



2025:DHC:529-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29.01.2025

+ W.P.(C) 5604/2017
SUBHASH KUMAR

.....Petitioner

Through: Mr. Raj Singh Phogat, Adv.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Rishabh Sahu, SPC with
Mr. Sameer Sharma, Adv. with
Mr. B.B. Sharma, A.C., Mr.
Amit Kumar, SI/Exe, Mr. Ajay
Kr., SI/Exe and Mr. Prahalad
Kr. SI/Exe, C.I.S.F.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 29.04.2016 by which the petitioner's representation dated 21.01.2016 for regularization of the intervening period between the date of the order of his premature retirement from service to the date of his reinstatement in service has been rejected.

2. As a brief background, the facts giving rise to the present petition are that the petitioner was appointed as a Sub Inspector ('SI') (Executive) in the Central Industrial Security Force ('CISF') on 09.12.1989, and later, was promoted to the rank of Inspector (Executive) on 01.05.2005.



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3. It is the case of the petitioner that the petitioner had earned Annual Performance Assessment Report ('APAR') gradings of 'good' and 'very good', however, by an Order dated 09.01.2015, the petitioner was compulsorily retired from service under Rule 56(j) of the Fundamental Rules. The petitioner represented against the same by way of a representation dated 10.02.2015 (wrongly mentioned as 10.02.2016 in the documents enclosed with the petition). The same was duly considered by the respondent no. 2, who, by an Order dated 30.11.2015/02.12.2015, took a lenient view on the representation of the petitioner and decided to give him one more chance to serve in the force by reinstating him in service.

4. As far as the period between the order of the petitioner's compulsory retirement from service and the date of his reinstatement in service is concerned, the respondent no. 2 directed that the same shall be regularised by grant of leave of the kind due to the petitioner. Aggrieved of the same, the petitioner has approached this Court by way of the present petition.

5. The learned counsel for the petitioner submits that the Order dated 09.01.2015 passed by the respondents directing the premature retirement of the petitioner was contrary to Rule 56(j) of the Fundamental Rules was contrary to the Rules. He submits that for the purposes of considering a case for premature retirement, only the last five Annual Confidential Reports (ACR)/APARs of the concerned personnel are to be seen by the Superannuation Review Committee. He submits that the last five APARs of the petitioner had graded him as 'good' and 'very good', which met the benchmark for promotion to



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the post of Assistant Commandant. He submits that, therefore, the decision to compulsorily retire the petitioner in itself was wrong.

6. He submits that while the Impugned Order dated 30.11.2015/02.12.2015 has directed the reinstatement of the petitioner in service, it has taken note of six minor punishments that were given to the petitioner during his tenure. He submits that five of these minor punishments were awarded when the petitioner was posted in the rank of SI, and since the petitioner was duly promoted to the rank of Inspector thereafter, these punishments could no longer have been taken into consideration while deciding the case of the petitioner.

7. He further submits that the petitioner having met the criteria for promotion to the post of Assistant Commandant, even otherwise, these five minor punishments and the one minor punishment that had been awarded to the petitioner while he was holding the rank of Inspector, could not have been the cause for directing the compulsory retirement of the petitioner. He submits that, therefore, the period between the date of petitioner's compulsory retirement from service and the date of his reinstatement to service should have been regularised by the respondents as being on duty.

8. He further submits that in terms of the Office Memorandum No.25013/5/76-Estt.(A) dated 11.10.1976, the respondents were under an obligation to complete the entire exercise of considering the representation of the petitioner against his compulsory retirement within a period of nine weeks of receipt thereof. He submits that in the present case, the respondents have taken more than a year to decide on the application/representation of the petitioner. He submits that the



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petitioner cannot be made to suffer due to the delay on the part of the respondents, which is, in fact, in violation of the said Office Memorandum.

9. On the other hand, the learned counsel for the respondents submits that the respondent no. 2 has taken a lenient view on the representation of the petitioner against his compulsory retirement. The respondent no. 2 has, in fact, given another chance to the petitioner to perform his duties more diligently and with sincerity. Taking into account the overall service record of the petitioner, the respondent no. 2 has, thereafter, decided to regularise the period between the date of the order of compulsory retirement of the petitioner to the date of his reinstatement as being on leave that was available to the petitioner. He submits that this discretion, having been exercised by the Competent Authority under Rule 56(jj)(i) of the Fundamental Rules, should not be interfered with by this Court in the absence of any allegations of *malafide* or violation of rules.

10. We have considered the submissions made by the learned counsels for the parties.

11. In the present case, it is not denied that the petitioner had been promoted to the rank of Inspector on 01.05.2005, and prior to his promotion, there were five minor punishments with which the petitioner was visited with. These are reproduced hereinunder:

“i) Withholding of one increment for one year without cumulative effect vide FO No.(765) dated 27.06.1992 for taking medical rest to avoid temporary duty to Zonal HQRs Barwaha.



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ii) *Reduction of pay by two stages for two years without cumulative effect vide FO No.(1098) dated 26.02.1994 for desertion from commando course.*

iii) *Censure vide FO No.(3274) dated 27.12.1994 for lost of identity card.*

iv) *Five days pay fine vide FO No. (553) dated 23.08.1995 as the railway warrant issued to him could not be exchanged due to his negligency and carelessness.*

v) *Censure vide FO No. (5406) dated 23.07.1996 for breakage of revolver parts due to mishandling and carelessness.”*

12. Even on being promoted to the rank of Inspector, the petitioner was again visited with another punishment on 03.08.2011, as under:

“vi. Reduction of pay by one stage for a period of three years without cumulative effect on 03.08.2011 for failure to watch the behaviour and activities of Const Balwinder Singh while performing as Coy. Commander at Naroda Ahmedabad Gujrat on IS duty and carelessly detailed him in night shift duty along with arms as a result said Constable opened fire in which eight civilians got injured. “

13. The respondent no. 2, being the Competent Authority, while considering the representation of the petitioner, took note of these punishments awarded to the petitioner and disposed of the representation of the petitioner by observing as under:

“3. The Representation Committee has considered his representation for reinstatement in service.

i. On scrutiny of the service records of Ex-Inspector (Exe) Subhash Kumar, it is observed by the Representation Committee that although he has been



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awarded with 06 Minor punishments during his entire service for various acts of misconduct, none of them relate to acts of serious misconduct e.g. moral turpitude corruption etc.

ii. It is also observed by the Representation Committee that No.892200081 Ex-Inspector (Exe) Subhash Kumar has been consistently getting 'Good/Very Good' in his ACR from the year 2008 onwards which shows that he has been discharging his duties to the satisfaction of his superiors.

3. Thus, taking all facts of the case into account, the Representation Committee has taken a lenient view of the representation of No.892200081 Ex-Inspector (Exe) Subhash Kumar of CISF Unit, P&HCs Chandigarh and decided to give him one more chance to serve in the Force by reinstating him in service.

4. It is also made clear to the petitioner that his performance will be supervised closely and if at any point of time he is found to be failing in his commitment towards bonafide Govt. duties, then provisions of FR-56(j) may be invoked again to review his retention in service.

5. The intervening period between the date of premature retirement from service to the date of reinstatement in service will be regularized by grant of leave of the kind due to the individual."

14. The submission of the learned counsel for the petitioner that the punishments with which the petitioner was visited while he was holding the rank of SI could not have been taken into account by the Competent Authority while ordering his compulsory retirement or reinstatement, cannot be accepted. In ***State of Gujarat vs Umedbhai M. Patel***, (2001) 3 SCC 314, the Supreme Court has summarised the principles applicable to compulsory retirement as under:



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“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.”

15. From the above, it would be apparent that though an order of compulsory retirement should not be passed as a shortcut to avoid a Departmental Inquiry or as a punitive measure, at the same time it is passed for better administration and to cut off the dead wood. Further, it must be passed after having due regard to the entire service record of the officer, and though the petitioner having been granted promotion inspite of adverse entries made in the Confidential Reports



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prior to the same, enures to the benefit of the officer, at the same time, the punishments which he has been visited with and form part of his service record, cannot be completely ignored.

16. As far as the submission of the learned counsel for the petitioner that the petitioner was otherwise making the grade for further promotion to the rank of Assistant Commandant, our attention has been drawn to the Circular No. 14/2011 dated 14.10.2011, which states that for promotion, one of the criteria is that the officer should not have a total of five (or more) minor and major punishments in the whole career. Therefore, the above submission also does not help the petitioner in the present case.

17. In the present case, the petitioner was visited with a punishment even post his promotion. The Competent Authority has, therefore, while ordering the reinstatement of the petitioner, taken note of his service record and thereafter, on a sympathetic consideration, granted a further opportunity to the petitioner to perform his duties more diligently. The Competent Authority has further directed that the period between the date of compulsory retirement and the date of the reinstatement of the petitioner shall be treated as being on leave of the nature that is available to the petitioner. This is in exercise of the powers under Rule 56 (jj)(i) of the Fundamental Rules, which is reproduced hereinunder:

“(jj)(i) If on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period between the



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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.”

18. In the absence of any allegation of *malafide* or arbitrariness, we would not like to interfere with the discretion exercised by the respondent no. 2 in this regard.

19. Accordingly, we find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 29, 2025/sds/sk/SJ

[Click here to check corrigendum, if any](#)