

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

W.P.(C).No.28583 of 2013 (W)

PETITIONER(S):-

V.GIRIJALMAJAN,
NO.834340033, HEAD CONSTABLE/GENERAL DUTY
CENTRAL INDUSTRIAL SECURITY FORCE UNIT,
V.O.CHIDAMBARANAR PORT TRUST, TUTICORIN-628004,
RESIDING AT PARAYADIYIL HOUSE, PANNIYALI,
OMALLOOR P.O., PATHANAMTHITTA-689647.

BY ADVS.SRI.S.VISHNU
SRI.K.B.SOUNDER RAJAN
SRI.M.J.AJITH MOHAN

RESPONDENT(S):-

1. THE DIRECTOR GENERAL,
CENTRAL INDUSTRIAL SECURITY FORCE UNIT,
CENTRAL GOVERNMENT OFFICES COMPLEX, LODHI ROAD,
NEW DELHI-110001.
2. THE DEPUTY INSPECTOR GENERAL,
SOUTHERN SECTOR, CENTRAL INDUSTRIAL SECURITY FORCE,
SOUTHERN SECTOR HEAD QUARTERS, CHENNAI-600 009.
3. THE COMMANDANT,
CENTRAL INDUSTRIAL SECURITY FORCE UNIT,
V.O.CHIDAMBARANAR PORT TRUST, TUTICORIN-628004.

Addl.4. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI - 110 001.

[ADDITIONAL 4TH RESPONDENT IS IMPEADED AS PER ORDER
DATED 28/08/2014 IN IA 11633/2014]

R1 TO R4 BY ASSISTANT SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:- -----

- EXHIBIT P1: TRUE COPY OF THE ACR FOR THE PERIOD 1-1-2012 TO 31-12-2012 OF THE PETITIONER.
- EXHIBIT P2: TRUE COPY OF THE MEDICAL EXAMINATION PROFORMA OF THE PETITIONER.
- EXHIBIT P3: TRUE COPY OF THE ORDER NO.E-21-13/CISF/VOCPT/DOC/2013/1178 DT.4-4-2013 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P4: TRUE COPY OF THE APPEAL DT.23-4-2013 TO THE 2ND RESPONDENT.
- EXHIBIT P5: TRUE COPY OF THE COMMUNICATION NO.E-28013/SZ/SR-GEN/ACCTS-1/2013-3123 DT.3-5-2013 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE APPEAL DT.11-05-2013 BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DT.1-7-2013 TO THE 1ST RESPONDENT.
- EXHIBIT P8: TRUE COPY OF THE JUDGMENT IN WP(C).17935/2013 DT.18-7-2013 OF THIS HON'BLE COURT.
- EXHIBIT P9: TRUE COPY OF THE ORDER NO.E-28014/10/2013/ESTT.I/13 DT.30-8-2013 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P10: TRUE COPY OF NOTICE ISSUED BY SBT OMALLUR BRANCH VIDE NO.AGM V(K) DATED 10.1.2014.
- EXHIBIT P11: TRUE COPY OF THE NOTICE DATED 10.2.2014 ISSUED BY THE KERALA STATE CO-OPERATIVE BANK TO THE PETITIONER'S WIFE.
- EXHIBIT P12: TRUE COPY OF THE NOTICE DATED 10.2.2014 ISSUED BY THE KERALA STATE CO-OPERATIVE BANK, THIRUVANANTHAPURAM.
- EXHIBIT P13: TRUE COPY OF THE NOTICE NO.AGM V (K) DATED 10.1.2014 ISSUED BY THE STATE BANK OF TRAVANCORE, OMALLOOR BRANCH.

RESPONDENT(S)' EXHIBITS/ANNEXURES:-

ANNEXURE R1(a) BOARD PROCEEDING OF SUPERANNUATION REVIEW OF
CISF UNIT, VOCPT, TUTICORIN IN RESPECT OF THE
PETITIONER ON 14.02.2013.

ANNEXURE R1(b) JUDGMENT IN WP(C).NO.20496 OF 2012 DATED 17.3.2015
IN K.RAJENDRAN PILLAI VS. COMMANDANT, CISF UNIT,
KUDANKULAM.

EXHIBIT R3(a) TRUE COPY OF THE LETTER DATED 15.02.2013.

EXHIBIT R3(b) TRUE COPY OF THE ANNUAL CONFIDENTIAL REPORT DETAILS
IN RESPECT OF THE PETITIONER.

EXHIBIT R3(c) TRUE COPY OF THE DETAILS OF PUNISHMENT AWARDED TO
THE PETITIONER.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.28583 of 2013-W

Dated this the 23rd day of November, 2015

JUDGMENT

The petitioner is aggrieved with the fact that after thirty years of service in the Central Industrial Security Force [for brevity "CISF"], the petitioner was unceremoniously sent out on compulsory retirement by Exhibit P3 order dated 04.04.2013, by which he was retired as on that date and refused duty from the next day.

2. The learned counsel for the petitioner conveys the angst of the petitioner, who was a member of a disciplined force in having been so sent out without a notice and without even an opportunity for the fellow members of the force, to felicitate him on his retirement. Though this Court perfectly understands the same, the question is one of compulsory retirement, which the authority has ordered under the Rules, and the issue would be as to whether the procedure had been followed.

3. The petitioner's further contention of his having two unmarried daughters, still undergoing their studies and having yet to satisfy a housing loan, cannot, in any manner, influence this

Court sitting in Article 226 of the Constitution, when considering the issue of compulsory retirement. The petitioner assails Exhibit P3 on the ground that there was absolutely no reason why the petitioner should have been compulsorily retired in public interest.

4. The official respondents have produced Exhibit R3 (a) communication of the Commandant at Chennai to the Senior Commandant, CISF Unit, VOCPT, Tuticorin, where the petitioner was stationed, at the time of his compulsory retirement. The said communication is dated 15.02.2013 and the petitioner was compulsorily retired on 04.04.2013. The petitioner's contention is that the petitioner ought to have been at least issued with an order granting three months notice, when he would have continued in the force for the notice period, before he was compulsorily retired. However, looking at the dates, it is to be noticed that the delay in communication has only benefited the petitioner insofar as he was able to draw the salary for the month of March, 2013 solely for the reason that no notice was issued. If the petitioner had been issued with notice, on the petitioner completing one month period the authority would have had the liability to pay only two months notice pay; since for compulsory retirement either three months notice or

in lieu of that payment of three months pay and allowances; is provided. The petitioner, admittedly, was paid the entire salary for the notice period.

5. With respect to the reasons for sending the petitioner out on compulsory retirement, the official respondents have produced Exhibit R3(b), his Confidential Reports over the years, which would show an “average” in many of the years. This has considerably swayed the authority in ordering compulsory retirement. The petitioner's contention is that he had not been served with any such adverse remarks, which could not be reckoned to adversely affect his service.

6. The said proposition cannot be accepted, since the Hon'ble Supreme Court in ***Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another*** [(1992) 2 SCC 299] has categorically held that uncommunicated adverse remarks can form the basis of a compulsory retirement and that alone cannot lead to interference in an order of compulsory retirement. The Supreme Court judgment is also an authority for the proposition that compulsory retirement does not cast any stigma nor any implication of misbehaviour or incapacity, but is

only on an assessment of the over all performance of the employee and his eligibility for continuous employment. Especially so in the present case, where the employment is in a disciplined force.

7. Exhibit R3(b) indicates that in the last seven years, the petitioner had an “average” evaluation in four years and “good” in the other three. The petitioner had been, over the years during his service in the force, imposed with 14 penalties, all of them minor penalties. The Board of Review also had considered the case of the petitioner. The minutes of the Board of Review is produced at Annexure R1(a), which, according to the petitioner, does not contain any discussion. Having evaluated the petitioner's performance on the basis of the punishments imposed, rewards and commendations as also his physical condition and the annual Confidential Reports, the Commandant of the Unit, in which the petitioner was working, had not recommended his continuance. In addition to the adverse remarks is the general conduct of the petitioner which led to imposition of penalties; for a total of 14 times. The Board definitely after looking into the said documents, affirmed the view of the Commandant which does not require any

further reasoning to be supplied. In the above circumstances, this Court does not find any reason to interfere with the order of compulsory retirement, which has been done in accordance with Fundamental Rules 56(j) applicable to the Central Government employees, including the employees of the respondent.

The writ petition would stand dismissed. The petitioner's pensionary benefits shall be computed and disbursed expeditiously, at any rate within a period of two months from the date of receipt of a certified copy of this judgment. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]