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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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DECIDED ON: 08.01.2016

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W.P. (C) 110/2016

S.P. SINGH

..... Appellant

Through: Ms. Shruti Munjal, Ms. Ankita Patnaik

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Shubhra Parashar, CGSC with Mr.
G.L. Bhatia, Govt. Pleader.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. The petitioner is aggrieved by the order directing his compulsory retirement. The respondent Central Industrial Security Force ("CISF") invoked its powers under Rule 56 (J) of the FRSR read with Rule 48 of the CCS (Pension) Rules, 1972 and determined that he was unfit for further retention in the service.

2. He joined the CISF as Constable on 1.5.1985 and was subsequently promoted as Assistant Sub-Inspector (Executive) on 4.10.1990. The petitioner whilst on a posting to the Rourkela Steel Plant was alleged to have committed misconduct which led to an enquiry. The enquiry resulted in the penalty of removal imposed on him on 24.08.1995. After exhausting his departmental remedies, he approached the Orissa High Court which by its

order dated 26.08.2003 rejected the writ petition. The petitioner's SLP was disposed off on 09.11.2005; his complaint that cross examination of certain witnesses were not permitted was dealt with and the Court directed that he should be permitted to cross examine the witnesses concerned. Consequently, he was allowed to cross examine the witnesses.

3. Based upon the ultimate findings, the disciplinary authority on 21.03.2007 imposed the penalty of stoppage of one increment for two years that would have the effect of postponing his future increments of pay. The petitioner appealed against this order and later approached the Patna High Court by filing W.P.(C)15806/2008. That High Court dismissed the petition on 24.04.2014. In the meanwhile, the petitioner's grievance against the penalty of upholding of increments was pending before the Patna High Court.

4. The respondents CISF issued the impugned order retiring him from the services on 22.10.2012. It is contended that the impugned order is arbitrary and motivated. Learned counsel contends that the respondents' action lacks *bona fide* because despite being unable to get rid of him in the departmental proceedings - which led to reduced penalty of withholding of increments - they somehow contrived with the aid of old records and issued the impugned order. It is highlighted that the petitioner was recipient of certain commendations, certificates as well as cash rewards and that even in 2006 he was considered for promotion to the post of Sub-Inspector. Learned counsel relied upon a decision of the Division Bench of this Court in *Balwinder Singh v. UOI & Ors.* (W.P.(C)12820/2009), decided on 23.03.2011).

5. The impugned order in the present case states that the petitioner had attained the age of 55 years and was eligible for pension as on 22.10.2012. The competent authority merely invoked its powers under Rule 56 (J) of the FRSR and directed his retirement. The petitioner appealed, contending that the impugned order was not based upon the correct appreciation of the facts. In the appeal, the petitioner more or less highlighted the contentions which are urged in the present case. The appellate authority, i.e., the Director General of the CISF referred the matter to the Representation Committee - apparently in accordance with the procedure. The appellate order communicated to the petitioner notes that he was awarded a major penalty and eight minor penalties during his entire service. These are *inter alia* detailed as follows: -

- (a) *“Demanding illegal gratification from Contractors and instructing his sub-ordinate staff to collect illegal gratification from the Contractors in the year 2007.*
- (b) *Absent from duty post and unit line in the year 1985 & 2009.*
- (c) *Trying to tamper with the official records in the year 1987.*
- (d) *Not complying the lawful orders of Superiors in the year 1991.*
- (e) *Refusal to accept official communication i.e. enquiry notice in the year 1995.*
- (f) *Overstaying on leave for 24 days in the year 2010.*
- (g) *Using unparliamentary language for fellow employees and seniors in the year 2011.*
- (h) *Leveling baseless allegation against the Unit Commander in the year 2011.”*

The appellate order further noted that during his entire career, the petitioner was graded as ‘average’ in his ACRs eight times and that he had earned five ‘average’ ACRs during the last six years besides one major and four minor penalties. The CISF was of the opinion that given these circumstances, it

was evident that he had not improved his performance. It was also surmised that his behavior was not becoming of a member of the Armed Forces of the Union. In these circumstances, pre-mature retirement order was upheld and the appeal rejected.

6. The decision in *Balwinder Singh (supra)* was premised upon certain pertinent facts. They are that the petitioner there had complained that pre-mature retirement order took into consideration stale materials with adverse entries which related to 11 years prior to the invocation of Rule 56 (J). Furthermore, the petitioner in that case had also been promoted during the intervening period after the adverse ACRs were recorded. This Court took note of the previous authorities especially *State of U.P. & Ors. v. Vijay Kumar Jain*, (2002) 3 SCC 641 and *Union of India v. P.S. Dhillon*, 1996 (3) SCC 672 to hold that contemporaneous material cannot be overlooked by the authorities while deciding whether to continue with the services of an official or order his pre-mature retirement. The Court also noticed pertinently the decision in *Baikunth Nath Das & Anr. v. Chief District Medical Officer, Baripada and Anr.*, 1992 AIR 1020 which stated that the Review Committee or the concerned Government would have to consider the entire record of service of course attaching more importance to record performance of later years.

7. In the present case, this Court notices that the petitioner has had an average or less than average overall record. He faced disciplinary proceedings and was initially removed from service, later of course the penalty was recorded to one of withholding of two increments. Apparently even after his reinstatement the petitioner's record was not inspiring - he was graded as 'average' in five out of six years that he was assessed.

Furthermore, even for the last five years of his service he was imposed with no less than four minor penalties. Having regard to the totality of these circumstances and given the fact that according to the settled law (refer *Baikuntha Nath Das*), an order of pre-mature retirement is not to be deemed as punitive, this Court sees no cause to interfere. The writ petition is, therefore, dismissed.

Order dasti.

JANUARY 08, 2016



**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**