

(1995) 12 DEL CK 0011
In the Delhi High Court
Case No : C. W. No. 722 of 1991

Sh. K.L. Mehta

APPELLANT

Vs

National Seeds Corporation Ltd.

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Citation : (1996) 1 AD 177

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Judgement

Usha Mehra, J.—Mr. K. L. Mehta who was working as Seeds Officer with National Seeds Corporation Limited (in short the Corporation) was prematurely retired on 13th December, 1989. His appeal was also rejected vide order dated 17th May, 1990. The grievance of the petitioner are two fold namely; (i) he had clean and unblemished record of services. He was promoted as Deputy Seeds Officer in 1983 and Seeds Officer by Selection in 1985. He completed the probation period successfully after two years. (ii) He was placed under suspension on 26th August, 1989, by the order of Regional Manager. This he challenged. The respondent when found going difficult invoked the provisions of Rule 56 (j) (i) of Fundamental Rules which respondent could not do during the pendency of suspension. No enquiry was held nor charges were leveled. Moreover, without communicating any adverse entry or remarks regarding his integrity at any point of time, respondent could not prematurely retire the petitioner.

2. The impugned order date 13th December, 1989 runs as under :-

"NATIONAL SEEDS CORPORATION LIMITED (A GOVERNMENT OF INDIA UNDERTAKING) BEEJ BHAWAN, PUSH COMPLEX, NEW DELHI

Dated 13-12-1989

No. 23/83-Per/NSC

OFFICE ORDER NO. 207

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 clauses 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 K. L. Mehta, Seed Officer, Sriganganagar under Jaipur Region with immediate effect, he having already attained the age of 50 years on 12-10-1987. The Chairman-cum-Managing Director also directs that Sh. K. L. Mehta 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".

3. It is the case of the petitioner that he was appointed as Agriculture Inspector with the respondents on 8th February, 1986. He rose to the rank of Seeds Officer, a Class-I Officer, w. e. f. 31st July, 1985. It was a selection post. He was to be on two years probation which he successfully completed. He was, however, placed under suspension by the Regional Manager vide order dated 26th August, 1989 without indicating any charge. The said order, however, contemplated disciplinary proceedings against him. He challenged the said order being passed by the Regional Manager who had no authority to suspend him. On his representation instead of withdrawing the illegal order the Chairman-cum-Managing Director issued another order suspending him vide his order dated 8th September, 1989. While the petitioner was still under suspension that the impugned order thereby prematurely retiring him by applying the provision of Rule 56 (j) (i) was passed. He made representations on 4th January, 1990 and 19th February, 1990. Those were rejected. Further Rule 56 (j) (i) could not be attracted to the employees of the Corporation.

4. Refuting these allegations respondent Corporation through its Company Secretary Sh. R. P. Raveri contended that the order of premature retirement was made in public interest by the competent authority after the Review Committee submitted its recommendation. The Review Committee was of the opinion that the had shown slackness in the performance of his official duties resulting in financial loss to the Corporation. He had constantly shown himself to be of no use to the Corporation. His service record and ACRs. were indifferent. He was of doubtful integrity and no enquiry, was essential on these grounds for retirement. Before taking action condition prescribed under FR-56(j) were satisfied. Review Committee acted perfectly in legal manner. The conduct of the petitioner had been prejudicial to the interest of the Corporation. That suspension of the petitioner did not debar the Corporation from taking impugned action in accordance with the terms of his condition of service nor the suspension could come in the way of passing of the impugned order. The Controlling Ministry of the Corporation i.e., Ministry of Agricultural has already clarified that an employee under suspension is not immune from the normal contingencies of employment such as premature retirement under FR-56(j). That the record of the service of

the petitioner is neither clear nor unblemished as alleged by him.

5. The service record including the character role entries of the petitioner were placed before this Court at the time of hearing of this writ petitioner. The minutes of the Review Committee Meeting were also produced before the Court. Those were also shown to the counsel for the petitioner. A perusal of the same shows that the Review Committee while considering the case of the petitioner under Rule 56(j) had taken note of his recorded entries in the character role as well as the censure-cum-penalties imposed upon him between 1987 to 1989. His ability was considered to be below average except for two years i.e., 1985 and 1987, when he secured "average" remarks. From 1989 onwards he was censured vide two separate orders passed for recovering the amount corresponding to the loss caused by him to the Corporation. Earlier in January, 1987 he was censured and his appeal was also rejected by the Board of Directors.

6. The Review Committee considered his ability as recorded in the CRs. i.e., below average and took note of the fact that there had been failures on his part to discharge his responsibility properly. In 1989 he was involved in a case of failure to account for quantity of Bajra Seeds taken out of stores for clearing resulting in shortage of 2302 Kgs. In another case of June, 1990 he was held responsible for negligence resulting in supply of weevil infested seeds. Recovery of part of the financial loss was made from his salary. These facts he concealed from this Court when he alleged that he had a unblemished record of service. Inspire of repeated warnings and censures when he did not improve in performance after 1987 the impugned action was taken. These facts were taken note of by the Review Committee as is apparent from the record of the Review Committee produced by the counsel for the respondent in Court. It cannot be said that there was no material before the Review Committee to reach the conclusion which ultimately lead to the passing of the impugned order. Petitioner having been granted "below average" officer and there being censure-cum-penalties imposed upon him due to his negligence and failure in discharge of his responsibility thereby causing financial losses to the Corporation, it cannot be said the action of the Corporation is mala fide. If in this background, the Review Committee came to the conclusion that it was in the public interest not to retain the petitioner in service. There is no illegality in such an order. Petitioner's assertion that his record was unblemished and clean is belied from these facts. Even the appeals filed by the petitioner against the orders were rejected by the Board. The impugned action by no stretch of imagination can be called arbitrary or based on extraneous consideration.

7. Admittedly respondent is a Public Sector Undertaking. It has come on record that it adopted the CCS Rules and also Government of India, Ministry of Home Affairs (Deptt. of Personnel and Admn. Reforms) Memo No. 25013/14/77 Estt. (A) dated the 5th January, 1978. This formed part of the Resolution of the Board of Directors. Board of Directors of the respondent-Corporation in its meeting dated 28th April, 1965 approved the application of all Government of India Rules

and Regulations to the staff of the Corporation. In this view of the matter FR-56(j) became a condition of service for the employees of the Corporation including the petitioner. Even otherwise the matter came up before the Punjab and Haryana High Court whereby an employee of the Corporation challenged the application of FR-56(j) to the employees of the Corporation and alleged the same to be violative of Articles 14 and 21 of the Constitution of India. While dismissing the writ petition the Court upheld the validity of FR-56(j) and its applicability to the employees of the Corporation. It was also observed that right conferred on the appropriate authority under Rule 56(j) is absolute one. Supreme Court in the case of *C. D. Ailawadi v. Union of India* reported in 1990 2 CLR 253 opined that an aggrieved civil servant can challenge an order of compulsory retirement on any of the three grounds namely; (i) requisite opinion has not been formed, (ii) decision based on collateral consideration and (iii) it is an arbitrary decision. It is only when the civil servant is able to establish that the order of compulsory retirement suffers from any of the above infirmity the Court has jurisdiction to quash the same. It was further observed that retirement under Rule 56(j) is not a punishment as it does not take away any of the past benefits. Chopping off the dead wood is one of the important considerations for invoking Rule 56(j) of the Fundamental Rules. Supreme Court in the case of *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, has gone to the extent of observing that it is not necessary to communicate every remarks. It says that :-

"What is normally required to be communicated is adverse remarks - not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F. R. 56(j) or a rule corresponding to it".

8. Supreme Court in the case of *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, observed that principle of natural justice has no place in the context of an order of compulsory retirement, though judicial scrutiny is not excluded altogether. It is only after the petitioner makes out a ground of mala fide or that opinion was not formed by a competent authority or that decision was taken on extraneous consideration that Courts will examine the matter. But otherwise the Courts are not sitting as an appellate Court over the decision of the competent authority who formed the opinion to compulsorily retire the Government employee. To the same effect are the observations of the Supreme Court in the case of *Posts and Telegraphs Board & Ors. v. C. S. N. Murthy* 1992 1 CLR 815 . In this case Supreme Court went to the extent of saying that in a case of compulsory retirement speaking order is not required. To the same effect are the observations of Supreme Court in the case of *Union of India (UOI) and Others Vs. Dulal Dutt*, . In the absence of any mala fide or arbitrariness order of compulsory retirement has to be followed.

9. No case of mala fide or extraneous consideration has been made out by the

petitioner. It is not disputed that the opinion was formed by the Review Committee and action was taken by the Competent Authority. As already pointed out above principle of natural justice has no role to play in case of compulsory retirement. Hence, no notice was required to be given to the petitioner with regard to recording of his ability "below average" and the reasons for the same. Nor it can be said that action is based on any extraneous consideration. Allegations by the petitioner against Senior Officer has not been the basis for the Review Committee to opine that petitioner be compulsorily retired. After his appeals were rejected against the penalty of censure and recovery of money these decisions became final. If these factors were taken note of by the Review Committee it cannot be called mala fide nor extraneous. To my mind, petitioner has not been able to make out any case of interference.

10. Before parting I must mention that petitioner had also taken the plea that while he was under suspension, impugned order could not be passed. I am afraid this argument has no merits. Premature retirement under Rule 56(j) is neither a punishment nor a stigma so held by catena of judgments of Apex Court. Suspension by itself is no ground nor would immune the petitioner from the normal contingencies of employment such as premature retirement under FR 56(j). If what the petitioner contended is accepted it would lead to totally an inequitable and unfair situation. The right of the management to retire prematurely cannot be foreclosed simply because the Management once thought of starting disciplinary proceedings against him and, Therefore, place him under suspension. If that be so then person with doubtful integrity would remain scot free because he happens to be under suspension.

11. In the case of Baikuntha Nath Das & Anr. (supra) Supreme Court opined that "the Review Committee or the Government would not naturally be swayed by one of two remarks, favorable or adverse. Most often the authority which made the adverse remarks and the authority competent to retire him compulsorily are not the same. There is no reason to presume that the authority competent to retire him will not act bona fide or will not consider the entire record dispassionately. As the decided cases show, very often a Review Committee consisting of more than one responsible officer is constituted to examine the case and make their recommendation to the Government. The Committee would form an opinion on totality of consideration of the entire record including representations, if any, made by the Government servant against the above remarks".

12. For the reasons stated above I find no merit in the petition.