

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1007 of 2014

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Sadashiv Mandal Son Of Late Ram Mandal Resident Of Village- Puraini, P.S.
Puraini, District- Madhepura

.... **Petitioner**

Versus

1. The Union Of India Through The Director General Central Industrial Security Force, Lodhi Road, New Delhi
2. The Inspector General, Central Industrial Security Force, Boring Road, New Patliputra Colony, Patna, Bihar
3. The D.I.G., Central Industrial Security Force, Unit C.C.L., Kargali, P.S. Dhor, District- Bokaro (Jharkhand)
4. Senior Commandant, Central Industrial Security Force, Unit C.C.L., Kargali, P.S. Dhor, District- Bokaro (Jharkhand)

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Ashok Kumar, Advocate and
Mr. Amresh Singh, Advocate

For the Union of India : Mr. Anjani Kr. Sharan, ASG and
Mr. Ravinder Kr. Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 29-06-2018

Heard learned counsel for the petitioner and learned
counsel for the Union of India.

2. The writ petition has been filed for quashing order
dated 7.11.2012 (Annexure 1), whereby the petitioner has been
made to retire compulsorily on completing 30 years of service.

3. Learned counsel for the petitioner has stated that the
option of compulsorily retiring an employee under
Rule 48(i) (B) of the CCS (Pension) Rules, 1972 can be done by
observing the mandate in Clause (3)(c) of Appendix 9 of the
Pensions Act, 1871, which is the new revised publication of
Appendix 5 (Instructions Regarding Premature Retirement of



Central Government Servants) specifically clause 3(c) thereof provides as follows:-

“(c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years, or where he has been promoted to a higher post during that 5 years’ period, his service in the highest post, has been found satisfactory.”

4. Referring to the said two provisions and other instructions/guidelines contained in CCS (Pension) Rules, submission is made on behalf of the petitioner that the authorities were obliged to take into consideration the entire service record of the petitioner as also the fact that his service in the last five years was satisfactory, before passing order to retire him prematurely on attaining 30 years of service in purported exercise of power under section 35 (j) of the CCS Pension Rules. The specific assertion of the petitioner in the writ petition was that his service career was not taken into consideration. He claimed that he has been prejudiced inasmuch as the power has not been exercised by the authorities in accordance with the requirement of the CCA (Pension) Rules.

5. In support of the submission, learned counsel for the petitioner relies upon a decision rendered in case of **Rajasthan State Road Transport Corporation and others Vs. Babu Lal Jangir** reported in (2013) 10 Supreme Court Cases 551. Referring



to paragraphs 24 and 25 of the said judgment it is submitted that the judgment of the Hon'ble Apex Court fortifies the submission of the petitioner to the extent that the CCA (Pension) Rules require consideration of the entire service record and special weightage to the last five years to see that the functioning of the employee is satisfactory in the last five years.

6. Learned counsel for the Union of India has referred to the counter affidavit and supplementary counter affidavit filed on behalf of the Union of India. Stand of the respondents in these two affidavits is that upon completion of 30 years of qualifying service, case of the petitioner was subject to the Review Committee for assessing his suitability or otherwise for further extension of service beyond the age of 50-55 years as the case may be.

7. Action is sought to have been taken under the powers derived from the provisions of Fundamental Rules (FR) 56(J) read with Rule 48 of the CCS (Pension) Rules. Respondents have placed on record Board's proceedings contained in Annexure A to the counter affidavit. The same discloses that the petitioner has been found 'not fit for retention in service beyond 30 years of qualifying service'. The Board's proceedings, referred to, show that on 14 occasions the petitioner has been given minor punishments and he has suffered one major punishment in his entire service career in



the Central Industrial Security Force (herein after referred to as 'the CISF'), details of which are as follows:-

1. "Censure" for 92 days OSL vide USO No. 512/86 dated 16.07.86.
2. "Stoppage of one increment for a period of one year without cumulative effect" for absent from duty. Vide USO P-II No.75/88 dated 15.01.88.
3. "Stoppage of one increment for a period of one year without commutative effect" for 88 days OSL from leave. Vide USO P-II No.242/90 dated 22.05.90.
4. "Censure" for absent from duty vide USO No. 338/92 dated 14.10.1992.
5. "Censure" for improper kit layout vide FO No.(1493) dated 08.06.95.
6. "Reduction of pay from Rs.3350/- to Rs.3050/- for 3 years without cumulative effect for 145 days OSL vide USO P-II No.7498 dated 30.06.98.
7. Withholding of one increment for a period of one year which will not have the postponing effect for submitting wrong information family planning. USO P-II No. 129/99 dated 05.11.99.
8. "One day pay fine for absent from duty post. F.O.No.2237 dated 24.11.1998.
9. "Five days pay fine for 13 days OSL from leave F.O.No.1783 dated 08.08.00.
10. "One day pay fine for 7 days OSL, from leave F.O.No.2276 dated 31.12.2003.
11. "One day pay fine for sleeping on duty FO No.(2111) dated 30.1.04.
12. "Censure for sleeping on duty vide F.O. No.356 DT 06.02.07.
13. "Three days pay fine for absent from duty F.O. 2209 dated 31.12.04.
14. "One day pay fine for absent from duty vide order No.1810 dated 25.08.06.
15. "Five days pay fine for 25 days unauthorized over stay from medical rest vide F.O.No.139 dated 02.05.12.

8. Counter affidavit shows admission of the fact that



during his past service the petitioner has also received six cash rewards and one commendation in his favour. Respondents, however, have tried to justify the action of premature retiring the petitioner by the Review Committee.

9. Essence of the submission arising from the supplementary counter affidavit filed on behalf of the Union of India is that the proceedings for consideration of petitioner's case for retention in service beyond 30 years, is taken under the FR 56(J) read with Rule 48(1) (B) of the CCS (Pension) Rules relied upon by learned counsel for the petitioner. However, the standard of scrutiny in respect of members of the Armed Forces such as petitioner is very stringent. It has been pleaded by learned counsel for the Union of India that the members of the CISF including the petitioner are expected to maintain the highest order and respect towards the constitutional rights of the citizens. They are deployed in various important and sensitive sectors to guard critical infrastructure and precious property of Public & Private Sector Undertakings and also deployed in large scale on Internal Security Duty.

10. Learned counsel for the Union of India has also relied upon Circular No. 24/2011 dated 1.7.2011 issued by the Inspector General (Headquarters), Directorate General, Central Industrial



Security Force, Ministry of Home Affairs (Annexure G of the supplementary counter affidavit). Referring to the same, he has rightly pointed out that while undertaking exercise under Rule FR 56(J) the said circular provides the very strict scrutiny in respect of Members of the Force, keeping in view the high level of order, discipline and commitment required keeping in view the nature of duties to be performed by the Members of the Force. It emphasizes that review under FR 56(J) of personnel who have been found indulged in various indiscipline, such as the instant petitioner, should be done strictly to maintain discipline in the Force which is a Para Military Force.

11. Clearly, the review under FR 56(J) in respect of Members of this Force is expected to be of a very stringent nature. In this connection, reliance is also placed on the Office Memorandum No. 25013/11/87-Estt.(A) dated 4.8.1989, issued by the Deputy Secretary to the Government of India, Ministry of Personnel, P.G. & Pensions Department of Personnel & Training, New Delhi (Annexure H of the supplementary counter affidavit).

12. A careful scrutiny of the said two circulars and office memorandum reveals that the review contemplated under FR 56(J) in respect of Members of the Force allows different latitude so as to ensure a very strict/stringent scrutiny of the Members of the Force.



The petitioner has neither filed re-joinder nor disputed or denied the circular and office memorandum relied upon by the Union of India. Neither circular nor the office memorandum has been challenged by the petitioner. In the circumstances, action taken under circular dated 1.7.2011 and office memorandum dated 4.8.1989 cannot be challenged by the petitioner in the instant proceedings.

13. In such case, this Court would only refer to the judgment in case of **Rajasthan State Road Transport Corporation and others (supra)**, wherein the Hon'ble Apex Court in para 27 of the said judgment has held as follows:-

“It hardly needs to be emphasized that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non application of mind, malafide, perverse, or arbitrary or if there is non-compliance of statutory duty by the statutory authority. Power to retire compulsorily, the government servant in terms of service rule is absolute, provided the authority concerned forms a bonafide opinion that compulsory retirement is in public interest.(See: Posts and Telegraphs Board Vs. LSN Murthy”.

14. Considering the aforesaid dicta from the judgment of the Hon'ble Apex Court which has been relied upon by the petitioner and considering the fact that there are 15 instances of indiscipline, this Court would not interfere with the order of premature retirement. In the case of the petitioner, it may be



relevant to notice that the order is not stigmatic and not by way of punishment and in spite of the same, the petitioner is also entitled to the benefits of pension.

15. In view of the considerations as above, this Court finds no merit in the writ petition and the same is dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.8.2018
Transmission Date	NA

