

(2011) 11 GUJ CK 0016
In the Gujarat High Court

Case No : Letters Patent Appeal No. 28 of 2011 in Special Civil Application No. 13094 of 2010

Shivmuni Ram

APPELLANT

Vs

Central Industrial Security Force and 2

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Central Services (Pension) Rules, 1972 — Rule 48
Fundamental Rules — Rule 56, 56J

Citation : (2011) 11 GUJ CK 0016

Hon'ble Judges : V.M. Sahai, J;K. S. Jhaveri, J

Bench : Division Bench

Advocate : Sonal D. Vyas, for the Appellant; Shakeel Qureshi, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. By way of this Appeal, the appellant-original petitioner has challenged the judgment dated 5.10.2010 passed by the learned Single Judge in Special Civil Application No. 13094 of 2010 whereby the learned Single Judge has upheld the order of compulsory retirement of the petitioner passed vide order dated 4.10.2010.

2. The petitioner, a member of CISF, is before this Court challenging order dated 01.10.2010, whereby he is compulsorily retired from service. The petitioner has prayed that order dated 01.10.2010 be quashed and set aside and he be ordered to be reinstated on the post of Head Constable with consequential benefits.

3. Learned Advocate for the petitioner vehemently submitted that the petitioner had been representing to the authorities from time to time against his Confidential Reports. One such representation is placed at Annexure-C, page No.31. It is dated 25.04.2007.

4. In that representation, it is mentioned that the petitioner was in receipt of one communication bearing No.PSL No.24400. On inquiry, it is told that the said communication is of the year 2002. About the said communication, it is mentioned by the petitioner himself in the said representation that by the said communication, his promotional avenues got foreclosed for all time to come. That being so, it was necessary for the petitioner to challenge the said communication in the year 2002.

5. While considering the case of the petitioner, the learned Single Judge has observed that on completion of 30 years of service on 31.7.2004 and considering Rule 56-J of Fundamental Rules of Rule 48 of the Central Services (Pension) Rules, 1972, the powers are exercised by the Chief Commandant and has compulsorily retired the appellant-petitioner after completion of 30 years of service in public interest which has been reviewed by the Review Committee. The learned Single Judge has observed in para-5 of his order as under:

5. In the present case, the learned Advocate for the petitioner made a vague submission that, from the year 1987 to 2001, the service record of the petitioner was very good. Then it is stated that his service record from 2004 to 2008 was also very good. This is neither hear nor there. At the relevant time, the petitioner ought to have challenged the Confidential Reports. Having failed in that, the petition challenging order dated 01.10.2010, which is an order passed by exercising power conferred by Clause-(J) of Rule-56 of Fundamental Rules of Rule-48 of the Central Services (Pension) Rules, 1972, cannot be entertained. The order is of compulsorily retirement and it is passed on completion of 30 years" of service, which is required for getting pension.

6. In view of the fact that the petitioner has completed 30 years of service and Review Committee has given its opinion exercising powers under Rule 56(J) of the Fundamental Rules of Rule 48 of the Central Services (Pension) Rules, 1972. Fundamental Rule 56(J) reads as under:

(j) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months" pay and allowances in lieu of such notice.

(i) If he is, in Group "A" or Group "B" service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years after he has attained the age of 50 years;

(ii) In any other case after he has attained the age of fifty-five years.

Provided that nothing in this clause shall apply to a Government servant referred to clause (e), who entered Government servant on or before the 23rd July, 1966).

In our view, the view taken by the learned Single Judge is just and proper.

7. Learned counsel for the appellant has relied upon the judgment of the Apex Court in Indu Bhushan Dwivedi vs. State of Jharkhand and Anr. 2010 (4) SLR 422, more particularly paragraphs 24 to 28 of the said decision. In our view, the same will not apply to the facts of the present case as it is a case of uncommunicated remarks and it is not a case of compulsory retirement. Therefore, the said decision will not apply to the facts of the present case.

8. In our view, the view taken by the learned Single Judge is just and proper and no interference is called. The Appeal is devoid of any merits and it is accordingly dismissed.