

\$~12

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

+ W.P.(C) 13452/2018

SANGEETA RAO

..... Petitioner

Through: Mr. Dinesh Kumar Garg,
Mr.Dhananjay Garg and Mr.Abhishek
Garg, Advocates.

versus

GOVERNEMENT OF INDIA AND ORS.

..... Respondents

Through: Mr. Akshay Makhija, CGSC with
Mr.Kavindra Gill, G.P., Ms.Mahima
Bahl and Ms. Seerat Deep Singh,
Advocates for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **14.12.2018**

1. The petitioner has preferred the present petition to assail the order dated 18.09.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'Tribunal') in OA No.1827/2017.
2. The Tribunal had rejected the said Original Application preferred by the petitioner, wherein, she primarily assailed her compulsory retirement on attaining the age of 52 years. The petitioner had earlier preferred several Original Applications on account of the fact that her representation against her compulsory retirement resorting to FR 56(j) had not been decided. In compliance of the orders passed by the Tribunal, the respondents issued a reasoned order on 14.03.2017 dealing with the representation of the

petitioner and giving its reasons for compulsorily retiring her. The same was assailed before the Tribunal by the petitioner in the OA in question.

3. A perusal of the order dated 14.03.2017 shows that the compulsory retirement of the petitioner has been resorted to on account of poor performance and her efficiency being low. It was found on the basis of Biometric Attendance System ('BAS') record that she was not punctual; she was taking unauthorised leaves and she was not attending her office during the full office hours as she was frequently arriving late and leaving office early. The reasoned order dated 14.03.2017, *inter alia*, records as follows:-

"3. And whereas, in the meeting of the Review Committee held on February 29, 2016, Joint Secretary, Ministry of Defence was also called as a special invitee. In the meeting, he stated that punctuality of the officer was an issue as had been recorded in the biometric attendance record. He also informed that there was no record in the biometric system for about 52 days from December 2014 to February 22, 2016.

4. And whereas, the Ministry of Defence vide their ID No. A-38012/1/2015-d (Est-I/Gp.I) dated February 29, 2016 sought explanation of the officer. Accordingly, Smt. Rao furnished an explanation vide which she inter-alia informed that on few days, when she was on official tour and training, she was shown absent, and on few days when she was shown absent, she actually attended office and marked files. Even after deducting 12 days' leave as claimed by her, still there is no record for about 40 days in BAS and there is no explanation from the officer.

5. And whereas, Smt. Rao, also informed that she had plenty of leave in her account and she even did not avail Child Care Leave (CCL). Now, when an officer wishes to avail leave for any reason, leave has to be applied for and it has to be approved by the competent authority before officer proceeds on leave. Having sufficient leave in the leave account is not a reason not to attend office without applying for leave and its acceptance.

6. *And whereas, the Committee also observed from the BAS data that on almost all the days she attended office, she reached office much beyond the starting time and left office early. The Committee felt that this was not an acceptable behaviour from as senior officer of the Government of India. Her conduct demonstrated that she was not taking her job seriously and not contributing to Government effectively and proved to be a deadwood. The behaviour of the officer is against the provision of CCS (Conduct) Rules, 1964 as she failed to maintain absolute devotion to duty, and failed to maintain discipline in discharge of her duties with the highest degree of professionalism and dedication to the best of her abilities.”*

(emphasis supplied)

4. The reasoned order aforesaid was also assailed by the petitioner in the Original Application in question. Pertinently, the petitioner has not disputed the position taken note hereinabove; she sought to explain her circumstances by claiming that she has an old bedridden mother, who lived at a distant place from her office in Ghaziabad; her spouse was posted at Lucknow. These aspects were considered by the Committee and not found adequate to justify the petitioner's behaviour, conduct and attitude towards the work.

5. The submission of learned counsel for the petitioner is that the conduct of the petitioner, allegedly being in breach of the CCS (Conduct) Rules, 1964, and the respondent having observed that the petitioner had failed to maintain absolute devotion to duty and to maintain discipline in the discharge of her duties with the highest degree of professionalism and dedication to the best of her abilities, it was essential for the respondents to hold a departmental inquiry against the petitioner and the route of compulsory retirement could not have been adopted to circumvent such an inquiry. In this regard, learned counsel for the petitioner has placed reliance

on ***State of Gujarat vs. Umaidbhai M. Patel***, 2001 (3) SCC 314, wherein the Supreme Court observed as follows:

“(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

Specific reference is made to Clause (vi) and (viii) above.

6. We do not find any merit in the aforesaid submissions of the petitioner. The compulsory retirement of the petitioner has been resorted to after examining her service record, conduct and approach, *inter alia*, prior to taking the decision to compulsorily retire her. It is not a case which required holding of a departmental inquiry, since the data relied upon by the

respondents was the data collected by the BAS, which reflected on her unauthorised leave, as well as on the timings maintained while coming and leaving the office. Pertinently, the petitioner has not disputed that position, and has sought to offer excuses for not being punctual in attending the office, and not attending the office during the full office hours. The BAS data reflects poorly on the petitioner's discipline and devotion to her duties. Even in *Umedbhai M. Patel* (supra) the Supreme Court has not ruled that in every case where the conduct of an Officer may tantamount to actionable misconduct in respect of which disciplinary proceedings can be undertaken, it is essential for the Government to take disciplinary action and that the Government cannot resort to FR 56(j). The Supreme Court has only observed that the Government should consider whether departmental inquiry would be a more desirable course to adopt, instead of compulsory retirement. In the facts of the present case it cannot be said that the Government's decision-not to resort to a departmental proceeding for indiscipline against the petitioner i.e. on the aspect of desirability of departmental action is unfounded. It cannot be said that the Government has sought to punish the petitioner without resort to a departmental proceeding. Compulsory retirement of the petitioner is not a punitive action. In fact, the petitioner has been let off without disciplinary action which, if undertaken, may have exposed her to severe penalties.

7. We may observe that no Government servant has a vested right to continue in service beyond the age of 52 years. The continuation of the service of the Government servant beyond the said age depends on the working, efficiency and devotion to duty exhibited by the Government servant. It is a call which the Government has to take in each case

depending on the facts and circumstances of the case. The present is certainly not a case where it could be said that the decision of the Government is either arbitrary or discriminative. The decision to compulsorily retire the petitioner is based on cogent material, which is substantially admitted by the petitioner viz. the BAS data.

8. We are therefore not inclined to interfere with the impugned order. The petition is dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 14, 2018

nn