

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 12th July, 2011
Judgment Delivered On: 12th August, 2011

+ W.P.(C) 307/2011

SUSHIL SHARMA Petitioner
Through: Mr.Keshav Kaushik, Advocate

versus

UOI & ORS. Respondents
Through: Ms.Barkha Babbar, Advocate
with Mr.Asit Tiwari, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The petitioner had been enrolled in the Central Industrial Security Force (hereinafter referred to as CISF) as an Assistant Sub-Inspector on 28.06.1982. He served CISF for a duration of 28 years and had earned 2 promotions during this period, firstly to the post of Sub-Inspector on 29.03.1990 and then ascending to the post of Inspector on 19.09.2003. On attaining the age of 50 years, petitioner's case was placed for assessment by an Internal Screening

Committee under Rule 56(j) of the Fundamental Rules. The said Committee declared petitioner 'Unfit' for retention in service, which view was accepted by the Review Committee of CISF resulting in an order being passed on 06.06.2010 by the Competent Authority prematurely retiring the petitioner.

2. The petitioner submitted a representation dated 21.06.2010 before the Representation Committee against the afore-mentioned order. After due deliberations, the Committee found no merit in the representation and rejected the same.

3. Needless to state the Internal Screening Committee as also the Review Committee and the Representation Committee considered the service record of the petitioner which contained the gradings earned by the petitioner as recorded in the ACRs and further information pertaining to the penalties, if any, inflicted upon the petitioner and the commendations earned.

4. Thus, we may note the ACR gradings earned by the petitioner. The same are as follows:-

<i>Period</i>	<i>Grading</i>
28.06.1982 - 17.04.1983	B.Trg
18.04. 1983 - 31.12.1983	Average
1984	Average
01.01. 1985 – 14.07. 1985	Average
15.07. 1985 – 31.12. 1985	Average
1986	Average
1987	Average

<i>Period</i>	<i>Grading</i>
01.01. 1988 - 13.06. 1988	Good
14.06. 1988 – 31.12. 1988	Good
1989	Good
1990	V.Good
1991	Good
01.01. 1992 – 19.12. 1992	V.Good
21.12. 1992 – 31.12. 1992	NIC
1993	Good
01.01. 1994 - 31.08. 1994	Good
01.09. 1994 – 31.12. 1994	NIC
01.01. 1995 – 19.07. 1995	Average
20.07. 1995 – 31.12. 1995	Average
01.01. 1996 – 28.02. 1996	NIC
01.03. 1996 – 31.12. 1996	Good
1997	Average
01.01. 1998 – 13.09. 1998	Good
14.09. 1998 – 03.12. 1998	NIC
1999	Average
01.01.2000 – 30.09.2000	V.Good
01.10.2000 - 31.12.2000	NIC
2001	V.Good
2002	V.Good

<i>Period</i>	<i>Grading</i>
01.01.2003 – 08.09. 2003	V.Good
09.09. 2003 – 31.12. 2003	V.Good
2004	Average
2005	V.Good
2006	Good
2007	Good
01.01. 2008 – 31.03. 2008	Good
01.04. 2008 – 31.12. 2008	Average
01.01. 2009 – 31.12. 2009	Average

5. The record shows that during his service spanning 28 years petitioner earned 1 major and 9 minor penalties.

6. Ignoring the penalties inflicted upon the petitioner prior to his promotion firstly as a Sub-Inspector and then as an Inspector, for the reason, law compels us to so do. As per law penalties inflicted which do not come in the way of a person earning promotion, whether on account of they being stale or trivial, have to be ignored while determining the suitability of an employee to be retained in service while considering the applicability of FR 56(j), we would highlight that after he was last promoted as an Inspector on 19.9.2003 petitioner was inflicted with only 1 minor penalty i.e. that of 'censure' for the misdemeanour of giving a false reason to obtain leave. Though not to be treated as penalties, on 4 occasions petitioner had been warned for being negligent in discharge of duties and in particular for

not submitting weekly diary. Twice he had been issued advisory for lethargic attitude.

7. Against this backdrop of facts, we are required to consider the petitioner's case that the respondents have acted arbitrarily and without any basis. The argument advanced was that no adverse remark ever being communicated to the petitioner an inference had to be drawn that nothing adverse was found with respect to the working of the petitioner and thus he could not be prematurely retired.

8. Before going into the nitty-gritty of the petitioner's arguments, it would be circumspect to go into the varied facets of the law in considering a case of premature retirement under Rule 56(j) of the Fundamental Rules. This branch of law deals primarily with the requirement of weeding out the '*dead wood*' from the system by testing the integrity, utility and efficacy of the concerned Government employee, on the anvil of public interest. This flows out of the language of FR 56(j) which says that on issues of integrity, utility and efficacy the requirement to continue with the employment or not have to be considered. The dictionary meaning of '*dead wood*' is '*one that is burdensome or superfluous*'. The public interest to be kept in mind is that it subserves the public if efficient persons discharge duties as public servants and if somebody is found to be a dead wood, he better be replaced by an efficient person. Law guarantees to a public servant a minimum pensionable service and beyond that he must

earn the right to serve by dint of hard work by proving his worth.

9. It was settled by a Constitution Bench of the Supreme Court, in the decision reported as 1955 (1) SCR 26 Shyam Lal vs. State of UP, that compulsory retirement or premature retirement is not a punishment and no stigma is attached as there is no element of charge or imputation. This is the reason why, even with respect to un-communicated adverse entries in the ACRs of a civil servant, it has been held that it is permissible to take them into account while considering the service record of a Government servant as per the decision reported as AIR 1992 (SC)1020 Baikuntha Nath Das And Anr vs Chief Distt. Medical Officer, Baripada & Anr. which decision also recognizes that although the entire service record has to be kept in view, but primacy has to be accorded to the service profile preceding up to last 5 years for the reason it may happen that a person may be Average in the beginning but with passage of time would become Very Good and vice-versa.

10. In the instant case, we note that the petitioner's graph of ACRs (Annual Confidential Reports) rose with a series of "Average" ratings earned at the commencement of his career from 1983-87, followed by ratings of "Good" and "Very Good" till 1994. During this promising period, he had earned his first promotion in 1990. The career graph took a series of dents in the years 1995, 1997 and 1999 because of the rating "Average". Thereafter, the ACRs improved to "Very Good" from 2000-2003 thus earning him his second promotion in 2003. Scrutinizing the last 5 years of the

petitioner's service, i.e 2004-2009, we find that the ratings earned are "Average" for 2004, 01.04.08-31.12.08 and 01.01.09-31.12.09, "Very Good" in 2005 and "Good" for 2006, 2007 and 01.01.08-31.03.08.

11. In the last 5 years, there is a steady decline in the ACRs of the petitioner ending with 2 "Average" ratings in the last two years. In other words, the position would be that in the year 2004-05 petitioner was 'Average' and became 'Very Good' the next year, the next 2 years he was 'Good' and then he became 'Average' for the next 2 years. It also assumes importance to note that after his last promotion in the year 2003, the petitioner was inflicted 1 minor penalty of 'censure' and on 4 occasions was warned for being negligent in discharge of duties and not submitting weekly diary and twice had been issued advisory for lethargic attitude.

12. Is it possible to argue that it is a borderline case? If yes, on which side of the line would the petitioner fall.

13. We have for our guidance the decision of the Supreme Court reported as 1992 SCR (2) 338 P&T Board & Ors. vs. CSN Murthy, wherein for the last 5 years CSN Murthy had 3 'Goods' and 2 'Average' ACRs, with the 2 'Average' ACRs being in the last 2 years and the Supreme Court observed:-
"In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last 2 years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala-fide, perverse, arbitrary or unreasonable..... It is true that the earlier record of the respondent was good but if the

record showed that the standard of work of respondent had declined and was not satisfactory, that was certainly material enabling the department to come to a conclusion under FR 56(j)".

14. As we understand, the law would be that where a case is on the borderline, it is the decision of the employer which has to be accepted for the reason unless it could be shown that the employer has acted with unreasonableness of the kind which equals perversity, under judicial review it would not be permissible to quash a decision taken by the Executive i.e. the Administration. After all, unreasonableness as a ground to quash an administrative decision must be tested on the principle of '*Wednesbury*' unreasonableness.

15. We dismiss the writ petition but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

AUGUST 12, 2011

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