

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1650 of 2012

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1. Angad Rai Son of Late Banke Rai Resident of Village Tiwari Tola, P.O. and Police Station Maner, District Patna

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi
2. Director General Central Industrial Security Force (Head Quarter), 13, C.G.O. Complex, Lodhi Road, New Delhi
3. The Inspector General C.I.S.F. (Ns) Head Quarters Saket, New Delhi
4. The Deputy Inspector General C.I.S.F. (N.S.) Hons Saket, New Delhi
5. The Commandant, C.I.S.F. 6th Res. Bn

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Sinha, Adv.

Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Awadesh Kumar Pandey, CGC

Mr. Ravindra Kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-10-2016

Heard Mr. Amaresh Kumar Sinha learned counsel for the petitioner and Mr. Ravindra Kumar Sharma, learned Central Government Counsel for the Union of India.

With the consent of the parties, the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 1.9.2010 passed by the Commandant, CISF 6th Reserve Battalion Deoli (Raj) whereby the petitioner has been made to superannuate on having attained the age of 55 years in exercise of powers vested in the appointing authority under Rule 56(j) of the Fundamental Rules. The order accompanies a payment of pay and allowance for a period of 3 months for the notice period as envisaged under 'the Rules'. The order of the Commandant is affirmed by the Assistant Inspector General in her



order passed on 29.7.2013. Copies of the order passed by the Commandant together with its affirmation are impugned at Annexures-2 and 1 respectively to the writ petition.

Facts of the case briefly stated is that the petitioner was appointed as a Security Guard (redesignated as Constable) with the Central Industrial Security Force (hereinafter referred to as the 'CISF') on 11.6.1973. The petitioner was granted promotion under the Assured Career Progression on completion of 12 years and 24 years of regular service. On completion of 30 years of satisfactory service, the case of the petitioner was considered under Rule 48 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Rules') and the petitioner was found fit for further service and communicated accordingly vide letter dated 16.4.2013. It is after allowing the petitioner to continue for more than 7 years thereafter that his case was reviewed under FR56(j) and when the order of his retirement was passed at Annexure-2 as affirmed vide Annexure-1. The petitioner feeling aggrieved is before this Court.

Mr. Sinha learned counsel has referred to the service details of the petitioner present at Annexure-12 of the counter affidavit to submit that whereas in between 2003-09 the petitioner has been rated 'good' on two occasions and 'very good' on one occasion, yet in absence of any material to demonstrate that his services was not required, he has been made to superannuate. According to Mr. Sinha,



although the jurisdiction to superannuate is vested with the respondents but once they have found the petitioner fit for further continuance in the year 2003 then whatsoever be the defect in the service period prior thereto gets washed away and it is the period thereafter which would be relevant for consideration for the continuation of the petitioner, in service. He submits that a plain consideration of the punishment details, since after the extension of the service of the petitioner in 2003 would show that he has been awarded fine in the year 2003, 2007 and 2009 and censure in the year 2014 but these are in the nature of minor punishment and not serious enough to terminate the service.

In sum and substance the argument of Mr. Sinha is that once the petitioner was allowed to continue beyond 30 years then unless there are materials to show that services of the petitioner was not required and that there were serious defect therein, his continuation could not have been ended abruptly.

Mr. Ravindra Kumar Sharma learned Central Government Counsel in reference to the counter affidavit has submitted that no doubt the petitioner was continued after completion of service of 30 years but then his continuation was subject to scrutiny of his service and which ultimately was not found to be in public interest resulting in the impugned orders. It is submitted that a right is vested in the respondents to review the continuation under Rule 56(j) and since the



service records of the petitioner was reexamined and the Review Committee did not think it proper in public interest to continue the petitioner beyond 56 years hence the impugned order.

I have heard learned counsel for the parties and I have perused the records.

Rule 48 of the 'the Rules' gives an option to the employee as well as an employer to retire on completion of 30 years of service. In so far as the present case is concerned, the service record of the petitioner having been reviewed, the employer decided in favour of the petitioner to continue even thereafter. The counter affidavit on record at paragraph 12 discusses the service details of the petitioner and although rightly argued by Mr. Sinha, the records prior to 2003 would have no bearing as to the continuation of the petitioner after completion of 30 years of service, the service record thereafter terms the petitioner 'average' on four occasions, 'good' on two occasions and 'very good on one occasion. Rule 56(j) of the Fundamental Rules vests absolute right on the Government for continuance of a Government servant beyond the age of 55 years in so far as Group-C and D is concerned. The only prerequisite to such exercise that it should be in public interest. Now whereas according to Mr. Sinha learned counsel for the petitioner, even this power can only be exercised if there would be reasons apparent for such exercise, the argument has been contested by learned counsel for the Union of



India on the exclusive right so vested in the Government. The counter affidavit at Annexure 12 reiterates that the case of the petitioner on completion of 55 years was reexamined by the Superannuation Review Committee under FR 56(j) and a decision was taken that the petitioner was unfit to continue beyond the age of 55 years. In my opinion whether it is Rule 48 of the 'the Rules' or Rule 56(j) of the Fundamental Rules, once a Government servant has completed 30 years of service the discretion entirely rests with the Government whether to continue the Government servant concerned thereafter or to superannuate him. Since in the present case, the Government has decided to invoke the provisions of F.R. 56(g) after allowing the petitioner to continue for 7 years even after completion of 30 years of service, in consideration of the service records which at their discretion is not in public interest, no error can be found in such decision which is taken in public interest. In fact any opinion by this court may possibly be a second opinion on the discretion so exercised but would not be sufficient to render the decision itself perverse requiring an interference.

For the reasons aforementioned, I am not persuaded to interfere with the orders impugned.

The writ petition is dismissed accordingly.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	
CAV DATE	
Uploading Date	9.11.16
Transmission Date	

