



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

O.A/350/762/2018
M.A/350/543/2018

Date of Order: 28th June, 2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Ganga Ram Kisku, S/o Makram Kisku, aged about 55 years, working as UDC under the control of Deputy Director General, Head Quarters, Ordnance Factory Board, at present residing at Village – Berh, P.O & P.S Singur, District Hooghly, Pin – 712409, West Bengal.

--Applicant.

-vs-

1. Union of India through the Secretary,
Ministry of Defence, South Block,
New Delhi, Pin – 110011.

2. The Secretary,
Dept. of Defence Production & Supplies.
Ministry of Defence, Sena Bhawan,
New Delhi – 110011.

3. The Chairman & DGOF,
Ordnance Factory Board,
'Ayuchh Bhawan',
10 A, S.K. Bose Road, Kolkata – 700001.

4. The Member Personnel,
Ordnance Factory Board,
'Ayuchh Bhawan',
10 A, S.K. Bose Road, Kolkata – 700001.

5. The Deputy Director General/Hqrs.
Ordnance Factory Board,
'Ayuchh Bhawan',
10 A, S.K. Bose Road, Kolkata – 700001.

--Respondents.

B

For The Applicant(s): Mr. C. Sinha, counsel

For The Respondent(s): Mr. B. P. Manna, counsel

ORDER (Oral)

Per: Ms. Bidisha Banerjee, Member (J):

Heard ld. counsel for both sides.

This application has been filed to seek the following reliefs:

- "a) To set aside and quash Impugned Charge Memorandum dated 07.09.2016 issued by Deputy Director General/Hqrs. & Disciplinary Authority, Ordnance Factory Board, Kolkata.
- b) To set aside and quash the Impugned Enquiry Report dated 29.11.2017.
- c) To set aside and quash Impugned Order dated 05.03.2016 issued by Deputy Director General/Hqrs, Ordnance Factory Board, Kolkata.
- d) To set aside and quash Impugned Office Memorandum dated 25.05.2018 issued by Deputy Director General/Hqrs., for Director General, Ordnance Factories.
- e) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. The proceedings have been assailed on the following grounds inter alia:

- (i) Violation of the Principles of natural and procedural justice as no show cause notice or a chance of hearing has been granted to the applicant against the proceedings under FR 56(j).
- (ii) Two proceedings have drawn up for the same office, one under FR 56(j) and the other by issuing a Major Penalty Charge Memorandum under Rule 14 of CCS (CCA) Rules, 1965 which is against settled law.
- iii) Where the enquiry proceedings was completed and applicant has submitted his final statement of defence to the disciplinary authority, proceeding under FR 56(j) is illegal and bad in law.

3. The respondents have emphatically admitted that as per the provision contained in the Fundamental Rule 56 (j), the service of Shri Ganga Ram Kisku, UDC has been reviewed. The performance report, which is a mandatory requirement under the above Rule, has been sought as per the

prerefinned format of the DOP&T from the controlling officer under whom Shri Kisku is working. Controlling Officer made the following comments *"that the individual is unfit to continue in the present post as he is not attending office. He is highly irregular and absent most of the times. He is also unable to do any type of office work like handling office documents, making notings, maintaining files etc."*

This performance report was submitted to the committee under the Chairmanship of Shri B. Uday Kumar, Dy. Director General/HQrs and Shri Tushar Tripathy, Dy. Director General/SA & Veh as Member for review. The committee has submitted its report dtd. 08-01-2018 and findings was annexed with the report and decided the following:

In report, a copy of the Minutes to the Minutes of the Meeting held on 08-01-2018 was annexed.

They have further averred that the performance of Shri Ganga Ram Kisku, UDC, OFB is reviewed based on the following aspects:-

- i) Performance since last promotion :- Not satisfactory.
- ii) Integrity since last promotion:- Not upto the mark.
- iii) Whether the officer is fit to continue:-

It was remarked that "the individual is unfit to continue in the present post as he is not attending the office properly. He is highly irregular and absent most of the times. He is also unable to do any type of office work like handling office documents, making noting, maintaining files etc., even failed to fill up his APAR (Annual Performance Appraisal Report) for the last 02 years."

Based on the findings, the Committee decided to impose Fundamental Rule 56 (j) for premature retirement from service in respect of Shri Ganga Ram Kisku, UDC OFB. Concerned Admin. Section was therefore directed to initiate further action in this regard. Based on the above directives "03

months Notice of the Premature Retirement" was served to Shri Kisku as per the pre defined format of Government of India vide order No. 09(03)/2016-HQ/NG (Vol-II) Dtd. 05-03-2018 erroneously typed as 05-03-2016. And as per the provision contained in the FR56 Three (03) months pay was also released despite his pay was stopped since July 2016 for unauthorized absence on repeated nature.

4. We note that the applicant was proceeded against departmentally vide charge memo dated 7.9.16 on the allegation as under:

"Shri Ganga Ram Kisku, UDD,P/W&V, OFB HQrs., is continuously absenting from duty since 01-02-16 to 18-02-16, 23-03-16 to till date (except 04-04-2016 he was present) without any prior permission. During this period he did not intimate his office regarding the reasons of his absence. Consequent on his long absence, the allotted work of Shri Ganga Ram Kisku is affected."

On 30.11.2017, while the proceedings were on, he admitted his guilt. He prayed for voluntary retirement which prayer was turned down on 30.11.2017 on the ground that: as per rule, it cannot be accepted during the period of inquiry.

Yet upon conclusion of the proceedings, no penalty order was issued but surprisingly FR 56(j) was invoked to compulsorily retire him as a punishment, instead of invoking Rule 11 of CCS (CCA) Rules. Such a recourse is not permissible in law as FR 56(j) cannot be invoked to punish an employee.

Hon'ble Apex Court in *State of Gujarat v. Umedbhai M. Patel* [(2001) 3 SCC 314] : (2001 AIR SCW 862) summarised the law thus:

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

- (i) *Whenever the services 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.*
- (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."*

5. In the aforesaid backdrop, the order of compulsory retirement issued invoking FR 56 (j), is quashed and the matter is remanded back to the authorities to act in accordance with law. Till an order is issued, the applicant may be kept on suspension if he has not attained the age of superannuation and the interregnum between compulsory retirement and reinstatement on suspension shall be treated as on suspension.

6. The O.A is accordingly disposed of. The M.A 543/2018 consequently stands disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)