was in public interest and this was after careful consideration of the entries in his service record. The action was not arbitrary and is in conformity with Fundamental Rule 56 (j) and guidelines of DOPT in this regard. As such, the order is fully legal and the OA needs to be dismissed.

14. We have heard both the parties and have also gone through the pleadings of the case. We have also given thoughtful consideration to the entire matter.

15. We observe that the applicant has been compulsory retired vide orders dated 09.08.2017 and 07.09.2017. We also observe that the main grounds relied upon by the applicant are (a) his unblemished service record leading to his promotion in 2012; and (b) long service medal received by him. As regards the long service medal, as per averments made by the respondents, this medal has no relevance with the performance, attributes and efficiency of the officer and is given purely based on length of service rendered. We, therefore, do not consider the

fact of receipt of long service medal as a reflection of quality of service rendered by the applicant.

16. Further, with regard to unblemished service career being claimed by the applicant, we note that the applicant is a Group 'A' service officer at a very senior level. We also note from his APARs, copies of which are on record, that the averments made by the respondents with regard to observations made in his APARs are correct. We also observe from these APARs that comments in pen picture quoted by the respondents in their reply and referred to by us in paragraphs 5 and 6 are correct. These comments were given by reporting officers and were confirmed by the reviewing officers. These comments repeatedly mention "casual approach", "need for reminders", etc. which are not the qualities acceptable at the level at which the applicant was working prior to his compulsory retirement. We further observe that even in the health column in the two APARs for year 2013-14 and 2014-15, entries are "Not very Good. It's deteriorating" and "Poor" respectively. Even in the overall numerical grading, the marks obtained by the applicant are 5.7 and 5.6 respectively for the years 2013-14 and 2014-15 which qualify only as 'Good' and not 'Very Good' or 'Outstanding'.

17. During arguments, we specifically asked the counsel for the applicant whether the applicant was aware of these entries and whether he made any representation against them. He fairly admitted that the applicant was aware of these entries and never made any representation against them. In fact, these APARs are part of OA and there is no mention in the OA about any representation against them. It would, therefore, be right to conclude that the applicant accepted these entries.

18. We also observe that the applicant was retired in 2017 and these entries are within last 5 years of his compulsory retirement. Hence, these

APARs would be most relevant for consideration of his fitness for continuance in service beyond 50 years. The fact that the applicant was promoted in the year 2012 cannot be a ground to support his claim as the promotion was based on his performance prior to that period. If at all, it only goes to prove that there is no malafide on the part of the respondents. We also observe that subsequent to his promotion, the APARs for the next two years i.e. 2013-14 and 2014-15 show steep fall in his performance. They also show his poor health as well as casual approach to work. For consideration of government servants for retention in service after completion of 50/55 years of age, their performance of last 5 years and performance in higher posts (if he is promoted during this period) are most relevant and it was here that the applicant's performance slipped suddenly.

19. In view of the above observations, we are of the view that Screening Committee's recommendation considering him not fit for continuance in service and the decision of the competent authority approving this recommendation was wholly within the scope and preview of Fundamental Rule 56 (j) which gives "absolute right" to the Government to retire Government servants from service in public interest.

20. We also note that there is no obligation to provide minutes of the Screening Committee or various notes / communications leading to the decision of the competent authority approving compulsory retirement. It is adequate that the Government servant was issued notice prior to compulsory retirement and was finally informed the decision.

21. We also observe that though the applicant has alleged malafide, he has not made any individual as respondent in the array of the parties. The applicant has also not been able to bring out any specific facts or

instances to prove malafide. On the other hand, the respondents have brought on record documents that show steep fall in his performance as well as his deteriorating health in last 5 years. The applicant has admitted himself that he was aware of the entries in the ACRs and made no representation against him. Hence, we do not accept the ground of malafide being put forth by the applicant to support his claim.

22. In view of all above, we do not find any merit in the OA. Accordingly, the OA is dismissed. There is no order as to costs.

(Ajanta Dayalan)
Member – A

(Justice Bharat Bhushan)
Member – J

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