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Writ Appeal No.1942 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1942 of 2019
and C.M.P.No.13170 of 2019**

S.Bala Krishnan,
CISF Unit VSP-Visakhapatnam.

... Appellant

Vs

1. The Union of India,
Rep. By its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
CISF, Force, Hqrs,
Block No.13, CGO Complex,
Lodhi Road, New Delhi – 110 003.
3. The Inspector General,
CISF, SS Hqrs, Office,
CISF, CHPT Campus,
Opp. War Memorial, Chennai – 09.
4. The Deputy Inspector General,
CISF SZ Hqrs, D Block 2nd Floor,
Rajajibhawan, Basant Nagar, Chennai.
5. The Senior Commandant,
CISF Unit, VSP – Visakhapatnam,
Visakhapatnam – 530 031.

.. Respondents



Writ Appeal No.1942 of 2019

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.No.26787 of 2016 dated 02.01.2019.

For Appellant : Mr.A.S.Mujibur Rahman

For Respondents : Mr.J.Madanagopal Rao

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal has been directed against the order passed by the Writ Court dated 02.01.2019 made in W.P.No.26787 of 2016.

2. The appellant herein was the writ petitioner, who had been serving in the respondent Organization for several years, at the age of 55 years as per the Rule, which was in vogue, his service whether was required to be extended from 55 years or he can be sent for premature retirement based on his past service i.e., review had been taken place, based on the review considering his past performance i.e., five years preceding before the date of consultation of such review, the Department



had come to a conclusion that his service can be terminated by giving a premature retirement, where since the Rule says that either three months notice or in lieu of three months salary have to be paid before passing any such order for premature retirement and that has also been calculated and paid to the petitioner/appellant and an order has been passed on 19.08.2014, as against which, he filed appeal as well as review, in all these attempts since he has failed, he has challenged those orders before the Writ Court in W.P.No.26787 of 2016.

3. The said writ petition was rejected by the learned Judge through the impugned order.

4. Assailing the same, Mr.A.S.Mujibur Rahman, learned counsel appearing for the appellant would submit that, the learned Judge in paragraph 6 of the impugned order has relied upon circular dated 22.09.2019, where clause (c) of the said circular was heavily relied upon.

5. Clause (c) says that, only five years preceding to the consultation of review, if any promotion had been given, the five years period in the promoted post alone shall be taken into account, where his service is



found unsatisfactory then he can be terminated or prematurely retired.

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6. In this context, it is the contention of the learned counsel appearing for the appellant that the said clause (c) of the circular has not been properly applied to the case of the petitioner as he earned promotion in the year 2004, where the period taken for such review was between 2009 – 2013, based on which, since the learned Judge has come to the conclusion that the decision taken by the respondent was sustainable, hence such an approach is erroneous, he contended.

7. However, Mr.J.Madanagopal Rao, learned Standing Counsel appearing for the respondent has contended that as per Clause (c) of the circular, the last five years alone shall be taken into account, hence, the approach of the learned Judge in coming to such conclusion by relying upon the said circular is to be sustained.

8. We have given our anxious consideration to the said submission of the learned counsel appearing for both sides and have perused the materials placed before this Court.

9. The relevant portion of the order passed by the learned single



Judge reads thus:

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“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



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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."

10. Clause(c) of the said circular dated 22.09.2015 made it clear that, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding five years or where he has been promoted to a higher post during that five year period, his



service in the highest post, has been found satisfactory. Therefore, there are two limbs in clause (c). Under the first limb, the five years preceding to the review or consultation shall be taken into account or during the preceding five years, if any promotion he has earned, in the promoted post what is his service performance whether it is found to be satisfactory or not is to be taken into account.

11. In this case, the review has been taken place in the year 2014, therefore preceding five years is from 2009 – 2013, therefore, that period he had not earned any promotion.

12. In this context, it is the contention of the learned counsel appearing for the appellant is that, he earned promotion to the post of Head Constable only in the year 2004, therefore from 2004 alone his service should have been reviewed for five years i.e., from 2004 – 2008 and not from 2009 – 2013. The said interpretation sought to be given by the learned counsel appearing for the appellant on the second limb of clause (c) of the circular cannot be countenanced. The reason being that during the last five years i.e., preceding five years before the review, if he earned any promotion, in that promoted post his performance has to be



reviewed.

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13. In this case, he earned promotion in the year 2004, therefore, it cannot be stated that, he has earned promotion during the last five years period. However, in over all performance in the promoted post i.e., from 2009 – 2013 atleast the preceding five years period his performance have to be reviewed.

14. When they reviewed his performance, they found that atleast in one year he earned 'Average' and another year he earned 'Below average'. Therefore, his service during the last five years before his review was taken up and was found to be unsatisfactory and therefore, on that ground, the Department has come to a conclusion to make him to go for premature retirement and in this context, as per the Rule, which was in vogue, the three months salary having been calculated and had been paid to the petitioner/appellant, who received the same and an acknowledgement to that effect has also been filed along with the order of such premature retirement dated 19.08.2014.



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15. In that view of the matter, we do not find any error in the order passed by the learned single Judge. Hence, this appeal fails and accordingly, it is dismissed. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

14.08.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

mp

To

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



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3. The Inspector General,
CISF, SS Hqrs, Office,
CISF, CHPT Campus,
Opp. War Memorial, Chennai – 09.
4. The Deputy Inspector General,
CISF SZ Hqrs, D Block 2nd Floor,
Rajajibhawan, Basant Nagar, Chennai.
5. The Senior Commandant,
CISF Unit, VSP – Visakhapatnam,
Visakhapatnam – 530 031.



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