

(2021) 04 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 1761 Of 2020

Vinod Kumar Gupta

APPELLANT

Vs

Commissioner North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 19-04-2021

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48

Citation : (2021) 04 CAT CK 0028

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

Bench : Division Bench

Advocate : Rajeev Sharma, R. V. Sinha, Amit Sinha

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant herein was appointed as Junior Engineer in the Municipal Corporation of Delhi in the year 1988. He was also promoted to the post of Assistant Engineer in the year 2008. On trifurcation of the Municipal Corporation, he was allotted to the North Delhi Municipal Corporation (NDMC) in the year 2012. He was also granted the MACP on 18.12.2018. Through an order dated 31.10.2019, the NDMC retired the applicant on compulsory basis by invoking FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972. The review filed against that order was rejected on 17.02.2020. This OA is filed challenging the order of compulsory retirement and the order passed by the Reviewing Authority.

2. The applicant contends that the impugned order is illegal, arbitrary and wrong, and runs contrary to the settled principles of law. He further contends that his ACRs were above benchmark and the impugned order was passed just on the face of suspicion and dislike. It is also stated that no punishment was awarded to him after he was promoted, and there was no basis for invoking the drastic provisions of FR 56 (j) against him.

3. The respondents filed a detailed counter affidavit. It is stated that as many as

13 disciplinary proceedings were initiated against the applicant, and though he was exonerated in some of them, penalty was imposed on 4 occasions. They further contend that a high level Committee constituted to review the case of the employees who completed 50 years of age. The examined the record of the applicant and recommended invocation of FR 56 (j). They further contend that an officer who faced so many disciplinary proceedings would be a source of serious concern for the entire department.

4. We heard Shri Rajeev Sharma, learned counsel for the applicant and Shri R. V. Sinha with Shri Amit Sinha, learned counsel for the respondents.

5. The applicant was working as Assistant Engineer by the year 2019. He was promoted to that post in February, 2008. The NDMC retired him on compulsory basis by invoking FR 56 (j). The parameters for adjudication of the case of this nature are fairly well settled. Basically, an order of compulsory retirement is not one of punishment. Secondly, the Appointing Authority is entitled to take the entire service of the officer into account. A final decision is to be taken on overall consideration.

6. In *Baikuntha Nath Das & another v. Chief Distt. Medical Officer, Baripada & another*, 1992 AIR 1020, the Hon'ble Supreme Court summed up the principles. They read 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."

In some cases, the Hon?ble Supreme Court carved out certain exceptions. One of it is where the employee, though was subjected to disciplinary proceedings at certain stages, did not face any such proceedings after promotion. In other words, the promotion was treated as a breaking point, meaning thereby, that the impact of punishment/adverse circumstance stood wiped away with promotion. In the instant case, the particulars of the disciplinary proceedings against him are as under:-

Penalty

: 1/196/1989

Stoppage of one increment with future effect vide O.O. dated 06.06.1994

Penalty

: 1/427/992

Warned to be careful in future vide O.O. 12.01.1994

Penalty

: 1/25/2000

Stoppage of two stage down in the present pay scale for two years without cumulative effect vide O.O. 11.01.2002

Penalty

: 1/108/2000

Reduction in the pay by two stage for a period of two years with cumulative effect vide O.O. 14.07.2006

Penalty

: 1/123/2001

Exonerated vide O.O. 14.01.2009

Penalty

: 1/206/2002

Exonerated vide O.O. 07.11.2007

Penalty

: 2/142/2004

Stoppage of two increments without future effect vide O.O. 04.08.2015

Penalty

: 1/53/2008

Commissioner MCD vide OO dated 26.11.2010 warned to be careful in future vide OO No.1/53/ 2008/Vig./AD/Sp.Cell /2010/8228 dated 23.12.2010

Penalty

: 3/108/2009

Exonerated vide O.O. 04.02.2014

Penalty

: 1/192/2009

Exonerated vide O.O.

31.12.2012

Penalty

: 1/207/2009

Exonerated vide O.O. 20.03.2015

Penalty

: 1/141/2011

Exonerated vide O.O. 25.04.2013

Penalty

: 1/257/2011

Exonerated vide O.O. 13.01.2015"

7. It may be true that out of 13 proceedings, 7 ended in exoneration, in the remaining, 2 resulted in warning and 3 in imposition of punishments. After the applicant was promoted to the post of Assistant Engineer, he faced as many as 6 disciplinary proceedings. Though 5 of them ended in exoneration, in one of it, he was warned. The NDMC cannot afford to have an officer of such a record on its rolls. At a time, when the applicant was expected to render service to the NDMC, thereby to the public, his acts and omissions resulted in a substantial attention of the administration of the Corporation being paid to the initiation and pursuit of the disciplinary proceedings against him. The very purpose of incorporation proviso like 56 (j) is to ensure that the authorities are clothed with the power to dispense with the service of the officers who have turned out to be of not much utility or became a source of concern.

8. We do not find any merit in the OA. It is accordingly dismissed. There shall be

no order as to costs.