(2021) 04 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 971 Of 2020

Ashok Kumar Sharma APPELLANT

Vs

North Delhi Municipal Corporation & Others RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48, 56(j)
General Financial Rules, 2017 — Rule 154

Citation : (2021) 04 CAT CK 0031

Hon'ble Judges : L. Narasimha Reddy, J;A. K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Sachin Chauhan, R K Jain

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant was appointed as a Teacher in the Education Department of Delhi Administration on 25.07.1990 and was promoted as Trained Graduate Teacher (TGT) (Mathematics) on 07.01.1997. He was selected and appointed by way of direct recruitment as School Inspector (General) in the same Department on 13.02.2003. Six years thereafter, he was selected as Assistant Director (Education) by way of direct recruitment in the same Department on 31.12.2009 by the Union Public Service Commission (UPSC). He is said to have been entrusted with the duties of Deputy Director (Education) on 07.05.2014.

2. The applicant was issued a charge memo dated 23.09.2014. Through order dated 21.05.2019, the Disciplinary Authority (DA) imposed the major penalty of reduction in pay by five stages with cumulative effect for a period of three years. Appeal filed against the order of punishment is said to be pending. The Government issued an order dated 31.10.2019, retiring the applicant on compulsory basis, by invoking F.R. 56 (j) and Rule 48 of CCS (Pension) Rules, 1972. Review sought by the applicant was rejected through order dated

17.02.2020. He filed this O.A. challenging the order of compulsory retirement and the order, rejecting the review.

3. The applicant contends that except for the order of punishment dated 21.05.2019, his career was free from blemish, and by the dint of hard work and with a zeal to serve the Department, he competed for superior posts of School Inspector (General) and Assistant Director (Education); and that he was successful on both the occasions. He submits that the only order of punishment, which he faced in his entire service, is the subject matter of appeal; and that the extraordinary provision of F.R. 56 (j) was invoked against him without any basis. He placed reliance upon the judgment of Hon'ble Supreme Court in State of U.P. & another v. Abhai Kishore Masta, (1995) 1 SCC 336 and certain other precedents.

4. On behalf of the respondents, a detailed counter affidavit is filed. The progression of the applicant in the service is not disputed. It is, however, stated that the applicant resorted to serious acts of misconduct while holding the post of Assistant Director (Education) and caused enormous financial loss to the Government. According to them, even while a book was available at the price of Rs.94.25 paisa, the applicant purchased that very book at a price of Rs.256.75 paisa for each copy, that too, when there existed facility of availing concession on the rate, in view of bulk purchase.

5. The respondents further state that a Committee, comprising of very senior officers of the Government for the purpose of reviewing the performance of Group 'A' & 'B' officers, who completed 50 years of age, stipulated under F.R. 56 (j), examined the case of the applicant in detail and recommended for compulsory retirement. They contend that the appointing authority took into account, the entire record of the applicant and formed an opinion that it is not in the interest of the Government to continue the applicant in service. The respondents submit that the compulsory retirement is not a punishment and that no prejudice can be said to have been caused to the applicant.

6. We heard Sri Sachin Chauhan, learned counsel for applicant and Sri R K Jain, learned counsel for respondents, in detail.

7. The career of the applicant, in Delhi Administration started as a Teacher in 1990. Seven years thereafter, he got promotion to the post of TGT (Mathematics) and six years thereafter, he was selected in direct recruitment, as School Inspector (General). After serving the Department in that capacity for six years, he took part in the selection for the post of Assistant Director (Education), conducted by the UPSC and was successful in that. Even the respondents do not dispute such a meritorious progression on the part of the applicant. It was in the year 2014, that the applicant was served with a charge memo. That, in turn, resulted in the imposition of major penalty of reduction in pay by five stages with cumulative effect for a period of three years. Though an inter-departmental appeal is said to be pending, that would not be of much relevance.

8. Almost as a process of cleansing the Department, the Government constituted a Committee of five senior officers to verify the records of officers, who have completed the stipulated length of service and give its opinion whether any officer, deserves to be retired on compulsory basis. On examining the recommendation of the Committee, to compulsory retire the applicant, the appointing authority ultimately passed an order of compulsory retirement dated 31.10.2019. Since it is almost in a standard format, we do not find any reasons therein. The reviewing authority has upheld the order of compulsory retirement.

9. In matters of this nature, the Tribunal or Courts are required to depend upon the facts mentioned in the counter affidavit and the connected reasons. Before undertaking the judicial review of the orders of compulsory retirement, the Tribunal has to keep in mind certain principles. The first is that the order of compulsory retirement is not a punishment, obviously because the employee would be paid all the retirement benefits and the pension. Except that, the date of his retirement is slightly advanced, he is not put to any disadvantage.

10. Another aspect is that the mere existence of power to compulsory retire an employee, by itself, does not justify the action. There must exist some material, to justify the step taken by the appointing authority in this behalf. A caveat is to be added. Once the Tribunal finds the existence of material, it cannot embark upon the adequacy thereof. These and other principles, that are applied in matters of this nature, are enunciated by the Hon'ble Supreme Court in Baikuntha Nath Das & another v. Chief Distt. Medical Officer, Baripada & another, 1992 AIR 1020. They read as under:-

"32. The following principles emerge from the above discussion:

(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 have 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 based on no evidence or (c) 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 a 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 consideration. That circumstance by itself cannot be a basis for interfere. Interference is permissible only on the grounds mentioned in (iii) above."

11. With the slight difference of emphasis, the principles were reiterated in subsequent judgments. In some of the judgments, it was held that the conduct of an employee before he was promoted to a higher post, cannot constitute the basis for invoking F.R. 56 (j).

12. Coming to the facts of the case, the applicant was issued a charge memo and that, in turn, resulted in imposition of major penalty. The gist of the charges is reproduced in the counter affidavit by the respondents and it reads:-

"That while working in R&E Cell, Edu. Deptt., HQ during the year 2010-11, He in connivance with the publisher of the book Shri Mohinder Singh Saini, Asstt. Librarian (R&E) and Shri R. K. S. Gaur, Addl. Director (Edu.) got purchased 8795 copies of books namely 'Sachitra Rastriya Prateek Avam Gaurav Kosh' (with Hard Cover) in the year 2009-10 for Rs. 22,58,116/- (Rs. 256.75 for each copy) and during the year 2010-11 also purchased 23,342 copies of the same book (without Hard Cover) for Rs. 21,99,983/-(Rs. 94.25 for each copy) which is 2.72 times higher than the price of the book purchased during the year 2010-11 as such he caused pecuniary loss to the Corporation. He forwarded the proposal of Shri Mohinder Sing Saini, Asst. Librarian (R&E) for purchase of said book without any requisition/demand of the same from any department. He did not propose for constitution of a committee to evaluate the contents of the book during the year 2010-11. He also did not obtain any order from Competent Authority for waiving of codal formalities for purchase of books at a higher price during the year 2009-10 as such violated the rule 154 of GFR. He also did not obtain/keep the specimen copy of the book and got the supply of inferior qualify of books. He in connivance with Shri R. K. S. Gaur, Addl. Director (Edu.), Shri Satpal Singh, Asstt. Librarian and publisher of the book took hand written consent of the publisher later on to allow 35% discount for purchase the said book during the year 2010-11 on his letter dated 25.01.2011 when a clarification was sought in this regard by Finance Department on 11.03.2011. He also failed to exercise proper supervision and control over the functioning of Shri Mohinder Singh Saini and Shri Satpal Singh, Asstt. Librarian who failed to perform their duties effectively."

13. The charges are indeed very serious, from the point of view of amount involved, and the very intention to indulge in such activities. Whenever the books are purchased by the library in bulk, an attempt is to be made to get as much as

discount as possible, so that the State would be benefitted. Further, the difference between a paperbound book on the one hand and hardbound book on the other, would not be phenomenal. At the most, it is the cost of hardcover and the binding charges. What is shocking in the instant case is that a book with paperbound, costing at Rs.94.25 paisa, was purchased at Rs.256.75 paisa, by stating it as hardbound book. Rarely, we come across such acts of dishonesty. The amount involved in this episode runs into lacs of rupees.

14. It may be true that the applicant was already punished for the irregularities committed by him. However, the very purpose of making of a rule, like F.R.56 (j), is to weed out the persons, who would not be beneficial to the Department. In the instant case, it is invoked to get rid of a person, who did not protect the interest of the Department and kept his selfishness above it.

15. The punishment was imposed in the recent past. The effort of the respondents is to ensure that the Department is not made vulnerable to such acts, which lack bona fide.

16. We do not find any merit in this O.A. It is accordingly dismissed. There shall be no order as to costs.

