

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.26787 of 2016

S.Bala Krishnan  
No.844130028 Ex.HC/GD  
CISF Unit VSP-Visakhapatnam .. Petitioner

-vs-

1. The Union of India  
rep.by its Secretary to Government  
Ministry of Home Affairs  
New Delhi
2. The Director General  
CISF Force, Headquarters  
Block No.13, CGO Complex  
Lodhi Road  
New Delhi 110 003
3. The Inspector General  
CISF, SS Headquarters office  
CISF ChPT Campus  
Opp.War Memorial  
Chennai 600 009
4. The Deputy Inspector General  
CISF SZ Headquarters  
D Block 2<sup>nd</sup> Floor  
Rajaji Bhavan, Besant Nagar  
Chennai 600 090 (Tamil Nadu)
5. The Senior Commandant  
CISF Unit VSP-Visakhapatnam  
Visakhapatnam 530 031 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in his E-28014/01/2015/Estt.I/02 dated 27.07.2015 communicated by the fifth respondent in E-28014/CISF/VSP(V)/PR/SBK/15/7121 dated 28.07.2015 and the order No.E-28014/CISF/VSP(V)/PM/SBK/ 14/7747 dated 19.08.2014 passed by the fifth

respondent and quash the same and to direct the respondents to take the petitioner into the strength of CISF as Head Constable with all monetary benefits.

For Petitioner        ::    Mr.M.Md.Ibrahim Ali

For Respondents     ::    Mr.J.Madana Gopal Rao  
                                      Senior Central Government  
                                      Standing Counsel

#### ORDER

This writ petition has been directed against the two impugned orders dated 27.7.2015 passed by the Director General of Central Industrial Security Force, New Delhi, confirming the order dated 19.8.2014 passed by the Senior Commandant, Central Industrial Security Force Unit, VSP-Visakhapatnam, prematurely retiring the petitioner from service, citing a reason that the decision of the Superannuation Review Committee to retire the petitioner prematurely on attaining 55 years of age under the provisions of FR-56(j) of the Fundamental Rules cannot be interfered with.

2. Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner, assailing the impugned orders, submitted that the petitioner, after joining the Central Industrial Security Force in the year 1984 as Constable (GD), was given promotion to the rank of Head Constable (GD) in the year 2004. Although he was serving in the respondent department, he was awarded with two minor punishments from the year 2004 to 2013 on the allegation of slackness on duty and overstaying of leave for the year 2012. However, these punishments have not been awarded for his doubtful integrity or creating nuisance or theft or quarreling etc. As per the circular issued by the Central Industrial Security Force Headquarters dated 22.9.2015, the criteria to be followed by the Committee for reviewing the cases of government employees covered by FR 56(j) or Rule 48(1)(b) of the CCS (Pension) Rules prescribes that the Government employees whose integrity is doubtful, will be retired. Besides, the Government employees who are found to be ineffective will also be retired. But the basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he/she is holding. One of the norms also shows that no employee should ordinarily be retired on the ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of the case. Adding further, he submitted that ordinarily no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case.

The circular dated 22.9.2015 also further clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement. Since the above criteria are relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity, as the petitioner has not suffered any punishment for his doubtful integrity or creating nuisance or theft or quarreling etc., the impugned order dated 19.8.2014 passed by the Senior Commandant, CISF Unit, VSP-Visakhapatnam prematurely retiring the petitioner, which decision has been confirmed by the Director General of the Force in the order dated 27.7.2015, are wholly unjustified and untenable.

3. After the order dated 19.8.2014 was passed by the Senior Commandant, when the petitioner preferred an appeal in December, 2014 taking various grounds that he should be given an opportunity to present his case before being prematurely retired, that after his promotion to the rank of Head Constable/GD in the year 2004, although he was awarded with two minor punishments in the year 2012, the punishments awarded to him prior to his promotion should be ignored while considering his superannuation review, that the ACR for the year 2011 shows the grading as 'Average' while he was posted at the CISF Unit, ASG Bhubaneswar, but the same was not communicated to him and that he had served in the Force for thirty years and his sudden retirement will affect his daughter's education and future career, while considering his appeal, the Director General of the Force, the second respondent herein has wrongly taken into account the Annual Confidential Reports that two times in his career, he had been graded with 'Below Average' and for nine times had been graded with 'Average' and these poor annual performance gradings given by his superiors while he was working in various CISF units, have prejudiced the second respondent, which is not permissible in law. Arguing further, he submitted that the observation/reasoning given by the second respondent that the poor annual performance gradings given by his superiors in various CISF units indicate his persistent lackadaisical approach towards his bona fide government duties, is without any basis. The reason being that in the preceding five years before the crucial date, the petitioner never suffered any punishment, except the grading of 'Average' in the year 2011 and also one more grading of 'Below Average' in the year 2012. However, in the year 2013, he has been graded as 'Good/Very Good'. That shows that the petitioner has improved his performance. Therefore, the failure to take note of the 'Good' performance awarded to the petitioner in the year 2009 and one more 'Good' performance awarded to him in the year 2010 and one another 'Good/Very Good' performance awarded in the year 2013, clearly vitiates the order dated 19.8.2014 passed by the Senior

Commandant and the order dated 27.7.2015 passed by the Director General of the Force.

4. Again referring to Rule 48 of the Central Civil Services (Pension) Rules, the learned counsel for the petitioner submitted that as per the said rule, the appointing authority is obligated to give a notice in writing to the Government servant at least three months before the date on which he is required to retire or three months pay and allowances in lieu of such notice. That mandate has been breached and violated. Again placing on record FR 56(j), it was further contended that the case of government servants should be reviewed six months before they attain the age of 50/55 years or they complete 30 years service, whichever occurs earlier. This mandatory provision also has not been followed in the present case. Therefore, the impugned orders passed by the disciplinary authority and the appellate authority are liable to be interfered with. In support of his submissions, the learned counsel also placed reliance on an order passed by the Division Bench of the Delhi High Court in W.P.(C) No.7471 of 2011 dated 14.10.2011 (HC (GD) Om Prakash v. Central Industrial Security Force) holding that the penalties imposed against the petitioner therein prior to 2000, on promotion as Head Constable with effect from 14.6.2000, have to be ignored while determining his suitability to be retained in service, as the ACR gradings of the preceding five years did not justify the decision to treat the petitioner therein as a dead wood.

5. A detailed counter affidavit has been filed on behalf of the respondents justifying the impugned orders. It has been stated that since the petitioner was awarded with seven penalties prior to his promotion to the rank of Head Constable (GD) in the year 2004, the service records of the preceding five years were taken into account while considering his case for promotion even as per the norms. However, as there was no punishment awarded to him during the period 1999 to 2003 and secured the requisite bench mark, the department has assessed him to be suitable for promotion to the post of Head Constable (GD). But the petitioner was awarded with three punishments during the period 2004 to 2013. Out of these three punishments, on two occasions he was awarded the penalty for overstaying on leave unauthorisedly and on one another occasion, he was found sleeping while on duty. Since the petitioner being a member of the Force is expected to discharge his duties with highest order of discipline, integrity, energy and efficiency to perform the tasks assigned to him, he utterly failed to follow. In spite of giving number of chances to improve his lapses, he failed to mend his ways and has become incorrigible. Even the Assistant Commandant, CISF Unit, SCCL, Singareni in his final order No.1352 dated 31.12.2011 had found the petitioner sleeping while

on duty. Therefore, he was graded with 'Average' in the annual remarks for the year 2011 by the competent authority after thoroughly assessing his performance during the relevant period. The Review Committee, constituted to assess the suitability of the petitioner for retention in service beyond the age of 55 years, examined the service records of the petitioner and found that he was awarded ten penalties for various misdemeanours and also the grading of 'Below Average' on two occasions and the grading of 'Average' on nine occasions during his service tenure. That clearly indicates that he has miserably failed to maintain good service record even after his promotion to the rank of Head Constable (GD).

6. Answering the contention made by the petitioner that the provision of FR 56(j) was not followed, it is replied that the case of the petitioner for retention in service beyond the age of 55 years, was rightly examined by the Review Committee while he was serving at CISF Unit, VSP-Visakhapatnam and as per the recommendation of the Review Committee, the petitioner was prematurely retired from service by the order dated 19.8.2014 passed by the Senior Commandant, CISF Unit, VSP-Visakhapatnam, who is the appropriate authority, by duly making payment of three months pay in lieu of three months notice. This is in consonance with Rule 48 of the Central Civil Services (Pension) Rules. As per Rule 48(1)(b), the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire or three months pay and allowances in lieu of such notice, therefore, there is no violation of Rule 48 of the Central Civil Services (Pension) Rules. Even the circular dated 22.9.2015 issued by the Central Industrial Security Force Headquarters also clearly says that while the entire service record of an officer should be considered at the time of review, the petitioner's Annual Confidential Reports for the years 2009 to 2013 give the following gradings:-

|      |   |                |
|------|---|----------------|
| 2009 | - | Good           |
| 2010 | - | Good           |
| 2011 | - | Average        |
| 2012 | - | Below Average  |
| 2013 | - | Good/Very Good |

A perusal of the same clearly shows that the petitioner has suffered the gradings of 'Average' in the year 2011 and also 'Below Average' in the year 2012. Therefore, the operation of the circular dated 22.9.2015 against the petitioner cannot be brushed aside. Paragraph 4(c) of the said circular reads as follows:-

"4.The criteria to be followed by the Committee in making their recommendation would be 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 year period, his service in the highest post, has been found satisfactory."

7. A perusal of the same also shows that when the appropriate Committee causes review of the cases of CISF personnel for continuance beyond the age of 55 years or on completion of 30 years of service, the entire service record of the officer should be considered at the time of review. Since the petitioner, admittedly, has suffered two 'Below Average' gradings and nine 'Average' gradings during his service tenure and also failed to maintain good service record after his promotion to the rank of Head Constable (GD), the Senior Commandant, CISF Unit, VSP-Visakhapatnam, who is the competent authority to review the case of the petitioner for his retention, has rightly passed the order dated 19.8.2014. On appeal, the Director General of the Force also, analysing the Annual Confidential Reports of the petitioner, as per Rule 48 of the Central Civil Services (Pension) Rules and FR 56(j), has prematurely retired the petitioner from service. Hence, this Court finds no infirmity or illegality in the impugned orders. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-  
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

ss

To

1. The Secretary to Government of India  
Ministry of Home Affairs  
New Delhi
2. The Director General  
CISF Force, Headquarters  
Block No.13, CGO Complex  
Lodhi Road  
New Delhi 110 003

3. The Inspector General  
CISF, SS Headquarters office  
CISF ChPT Campus  
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4. The Deputy Inspector General  
CISF SZ Headquarters  
D Block 2<sup>nd</sup> Floor  
Rajaji Bhavan, Besant Nagar  
Chennai 600 090 (Tamil Nadu)

5. The Senior Commandant  
CISF Unit VSP-Visakhapatnam  
Visakhapatnam 530 031.

+1cc to M/s.M.MD.Ibrahim Ali, Advocate SR.No.38

+1cc to M/s.J.Madanagopal Rao, Advocate SR.No.119

W.P.No.26787 of 2016

RK(CO)  
GMY(30/01/2019)