
(2004) 04 DEL CK 0011
In the Delhi High Court
Case No : CWP 586 of 1999

V.K. Issar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Citation : (2004) 112 DLT 150 : (2004) 74 DRJ 557 : (2004) 102 FLR 662 :
(2005) 1 SLJ 339

Hon'ble Judges : V.K. Jain, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Naveen Chawla, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—This writ petition challenges the order of compulsory retirement passed by the respondents. The case of the petitioner is that he has joined the Indian Army as a Short Service Commissioned Officer in 1968. In 1973 he was released from the Army and joined Central Industrial Security Force in the rank of Inspector. He was promoted in 1985 as Assistant Commandant with CISF. On the basis of his service profile, he was promoted to the rank of Deputy Commandant in the year 1992. In 1996-1997, adverse remarks were recorded in his ACR for the period from 16.7.1996 to 31.3.1997. Petitioner submitted his representation against the adverse remarks. Petitioner completed 50 years of age on 4.12.1997. However, on 29.4.1998, impugned order of compulsory retirement from service w.e.f. 1.5.1998 was passed without assigning any reason and without granting him any opportunity to under FR 56 (j) of the Rules.

2. Learned counsel appearing for the petitioner has contended that the only adverse entry in his career after the promotion in 1992 was for the period stated above i.e. 1996-1997. However, on the representation filed by the petitioner with the respondents, adverse remarks were expunged. On page 103 of the paper book is the order passed by Inspector General of respondents in the following terms:-

"With reference to his representation dated 30.7.97 Shri V.K.Issar, Dy.Commandant, CISF Unit BHEL Hardwar (UP) is hereby informed that his representation against the adverse remarks recorded in his ACR for the period from 16.7.96 to 31.3.97 and communicated vide DIG (NZ) letter No.E-15015/NZ/CONFD/PA/97/7826 dated 7.7.97 has been considered in depth. The officer assumed his charge as Dy.Comdt on 8.7.96 and that time the Commandant who was under order of transfer, relinquished his charge on 12.7.96 and next Commandant i.e. Shri Anand Prakash (Reporting Officer) assumed in the unit on 23.10.96. Therefore the period from 8.7.96 to 22.10.96 should have been treated as NIC because the Officer did not work under any Reporting Officer for a mandatory period of 90 days. The ACR for the period from 23.10.96 to 31.3.97 was to be written by the Reporting Officer while the Comdt. Initiated the ACR of the Officer for the period from 16.7.96 to 31.3.97 very carelessly which is totally wrong. Since I did not find records to substantiate the Adverse Remarks, Therefore, the remarks are expunged."

3. On the basis of aforesaid, it was contended by learned counsel for the petitioner that order of compulsory retirement of the petitioner by invoking Rule 56(j) of the Fundamental Rules is illegal, arbitrary and without the authority of law. On the other hand, learned counsel appearing for the respondents has contended that the petitioner was compulsory retired not only on the basis of adverse remarks for the period 1996-1997 but he was retired on the basis of his overall record. It was contended that the petitioner got adverse remarks in his ACRs on six occasions i.e. 1976, 1977, 1979, 1987, 1989-90 and 1992-1993. It was further contended that even though adverse remarks pertaining to the year 1996-1997 was expunged by the respondents, on consideration of the entire service records of the petitioner, the Review Committee constituted under Rule 56(j) concluded that the petitioner was not fit for further retention in service as he was an average officer.

4. To our mind, the approach of the respondents is totally contrary to the law laid down in *Badrinath Vs. Government of Tamil Nadu and Others*, . Relying upon the judgment of three Judges Bench in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, , the Supreme Court held that

"(1) It would not be reasonable and just to consider adverse entries of remote past and to ignore good entries of recent past. If entries for a period of more than 10 years" past are taken into account it would be an act of digging out past to get some material to make an order against the employee. (2) it was held that unless an adverse report is communicated and representation, if any, made by the employee is considered, it may not be acted upon to deny the promotion. The same consideration applies were the adverse entries are taken into account in retiring an employee prematurely from service."

5. In the instant case, we are concerned with the question as to whether the petitioner could have been compulsory retired on the consideration of his remote alleged adverse entries for the period 1976, 1977, 1979, 1987, 1989-90 and

1992-1993 in view of the fact that respondents themselves have promoted the petitioner as Deputy Commandant in the year 1992. If the respondents have promoted the petitioner in the year 1992 to the post of Deputy Commandant and the adverse entry in the subsequent period 1996-97 have been expunged by the respondents, the respondents cannot be permitted to compulsorily retire the petitioner on the basis of remote ACRs when nothing adverse has come to the notice of the authorities after 1992 till the order of compulsory retirement was made. Even in the counter-affidavit filed by the respondents, the stand of the respondent is not that the order of compulsory retirement was passed on account of petitioner's integrity being doubtful or his work and conduct was unsatisfactory. In paragraph 9 of the counter-affidavit, respondents have stated that petitioner was retired as he was an average officer. Rule 56(j) of the Fundamental Rules cannot be used to get rid of an officer who is average. It may be invoked to get the dead wood out. Nothing to that effect has been stated in the counter affidavit nor any material has been placed before us to justify the stand of the respondent.

6. Following the ratio of the judgment in *Badrinath Vs. Government of Tamil Nadu and Others* (supra), we quash the order of compulsory retirement dated 29th April, 1998 and direct the respondents to reinstate the petitioner in service with all consequential benefits. Writ petition stands allowed. Rule is made absolute.