

CWP-7934-2024 and 1 2024:PHHC:049972
other connected case

124-9
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CWP-7934-2024
Date of Decision:15.04.2024

MAHAVIR SINGH Petitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERS Respondents

2) CWP-7936-2024

HARDEV SINGHPetitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERS ...Respondents

3) CWP-7961-2024

BALWINDER SINGH TEJAPetitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERSRespondents

4) CWP-7973-2024

SUSHIL KUMAR BHATIAPetitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERSRespondents

5) CWP-7981-2024

GURMAIL SINGHPetitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERSRespondents

6) CWP-7985-2024

ATAM PARKASHPetitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERS ...Respondents

2024:PHHC:049972

CWP-7988-2024

....Petitioner

FOOD CORPORATION OF INDIA AND OTHERSRespondents

CWP-7994-2024

.....Petitioner

FOOD CORPORATION OF INDIA AND OTHERS ...Respondents

CWP-7996-2024

....Petitioner

FOOD CORPORATION OF INDIA AND OTHERSRespondents

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate and
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Sunish Bindlish, Advocate
for the respondents-FCI.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-7934-2024, CWP-7936-2024, CWP-7961-2024, CWP-7973-2024, CWP-7981-2024, CWP-7985-2024, CWP-7988-2024, CWP-7994-2024 and CWP-7996-2024 are hereby disposed of since issues involved and prayers sought in captioned petitions are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-7934-2024.

2. The petitioner through instant petition under Article 226 of

the Constitution of India is seeking setting aside of order dated 11.07.2023 (Annexure P-1) whereby petitioner was prematurely retired from service and orders dated 13.10.2023 (Annexure P-3) and 20.02.2024 (Annexure P-6) whereby representations of the petitioner have been rejected.

3. The petitioner joined respondent-FCI as Category-III employee. In the year 2023, he completed age of 53 years. The respondent constituted a Special Review Committee to consider service record of petitioner and other employees. The Committee formed an opinion that petitioner in terms of Regulation 22 (2) of FCI Regulations, 1971 should be prematurely retired. He filed a representation against the order of premature retirement which came to be dismissed by Representation Committee. The order of premature retirement dated 11.07.2023 (Annexure P-1) and order dated 13.10.2023 (Annexure P-3) rejecting representation is reproduced as below:

“Order dated 11.07.2023

“WHEREAS, the undersigned is of the opinion that, it is in the interest of the Corporation and public interest in general to retire Shri Mahabir Singh (DOB: 01.03.1971), Manager (QC) presently posted 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 Mahabir Singh w.e.f. 11.07.2023 (A/N).

That in lieu of the notice period, Shri Mahabir Singh shall be paid a sum equivalent to the amount of his pay and allowance for a period of 3 (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, Shri Mahabir Singh, Ex-Manager (QC) 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 Mahabir Singh, Ex-Manager (QC) had made the Representation against the ibid order on dated 19.07.2023 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 Mahabir Singh and perusal of Representation Committee Report, the undersigned hereby rejects the representation of Shri Mahabir Singh, Ex-Manager (QC).”

4. The petitioner and other similarly situated employees preferred civil writ petitions and this Court vide judgment dated 22.12.2023 (Annexure P-4) rejected claim of those employees who were not promoted within 5 years from the date of premature retirement, however, directed respondent to re-consider case of those employees who have been promoted within 5 years, in terms of Clause (iv) and (v) of paragraph 10 of circular dated 09.07.2021 (Annexure P-7) issued by respondent-FCI.

5. The petitioner filed representation dated 29.12.2023 (Annexure P-5) before Representation Committee seeking re-consideration of his case. He pointed out that he has been promoted and awarded outstanding grade in ACR after promotion, thus, it is unjustified

to prematurely retire him. There are many employees who have been subjected to multiple major and minor penalties, nevertheless, permitted to continue.

6. The respondent constituted a Special Review Committee which re-considered case of 15 employees who were promoted during last 5 years from the date of order of their premature retirement. The said Committee found that petitioners have not been promoted on merit whereas they have been promoted on the basis of seniority-cum-fitness, thus, as per circular dated 09.07.2021 (Annexure P-7), their entire service record can be considered. Considering the entire service record, the said Committee reiterated findings of earlier Special Review Committee. The Executive Director (North Zone) in terms of report of Special Review Committee passed impugned order dated 20.02.2024 (Annexure P-6) whereby representation of the petitioner came to be rejected.

7. Mr. R.K. Malik, Senior Advocate submits that respondent has not passed impugned order in the true spirit of order dated 22.12.2023 (Annexure P-4) passed by this Court in the earlier round of litigation. The petitioner was promoted on 22.11.2005 from the post of Technical Assistant-III to Technical Assistant-II. He, on 14.12.2018, was further promoted from the post of T.A.-II to T.A.-I. On the basis of seniority-cum-fitness, he was lastly promoted on 28.06.2020 to the post of Manager (QC). No penalty was awarded after promotion. He was subjected to minor penalties of recovery. All the penalties were imposed on account of transit loss and as per instruction dated 12.02.2008 (Annexure P-8) issued by respondent, no recovery can be effected for storage and transit loss. The respondent has permitted to continue persons

named in the body of the petition as well as Annexure P-9 who had been subjected to multiple penalties including major penalties. The respondent has even reinstated those employees who did not approach this Court. The respondent has settled issue with them but punished many officials including petitioners.

8. Per contra, Mr. Sunish Bindlish, Advocate submits that scope of interference by Courts in case of premature retirement is very limited. This Court vide order dated 22.12.2023 (Annexure P-4) rejected petition of those employees who were not promoted during last 5 years, however, directed the authorities to consider case of those employees who were promoted during last 5 years. The respondent has re-considered claim of 15 employees who were promoted during last 5 years. It was found that none of the officers was promoted on merit, thus, respondent considered their entire service record. Nine employees at present are before this Court and seven, out of them were subjected to penalty after promotion. All the petitioners have been subjected to minor penalty on multiple occasions and major penalty on one or another occasion. The respondent was not supposed to pass a speaking order because it would be stigmatic and order of premature retirement is not a stigmatic order. There is no challenge to authority of respondent who has acted in a *bona fide* manner and in the public interest.

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

10. 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 of India. Simple order of compulsory 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 compulsory retirement is an order of punishment. The authorities passing order of premature retirement are not supposed to pass a speaking order. Premature retirement is prerogative of Government but it should be based on material and has to be based on the subjective satisfaction of the Government.

11. 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 compulsory 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 compulsory 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 compulsory 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.

12. Before advertng with issues raised by petitioners, it would be apposite to look at order dated 22.12.2023 (Annexure P-4) passed by this Court in the first round of litigation. This Court considered circular dated 09.07.2021 (Annexure P-7) vis-a-vis promotion of different petitioners during last 5 years. The respondents were directed to re-consider claim of the petitioners in the light of Clause (iv) of paragraph 10 of the aforesaid circular. The relevant extracts of order dated 22.12.2023 (Annexure P-4) are reproduced as below:

“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.”

13. The respondent during the course of hearing produced record of Special Review Committee which considered case of petitioners in terms of aforesaid order of this Court. It is apt to mention here that Minutes of Meeting of Special Review Committee have not been supplied to petitioners. They have been supplied copy of order of premature retirement passed by Executive Director which is based upon opinion of Special Review Committee. The petitioners are bereft of opinion of Special Review Committee. This Court has gone through report of Special Review Committee and finds that said Committee has considered factum of promotion of petitioners during last 5 years, scope of circular dated 09.07.2021 (Annexure P-7) and status of similarly situated employees. The Committee has formed an opinion that case of 286 employees was reviewed and 55 were ordered to be prematurely retired. 210 were found fit and remaining had already retired or were on the verge of retirement. The entire service record of petitioners was considered and an opinion was formed that they cannot be permitted to continue. They were not promoted on the basis of merit whereas they were promoted on the basis of seniority-cum-fitness. The respondent further submitted a chart disclosing that seven out of nine petitioners have been subjected to penalty after their promotion. They have been subjected to minor penalties on multiple occasions. Most of them have even been subjected to major penalties.

14. A two Judge Bench of Supreme Court in ‘**Central Industrial Security Force Vs. HC (GD) Om Prakash**’ 2022 LiveLaw (SC) 128 has

held that for the purpose of premature retirement entire service record is to be taken into consideration which would include ACRs of the period prior to promotion. The order of premature retirement is based upon entire service record, though recent reports may carry their own weight. The Court while setting aside order passed by Division Bench of Delhi High Court has observed that adverse remarks can be taken into consideration as mentioned in numerous judgments. The relevant extracts of the judgment read as:

*“13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in **Ram Murti Yadav v. State of Uttar Pradesh and Another**, (2020) 1 SCC 801 held as under:*

“6.The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.”

*14. Thus, we find that the High Court has not only misread the judgment of this Court in **Baikuntha Nath Das** but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as*

mentioned in the number of judgments mentioned above. There is also a factual error in the order of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

15. The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight.

16. In view of the said fact, we find that the order of the High Court setting aside the order of premature retirement is clearly unsustainable and is set aside. The appeal is allowed. The writ petition thus stands dismissed.”

15. In the case in hand, the petitioners were concededly promoted within last 5 years from the date of their premature retirement, however, none of them was promoted on merit. They were promoted on the basis of seniority-cum-fitness. They have been subjected to punishment on multiple occasions. The respondent has considered their entire service record and arrived at a conclusion that they should be prematurely retired.

16. In view of above cited judgments, this Court cannot substitute opinion of authorities unless and until there is *mala fide* or violation of fundamental rights or any other statutory provisions on the part of authorities. The petitioners have failed to point out *mala fide* on the part of respondents or violation of fundamental rights or statutory provisions, thus, this Court does not find it appropriate to substitute opinion of authorities. The petitions being bereft of merit deserves to be

dismissed and accordingly dismissed.

16. Before parting with the judgment, I would hasten to add that respondent as duty bound shall consider case of all those employees who are similarly situated especially who have been pointed out by petitioners in the body of writ petition or Annexure P-9.

17. The record of Special Review Committee produced by respondent is hereby returned to Mr. Sunish Bindlish, Advocate.

(JAGMOHAN BANSAL)
JUDGE

15.04.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>