
(2021) 06 CAT CK 0030
In the Central Administrative Tribunal
Case No : Original Application No. 882 Of 2020

Sushil Kumar Jain

APPELLANT

Vs

South Delhi Municipal Corporation & Others

RESPONDENT

Date of Decision : 14-06-2021

Acts Referred:

Citation : (2021) 06 CAT CK 0030

Hon'ble Judges : L. Narasimha Reddy, J; Tarun Shridhar, Member (A)

Bench : Division Bench

Advocate : Aditya Ajay, R.K. Jain

Final Decision : Dismissed

Judgement

L. NarasimhaReddy, J

1. The applicant joined the service of the South Delhi Municipal Corporation of Delhi in the year 1989 as Junior Engineer (Civil). He was promoted to

the post of Assistant Engineer on 25.07.2012. Much before he attained the age of superannuation, he was retired from service vide order dated

13.09.2019 by the South Delhi Municipal Corporation by invoking FR 56 (j). Being aggrieved by the order of premature retirement, he submitted a

representation dated 04.10.2019, it was rejected on 30.12.2019. This OA is filed challenging the order of premature retirement as well as the rejection

of the representation made by him.

2. The applicant contends that there are no allegations of corruption, or lack of integrity against him and though disciplinary proceedings were initiated

against him on certain occasions, no such steps were taken after he was promoted to the post of Assistant Engineer. He submits that there was no

justification for the respondents in retiring him before he attained the age of

superannuation. He placed reliance upon certain precedents including the judgement dated 22.10.2020 rendered by this Tribunal in OA.153/2020 (Ranveer Singh Vs. South Delhi Municipal Corporation of Delhi).

3. The respondents filed a detailed reply. It is stated that a High Power Committee was constituted for examining the cases of Group "B and C

officers to ensure that employees lacking efficiency and transparency are weeded out. They have furnished the particulars of the disciplinary

proceedings initiated against the applicant from time to time and the punishments imposed upon him.

4. The respondents further contend that the Committee examined the entire service record of the applicant and felt that it is not at all in the interest of

the Corporation to continue the applicant in the service and accordingly the impugned order was passed. They placed reliance upon the judgement of

the Hon'ble Supreme Court in Baikuntha Nath Das & another vs. Chief Distt. Medical Officer, Baripada & another, 1992 AIR 1020 and

certain other judgements.

5. We heard Sh. Aditya Ajay, learned counsel for the applicant and Sh. R. K. Jain, learned counsel for the respondents in detail.

6. The applicant was working as Assistant Engineer in the South Delhi Municipal Corporation. In the normal course, he was to retire from service on

attaining the age of 60 years. However, he was retired at a time when he was 53 years old. The respondents invoked the power under FR 56 (j).

7. The competence of the respondents to invoke 56 (j) is not in doubt, nor is disputed. The main contention is that the justification for invoking it against

the applicant. The law is fairly well settled in this behalf. An order of premature retirement passed under FR 56 (j) cannot be treated as a punishment,

since the employee is ensured of all the retirement benefits. The detriment if at all he suffers is the one, of leaving the service a few years or months in

advance.

8. One of the leading cases rendered by the Hon'ble Supreme Court on the subject is that of Baikuntha Nath Das & another vs. Chief Distt.

Medical Officer, Baripada & another, 1992 AIR 1020. Their Lordships summed up the parameters of adjudication of matters of this nature,

as under :

32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant

compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny

is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are

satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no

reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a

decision in the matter - of course attaching more importance to record of and performance during the later years. 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.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated

adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interfere. Interference is permissible

only on the grounds mentioned in (iii) above.â??

9. Over the years, this judgement was cited with approval in several judgements. One aspect which was emphasized in the case of State of Gujarat

Vs. Umedbhai M. Patel (2001) 3 SCC 314 is that, in case an employee is promoted and no disciplinary proceedings were initiated thereafter, the

order of premature retirement in respect of the employee tends to become untenable. However, in subsequent judgements reported in Pyare Mohan

Lal Vs. State of Jharkhand (2010) 10 SCC 693 and Punjab State Power

Corporation Vs. Hari Kishan Verma (2015) 13 SCC 15 6a different

view was taken. It was held that the entire service of the employee needs to be taken into account and it cannot be compartmentalized.

10. It is true that in Ranveer Singh's case this Tribunal, interfered with the order of premature retirement after taking note of the fact that though

an order of penalty was passed on 19.06.2007, against the applicant therein, no punishment was imposed, after he was promoted to the next higher

post in the year 2012. The order of premature retirement passed on 13.09.2019 was held to be not justified.

11. The attention of the Tribunal was not drawn to the judgements of the Hon'ble Supreme Court in Pyare Mohan Lal Vs. State of Jharkhand

(2010) 10 SCC 693 and Punjab State Power Corporation Vs. Hari Kishan Verma (2015) 13 SCC 15.6 It is brought to our notice that the

judgements rendered by this Tribunal in Ranveer Singh's case was stayed by the Hon'ble High Court in a Writ Petition.

12. In the instant case, the applicant was imposed as many as seven punishments between 2006 and 2010. The particulars thereof are as under :

(a) RDA No.1/82/2005

Stoppage of two increments for two years without future effect vide O.O.No.1/82/2005/Vig./P/RSY/2005 dt.05.01.2006.

(b) RDA No.1/231/2003

Reduction in the pay in the present time scale of pay by two stages for a period of two years with cumulative effect vide

O.O.No.1/231/2003/Vig./P/AM/2006/343 dt.23.02.2006

(c) RDA No.1/165/2006

Reduction of time scale by one stage for one year with cumulative effect vide O.O.No.1/165/2006/ Vig./P/2006/712 dt.13.01.2006.

(d) RDA No.1/71/2003

Reduction of pay by two stages for a period of two years with cumulative effect vide O.O.No.1/171/2003/ Vig./P/AM/2006/1090 dt.

20.06.2005.

(e) RDA No.1/387/2006

Reduction in the present time scale of pay by one stage for a period of one year without future effect vide

O.O.No.1/387/2006/Vig./P/GKG/2007dt. 14.03.2007.

(f) RDA No.1/441/2006

Reduction in the pay in the present time scale of pay by one stage for a period of one year with cumulative effect vide

O.O.No.1/441/2006/Vig./P/NK/2007/3201 dt. 28.09.2007.

(g) RDA No.1/67/2005

Reduction in the pay in the present time scale of pay by two stages for a period of two years with cumulative effect vide

O.O.No.1/67/2005/Vig./P/GKG/2010/309 dt.23.06.2010.

13. The factors to be taken into account for promotion, are of limited scope, namely, the ACRs for the preceding five years. However, the entire

service of the employees is to be examined, in the context of invoking the power under FR 56 (j).

14. We are of the view that the record of the applicant discloses initiation of disciplinary proceedings and imposition of punishments. It is not at all

advisable to continue such an employee in service. Once he is ensued of full pensionary benefits, he cannot be said to have suffered any serious detriment.

15. We do not find any merit in this OA and the same is dismissed accordingly. There shall be no order as to costs.