
(2007) 03 DEL CK 0058
In the Delhi High Court
Case No : LPA No. 1704 of 2006

B.S. Yaduvanshi		APPELLANT
	Vs	
National Seeds Corporation Ltd. and Another		RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2007) 139 DLT 462

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Chetan Sharma and S.K. Tiwari, for the Appellant; Sudhir Kulshreshtha, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—By this appeal the appellant prays for setting aside and quashing order dated 3rd April, 1992 passed by the

respondent Corporation compulsorily retiring the appellant from its service. Order dated 1st May, 2006 passed by the learned Single Judge

dismissing the writ petition filed by the appellant is also under challenge in this appeal.

2. The appellant joined the respondent Corporation as Assistant (Accounts) on 19th November, 1966. He was promoted as Accountant in

November, 1969 and later he was promoted as Accounts Officer in January, 1978. By Officer Order No. 67 dated 3rd April, 1992, issued in the

name of the Chairman-cum-Managing Director of the respondent Corporation, the appellant was compulsorily retired from service in exercise of

the powers conferred under Rule 56(J) of the Fundamental Rules. The said order was challenged by the appellant by filing a writ petition which

was registered as WP(C) No. 12/1993. The said writ petition was however dismissed on 1st May, 2006 as against which the present appeal was filed.

3. When the appeal was listed before the Division Bench of this Court, it was recorded that the counsel for the appellant had confined his

submission only to the limited plea that if the appellant was not found fit to continue in his present post, his fitness to continue in a lower post ought

to have been considered. In support of the said contention counsel relied upon Instructions dated 5th January, 1978 issued by the Government of

India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms. Accordingly notice was issued restricted to the aforesaid

ground which was raised with particular reference to the aforesaid Instructions of the Government of India.

4. We have heard the learned Counsel appearing for the parties who have taken us through the records in support of their respective contentions.

We have considered the submissions made by the counsel appearing for the parties and also perused the records in terms of which we proceed to

dispose of the present appeal.

5. During the course of arguments, counsel for the appellant had submitted before us that the appellant was given promotion by the respondents

themselves and his service was found to be satisfactory and, Therefore, his compulsory retirement from service by exercising the powers vested

under FR 56(J) and that too without considering as to whether or not the appellant is suited for a lower post, is arbitrary and illegal and, Therefore,

the impugned order is required to be set aside and quashed.

6. It is indeed correct that the appellant was given two promotions during his service career one when he was initially promoted to the post of

Accountant and the second, as Accounts Officer. He was also allowed to cross efficiency bar in the year 1988. The aforesaid promotions,

however, were routine promotions as both the promotions were based on inter se seniority only. None of the aforesaid promotions was to a

selection post. It is also established from the records that he has earned several adverse remarks and that though he was eligible to cross efficiency

bar, but was allowed to cross the efficiency bar only after a period of three years from the date of eligibility. In the impugned judgment, the learned

Single judge has extracted the character roll of the appellant from the year 1982 onwards. The same indicates that in the year 1982 the appellant

was rated as "average", in 1983 he was found to be "very poor", in 1984 he was "good" and in 1985 he had adverse remarks. In 1989 also

adverse remarks were communicated to him. Both the aforesaid adverse remarks were communicated as against which the appellant submitted

representations which were rejected. On appellant attaining the age of 50 years his case was referred to the Review Committee of the respondent

Corporation. The said Review Committee considered the records of the appellant including his character roll and related papers as also the

instructions of the Government of India dated 5th January, 1978, 7/9th August and 1985, 7th March, 1986 and found that the appellant is not a fit

person to be retained in service of the respondent as Accounts Officer and should be prematurely retired as per Rule 56(J) of the Fundamental

Rules, in public interest. In fact the Review Committee also recorded their reasons for finding the appellant liable to be prematurely retired in public

interest, which are as follows:

- i) Unable to be current in his work;
- ii) He lacks initiative; and
- iii) He lacks professional competence.

7. On the aforesaid recommendations of the Review Committee, the Chairman-cum-Managing Director of the respondent Corporation passed the

aforesaid order under FR 56(J), compulsorily retiring the appellant. It is, Therefore, crystal clear that the Review Committee, while considering the

case of the appellant under the provisions of Fundamental Rules 56(J), considered the guidelines dated 5th January, 1978 which speaks of

consideration of the case to a lower post. On such consideration, including the other notifications and guidelines referred to above, the appellant

was directed to be retired from service. The same also makes it crystal clear that the appellant was considered not fit even to continue in a lower

post as it was considered by the Competent Authority that he should be prematurely retired from service on attaining the age of 50 years. Even

thereafter the appellant filed a representation which was considered by the Representation Committee, after affording a personal hearing to the

appellant. After considering his submissions and on perusal of the Instructions/

Circulars, including Circular dated 5th January, 1978, the

Representation Committee did not find any substance in his submissions and the decision of the Review Committee dated 27th December, 1983

was upheld. The Representation Committee recommended confirmation of the decision taken by the Competent Authority to prematurely retire the

appellant. Records clearly disclose that adverse remarks had been communicated to the appellant. The learned Single Judge, while dismissing the

writ petition filed by the appellant, has considered various judgments of the Supreme Court which deal with the power of the Competent Authority

to retire an employee prematurely in public interest. In *State of Gujarat Vs. Umedbhai M. Patel*, , the Supreme Court re-stated the law on the

point as follows:

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 favor of the officer;

(viii) Compulsory retirement shall not be imposed as a punitive measure.

8. In the said decision it was also held that foundation of every order or decision to invoke the power to retire an employee prematurely is public

interest. In order to arrive at the satisfaction as to whether or not a public servant outlived his utility and whether there should be compulsory

retirement in public interest, an objective view of overall performance of that the government servant has to be taken before deciding, on attainment

of the age of 50 years, whether to retain him in service or to dispense with his services in public interest. In such matters the scope of judicial

review is limited, which is crystallised in the aforesaid re-statement of the law.

9. In the present case we find that the original records of the appellant were considered at three stages; at one stage by the Review Committee;

then by Competent Authority while issuing the order and, thereafter, by the Representation Committee. On consideration of the said records and

all material, the Competent Authority came to the conclusion that in public interest, the appellant be retired prematurely as he has outlived his utility.

10. Counsel for the respondent has relied upon the decision of the Supreme Court in *Union of India and Ors. v. R.C. Mishra* reported in :

(2003)9SCC217 . A perusal of the said decision would indicate that the said decision was rendered on the facts which are clearly distinguishable.

In the said case, adverse remarks of "good" or "average", which were recorded against the employee, were not communicated to him, which is

not the case here. There was also malafide alleged in the said case, which was found to be proved by the Supreme Court. Taking the aforesaid

factors into consideration the said decision was rendered which in our considered opinion is not applicable to the facts and circumstances of the

present case. The appellant herein, during the last nine years of his service earned four average/below average ratings and two adverse remarks.

All the aforesaid career profiles of the appellant were considered by the Review Committee and a decision was taken on appreciation of the entire

material on record. Provisions of the Guidelines dated 7th August, 1985 to the effect as to whether or not the appellant could be retained in service

in a lower post from which he was promoted to a higher post, was noticed by the Review Committee and held that the appellant should be retired

from service.

11. Considering the entire facts and circumstances of the case, we find no reason to interfere with the objective assessment made by the

respondents about retention of the appellant beyond the age of 50 years and also regarding exercise of power under FR56(J). We find no reason

to interfere with the findings recorded by the learned Single Judge. The appeal

has no merit and is dismissed.