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**(2006) 08 DEL CK 0190**  
**In the Delhi High Court**  
**Case No : LPA 683 of 2004**

J.P. Singh thru L.R"S.

APPELLANT

Vs

National Seeds Corporation and Another

RESPONDENT

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**Date of Decision :** 03-08-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2006) 08 DEL CK 0190

**Hon'ble Judges :** Mukul Mudgal, J;Dr. S. Muralidhar, J

**Bench :** Division Bench

**Advocate :** K.K. Rai and S.K. Pandey, for the Appellant; Sudhir Kulshreshtha, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Mukul Mudgal, J.—The appellant, through LRs, challenges the impugned judgment dated 9.3.2004 of the learned Single Judge dismissing the appellant's Writ Petition (C) No. 1550/1991. The said writ petition was directed against an order dated 10th July, 1990 passed by the respondent No. 1 compulsorily retiring the appellant in exercise of powers conferred by Rule 56(j)(i) of the Fundamental Rules. The order of compulsory retirement reads as follows:

No. 11(6)/90-Pers/NSC July 10, 1990

OFFICE ORDER NO. 170

WHEREAS the Chairman-cum-Managing Director, National Seeds Corporation Ltd., 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) (i) of Rule 56 of the Fundamental rules as made applicable to the employees of this Corporation, the Chairman-cum-Managing Director hereby retires Shri J.P. Singh, Sr. Marketing Officer, NSC, Hqrs. with immediate effect, he having already attained the age of 50 years on 07.07.1989. the Chairman-cum-Managing

Director also directs that Shri J.P. Singh 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.

Sd/-

S. Satyabhama)

Chairman-cum-Managing Director.

2. The learned Single Judge has examined the entire record and come to the finding that for the last 10 years, the employee had shown no improvement except for one year i.e. 1982 when he was rated as good and for 9 years he was rated as average/just satisfactory, nor was he showing any enthusiasm in his work and in 1988, the employee had worked only for 69 days. It has also been noted that the employee had not completed the task assigned to him and kept finding excuses to justify the work not done by him. The screening committee did not go into the issue of misconduct which was the subject matter of the enquiry.

3. Mr. K.K. Rai, the learned Counsel for the appellant, who incidentally has been appearing as amicus curiae even before the learned Single Judge, submitted that in terms of an Office Memorandum dated 15.1.1979 issued by the Government of India setting out certain guidelines for processing cases of compulsory retirement, the rules should not be used "to retire a government servant on grounds of specific acts of misconduct, as a shortcut to initiate formal disciplinary proceedings." Mr. Rai contends that the Review Committee which met on 31.5.1989 decided to defer the decision on the compulsory retirement of the appellant for a period of six months during which a vigilance case in which he was chargesheeted for major penalty proceedings was expected to be concluded. At the subsequent meeting of the Review Committee it was decided that the appellant's case was not one fit for further action under FR-56(J). However, it was decided to review the case after three months. At the third Meeting of the Review Committee held on 7.7.1990 it was decided that the appellant should be retired from service as per Rule 56(J) in the public interest on the following grounds:

- (i) He is of doubtful integrity;
- (ii) His records shows very sharp deterioration in his functioning;
- (iii) The officer is ineffective and has constantly shown himself to be of no use to the Corporation; and
- (iv) His service record and C.R. are indifferent.

Accordingly Mr. Rai submitted that the decision to compulsory retire the appellant was vitiated because respondent No. 1 chose to adopt a shortcut without waiting for the conclusion of the vigilance case particularly where one of the reasons for the decision was that the appellant was of doubtful integrity.

4. We are unable to agree with this submission of the learned Counsel for the appellant. The learned Single Judge has, after extensively examining the records, come to the conclusion that there were several factors which weighed with the respondent No. 1 before deciding to compulsorily retire the appellant in public interest. The decision of the respondent No. 1 cannot be said to be unreasonable or suffering from any non-application of mind to the relevant materials warranting any interference under Article 226 of the Constitution.

5. The learned Counsel for the appellant next contends that even if the appellant was not found fit for the post which he was holding, he should have been considered for appointment to a lower post. In this context he referred to certain guidelines formulated at the 115th Board Meeting of respondent No. 1 and in particular Clause (2) thereof which reads as under:

[2] Government employees who are found to be ineffective, the basic consideration in identifying such employees should be the fitness of competence of the employee to continue in the post he is holding. If the employee is not found fit to continue in the present post, his fitness to continue in the lower post from where he has been previously promoted should be considered.

6. It is not in dispute that even before the writ petition could be finally heard, the appellant had expired and was represented by his legal heirs. In the circumstances, even assuming that the employee was entitled to be considered for appointment to a lower post, it would not have been feasible to give such a direction. For the above reasons, we see no merit in the appeal and it is dismissed.

7. We appreciate the efforts put in by Mr. K.K. Rai, the learned amicus curiae who ably presented the case of the appellant even while declining to accept any honorarium for his efforts.