

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/01459/2017

Date of order: 3rd July 2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ajit Guria,
Son of Late D.D. Guria,
Aged about 59 years,
Working as Assistant Works Manager,
At Gun & Shell Factory,
Cossipore,
Kolkata - 700 002,
Residing at 48, SMPC Complex,
Bhattanagar, Liluah,
Howrah - 711 203.

...Applicant

- V E R S U S -

1. Union of India
Through the Secretary,
Ministry of Defence,
South Block,
New Delhi -1.
2. DGOF and Chairman Ordnance Factory Board,
10, A, S.K. Bose Road,
Kolkata - 700 001.
3. The General Manager,
Gun & Shell Factory,
Cossipore,
B.T. Road,
Kolkata - 700 002,
West Bengal

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

Aggrieved with the order of compulsory retirement under FR 56(j), the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"Office Order No. 581/Review/PAR/G/AG dated 31.8.2017 issued by Director/G on behalf of Director General (Ordnance Factories) cannot be sustained in the eye of law since same was not issued in public interest and therefore the same may be quashed."

2. Heard both Ld. Counsel, examined pleadings and documents on record. Written notes have been filed by both sides. In response to directions of the Tribunal dated 30.11.2017, the respondents have filed their supplementary affidavit. Judicial pronouncements cited in support have also been studied in the context of adjudication of this instant matter.

3. The submissions of the applicant, as made through his Ld. Counsel, is that, the applicant has been working in the post of Assistant Works Manager (Group -A) with the respondents and, that, the applicant received an Office Order dated 31.8.2017, issued by the respondent authorities, wherein it was stated, that in exercise of the power conferred by clause (j)(i) of Rule 56 of the Fundamental Rules, the President gives a notice to the applicant that he, having attained the age of 50 years, shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date following the date of service of notice on him.

The applicant further avers that it is settled law that when the government resorts to compulsorily retire any government servant, his entire period of service, particularly, the final stages of his service are required to be closely scrutinized prior to arriving at any decision and that, as the applicant did not receive his APARs for the period from

hch

1.4.2011 to 31.3.2012, from 1.4.2013 to 31.3.2014 and from 1.4.2016 to 31.3.2017 respectively, he did not have an opportunity to respond on his APARs. Hence, the authority could not rightfully have concluded that he could not be retained in service on the basis of such uncommunicated APARs and that, the applicant after receiving his notice of compulsory retirement, had represented on 22.9.2017 against the said notice and had also prayed for revocation of order passed under clause (j)(i) of Rule 56 of the Fundamental Rules, and, that, although the said representation was forwarded to the competent authority, the same was not disposed of by the authorities concerned.

The applicant would further state that he had been promoted to a higher post during preceding five years and that there were no adverse remarks in his APARs for the period 2014-2015, 2015-2016 and 2016-2017 respectively as it transpired from the reply of the respondents. Hence, challenging the notice of compulsory retirement, the applicant has approached the Tribunal for relief.

4. The respondents, per contra, have contended that on 26.6.2014, the applicant was promoted to Gr. 'A' post of Assistant Works Manager in the pay scale of Rs. 15600-39100/-. The respondents would further argue that the applicant's APAR for 2016-2017 was under preparation on the date of filing of the instant O.A. but the applicant has thereafter been served with a copy of the complete APAR for the said period. The respondents admit that there were no adverse remarks in the APARs of the applicant since his date of promotion to the post of Assistant Works Manager i.e. from the year 2014-2015, 2015-2016 and 2016-2017 and that the Review Committee has not treated the ACRs for the year 2011-2012, 2013-2014 and 2016-2017 as adverse.

hsh

That, the committee which reviewed the applicant's compulsory retirement under FR 56(j) had carefully noted the fact that the applicant had been promoted to the post of Assistant Works Manager in the year 2014 but the committee had reviewed the performance of the applicant from 2005-2006 onwards and discovered that the applicant had been graded below bench mark in the years 2005-2006, 2006-2007 and 2012-2013 respectively. The respondents further argued that the respondent No. 3 had categorically recommended that the applicant be retired under FR 56(j), on account of his unsatisfactory performance since his last promotion, and, that the review committee had fairly concluded that the applicant is not fit for retention in service, and, accordingly his premature retirement was ordered in terms of FR 56(j) and Rule 48(1)(b) of CCS (Pension) Rules. That, such recommendations were accepted by the competent authority in the Ministry of Defence and the applicant was served with a three months' notice dated 31.8.2017 accordingly.

In their supplementary affidavit, the respondents have disclosed that, on the basis of recommendations on 'measure for strengthening of administration' and also on the recommendation of the committee on 'prevention of corruption', provisions under FR 56 and Article 459 of the Civil Service Regulations were amended. Relevant rules for compulsory retirement were introduced thereafter and that procedures and guidelines for reviewing the cases of government servants, who are covered, under such amended rules, were notified vide O.M. dated 23.6.1969 and that criteria, procedure and guidelines for such review were consolidated and issued vide O.M. dated 5.1.1978 of the DOP&T.

The respondents have, inter alia, referred to the Hon'ble Apex Court's decisions in **Union of India v. Col. J.N. Sinha, Ex-Director, (Selection Grade), Survey of India and another** 1971 (1) SCR 171 as

hch

well as **Shivcharan Singh v. State of Mysore AIR 1965 SC 280** to aver that no show-cause notice is required to be issued to any government servant before notice of retirement under the provision of FR 56(j). The respondents have also referred to **State of Gujarat v. Umedbhai M. Patel, 2001 (3) SCC 314** on the matter of periodical review of performance of Government servants under Fundamental Rule 56 or Rule 48 of CCS (Pension) Rules, 1972.

According to the respondents, the review committee, which had met on 29.8.2016, took into consideration the entire service record of the applicant and made certain observations concluding thereupon that the applicant is not fit for retention in service and, hence, such recommendation having been accepted by the competent authority, the applicant's prayer for revocation of the same deserves to be dismissed.

5. The issue before us for adjudication in the instant matter is whether the criteria laid down for compulsory retirement under Fundamental Rules 56(j)(1) have been adhered to by the respondent authorities in the context of the applicant.

6.(1) In **State of Gujarat v. Umedbhai M. Patel, AIR 2001 SC 1109** the Hon'ble Apex Court had summarized the law relating to compulsory retirement as follows:

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized thus:

- (i) Whenever the service of a public servant are no longer useful to the general administration, the officer 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 record of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage 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.

hch

- (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 measure."

The Union of India had acknowledged the above rulings in their Office Memorandum dated 11.9.2015 (Annexure SA-8 of the Supplementary Affidavit of the respondents).

6.(2) Prior to the same, in continuation to office memorandum dated 23.6.1969 (Annexure SA-1 to the Supplementary Affidavit), measures on strengthening of administration and premature retirement of Central Govt. Service were notified as consolidated instructions thereon. The criteria, procedure and guidelines laid down therein were as follows:-

No. 25013/14/77-Estt.(A)
Government of India
Ministry of Home Affairs
(Deptt. Of Personnel & A.R.)

New Delhi, the 5th Jan, 1978

OFFICE MEMORANDUM

Subject:- Strengthening of administration - Premature retirement of Central Govt. servants - Issue of consolidated instructions regarding

Xxxxxxxx

II. Criteria Procedure and Guidelines

In order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily, it has been decided to lay down the procedures and guidelines for reviewing the cases of government employees covered under the various aforesaid rules as mentioned below:

- (1) The cases of Government servants covered by FR 56(j) or FR 56(i) or Rule 48 of the CCS (Pension) rules, 1972 or CSR 459(h) should be reviewed six months before they attain the age of 50/55 years or complete 30 years service/30 years of qualifying service, whichever occurs earlier. (See Schedule in part IV(1).
- (2) Committee shall be constituted in each Ministry/Department/Office, as shown in Appendix- II, to which all such cases shall be referred for recommendation as to whether the Officer concerned should be retired from service in the public interest or whether he should be retained in service.

Provided that:-

- (a) Nothing in this clause shall apply to a Govt. servant referred to in the Clause (f) who entered Government service on or before 23rd July, 1966, and
- (b) It shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause."

heli

The Government had laid down the guidelines on premature retirement of Central Government service on grounds of doubtful integrity in 1985 and, thereafter, on 7.3.86, an office memorandum (Annexure SA-4 to the Supplementary Affidavit) was issued on guidelines relating to action on premature retirement of Central Government servants when the Government servant was found ineffective. The said notification is extracted below, which reads as under:-

“
No. 25013/38/85-Estt.(A)
Government of India/Bharat Sarkar
Ministry of Personnel, Public Grievances and Pensions,
(Department of Personnel & Training/Karmik Aur
Prashikshan Vibhag)

New Delhi, the 7th March, 1986

OFFICE MEMORANDUM

Subject: Premature retirement of Central Government servants- Guidelines relating to action where the government servant is found ineffective.

XXXXXXXXXX

Let us defect the 'Peter Principle'

2. The aphorism that 'in a hierarchy every employee tends to rise to his level of incompetence', which has come to be known as 'Peter Principle' was laid down in the book by that name, written by L.J. Peter and R. Hull in 1968. The application of Peter Principle need not be inevitable, if only care is exercised to scrutinize diligently the performance of every officer who has reached his present level having secured a series of promotions. It is of course true that promotion beyond a certain level, in each Service, is on the basis of selection by merit, as distinct from promotion by seniority subject to fitness. All the same, it has to be remembered that promotion is given on the assessment of performance in the lower post; and it need not follow that performance continues to be at least as good, in the post to which promotion has been given. The provisions of F.R. 56(j) do enable the competent authority to retire compulsorily an officer who is found ineffective at the level he has reached in a service; once the decision to retire an officer compulsorily is arrived at, there is also the possibility of offering the lower post, as an alternative to the officer, in case he desires to continue in service till he reaches the normal date of superannuation. Our endeavour should, therefore, be to make use of the provisions of F. R. 56 (j) thereby virtually ending the application of Peter Principle to the organizations under Government.

Provisions of FR 56(j) are in the Public interest:

3. There need be no hesitation to take action under FR 56(j) where such action is eminently justified. The Supreme Court has observed that the provisions contribute toward maintenance of the highest efficiency in administration, obviously desirable in the public interest. While interpreting the scope of the provisions of Rule 16(5) of the All India Services (Death-cum-retirement Benefits) Rules, 1958, which is analogous to FR 56(j), the Supreme

hah

Court observed in the case *Union of India v. N.E. Reddy and another* (AIR 1980 SC 563).

- (i) "The object of the Rule is to weed out the dead wood in order to maintain a higher standard of efficiency and initiative in the State Services. It is not necessary that good officer may continue to be efficient for all time to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment."
- (ii) "Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative.... so as to meet the expanding needs of the nation which require exploration of "fields and pastures new". Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of administration."

4. In the case *Union of India v. Col. J.N. Sinha* and another (1971 (1) SCR 791), the Supreme Court observed,

"In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead wood."

Perusal of entire service record

6. Para II(3)(c) of the Office Memorandum dated 5th January, 1978 lays down that the entire service record of an officer should be considered at the time of review. In this Department's Office Memorandum dated 7th August, 1985, it has been explained that the term, "Service Record" is all embracing and a review should not be confined to the consideration of only the annual confidential remarks records on the officer. It was pointed out in the said Office Memorandum that matters found in the personal file of the officer should also be placed before the Review Committee and not only the CR dossier of the officer. The other guidelines laid down in the said Office Memorandum would also be relevant while reviewing the onus of an officer on grounds of ineffectiveness or inefficiency. In particular the guidelines laid down in paragraphs 4 and 6 of the said Office Memorandum would be attracted in the case of such a review. It is, therefore, reiterated that the guidelines contained in the office memorandum dated 7th August, 1985 would apply to a case where it is proposed to prematurely retire an officer on grounds of incompetence, inefficiency or ineffectiveness.

hoh

Consideration of record prior to promotion or crossing of efficiency bar

It has been laid down in para II(3)(c) of the Office Memorandum dated 5th January, 1978 that while the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding five years or where he has been promoted to a higher post during that five year period, his service in the higher post has been found satisfactory. However, there may be cases where it becomes necessary to review the record of an officer after he has been allowed to cross the efficiency bar or after he was promoted to a selection or non-selection post. What are the circumstances in which the entire service record of such an officer could be considered. This question has been the subject of consideration by the Supreme Court in D. Ramasamy v. State of Tamil Nadu, AIR 1982 SC 793. The Supreme Court observed: "After his promotion as Deputy Commissioner there was no entry in the service book to his discredit or hinting even remark that he had cultivated his utility to the government. If there was some entry not wholly favourable to the appellant after his promotion one might hark back to similar or like entries in the post, read them in conjunction and conclude that the time had arrived for the Government servant to be retired prematurely from Government service....."

..... the Learned Counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it prior to his promotion. We do not say that the previous history of a Government servant should be completely ignored once he is promoted. Sometimes past events may help to assist present conduct. But when there is nothing in the present conduct costing any doubt on the wisdom of the promotion, we see no justification for needless digging into the past....."

These observations were approved by the Supreme Court in J.D. Shrivastava vs. State of Madhya Pradesh, AIR 1984 SC 630. In the light of these observations, the position that emerges is that the period immediately preceding the review (which may be taken as five years) or the period after promotion or crossing of efficiency bar would be of utmost importance. However, if during the aforesaid period of review, there is evidence of deterioration in efficiency or unsatisfactory performance, then it would be in order of the Review Committee to examine the entire service record to arrive at a total picture about the suitability or otherwise of the officer for further retention in service.

XXXXXXXXXXXXX

Annual Confidential Remarks:

9. It has been mentioned in para 9 of the Office Memorandum dated 7th August, 1985, that, in a particular case, while an odd adverse remark that may not have been communicated to the officer concerned, could be taken into account as part of the total service record considered by the Review Committee, it would not, as a matter of course, be appropriate to take into account adverse remarks which have not been communicated to the officer. In any case, reliance should not be placed only on the CR dossier, but

hch

the entire service record including personal or other files relating to the officer should be taken into account, when pre-mature retirement is under consideration, as has been advised in para 11 of the Office Memorandum dated 7th August, 1985 and has also been reiterated earlier in the Office Memorandum.

XXXXXXXXXX

(K. Ramanujam)
Secretary to the Government of India

Further, in compliance to Hon'ble Apex Court's observations in **State of Gujarat vs. Umedbhai M. Patel (supra)**, the Government notified on 11.9.2015, the scope of periodical review under FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972 and laid down as follows:-

No. 25013/01/2013-Estt.A-IV
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
Establishment A-IV Desk
North Block, New Delhi
Dated 11th September, 2015
OFFICE MEMORANDUM
Subject: Strengthening of administration Periodical review under FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972

3. In every review, the entire service records should be considered. The expression 'service record' will take in all relevant records and hence the review should not be confined to the consideration of the ACR / APAR dossier. The personal file of the officer may contain valuable material. Similarly, the work and performance of the officer could also be assessed by looking into files dealt with by him, or in any papers or reports prepared and submitted by him. It would be useful if the Ministry/Department puts together all the data available about the officers and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration.

4. In the case of those officers who have been promoted during the last five years, the previous entries in the ACRs may be taken into account if the officer was promoted on the basis of seniority cum fitness, and not on the basis of merit."

6.(3) The Review Committee held on 29.8.2016 to review, inter alia, the case of the applicant under FR 56(j) and Rule 48(1)(b) of CCS (Pension) Rules on attaining the age of 50/55 years or on completing 30 of service, qualifying for pension, as the case may be, deliberated as follows in the case of the applicant.

hah

"09. Regarding Shri Ajit Guria, Sl. No. 250

The committee perused the Service record for the entire service period including trend of the ACR/APARs in respect of Shri Guria. However, APAR grading for the last 05 years are as follows:-

2010-11	2011-12	2012-13	2013-14	2014-15
6.5	6	2.85	6	7

Shri Ajit Guria has been promoted to AWM w.e.f. 26.6.2014. Shri Ajit Guria was considered for promotion from JWM to AWM for panel of 2013-14 and accordingly APARs upto 2011-12 have been taken into consideration. Shri Guria has been promoted on 26.6.2014 despite the below bench mark grading in 2012-13.

Remarks recorded in the APAR of Shri Guria:

Period 2005-06:**Part III**

Officer takes initiatives but he is to pick up the assigned work.

Period 2006-2007**Part III**

Officer is having very less knowledge of the subject which is the main reason in taking initiative. He is very poor in the scrutiny and maintenance of file.

Period 2012-13:**Part III**

The officer lacks basic knowledge of manufacturing. I could not find any area of strength which is appreciable & useful to Government.

The Sr. General Manager of GSF has opined that on account of his unsatisfactory performance since last promotion and unsatisfactory overall conduct he is not competent and effective and not fit to continue to hold the post occupied and he may be retired in terms of the provision under Rule 56(J) of CCS Rule 48(1)(b) of CCS (Pension) rule.

After a careful analysis of the above and deliberation, the committee recommends that Shri Ajit Guria is not fit for being retained in service. Hence, the Committee recommends that Shri Ajit Guria may be retired in public interest in terms of the provision of FR 56(j) and Rule 48(1)(b) of CCS (Pension) Rule."

From the minutes of the above mentioned review committee, the following is deciphered:

- (i) That, the committee in compliance with the Govt. of India directions issued from time to time perused the service records for the entire service period including the trend of ACR/APARs in respect of the applicant.

hsh

- (ii) That the APAR grading for the last five years of the applicant were as follows:-

2010-11	2011-12	2012-13	2013-14	2014-15
6.5	6	2.85	6	7

- (c) The committee recommended that the applicant had been promoted to Assistant Works Manager on 26.6.2014 and, as he was considered from the panel of 2013-2014, APARs only upto 2011-2012 had been taken into consideration, and, hence, he was considered for promotion despite his below bench mark grading in 2012-2013. Hence, the applicant's performance was rated as below bench mark after he was considered for promotion.
- (d) The committee also referred to his other below bench mark ACRs for the year 2005-2006 and 2006-2007 and in both he was described as an officer, who on account of having very little knowledge and being poor in organizational capacities, had failed to perform his assigned duties satisfactorily.
- (e) That, the Sr. General Manager of GSF has also opined that the applicant's performance was unsatisfactory and that he was incompetent and ineffective and, accordingly, deserves to be retired in terms of the provisions under Rule 56(j) of CCS Rule 48(1)(b) of CCS (Pension) Rule. Hence, the committee, in the light of the office memorandum dated 11.8.2015, and that dated 7.3.86, which laid down guidelines where the government servant was not found to be effective, recommended compulsory retirement for the applicant.

6.(4). The applicant's main contentions are that:

That, his APARs for the period 2013-14 and 2016-17 had not been communicated to him. Later, however, it has been acknowledged in written notes submitted on his behalf that he

we br

has come to learn that there were no adverse remarks in ACRs of 2014-15, 2015-16, 2016-17 respectively and that he had received copies of the same.

The respondents in their reply, however, have clarified that, as the review committee had not treated his ACRs 2011-12 and 2013-14 as adverse, non-communication of such APARs to him would not have been of any relevance before the review committee.

What has been inferred from the reply of the respondents in their supplementary affidavit and minutes of the review committee is that after his promotion was considered with reference to ACRs upto 2011-2012, his subsequent ACR, particularly of 2012-2013, was recorded as adverse and below bench mark grading. Hence, according to the respondents, the applicant's record of the entire service career was considered and noting a sharp drop in his performance, particularly, after the year when he was considered for promotion as well as earlier periods of similar non performance, the review committee concluded on his compulsory retirement.

6(5). In ***State of Gujarat v. Suryakant Chunilal Singh, 1999(2) SLJ 28 (SC)*** the Hon'ble Apex Court held that, while considering the case of an employee for compulsory retirement, public interest is of paramount interest.

In ***Pyare Mohan Lal v. State of Jharkhand & ors. AIR 2010 SC 3753*** the Hon'ble Apex Court had ruled as follows:-

"The washed off theory as regards adverse entries prior to promotion does not have universal application. It may have relevance while considering the case of Government servant for further promotion but not in a case where the employee is being assessed by the Reviewing Authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his entire service record."

hshw

This view has been reiterated in ***Posts and Telegraphs Board v. C.S.N. Murthy***, 1992 (3) SLJ 18 (SC) : ***Shukhdeo v. Commissioner, Amravati Division, Amravati***, 1996 (2) SLJ 3(SC), ***I.K. Mishra v. Union of India***, AIR 1997 SC 3740; ***M.S. Bindra v. Union of India***: AIR 1998 SC 3056 and ***Rajat Baran Roy v. State of West Bengal***, AIR 1999 SC 1661.

In ***M.P. State Cooperative Diary Federation Ltd. v. Rajnesh Kumar Jamindar***, (2009) 15 SCC 221, the Hon'ble Apex Court held that judicial review of an order of compulsory retirement is permissible if the order is perverse or arbitrary and also where there is non-compliance of statutory duty by statutory authority but the Court should not go into the factual findings.

Hence, there is limited scope of judicial review in the case of the compulsory retirement and it is permissible only on the ground of non-application of mind, malafide or want of particular materials. Power to retire compulsorily a government servant in terms of Service Rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

In the instant matter before us, the only allegation made by the applicant was for want of certain material particulars, namely, the APARs for certain years. These, the respondents have clarified, have not been held as adverse against the applicant.

6. In the context of compulsorily retiring of an employee, who has crossed the efficiency bar/has received promotions, the Hon'ble Apex Court, while adjudicating in ***State of Punjab v. Dewan Chuni Lal***, AIR 1970 SC 2086 as well as ***Baidyanath Mahapatra v. State of Orissa***, AIR 1989 SC 2218, had held that when a government servant is promoted to higher post on the basis of merit and selection, adverse

hkh

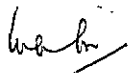
entries, if any, contained in his service record lose their significance and remain on record as part of past history.

6.(6). A three-Judge Bench of the Hon'ble Apex Court in ***State of Orissa v. Ram Chandra Das, AIR 1996 SC 2436***, however, had taken a different view. It has been held therein that such entries still remain as part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. Therefore, such entries do not lose significance, even if the employee has subsequently been promoted. The Court held as under:-

"Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that self same material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency of necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension."

This judgment has been followed by Supreme Court in ***State of Gujarat v. Umedbhai M. Patel, 2001 (3) SLJ 285 (SC); AIR 2001 SC 1109***, emphasizing that the "entire record" of the Government servant is to be examined and reiterated in ***Pyare Mohan Lal (supra)***.

In ***State of UP v. Vijay Kumar Jain, AIR 2002 SC 1345***, the Apex Court held that the vigour or sting of an entry does not get wiped out, particularly, while considering the case of employee for giving him compulsory retirement, as it requires the examination of the entire service records, mudding character rolls and confidential reports. 'Vigour or sting of an adverse entry is not wiped out' merely it relates to the remote past. There may be single adverse entry of integrity which may be sufficient compulsorily retire the Government servant.



6.(7). The Hon'ble Apex Court in **Rajendra Singh Verma (Dead) through LRS. and Others v. Lieutenant Governor (NCT of Delhi) and others (2011) 10 SCC 1** while referring to **Ram Chandra Das (supra)** and after discussing **Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299, State of U.P. v. Bihari Lal, 1994 Supp (3) SCC 593, Union of India v. V.P. Seth 1994 SCC (L&S) 1052, Posts and Telegraphs Board v. C.S.N. Murthy, (1992) 2 SCC 317, Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458, Union of India v. M.E. Reddy (1980) 2 SCC 14, Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188, S. Maheswar Rao v. State of Orissa, 1991 SCC (L&S) 952, V.K. Jain v. High Court of Delhi, (2008) 17 SCC 538, Baidyanath Mahapatra v. State of Orissa, (1989) 4 SCC 604** held as follows:-

"It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments, etc."

6.8. In the instant Original Application, the applicant had indeed been promoted. It is a fact that non-communicated APARS were not taken to be as adverse against the applicant by the Review committee. At the same time, based on his entire service record and, with reference to adverse APARs during intermittent period, and overall recommendation about his performance, and, particularly, that despite many years of service, he had neither acquired knowledge of work nor the capacity of work proficiency, led the respondents to conclude that the applicant deserves to be compulsorily retired as he was ineffective.

h/h

The only conclusion we can therefore arrive at is that the respondents have indeed acted in terms of their guidelines in compulsorily retiring the applicant and their action is legally valid in terms of ratio of **Ram Chandra Das (supra)** , **Rajendra Singh Verma (supra)** as well as **Umedbhai M. Patel (supra)** and **Vijay Kumar Jain (supra)** as noted above.

7. Accordingly, we are of the considered view, that the impugned order at Annexure A-1 to the O.A. does not require judicial intervention and review and we refrain from intervening in the same. The O.A. is dismissed as being devoid of merit.

8. The applicant, however, had been allowed to continue in the organization till disposal of the O.A. by virtue of an interim relief granted by this Tribunal on 30.11.2017. As the applicant had continued on the basis of interim relief granted by this Tribunal, the respondents are directed not to recover the payments received by the applicant during this extended period. The interim order stands vacated with the disposal of this O.A.

Parties will bear their own costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP