

(2024) 01 CAL CK 0004
In the Calcutta High Court
Case No : WPA No. 8034 Of 2012

Ashok Kundu

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 04-01-2024

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 3(k), 48, 48(1), 48(1)(b)

Citation : (2024) 01 CAL CK 0004

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : K.B.S. Mahapatra, Anirban Mitra

Final Decision : Dismissed

Judgement

Raja Basu Chowdhury, J

1. The instant writ petition has been filed, inter alia, challenging the order dated 2nd April, 2012 issued under Clause 1(b) of Rule 48 of Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the "said Rules") thereby, compulsorily retiring the petitioner from services.

2. Shorn of unnecessary details, the facts are that the petitioner had been employed in the Central Industrial Security Force (hereinafter referred to as the "CISF") and at the relevant point of time was posted at CISF Unit, Kolkata Port Trust.

3. It is the petitioner's case that he was appointed on 21st November, 1981. Subsequently, he was promoted to the rank of Lance Naik and later to the post of Head Constable in the month of May, 2002. The petitioner claims that by letter dated 27th December, 2011, he was informed by the Commandant that he had been awarded 14 minor penalties and accordingly, it was decided to issue a recordable warning for the past indifferent service of the petitioner. Subsequently, by a letter dated 19th March, 2012, the Superintendent, Bangur Hospital had directed the petitioner to appear before a Medical Board on 30th

March, 2012 in pursuance to the order of the Balistha Commandant Karjalaya dated 17th March, 2012.

4. The petitioner had accordingly, appeared before the Medical Board and after medical examination he was advised to undergo further treatment from ATR Centre, MR Bangur Hospital. Subsequently, thereafter, by an order dated 2nd April, 2012 the Senior Commandant of the Unit prematurely, retired the petitioner from services.

5. The petitioner questions the aforesaid order of premature retirement, inter alia, on the ground that the Deputy Inspector General had no authority in law to issue the order of prematurely retiring him. By drawing attention of this Court to the instructions regarding the premature retirement of Central Government servants under Appendix-5 of the said Rules, he submits that at any time after a Government servant completes 30 years of qualifying service, he may be retired from the services on the basis of "consolidated instructions" regarding premature retirement of Central Government servants as available in Appendix-5 thereof. Further by referring to the aforesaid Appendix-5, he submits that not only the criteria but procedure and guidelines have also been framed, which are required to be followed while compulsorily retiring a Government servant. A Government servant may be retired on the basis of the recommendations of the committee constituted for the said purpose. While referring to Annexure II of Appendix-5 of the said Rules, he submits that the petitioner was a non-gazetted officer, serving under Ministry/Department and as such the Head of the Department or the Appointing Authority, whosoever is higher would be the Chairman, and another Senior Officer nominated by the Government/appropriate Higher Authority who does not exercise direct immediate control or supervision over the officers being screened, as member, should be part of the Review Committee. According to the petitioner, the Deputy Inspector General is not the Head of the Department and as such could not have taken the decision as regards the petitioner, for compulsorily retiring him from service. By referring to Rule 3(k) of the said Rules, he submits that Head of the Department has been defined to mean an authority specified in Schedule I to the Delegation of Financial Powers Rules, 1978, and includes such other authority or person whom the President may, by order, specify as Head of the Department. By referring to the Delegation of Financial Powers Rules, 1978, he says that the Director General of the Central Government Industrial Security Force is the Head of the Department and as such it is the Director General, who could have taken a decision in this matter and not the Deputy Inspector General. In such circumstances, the aforesaid order of compulsory retirement cannot be sustained and the same should be set aside.

6. Mr. Mitra, learned advocate representing the respondents on the other hand, submits that the petitioner was a member of Paramilitary Force under CISF and was categorized as S(1), H(1), A(1), (P)(2), E(1) by the Chief Medical Officer, KOPT Kolkata and thereafter, he was sent to the Chief Medical Officer, MR Bangur Hospital, South 24-Parganas for obtaining health status and opinion of the

Specialist and thereafter, the Board of Officers examined the petitioner on 30th March, 2012 and opined and advised to undergo further treatment from ATR Centre, MR Bangur Hospital. It is claimed that the superannuation of a Government servant is ordinarily done on basis of a review conducted on the basis of the entire service records of the Government servant, on the Government servant attaining 55 years of age or on completion of 30 years of qualifying service, whichever is earlier, in respect of Group 'D' employee under Fundamental Rules 56(j) for judging his further retention in service. The petitioner during his service had been awarded as many as 14 punishments for various misconducts and indiscipline acts from different disciplinary authorities. Accordingly, the superannuation review boards endorsed the remarks that HC/GD Ashok Kundu is unfit for continuation in service beyond 30 years of qualifying service on being found of unsatisfactory performance. On the basis of the aforesaid, the appointing authority of the petitioner, who is Senior Commandant, CISF Unit KOPT, Kolkata had issued the order of premature retirement of the petitioner vide order dated 2nd April, 2012. According to the respondents, the Review Committee has to be reconstituted for each rank and the original Annexure II of Appendix-5 has been amended. In support of his contention, he has placed reliance on the Establishment manual 2017, Central Industrial Security Force and refers to the Directorate Circular No. 14/1984 issued under letter no. E – 28011/1/84 – GA.I dated 17th May 1984 as regards Constitution of various Review Committees forming part of the Establishment manual. As per the aforesaid circular, for the Head Constable rank, the reconstituted Review Committee is headed by the Deputy Inspector General as its Chairman and the Assistant Inspector General as a member. Accordingly, the reconstituted Review Board, as applicable to the petitioner, having found the petitioner unfit to continue in service beyond 30 years of qualifying service for his unsatisfactory performance, was prematurely retired from his service. He places reliance on Rule 48(1) of the said Rules and has relied on the following judgments:

(i) Central Industrial Security Force v. HC (GD) OM Prakash, reported in 2022 LiveLaw (SC) 128;

(ii) Posts and Telegraphs Board v. CSN Murthy, reported in (1992) 2 SCC 317, and;

(iii) Union of India & Ors. v. Dulal Dutt, reported in (1993) 2 SCC 179.

7. In the case of the petitioner no punishment had been inflicted on him. The premature retirement was made on the basis of the Rules as applicable to a Government servant. This apart, if the procedure laid down in the Appendix-5 is followed, the petitioner ought to have made a representation seeking for review. The petitioner did not make any representation as per Appendix 5 of the said Rules and as such has waived his rights, if any. The petitioner having not questioned the order by making the representation is deemed to have accepted the same. The writ petition does not merit consideration and the same should be dismissed with costs.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Pursuant to the directions passed by this Court, the respondents have produced the records. I have perused the same. It is apparent and clear from the records that the Review Committee was headed by the Deputy Inspector General. From the perusal of the judgments relied on by the respondents, it would appear that the Hon'ble Supreme Court in the case of Posts and Telegraphs Board (supra) in paragraph 3 thereof, has considered the general principles relating to issuance of an order of compulsory retirement. The same are extracted herein below:

"3. The modalities for the invocation of F.R. 56(j) have been examined by a number of decisions of this Court. All these judgments have been reviewed and the legal principles applicable thereto have been summarised by B.P. Jeevan Reddy, J., speaking for the Supreme Court, in *Baikuntha Nath Das v. Chief District Medical Officer, Baripada* [(1992) 2 SCC 299 : JT (1992) 2 SC 1] . These principles have been set out in paragraph 32 of the judgment, which can be extracted here for purposes of convenient reference: (SCC p. 315, para 34)

"34. 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 a 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 showing that, while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.””

9. The Hon’ble Supreme Court in the case of Central Industrial Security Force (supra) has once again reiterated its earlier view that the entire service record of the employee concerned, is required to be taken into consideration which would include the ACRs as well. The order of premature retirement thus, is required to be passed on the basis of the entire service records, though the recent report would carry their own weightage.

10. Having regard to the aforesaid and having perused the records, I find that the petitioner has not been able to point out any inconsistency in consideration of his record/ACRs by the Committee. The petitioner, however, points out that the Review Committee was not appropriately constituted. In this context, it is noticed that the constitution of the Committee shall be as per the Annexure-II of Appendix-5 in relation to instructions regarding premature retirement of Government servants. It is noticed that elaborate criteria and guidelines has been set forth for the purpose of ensuring that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily for the purpose of reviewing the cases of the Government employee, covered under CCS (Pension) Rules 1972, criteria 2 and 3.

11. The relevant portion of the unamended Annexure-II of Appendix-5 of the said Rules which lays down composition of the Review Committee in relation to Non-Gazette Officer serving under a Ministry/Department to which much stress has been laid is extracted herein below:

“ Classification

Composition of Review Committee

(ii) Non-Gazetted officers serving under a Ministry/Department.

(ii) The Head of the Department or the Appointing Authority whomsoever is higher would be the Chairman; another senior officer nominated by an appropriately higher authority and who does not exercise direct immediate control or supervision over the officers being screened as member. If action is proposed to be taken on grounds of lack of integrity, the Vigilance Officer concerned shall be associated as third Member. Final orders will be passed by the appropriate authority.”

12. Rule 3(k) of the said Rules defines the Head of the Department to mean and include the following:

“3(k) ‘Head of Department’ means an authority specified in Schedule I to the Delegation of Financial Powers Rules, 1978, and includes such other authority or person whom the President may, by order, specify as Head of a Department.”

13. Having regard to the aforesaid and taking note of Schedule I of the Delegation of Financial Powers Rules, 1978 serial no. 13, it would appear that the

Director General of Central Industrial Security Force is to be regarded as Head of the Department.

14. Unfortunately, for the petitioner, the aforesaid Annexure II of Appendix-5 of the said Rules appears to have been amended as appearing from the extracts of Establishment Manual, 2017, of the Central Industrial Security Force, wherefrom it appears that in pursuance of MHA instructions, the Internal Screening Committee, Superannuation Review Committee and the Representation Committee for disposal of cases under FR 56(j) and Rule 48 of the said Rules have been reconstituted in pursuance to the Directorate Circular no. 14/1984 issued under letter no. E – 28011/1/84 – GA.I dated 17th May, 1984 and subsequent amendments. On such reconstitution, the Review Committee in respect of the rank of Head Constable comprises of the Deputy Inspector General as the Chairman and the Assistant Inspector General/Commandant as the member. A Representative Committee is also in place as per the said manual. The same also provides that the same supersedes all previous orders/circular issued by the Directorate with regard to Constitution of various committees for disposal of cases under the provisions of FR – 56(j)/ Rule 48 of CCS (Pension) Rules, 1972. The petitioner having prematurely retired in the year 2012 is obviously covered by the amendment / reconstituted committee.

15. Thus, the arguments advanced by Mr. Mahapatra as regards the improper composition of the Review Committee appear to be fallacious and is unacceptable. I do not find the constitution of the Review Committee to be improper. I, however, notice that a specific provision has been provided for in the Appendix-5 of the said Rules, for consideration of representation, to be made against premature retirement, within three weeks from service of notice of premature retirement. Admittedly, in this case, the petitioner did not make any representation though he has filed a writ petition challenging the same. The petitioner having not made any representation within the time specified, in my view had waived his right to make a representation for being considered as per the aforesaid Appendix 5 of the said Rules. There are also no special circumstances warranting reconsideration of his case. It is well settled that a right which has been waived, cannot be reopened by filing a writ petition. Thus, the petitioner is not entitled to challenge the same on merits.

16. The writ petition fails and the same is accordingly dismissed.

17. There shall be no order as to costs.

18. The office is directed to return the original service records of the petitioner to the learned advocate for the respondents, against a proper receipt to be retained in the file.

19. Urgent photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of requisite formalities.