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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1) **CWP-26180-2023**
Date of Decision:22.12.2023

BIRENDRA SINGH CHAUHAN AND ORS .... Petitioners

Versus

FOOD CORPORATION OF INDIA AND ORS ..... Respondents

2) **CWP-26916-2023**

KRISHAN KUMAR RANGA .....Petitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERS .....Respondents

3) **CWP-28704-2023**

JATINDER SINGH AND ORS ....Petitioners

Versus

FOOD CORPORATION OF INDIA AND ORS ....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. D.S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate
for the petitioners.

Mr. S.K. Verma, Advocate
for the petitioner in CWP No.26916 of 2023.

Mr. Gurminder Singh, Sr. Advocate with
Mr. Sunlish Bindlish, Advocate and
Mr. Jatinder Singh Gill, Advocate
for the respondents.

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JAGMOHAN BANSAL, J. (Oral)

1. Written statement filed on behalf of respondents No.1 to 3 is taken on record. Registry is directed to tag the same at an appropriate place.

2. By this common order CWP-26180-2023, CWP-26916-2023 and CWP-28704-2023 are disposed of since issue involved in all the petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-26180-2023.

3. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of orders dated 05.07.2023, 11.07.2023, 29.08.2023 and 08.09.2023 (Annexures P-3 to P-24) whereby respondent No.3 has prematurely retired petitioners relying upon Regulation 22(2) of the Food Corporation of India Staff Regulations, 1971 (for short 'FCI Regulations 1971'). The petitioners are further seeking setting aside of orders dated 13.10.2023, 18.10.2023 and 20.10.2023 (Annexures P-27 to P-45) whereby their representations have been rejected.

4. The petitioners joined respondent-FCI as category III employees. The petitioners in the year 2023 completed age of 50 years. A Committee considered service record of the petitioners and formed an opinion that petitioners should be prematurely retired. The decision was taken in terms of Regulation 22(2) of FCI Regulations, 1971. The petitioners filed representation against order of pre-mature retirement which came to be dismissed. Orders passed in the case of all petitioners are identically worded. One order of pre-mature retirement dated 05.07.2023 and one order dated 13.10.2023 order rejecting representation is reproduced as below:

Order dated 05.07.2023

"WHEREAS, the undersigned is of the opinion that, it is in the interest of the Corporation and public interest in general to retire Shri Gurmail Singh (DOB: 01.04.1967), Manager

(Depot) presently working under Punjab Region from the services of Food Corporation of India under Regulation 22 (2) of FCI (Staff) Regulations.

NOW THEREFORE, in exercise of the power conferred under the aforesaid Regulations the undersigned hereby retires Shri Gurmail Singh w.e.f. 11.07.2023 (A/N).

That in lieu of the Notice period, Shri Gurmail Singh shall be paid a sum equivalent to the amount of his pay and allowance for a period of 03 (three) months calculated at the same rate at which he was supposed to be drawing them immediately before his retirement."

Order dated 13.10.2023

"WHEREAS, Shr Gurmail Singh, Ex-Manager (Depot) was retired from the services of Food Corporation of India under Regulation 22(2) of FCI Staff Regulations 1971 in the interest of the Corporation and public interest in general vide Order No. Zo (N)-27.0032/1/2023-E-1-ZO North Dated: 11.07:2023.

WHEREAS, Shri Gurmail Singh, Ex-Manager (Depot) had made the Representation against the ibid order on dated Nil which has been examined by the Representation: Committee.

NOW THEREFORE, in exercise of the powers conferred under the aforesaid Regulations and after careful consideration of representation of Shri Gurmail Singh and perusal of Representation Committee Report, the undersigned hereby rejects the representation of Shri Gurmail Singh, Ex-Manager (Depot)."

5. Mr. D.S. Patwalia, Senior Advocate submits that respondent by identically worded orders have prematurely retired all the petitioners. The orders have been passed in a mechanical manner. As per circular dated 09.07.2021 issued by the respondent, the petitioners could be retired after obtaining opinion of Review Committee. The representation

of the petitioners could be rejected after considering report of Representation Committee as well as Review Committee. The respondent has mechanically dismissed representation of all the petitioners. There are many petitioners who were promoted within 5 years preceding the date of impugned order and as per paragraph 10 (iv) of the aforesaid circular, an employee who has been promoted during preceding 5 years cannot be ordinarily prematurely retired. A person who has been promoted during preceding 5 years can be retired, if the integrity of the employee is doubtful. In the present case, the authorities have recorded 'very good' or 'excellent' or 'outstanding' in the APAR, thus, petitioners could not be prematurely retired. There are many employees who have been visited with multiple major and minor penalties still they have not been subjected to same treatment. The act of respondents amounts to violation of Article 14 of the Constitution of India.

6. Per contra, learned Senior counsel for the respondent submits that it is factually incorrect that Review Committee was not constituted or it did not consider record of the petitioners. The Review Committee considered case of all the petitioners and found it necessary to prematurely retire them. The Committee has not prematurely retired those employees whose record was satisfactory, however, the matter of employees, whose record is not upto the mark, is under active consideration. The representation of the petitioners was considered by Representation Committee. The said Committee examined report of Review Committee and thereafter decided to recommend rejection of the representation of the petitioners. The respondent has meticulously followed prescribed procedure, thus, there is neither discrimination nor

violation of any fundamental or vested right of the petitioners. Speaking order was not passed because the petitioners were not subjected to punishment. Article 311 of the Constitution of India is not applicable because no stigmatic order was passed. Paragraph 10 (iv) of the circular is applicable where an employee has been promoted on the basis of merit whereas petitioners have been promoted on the basis of seniority-cum-fitness. The authorities are supposed to consider APAR, dossier as well as all other valuable documents/inputs before deciding the fate of an employee. The authorities in terms of paragraph 10 (v) of the circular has considered APAR, dossier, vigilance report as well as entire service record before passing impugned orders.

7. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

8. Before adverting with the issue involved, it would be apt to notice Regulation 22(2) of the Food Corporation of India Staff Regulations, 1971 as well as relevant paragraphs of circular dated 09.07.2021 which are reproduced below:

> *"**Regulation 22***
>
> *(2) (A) (i) Notwithstanding anything contained in this Regulation, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Corporation employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:*
>
> *(a) If he is, in Category I & II service or post in a substantive, quasi-permanent or temporary capacity and had entered Corporation service before attaining the age of 35 years, after he has attained the age of 50 years;*
>
> *(b) In any other case after he has attained the age of fifty-five year;*

(ii) If on a review of the case either on a representation from the Corporation employee retired prematurely or otherwise, it is decided to, reinstate the Corporation employee in service, the authority ordering reinstatement may regulate the intervening period between the date of pre-mature retirement and the date of reinstatement by the grant of leave of the kind due and admissible, including extraordinary leave or by treating it as dies non depending upon the facts and circumstances of the case:

Provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or, if the order of premature retirement is set aside by a Court of Law.

(iii) Where the order of premature retirement is set aside by a Court of Law with specific directions in regard to regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the Court.

Circular dated 09.07.2021

*5. **Maintenance of Register:** A register of the Corporation employees who are due to attain the age of 50/55 years or to complete 30 years of service, has to be maintained in the office of Appointing Authority as mentioned in Appendix-II of FCI (Staff) Regulations, 1971. The register should be scrutinized at the beginning of every quarter by a senior officer in the office of Appointing Authority and the review to be undertaken according to the above schedule so as to ensure timely completion of the review for retention/pre-mature retirement of the Corporation employees.*

6. Corporation may, at any time after an employee has attained the age of 50/55 years or completed 30 years of service, as the case may be, retire him pre-maturely in public interest. However, non-adherence to the time-lines as indicated *in para 5 above due to certain administrative exigencies shall not take away the powers of Appointing Authority to pre-maturely retire a Corporation employee under Regulation 22(2). Therefore, review of a Corporation employee for the purposes of this Regulation can be undertaken even after he has attained the age of 50/55 years or he has completed 30 years of qualifying service as the case may be.*

7. There is also no bar on the Corporation to review any such case again where it was decided earlier to retain the officer, but the Appointing Authority is of the opinion that it is expedient to undertake the review again on account of changed circumstances, in public interest. In such cases, the Appropriate Authority is expected to demonstrate visible meticulousness as such Corporation employees have been found effective on earlier occasion for retention in service.

8. ***Composition of Review and Representation Committee:-***

A. ***Review Committee:*** *The head of the office will constitute the Review Committee comprising of two members as mentioned below:*

Office	**Members of Review Committee (To be decided by Appointing Authority)**
Headquarters	Two Executive Directors
Zonal Office	Two officers viz. CGM/GMs
Regional Office	Two officers viz. DGMs/AGMs

In addition to the above, CVO/Executive Director (Vigilance), in case of category-I and head of Vigilance Division of the concerned Zonal/Regional office in respect of other category officers/officials will be associated in the case of record reflecting adversely on the integrity of any employee.

B ***Representation Committee:*** *The head of office will constitute Representation Committee comprising of three members as mentioned below:*

Office	**Members of Review Committee (To be decided by Appointing Authority)**

Headquarters	Three Eds who are not members of review committee
Zonal Office	Three Gms/DGMs who are not member of review committee
Regional Office	Three DGMS/AGMs who are not member of the review committee

The Representation Committee considering the representation shall make its recommendations ***within two weeks from the date of receipt of the reference from the concerned Personnel Division*** *to the Appointing Authority (as per Appendix I of FCI Staff Regulation 1971).*

9. ***Constitution of Internal Committee:-*** *In addition to the above, the Appointing Authority is also empowered to constitute an Internal Committee comprising of such officer (s) as deemed fit to assist the Review Committee. These Committees will ensure that the service record of the Corporation employees being reviewed, along with a summary, bringing out all relevant information, is submitted to the Appointing Authority at least three months prior to the due date of review.*

10. ***Broad Criteria to be followed by the Review Committee:-*** *The broad criteria to be followed by the Review Committee whille making the recommendations are as follows:-*

(i) Corporation employees whose integrity is doubtful shall be retired.

(ii) Corporation employees found to be Ineffective shall also be retired. The basic consideration in identifying such Corporation employees should be their fitness / competence to continue in the post held.

(iii) No Corporation employee should ordinarily be retired on 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 his case. However, In a case where there is a sudden and steep fall in the competence, or effectiveness of a Corporation employee, it would be open to

review such a case also for premature retirement. The said instruction of not retiring the Corporation employee within one year on the ground of ineffectiveness except in case of sudden and steep fall in his performance is relevant only when he is proposed to be retired on the ground of Ineffectiveness, but not on the ground of doubtful integrity.

(IV) No Corporation employee should ordinarily be retired on ground 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. There is no such stipulation, however, where the Corporation employee is to be retired on grounds of doubtful integrity. In case of those Corporation employees who have been promoted during the last 5 years, the previous entries in the APARs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.

(V) The entire service record of a Corporation employee should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the APAR dossier. The personal file of the Corporation employee may contain valuable material. Similarly, his work and performance could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the concerned Internal Committee puts together all the data available about Corporation employee and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the APARs may be taken into consideration."

9. The respondent has invoked Regulation 22(2) while passing impugned orders. From the perusal of said Regulation, it is quite evident that an employee may be pre-maturely retired in the public interest. The Respondent-FCI for the sake of clarity and transparency has issued circular dated 09.07.2021 wherein complete procedure for passing order

of pre-mature retirement has been prescribed. The respondent cannot pass order of pre-mature as per its whim and caprice. The respondent is bound to consider complete service record of an employee and ascertain whether it is in the public interest to pre-mature retire him. Absolute power makes a person arbitrary, unreasonable and corrupt and every action of a public authority is arbitrary which is contrary to rule of law and prescribed procedure. The respondent has prescribed procedure which seems to be just, fair and reasonable and even otherwise is not under challenge.

10. In ***Maneka Gandhi Vs Union of India, (1978) 1 SCC 248 at page 281,*** a constitution bench elaborated and expounded the relationship between different articles guaranteeing fundamental rights and enunciated that every action of the State is violative of article 14 which is arbitrary. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Justice Bhagwati speaking for the bench has held:

> *7. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be*

> *imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3 namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.*

11. Supreme Court in catena of judgments has laid down that if order of compulsorily retirement casts stigma on the Government servant means it contains statement casting aspersion on the conduct or character, the Court will treat the said order as an order of punishment attracting provisions of Article 311 (2) of the Constitution. Simple order of compulsorily retirement cannot be regarded as an order of punishment. If the statement in the order refers only to the assessment of his work and does not at the same time cast aspersion on the conduct or character of the employee, it would not be proper to hold that order of compulsorily retirement an order of punishment. The authorities passing order of premature retirement are not supposed to pass a speaking order. Pre-

mature retirement is prerogative of Government but it should be based on material and has to be based on the subjective satisfaction of the Government.

Learned Senior counsel for the petitioners does not dispute the fact that impugned orders are neither stigmatic nor punitive in nature. He further concedes that authorities are not bound to pass speaking order or grant opportunity of hearing prior to passing order in terms of Regulation 22(2) of FCI Regulations, 1971.

12. The object of compulsorily retirement of a Government servant is to weed out the dead woods in order to maintain efficiency and initiative in the service as well as to dispense with services of those whose integrity is doubtful so as to preserve purity in the administration.

The Supreme Court in ***State of Gujarat Versus Umedbhai M. Patel 2001 (3) SCC 314*** has elaborated principles which ought to be followed in the matters relating to compulsory retirement. The relevant extracts of the judgment read as:

> *"**11.** The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:*
>
> *(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."*

In ***Allahabad Bank Officers' Assn. v. Allahabad Bank*, (1996) 4 SCC 504** Supreme Court has held that compulsorily retirement of a Government servant is one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. In case of compulsorily retirement, there is no need to hold an inquiry. The authorities have to record satisfaction to the effect that it is in the public interest to retire the employee.

In ***Ram Ekbal Sharma Vs. State of Bihar and another 1990 (3) SCC 504*** Supreme Court has observed that in order to find out whether an order of compulsorily retirement is based on any misconduct of the Government servant or the said order has been passed acting bona fide, without any oblique and extraneous purpose, the veil can be lifted by Court.

13. The prime contention of the petitioners is that case of the petitioners was not considered by Review Committee and thereafter Representation Committee. During the course of hearing, respondent

produced original record of Review Committee as well as Representation Committee. It is settled law that record of Review Committee and Representation Committee cannot be supplied to employees, however, Court can call for the record and examine the same. On scrutiny of the record, this Court is of the considered opinion that respondent has duly constituted Review Committee and Representation Committee and both the Committees have taken care of APAR of the employees, penal proceedings time to time initiated against the petitioners and report of vigilance. After considering all the aspects, both the Committees have formed an opinion to prematurely retire the petitioners. This Court does not find any infirmity or manifest illegality either in the procedure adopted by respondent or subjective satisfaction of the Committees. In the wake of above-cited judgments, this Court cannot substitute opinion of Committees by its opinion, thus, case of the petitioners who have not been promoted during preceding 5 years is not sustainable.

14. There is strong grievance of discrimination on the ground that similarly situated employees have been treated with a different yardstick. This Court cannot ask the respondent to perpetuate illegality, if any, they have committed qua few employees, nevertheless, it is hereby noticed that learned counsel for the respondent has conceded that the case of similarly situated employees who have not been pre-maturely retired, would be examined and appropriate orders shall be passed.

Learned counsel for the petitioners further pointed out orders dated 13.10.2023 passed in the case of Sunil Kumar (Manager quality control), Rakesh Kumar Meena (Manager Depot) and Manju Saryal (Manager Accounts) whereby respondent has reinstated aforesaid employees. They have been reinstated on the basis of their representation, accepted by Representation Committee. As per the petitioners, the aforesaid employees have been visited with major/minor penalties more times than the petitioners.

Faced with this, Mr. Gurminder Singh, Senior Advocate asserted that Competent Authority would look into this aspect.

In the light of afore-cited orders, the petitioners despite dismissal of their petition would be at liberty to file fresh representation which would be re-considered by Competent Authority in accordance with law.

15. In the light of Clause (iv) of paragraph 10 of the circular dated 09.07.2021, case of the petitioners who have been promoted during 5 years, preceding the date of their pre-mature retirement, needs to be separately and independently examined.

From the conjoint reading of Clause (iv) and (v) of paragraph 10 of circular dated 09.07.2021, the following position emerges:

(i) Ordinarily an employees shall not be retired on the ground of ineffectiveness, if his service during the preceding 5 years has been found satisfactory.

(ii) Ordinarily an employee shall not be retired on the ground of ineffectiveness, if he has been promoted to a higher post during the preceding 5 years and his service in the highest post has been found satisfactory.

(iii) In case an employee is to be retired on the ground of doubtful integrity, the principle of satisfactory service of last

5 years would not be applicable.

(iv) In case an employee has been promoted during last 5 years on the ground of seniority-cum-fitness, the previous entries in APAR may be taken into account. This would not be applicable, if promotion was made on the basis of merit.

(v) The Committee is empowered to consider APAR, dossier, personal file of Corporation employee, files dealt by him, any paper or report prepared by him or un-communicated remarks in APAR.

(vi) Internal Committee would put together all the available data and prepare a comprehensive brief for consideration by Review Committee.

16. A three Judge Bench of Supreme Court in ***State of Orissa and others Vs. Ram Chandra Das (1996) 5 SCC 331*** , has held that despite promotion of an employee, adverse entries remain part of record for overall consideration to pre-maturely retire a Government servant. The object is public interest, thus, entries do not lose significance, even if the Government servant has subsequently been promoted. The relevant extracts of the judgment read as:

> *"Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him*

> *further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after promotion and not earlier to promotion. Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits."*

The above view has been affirmed by Supreme Court in its subsequent judgment in ***Pyare Mohan Lal Vs. State of Jharkhand (2010) 10 SCC 693.***

17. From the perusal of dossier which was put up before the Reviewing Committee, the noting/opinion of Reviewing Committee and Representation Committee, this Court finds that Reviewing Committee has not taken care of mandate and spirit of Clause IV of paragraph 10 of the circular dated 09.07.2021. It is settled law that circulars are not binding upon the courts, however, department is bound by its circulars. The circular dated 09.07.2021 was issued by FCI, thus, it is precluded to argue contrary to circular and was bound to meticulously follow the same.

In the dossier, the fact of promotion of employees in preceding 5 years was noticed, however, this fact has not been noticed either by Reviewing Committee or by Representation Committee. This fact in the light of Clause (iv) read with Clause (v) of paragraph 10 of circular dated 09.07.2021 needs to be considered, thus, the respondents are directed to re-consider case of all those petitioners who were promoted during 5 years preceding the date of premature retirement. It is made clear that this order would not be construed as reinstatement of the said employees. The respondent as conceded, in the light of Clause (iv) and (v) of paragraph 10 of aforesaid circular, would decide fate of these petitioners within 8 weeks from today.

The record of FCI after perusal stands returned to Mr. Sunlish Bindlish, learned counsel for the respondent.

18. Disposed of in the above terms.

(JAGMOHAN BANSAL)
JUDGE

22.12.2023
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*