

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.205 of 2019

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Sadashiv Mandal Son of Late Ram Mandal resident of Village- Puraini, P.S.
Puraini, District- Madhepura.

... .. Appellant/s

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. D.I.G. Central Industrial Security Force, Unit C.C.L. Kargali, P.S. Dhdori, District- Bokaro (Jharkhand).
4. Senior Commandant Central Industrial Security Force Unit, C.C.L. Kargali, P.S. Dhor, District Bokaro (Jharkhand).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar, Adv.

For the Respondent/s : Dr. K. N. Singh, Sr. Adv., ASG

Mr. Ravindra Kumar Sharma, Adv., CGC

Mr. Adarsh Kumar Bhardwaj, Adv., JC to ASG

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 17-05-2022

I.A. No. 1 of 2019

The present interlocutory application has



been filed for condoning delay of 181 days which has occurred in filing the present appeal against the judgment dated 29.6.2018 passed in CWJC No. 1007 of 2014.

For the reasons mentioned in the present application, which is not seriously opposed by the learned counsel for the Respondents, we deem it fit and proper to condone the delay in filing the appeal.

I.A. No. 1 of 2019 stands allowed.

Re.: -LPA No. 205 of 2019

The present appeal is directed against the judgment dated 29.6.2018 passed by a Ld. Single Judge of this Court in CWJC No. 1007 of 2014 whereby and whereunder the writ petition filed by the appellant herein, challenging the order of premature retirement, has been dismissed.

The brief facts of the case are that the appellant herein was appointed on the post of constable on 12.3.1982 and ultimately he was discharged from service by being granted



premature retirement vide order dated 7.11.2012. The appellant herein is stated to have filed an appeal before the appellate authority, however, the same was also disposed of without any relief being granted to the petitioner and communication to the said effect was sent to the appellant herein vide letter dated 17.9.2013. The appellant herein had then challenged the aforesaid order dated 7.11.2012, by which he has been discharged from service by being granted premature retirement, as also the order dated 17.9.2013 whereby and whereunder the appeal filed by the appellant herein was rejected, by filing a writ petition bearing CWJC No. 1007 of 2014, however, the same has also stood dismissed by the impugned judgment dated 29.6.2018.

While assailing the impugned judgment dated 29.6.2018, the learned counsel for the appellant has raised a solitary ground to the effect that the entire service record of the appellant has not been considered while coming to a decision regarding compulsorily retiring the appellant herein under



Rule 48(i)(B) of the CCS (Pension) Rules, 1972. In this regard, the learned counsel for the appellant has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Rajasthan State Road Transport Corporation and Others vs. Babul Lal Jangir***, reported in **(2013) 10 SCC 551**.

Per contra, the learned counsel for the Respondents has submitted by referring to the counter affidavit filed in the writ proceedings that the Appellant was appointed in Central industrial Security Force (hereinafter referred to as 'CISF') as follower (cook) on 12.03.1982. The Appellant was then appointed as Constable (General Duty) on 12.12.1983 and promoted to the rank of Head Constable on 08.07.2011. It is submitted that as per FR- 56 (J) read with Rule-48 of CCS (Pension) Rules, 1972, the superannuation review of all force personnel, attaining the age of 50 years in respect of Group "B" and 55 years in respect of Group "C" or on completion of 30 years of qualifying service, whichever is earlier, is required to be undertaken



by the appropriate review committee for assessing their suitability or otherwise for their further retention in service beyond the age of 50/55 years, as the case may be or on completion of 30 years of qualifying service. As far as the Appellant is concerned, his superannuation review was due on 12.10.2012, on completion of 30 years of service, hence the same was conducted under the provision of FR-56(J) read with Rule-48 of CCS (Pension) Rules, 1972 by the designated review committee. The Review committee considered his case but did not find him fit for further retention in service, in public interest. Thereafter, an order for pre-mature retirement in respect of petitioner was issued by the Senior Commandant, CISF Unit CCL, Kargali vide order No. 5938 dated 07-11-2012 with a direction that he shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing pay immediately before his retirement, in lieu of 03 months notice. It is further submitted that the Appellant had



acknowledged the order of pre-mature retirement on 07.11.2012 and a cheque dated 07.11.2012 for a sum of Rs. 78,516/-, toward three months pay plus allowances in lieu of 03 months notice period, was paid to the petitioner on 07.11.2012 itself. The Appellant was then struck off strength from CISF Unit CCL Kargali as well as CISF w.e.f. 07.11.2012 (FN).

The learned counsel for the Respondents has further submitted that the appointing authority has the absolute right to retire an employee from service if it considers necessary to do so in public interest by giving notice of not less than three months in writing or paying an amount equivalent to his pay plus allowances for a period of three months, in lieu thereof, after an employee attains the age of 55 years or completes 30 years of qualifying service in terms of Rule-56(J) of Fundamental Rules and Supplementary Rules Part-1 and Rule-48 (1) (B) of CCS (Pension) Rules, 1972. Thus, the review committee, upon consideration of the case of the Appellant, found him unfit for



further retention in service, in public interest, hence he was retired prematurely from service w.e.f. 07.11.2012. It has been categorically stated that the appellant herein had never filed any appeal against the order of premature retirement, however, even if his application dated 02.09.2013 is considered to be of any worth, it will be apparent that he did not raise any grievance against the order of his premature retirement but had simply questioned his entitlement to pay and its effect on pension and gratuity, which has been dealt with appropriately by the Respondents in the letter dated 17.09.2013, sent to the appellant, wherein he has been intimated the following facts:-

“(a) He has been struck off strength of the unit w.e.f. 7.11.2012 as he was found not fit to be retained in service in terms of Rule-56(J) of Fundamental Rules and Supplementary Rules Part-I and Rule-48 (I) (b) of CCS (pension) Rules, 1972.

(b) He has been granted 1st ACP benefit



w.e.f 12.1.2009 vide CISF Unit KhSTPP Kahalgaon SO No. 1/2009 dated 20.1.2009, hence he is not entitled for 2nd MACP.

(c) An amount of Rs. 2800/- was being paid to him instead of 2400/- as MACP benefits. Necessary amendment to this effect was made, whereafter a sum of Rs. 18,328/-, which was paid in excess, has been recovered.”

At this juncture, the learned counsel for the Respondents has further submitted that the appellant herein has had a chequered past inasmuch as he has been awarded as many as 1 major and 14 minor punishments for various instances of delinquencies, details whereof are being enumerated herein below:-

“(a) Major Punishments:-

(i) "Reduction of pay from Rs. 3350/- to Rs. 3050/- for a period of three years without cumulative effect for 145 days OSL vide USO Part-II No. 74/98 dated



30.06.1998.

(b) Minor Punishment:-

(i) "Censure" for 92 days OSL vide
USO Part-II No. 512/86 dated
16.07.1986.

(ii) "Stoppage of one increment for a
period of one year without cumulative
effect" for absence from duty vide USO
Part-II No. 75/88 dated 15.01.1988.

(iii) "Stoppage of one increment for a
period of one year without cumulative
effect" for 88 days OSL from leave vide
USO Part-II No. 242/90 dated 22.05.1990.

(iv) "Censure" for absent from duty vide
USO Part-II No. 338/92 dated
14.10.1992.

(v) "Censure" for improper kit layout
vide Final Order No. 1493 dated
08.06.1995.

(vi) "Withholding of one increment for a
period of one year which will not have
the postponing effect for submitting



wrong information about family planning
vide USO Part-II No. 129/99 dated
05.11.1999.

(vii) "One day pay fine" for absent from
duty post vide Final Order No. 2237
dated 24.11.1998.

(viii) "Five day pay fine" for 13 days OSL
from leave vide Final Order No. 1783
dated 08.08.2000.

(ix) "One day pay fine" for 07 days OSL
from leave vide Final Order No. 2276
dated 31.12.2003.

(x) "One day pay fine" for sleeping on
duty vide Final Order No. 2111 dated
30.01.2004.

(xi) "Censure" for sleeping on duty vide
Final Order No 356 dated 06.02.2007.

(xii) "Three days pay fine for absent from
duty vide Final Order No. 2209 dated
31.12.2004.

(xiii) "One day pay fine" for absent from
duty vide order No. 1810 dated



25.08.2006.

(xiv) "Five days pay fine" for 25 days unauthorized over stay from medical rest vide Final Order No. 139 dated 02.05.2012.

Now coming to the legal aspect of the matter, the learned counsel for the Respondents has submitted that the fundamental rules (FR) have a provision that the performance of the personnel employed in Government service should be assessed when they have completed 30 years of service or 55 years of age in the case of Group "C" category and 50 years of age in the case of Group "B" category, under FR-56 (J) read with Rule-48 of CCS (Pension) Rules' 1972. This provision postulates screening of the personnel and ensures that such persons who are unfit to continue in the Department are weeded out. Such personnel include those whose performance is average or below average or who indulge in repeated acts of indiscipline. It is stated that CISF is a Central Armed Police Force and a Disciplined Armed Force



of the Union of India. Its personnel are deployed in various important Sectors which include sensitive Sectors such as Unit of Department of Atomic Energy, Department of Space, Airport Sector, Ports, Oil, Power, and Coal installations amongst other. CISF is also deployed in certain Private Sector Undertakings which are critical to India's economy apart from being deployed on very large scale for Internal Security and Election duties. It is thus submitted that in view of the duties to be performed by CISF personnel, they are expected to keep discipline of the highest order and maintain respect towards the constitutional rights of the citizens, especially since they are required to guard the critical infrastructure and precious property of Public, Private and Joint Sector Units.

The Ld. Counsel for the respondents, in the aforesaid backdrop, has submitted that the Appellant, during his service career, was awarded as many as 01 major and 14 minor punishments for various delinquencies, and during 30 years of his service career, he had been graded one time as



below average and 11 times as average by the respective authority in various units, while assessing his annual performance. It is thus submitted that since the appropriate authority has the absolute right to retire such person, if it is necessary to do so in public interest, under the relevant Fundamental Rule and CCS (Pension) Rules, the action taken by the Respondents are justified, as per Rules and valid in the eyes of law.

We have heard the learned counsel for the parties, perused the judgment in question as also gone through the materials on record and we find that the action taken against the appellant to retire him prematurely has been taken under the powers derived from the provisions contained in FR-56(J) read with Rule 48 of the CCS (Pension) Rules, 1972. We also find from the Committee's/Board's proceedings, annexed as Annexure-A to the counter affidavit filed in the writ proceedings that the appellant has been found "not fit for retention in service beyond 30 years of qualifying service" and further the same shows that on 14 occasions,



the appellant has been awarded minor punishments, apart from him having suffered one major punishment while in the service of the Central Industrial Security Force and the said fact remains undenied. At this juncture, it would be relevant to reproduce paragraphs no. 9 to 12 and 14 of the impugned judgment dated 29.06.2018 herein below:-

“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.

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.”

Having given anxious consideration to the facts and circumstances of the case in hand as also taking into account the relevant provisions of the Fundamental Rules and the CCS (Pension) rules, 1972, as referred to hereinabove in the preceding paragraphs, apart from considering the well-settled law on the subject-matter, we find that there are 15 instances of indiscipline qua the appellant herein and CISF being a disciplined force and a specialized police force responsible for providing security to strategic establishments like the Department of Space, the Department of Atomic Energy, and premises of establishments fundamental to Indian Economy, sense of integrity, commitment and discipline is of paramount importance as also is the essence of the organization and structure of police force, thus, no indulgence or latitude can be granted so as to condone the misconduct /indiscipline inasmuch as



discipline in the police force cannot be compromised (See *Union of India & Ors. Vs. Managobinda Samantaray*, reported in 2022 SCC online SC 284). We also find that it is a well-settled law that the scope of judicial review in such cases is also very limited, as can be deciphered from the judgment referred to by the learned counsel for the appellant in the case of *Babul Lal Jangir* (supra) inasmuch as interference is permissible only on the ground of non-application of mind, malafide, perversity or arbitrariness or if there is non-compliance of statutory duty by the statutory authority, however, we find that none of such issues have either arisen in the present case or have been raised / argued by the learned counsel for the appellant, hence, no interference is warranted so far as the order of premature retirement of the petitioner is concerned, more so since the same is neither stigmatic nor by way of punishment. Consequently, we do not find any infirmity in the impugned order dated 29.06.2018 passed in CWJC No. 1007 of 2014, hence, the



present appeal stands dismissed, sans any merit.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.8.2022
Transmission Date	NA

