

(2021) 03 CAT CK 0088

In the Central Administrative Tribunal

Case No : Original Application No. 1760 Of 2020

D.S. Chahal

APPELLANT

Vs

Commissioner North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

Central Civil Services (Pension) Rules, 1972 (Rule 48(1), 56(j))

Citation : (2021) 03 CAT CK 0088

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

Bench : Division Bench

Advocate : Rajeev Sharma, R. V. Sinha, Amit Sinha

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, J

1. The applicant was appointed as a Junior Engineer (JE) in the Municipal Corporation of Delhi (MCD) on 25.08.1988. He was promoted to the post of Assistant Engineer (AE) on 25.11.2014. Through an order dated 31.10.2019, the Appointing Authority retired him on compulsory basis by invoking FR 56 (j) and Rule 48 (1) of CCS (Pension) Rules, 1972 (Rules). Review sought by the applicant was rejected on 17.02.2020. This OA is filed challenging the order of compulsory retirement dated 31.10.2019 and the order of the Review Committee (RC) dated 17.02.2020.

2. The applicant contends that though he was imposed certain punishments before the year 2013, his career is without any blemish ever since then, so much so, he was promoted to the post of AE on 25.11.2014. He contends that his ACRs were also without any negative remarks, despite that, the exceptional provision, namely, FR 56 (j) was invoked against him. He has also placed reliance upon an OM dated 11.09.2015 issued by the DoP&T.

3. The respondents filed a detailed counter affidavit. According to them, the applicant was imposed major punishment, may be around 2013, but in the

context of examining the case of the official for invoking FR 56 (j), the entire record needs to be taken into account. It is stated that the RC has examined the matter in detail and no interference is warranted, in the impugned order.

4. We heard Shri Rajeev Sharma, learned counsel for the applicant and Shri R. V. Sinha and Shri Amit Sinha, learned counsel for the respondents.

5. Time and again, the Hon'ble Supreme Court held that the compulsory retirement is not a punishment, in view of the fact that an employee would get the pension and other benefits. At the same time, it was observed that the provision cannot be invoked indiscriminately, particularly, when the record of the employee is otherwise, neat and clean.

6. It may be true that the entire record needs to be taken into account while considering the case of an official under FR 56 (j). However, one benchmark is that of promotion. If the record of an employee, subsequent to promotion, is clean and without any blemish, the instances that have taken place before the promotion are required not to be taken into account.

7. Clause 2 (vii) of the OM dated 11.09.2015 reads as under:-

"2 (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."

8. The record discloses that the disciplinary proceedings were initiated against the applicant on five occasions between 1995 to 2003. The first one resulted in exoneration, the 2nd in Censure, 3rd & 4th were stoppage of increments and 5th was reduction in the pay in the time scale of pay by two stages for two years with cumulative effect. Though the punishment imposed in the year 2003 was major one, it has virtually lost its significance with the passage of time. Obviously, for that reason, it did not come in the way of promotion of the applicant to the post of AE in the year 2014. This aspect does not appear to have been examined by the RC. We are of the view that the matter needs to be remanded to the RC requiring it to have an overall assessment of the matter.

9. We, therefore, partly allow the OA, setting aside order dated 17.02.2020 passed by the Review Committee, and remanding the matter to it, with a specific direction, to take into account, the purport of OM dated 11.09.2015 and the record of the applicant. The order in this behalf shall be passed within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.