
(2004) 03 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 10193 of 1997

Guleri	Vs	APPELLANT
Director General, C.I.S.F.		RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Fundamental Rules — Rule 56(j)

Citation : (2005) 104 FLR 92 : (2004) 3 ILR (Ker) 27 : (2004) 3 KLT 410

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : L. Gopalakrishnan Poti and Dinesh Rao A, for the Appellant; Thomas Mathew Nellimoottil, A.C.G.S.C., for the Respondent

Judgement

K.A. Abdul Gafoor, J.—Ext.P1 is under challenge. By Ext.P1, the petitioner a Deputy Commandant in Central Industrial Security Force (C.I.S.F.) has been compulsorily retired from service invoking the power conferred on Government under 56(j) of the Fundamental Rules. Of course, the said rule confers power on Government on subjective satisfaction to dispense with the services of any Government Servant in public interest. It is exercising that power, the petitioner has been compulsorily retired with effect from 6th May 1997 when he attained the age of 55 years. The order reads as follows:

"Whereas the President is of the opinion that it is in the public interest to do so;

NOW, THEREFORE, in exercise of the powers conferred by Clause (j) of Rule 56 of the Fundamental Rules, the President hereby retires Shri P.C.S. Guleri, Deputy Commandant, C.I.S.F. Unit, FACT (CD), Cochin with immediate effect, he having already attained the age of 55 years on 6th May 1997. The President also directs that Shri P.C.S. Guleri shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement".

2. It is contended that what is public interest is not spelt out in Ext.P1. Even if

the Government had the privilege of being specifically satisfied about the fact u/s 56(j), the service history of the officer concerned has to be looked into. Without such materials, any order will per se be arbitrary. No such materials are disclosed, even though two adverse remarks said to be effected during the year 1984-85 and 1992-93 have been taken as a reason for compulsory retirement. The petitioner submits that there were subsequent promotions effected on 10th September 1985 and in November, 1992 to higher cadres which itself will erase the adversities that may arise out of such adverse entries. The petitioner relied on the decision of the Supreme Court in Jugal Chandra Saikia Vs. State of Assam and Another, . The Supreme Court in the said case has made it clear that:

"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".

3. It is an admitted case before me that the petitioner has been promoted as Assistant Commandant on 10th September 1985. Assistant Commandant is a selection post. There was a further promotion in November, 1992 as Deputy Commandant which also is a selection post. Added to this is Ext.P3 issued by his superior recommending his case for Award of Police Medal, detailing the meritorious services rendered by the petitioner. The ultimate paragraph of Ext.P3 reads as follows:

"In recognition of his achievements, utmost devotion to duty, sincerity, loyalty and absolute integrity and strong crime control, I strongly recommend Shri P.C.S. Guleri, Deputy Commandant, C.I.S.F. for Award of Police Medal for meritorious service on the occasion of 50th Independence Day, 1997".

Necessarily, this is far later than the second among the adverse entries stated to be effected in 1992-93. Going by the principles enunciated by the Supreme Court as extracted above, the said adverse entry loses its significance because of the achievements, devotion to duty, sincerity, loyalty and absolute integrity and strong crime control as stated in Ext.P3 in respect of the petitioner for recommendation for Award of Police Medal, that too, in connection with the 50th Independence Day of 1997. Such a person cannot be, on 10th June 1997, sent out of service merely stating "public interest" as done in Ext.P1. So, Ext.P1 shall have to be quashed and I do so.

4. It is true that, as contended by the learned Standing Counsel, the petitioner had not been in service and had not served after 1997. He had attained the normal superannuation on completion of 58 years on 6th May 2000. As the petitioner had not worked during this period, it is not proper for this Court to direct the salary to be paid for the period during which he did not perform any duty. Anyhow, as Ext.P1 is quashed, consequent relief would be computation of the pensionary benefits, as if he had worked until 6th May 2000. The benefit so

accrued shall be paid within two months from the date of receipt of a copy of this Judgment.

Original Petition is disposed of as above.