

(2012) 10 DEL CK 0147
In the Delhi High Court
Case No : Writ Petition (C) No. 3935 of 2012

Bhim Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0147

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Rekha Palli with Ms. Punam Singh and Ms. Amrita Prakash, for the Appellant; Himanshu Bajaj, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Heard learned counsel for the parties. The petitioner joined service as a Constable (Driver) with CISF in the year

1981. Annexure R-3 would reveal the service profile of the petitioner in relation to the Annual Confidential Rolls as under:-

2. It also reveals that during his career till the year 2009, commencing from the year 1981, i.e. 28 years, the petitioner was fined once for having

remained absent on August 27, 1981, had been censured on June 07, 1982; had suffered a fine of one day pay cut in October, 1984 for being

absent from unit line and creating nuisance in public place under the influence of liquor; a withholding of one stage in pay for a period of one year

on August 8, 1990 for having unauthorisedly driven a truck for 65 kms; and finally pay being deducted for 5 days on account of an act of

indiscipline committed on June 08, 1993.

3. We highlight that the five penalties are stale as of the year 2009 inasmuch as

the last was with respect to an indiscipline committed on June 08, 1993.

4. The respondents have exercised power under Rule 56(j) of the Fundamental Rules and have compulsorily retired the petitioner as per order dated January 04, 2011 against which appeal filed stands rejected vide order dated February 02, 2012. Needless to state the service profile of the petitioner which was considered by the Screening Committee took into account the five afore noted penalties and the ACR grading from the year 1981 till the year 2009.

5. Pertaining to writs of certiorari where a discretion is exercised by the executive, the law with respect to judicial interference is clear. Whereas it cannot be disputed that when the existence of an objective fact is laid down as a condition precedent to the exercise of powers, there is no question whatsoever of the exercise of any discretion by the authority, which has to be satisfied about the existence of that objective fact, before the power is exercised. Thereafter, as long as the exercise of discretion does not suffer from unreasonableness, the Court cannot go into the exercise of said discretion.

6. On the subject of the power to compulsorily retire a civil servant, Rule 56(j) of the Fundamental Rules is the statutory provision. This branch of law deals primarily with the requirement of weeding out the "dead wood" from the system by testing the integrity, utility and efficacy of the concerned Government employee, on the anvil of public interest. The public interest to be kept in mind is that it sub serves the public if efficient persons discharge duties as public servants and if somebody is found to be a dead wood, he better be replaced by an inefficient person. Law guarantees to a civil servant a minimum pensionable service and beyond that he must earn the right to serve.

7. Now, it is settled law that on the subject of compulsorily retirement, the entire service profile has to be kept in view by the decision making authority, but emphasis has to be laid on the immediately preceding 5 years record. Further, penalties which are stale and further, those which were inflicted after which a civil servant has obtained promotions, have to be ignored.

8. We have already highlighted hereinabove that the petitioner had earned five minor penalties. The ACR record of the petitioner would reveal that

since 1999, except for part year 2000, where he earned the ACR grading "Average", the consistent ACR grading of the petitioner has been either "Good" or "Very Good". Even pertaining to the year 2000 we find that for part year he has been graded "Very Good" and for a part of the year as "Average".

9. Objectively looked, we see no scope for any subjective satisfaction to conclude that the petitioner is a dead wood. It would be extremely

unreasonable to hold a person obtaining ACR grading "Good" or "Very Good" to be a dead wood. Those obtaining ACR grading "Average" and

below alone would be dead wood.

10. Accordingly, we allow the writ petition and quash the impugned order dated January 04, 2011 as also the appellate order dated February 02,

2012. Petitioner is directed to be reinstated in service with full consequential benefits of pay and allowances, increments as well.

11. Arrears would be paid to the petitioner within 12 weeks and needless to state the pension and 3 months pay and allowances if at all paid in

terms of the order dated January 04, 2011 shall be adjusted. No costs.