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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision : February 18, 2015

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W.P.(C) 1031/2014

NAROTTAM KUMAR JHA

..... Petitioner

Represented by: Mr.Virender Singh Kadian, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Ms.Barkha Babbar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (ORAL)

1. There is a multiplicity of causes of action merged in the writ petition. The petitioner is seeking quashing of the order compulsorily retiring him in exercise of the power of the respondent under FR 56(j). He is also claiming ACP benefits. He is also claiming updation of the leave record. He is also claiming disability pension.

2. Learned counsel for the petitioner states that the instant writ petition may be restricted to the order compulsorily retiring the petitioner and thus it may be observed that on other issues the writ petitioner would be at liberty to file fresh writ petitions.

3. Granting liberty to the petitioner as prayed for, we restrict consideration to the order by which the petitioner has been compulsorily retired from service.

4. Relevant record has been produced and would evince that the Appraisal Committee to consider continuation of service of the petitioner

has noted that the petitioner was appointed as a Constable in the CISF on June 11, 1973. In the year 2007 a major penalty of reduction of pay of one stage for a period of four years without cumulative effect was inflicted upon him on the charge of absence from duty and falsifying version regarding the same and giving an interview to the media. Thirteen penalties were levied which were minor in nature in the years 1999, 1991, 1993, 1996, 1998, 2003, 2004, 2008, 2009, 2010(3) and 2011.

5. ACR grading from the year 1973 till 1983 were not available. ACR grading from the year 1984 till the year 2011 were considered for the reason the Review Committee met on January 17, 2012. During this period of twenty eight years from 1984 to 2011 the petitioner had eleven average gradings, eight good gradings and two very good gradings. The gradings for the year 2006, 2008, 2009 and 2010 were average. For the part of the year 2007, the grading was average and for the remainder it was good. In the year 2011 it was good.

6. Keeping in view the penalties levied upon the petitioner and his appraisal and the ACP grading, we are satisfied that a *bona-fide* decision was taken to form the opinion that the petitioner was deadwood.

7. 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 & 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.

8. 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)'.

9. The writ petition is dismissed insofar it challenges the decision taken to compulsorily retire the petitioner in exercise of the power of the respondent under FR 56(j). The petitioner would be at liberty to file fresh writ petitions on other issues who have been raised in the writ petition.

10. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 18, 2015
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