

(2014) 12 OHC CK 0061

In the Orissa High Court

Case No : Writ Petition (Civil) No. 8082 of 2008

Manas Kumar Behera

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 2(9)(b), 3, 8
Constitution of India, 1950 — Article 311

Citation : (2015) 2 ILR (Ori) 1178 : (2015) LabIC 1095

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.

1. The petitioner, who was working as Head Constable under the Central Industrial Security Force (in short hereinafter referred to as CISF), has filed this application seeking to quash the order of compulsory retirement passed by opposite party No. 5-Senior Commandant, CISF Unit, Rourkela Steel Plant, Rourkela dated 13.05.2008 vide Annexure-1 and allow him to continue as Head Constable under the said organization as before.

2. The factual matrix of the case in hand is that the petitioner's date of birth being 27.02.54, he was appointed as Constable under CISF on 15.08.1972 by following due procedure of selection. Thereafter, he was promoted to the post of Head Constable on 19.05.2005 and is a member of "Force" within the meaning of Section 2(9)(b) of the Central Industrial Security Force Act, 1968 (Hereinafter referred to as 1968 Act).

3. Mr. D.R. Pattnayak, learned counsel for the petitioner strenuously urged that the order impugned under Annexure-1 dated 23.05.2008 compulsorily retiring the petitioner from his service was not passed following a disciplinary proceeding initiated against him but on completion of 30 years of service following a review. It is stated that the petitioner's date of birth being 27.02.1954 he would have superannuated from service on attaining the age of retirement on 28.02.2014.

While he was in service a review committee was held on 23.05.2008 after the petitioner completed 30 years of service and the order of compulsory retirement was passed. It is stated that such order was passed without application of mind. The petitioner completed 30 years of service on 15.08.2002. After completion of 30 years of service, the petitioner was allowed to continue in his service. Thereafter he was promoted to the post of Head Constable on 19.05.2005. Review Committee was held on 23.05.2008 and the impugned order was issued by opposite party No. 5-Senior Commandant, CISF Unit, RSP, Rourkela under Rule-48(1)(b) of the C.C.S. (Pension) Rules, 1972 directing the petitioner for compulsory retirement, which is contrary to the provisions of law.

In order to substantiate his contention, Mr. D.R. Pattnayak, learned counsel for the petitioner, has relied upon Swaran Singh Chand Vs. Punjab State Electricity Board and Others, .

4. Mr. A.K. Bose, learned Assistant Solicitor General appearing for the opposite parties, referring to counter affidavit specifically disputed the contentions raised by the learned counsel for the petitioner and stated that the order of premature retirement passed on 23.05.2008 by giving the petitioner three months' pay and allowance instead of three months notice in accordance with Rule FR-56(J) and Rule 48(1)(b) of CCS Pension Rules 1972 was sent along with banker's cheque bearing No. MCAB/688-475286 dated 23.05.2008 for Rs. 28,287/-. But the petitioner refused to accept the same. He having refused to accept the same, the same was sent through Registered Post dated 24.05.2008, which was also returned back by the postal authority with remarks that addressee customer was absent on 28.05.2008, 29.05.2008, 30.05.2008, 31.05.2008 and 02.06.2008. The said banker's cheque was again sent to his permanent address through Registered Post dated 20.06.2008 in which acknowledgement copy is still awaited. It is stated that in terms of Rules-48(1)(b) of C.C.S.(Pension) Rules, 1972, a review committee under the Chairmanship of D.I.G., CISF Unit, RSP, Rourkela was constituted for determining his suitability or otherwise for continued retention of the petitioner in Govt. service after completion of 30 years of qualifying service. Taking into account his whole service records and last five years annual confidential report, the review committee held him not fit for future service and accordingly the impugned order was passed which is well within the provisions of law and this Court may not interfere with the same.

5. On the basis of the facts pleaded and on perusing the records the undisputed fact is that the petitioner was appointed as Constable thereafter he was promoted to the post of Head Constable. While he was continuing in service, the impugned order under Annexure-1 was communicated to him compulsorily retiring him from his service under Rule 48 (1)(b) of C.C.S.(Pension) Rules, 1972. Central Industrial Security Force is constituted as per Section 3 of the 1968 Act. Section 2(9)(b) defines "Force" and the petitioner is a member of the "Force". The impugned order was passed under Rule 48(1)(b) of the CCS (Pension) Rules, 1972 which reads as follows:

"48. Retirement on completion of 30 years" qualifying service;

(1) At any time after a Government servant has completed thirty year"s qualifying service-

(a) he may retire from service, or

(b) he may be required by the Appointing Authority to retire in the public interest and in the case of such retirement the Government servant shall be entitled to a retiring pension, provided that

(a) a Government servant shall give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire; and

(b) the Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months" pay and allowances in lieu of such notice;

Provided further that where the Government servant giving notice under Clause (a) of the proceeding proviso is under suspension, it shall be open to the Appointing Authority to withheld permission to such Government servant to retire under this rule;

Provided further that the provisions of Clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

(i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments.

(iii) On a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year".

6. Section 8 of the 1968 Act states that subject to the provisions of Article 311 of the Constitution of India and such Rules as Central Government may make under the Act any supervisory officer may

"(i) dismiss, (removal) (order for compulsory retirement of) or reduce in rank, any (enrolled member) of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award anyone or more of the following punishments to any (enrolled member) of the Force who discharge his duty in a careless or negligent manner, or by any act of his own renders himself unfit for the discharge thereof, namely;

(a) fine to any amount not exceeding seven days" pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty

(c) removal from any office of distinction or deprivation of any special emolument.

- (d) Withholding of increment of pay with or without cumulative effect;
- (e) Withholding of promotion;
- (f) Censure".

7. In view of the aforementioned provisions, against the order of dismissal, removal, compulsory retirement and any other punishment under Rule-8 of the said Act, appeal and revision lies under Rule-9 of the above Act. Appeal under the above provision shall be filed within 30 days from the date of order. The order impugned having not been passed under Rule-8, neither any appeal nor any revision shall lie against the impugned order of compulsory retirement. As per the provisions contained in Section 34 of the 1968 Act, a rule has been framed called the Central Industrial Security Force Rules, 2001 (hereinafter referred to 2001 Rules). Under the 2001 rules the following penalties may for good and sufficient reasons and herein as provided, be imposed on an enrolled member of the "Force", namely major penalties:

"(i) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

(ii) removal from service which shall not be a disqualification for future employment under the Government.

(iii) compulsory retirement".

8. It appears that compulsory retirement is prescribed as one of the major penalties which can be awarded to an enrolled member by way of a punishment in a disciplinary proceeding. In State of Gujarat Vs. Umedbhai M. Patel, , the apex Court in paragraph-11 has summarized the law relating to compulsory retirement as follows:

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized 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) Compulsory retirement shall not be imposed as a punitive measure."

9. Considering the same, it appears that even after completion of 30 years of service from the date of initial entry by 15.08.2002 the petitioner was promoted to the post of Head Constable on 19.05.2005 and on a review being made he is being compulsory retired taking into account his past service which has entitled him to continue beyond 30 years of qualifying services. It is urged that as per the service record the petitioner had been imposed three major and minor penalties for committing various misconduct and offences. In spite of such punishment he had got promotion to the post of Head Constable on 19.05.2005, but his colleagues who were appointed in the year 1974 are holding the rank of S.I. which establishes that promotion in respect of the petitioner is delayed due to the imposition of above punishment. But the fact remains that in spite of such punishment he was considered for promotion as Head Constable. Consequentially he is continuing in the said post w.e.f. 19.05.2005. Therefore, on the date of consideration of review that is 23.05.2008 the petitioner had already got promotion and more so he completed 30 years service long since i.e. w.e.f. 15.08.2002. The petitioner having been promoted to the post of Head Constable after completion of 30 years of qualifying service, nothing remained to be considered to direct compulsory retirement of the petitioner in exercise of power conferred under Section 48(1)(b) of C.C.S. (Pension) Rules, 1972. As it appears from the counter affidavit, the petitioner has been given compulsory retirement on the ground that he is unfit to continue beyond 30 years of service if he is unfit to retain in service and consequentially has been given compulsory retirement, the order impugned is a stigmatic one. If the order impugned is a stigmatic one then the authority has to follow due procedure of law while granting the compulsory retirement. The petitioner has already preferred W.P. No. 1265-W/2005 and W.P. No. 12262-W/2005, which are pending in the High Court of Calcutta against two major punishments.

10. In Swaran Singh Chand (supra) the apex Court held that the order of compulsory retirement was passed on the allegation that not only the petitioner lacked integrity but also unfit to be retained in service, therefore, the order is stigmatic one. Therefore the order suffers from malice in law and accordingly the same is liable to be set aside.

11. The petitioner was allowed to continue in service and was also given promotion to the post of Head Constable after completion of 30 years. The reason assigned that the petitioner is unfit beyond 30 years of service is the outcome of non-application of mind and also stigmatic one in view of the ratio decided by the apex Court referred to supra and the same has been passed without following due procedure of law as he has been given promotion after completion of 30 years of service. Therefore, the same is accordingly quashed and the matter is remitted back to the authority to reconsider the same in

accordance with law within four months from the date of communication of this order.

12. With the above observation and direction, the writ petition is disposed of.