



2025:DHC:8-DB



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

% ***Reserved on: 13.11.2024***

Pronounced on: 07.01.2025

+ W.P.(C) 6197/2018

KALU SINGH

.....Petitioner

Through: Mr. Mrinmay Bhattmewara,
Adv.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Rajesh Kumar, SPC with
Mr. Rahul Kumar Sharma, Mr.
Yash Narain, Advs. With Mr.
Rishi Kaushik, DC, CISF.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The petitioner joined the Central Industrial Security Force (CISF) on 16.07.1986 as a Constable and was subsequently promoted to the rank of Head Constable (General Duty) on 24.09.2008. After completing 30 years of service, the petitioner was considered for Superannuation Review under Rule 48 of Central Civil Services (Pension) Rules, 1972 (in short, 'CCS Rules') by a Superannuation Review Committee, which assessed the entire service record of the petitioner, including his Annual Confidential Report (in short, 'ACR') gradings and punishments awarded to him during his service term and



2025:DHC:8-DB



found him '*not fit for retention in service*'. Consequently, the petitioner was prematurely retired from the CISF with effect from 16.07.2016 *vide* order dated 08.07.2016 passed by the Office of Commandant, CISF.

2. The petitioner preferred an appeal dated 21.07.2016 to the Director General, CISF against the retirement order dated 08.07.2016. The Appellate Authority, being the Deputy Inspector General, CISF, *vide* the order dated 12.01.2017, rejected the said appeal and the order of premature retirement was affirmed.

3. It is the case of the petitioner that the Appellate Authority failed to comply with the pre-conditions of Clause (j) of Rule 56 of the Fundamental Rules (in short, 'FR') as the petitioner was never informed or given any Show Cause Notice by the concerned authority before invoking the said provision. The Impugned Order was solely based on the report of Superannuation Review Committee, without providing the petitioner an opportunity of being heard, and furthermore, the order was non-speaking and did not give reasons.

SUBMISSIONS ON BEHALF OF THE PARTIES:

4. The learned counsel for the petitioner submitted that the order of premature retirement has serious consequences, therefore, an opportunity of a hearing should have been given to the petitioner. The petitioner was not granted any opportunity to submit any document, nor was he granted the opportunity to present his contention in defence before the Superannuation Review Committee. The petitioner



2025:DHC:8-DB



Guidelines issued by the Government. Given the petitioner's service record and punishments awarded to him on various Charges throughout his service period, the said Committee came to the conclusion that the petitioner is not amenable to the standards of discipline expected from an enrolled Member of the Force and that his continuation in the Armed Force is not in public interest.

11. He further contended that, even otherwise, the petitioner has been receiving all the retirement benefits as per the prescribed policy of the Government. The learned counsel in support of his contentions placed reliance on the following judgments:

- *Union of India v. Col. J. N. Sinha and Anr.*, (1970) 2 SCC 458;
- *Rajasthan State Road Transport Corporation & Ors. v. Babu Lal Jangir*, (2013) 10 SCC 551.

Findings & Analysis:

12. Having heard the submissions made at the Bar and examined the record, we may begin by noting that according to Government of India, Ministry of Home Affairs' Office Memorandum No. 25013/14/77-ESTT. (A), dated 05.01.1978 on the subject 'Strengthening of administration -Pre-mature retirement of Central Government Servants'- the criteria and procedure and guidelines laid down that the cases of the government servants covered by FR 56(j) or Rule 48 of the CCS Rules or Article 459 of the Civil Service



2025:DHC:8-DB



Regulations (CSRs) should be reviewed six months before they attain the age of 50-55 years or complete 30 years service/30 years of qualifying service, whichever occurs earlier. The Pension Rules and the Fundamental Rules have been issued under Article 309 of the Constitution. The power to retire, therefore, flows from the relevant rules made under FR 56(j) as well as those under Rule 48 of the CCS Rules.

13. In this background, we may now refer to the Rule 48 of the CCS Rules, which deals with retirement of a Government employee on completion of 30 years of service, and is reproduced as under:

“48. Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service

-

(a)	<i>he may retire from service, or</i>
(b)	<i>he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension :</i>

Provided that -

(a)	<i>a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and</i>
(b)	<i>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 in the public interest or three months' pay and allowances in lieu of such notice :</i>



2025:DHC:8-DB



14. In the aforesaid context, it would be further relevant to note the provision of FR 56(j) as well, which is as under:

“(j) Notwithstanding anything contained in this rule, 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 Government servant by giving him notice of not less than three months in writing or three months’ pay and allowances in lieu of such notice:

(i) If he is, in Group ‘A’ or Group ‘B’ service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years;”

15. In **Col. J. N. Sinha** (supra), the Supreme Court has held as under:-

“9....Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.”

16. From a symbiotic reading of the above-mentioned provisions and decision of the Supreme Court, what emerges is that the Competent Authority has the absolute right to retire a Government servant under FR 56(j) or Rule 48(1)(b) of the CCS Rules, as the case may be, if it is deemed to be best in the public interest. The Competent Authority may, at any time, after a Government servant has attained



2025:DHC:8-DB



the age of 50/55 years or completed 30 years of service, whichever is earlier, as the case may be, retire him pre-maturely in public interest. Therefore, for premature retirement of the employees of Group 'A' and 'B', who had entered government service before attaining the age of 35 years, the age criteria is 50 years, in any other case, it is 55 years or on completion of 30 years of service whichever is earlier.

17. Fundamentally, it cannot be claimed that both the Rules should be satisfied before the government employee can be considered for premature retirement. Needless to say, the minimum age of recruitment is 18 years and under Rule 48 of the Pension Rules, an employee can be considered for premature retirement when he/she completes 30 years of qualifying service, that means, he/she may not attain the age of 55 years as laid down under FR 56 (j). As a matter of fact, FR 56(j) and Rule 48 of the CCS Rules, in our view, are not to be read conjointly and thus it is not necessary that an employee should have attained 55 years of age as well as completed 30 years of qualifying service before he/she can be prematurely retired. The guidelines lay down the procedure, stating therein that as soon as such an employee attains the age of 55 years or completes 30 years of qualifying service, "whichever occurs earlier", he may be retired prematurely. However, it is mandatory to issue at least a 3 months' notice to such a government employee or to grant 3 months pay and allowance in lieu of such notice.



2025:DHC:8-DB



18. We are afraid that in light of the aforesaid provisions, this Court does not find merit in the submission made on behalf of the petitioner that since he had not completed 55 years of age and being a Group 'C' employee, he could not have been made to retire pre-maturely by the respondents. The petitioner had completed 30 years of service on the date he was compulsorily retired, that is, on 16.07.2016, therefore, his case squarely falls within the parameters of Rule 48(1)(b) of CCS Rules. The Superannuation Review Committee has also considered the case of the petitioner in accordance with Rule 48(1)(b) of the CCS Rules, which is also recorded in the Order dated 08.07.2016 passed by the Office of Commandant, CISF Unit ATPP Anapara, as well as in the Appellate Authority's Order dated 12.01.2017. Merely because the Commandant had mentioned FR 56(j) instead of Rule 48 does not take away its validity. It is a well settled legal position that the 'mere mentioning of wrong provision does not invalid an order as long as there exists a valid authority in law to take action'. The petitioner had completed 30 years of qualifying service and, therefore, the Competent Authority had taken action in order to retire him compulsorily on the completion of the same, without waiting for his attaining the age of 55 years, as urged by him.

19. The order of the Office of Commandant wherein the case of the petitioner was considered, is as under:

"It has been intimated that Superannuation Review under FR- 56(j)/Rule 48 of CCS Pension Rule 1972 in respect of No.



2025:DHC:8-DB



862310354 HC/GD Kalu Singh formerly of CISF Unit BCCL Dhanbad (Presently posted at CISF Unit RHPP Pipri) was conducted on 31.03.2016 and Superannuation Review Committee found him "NOT FIT FOR FURTHER RETENTION IN SERVICE" on completion of 30 years' service w.e.f. 16.07.2016 in the public interest. NOW, THEREFORE, in exercise of the powers conferred under clause (J) of Rule-56 of the Fundamental Rules, the undersigned hereby retires CISF NO.862310354 HC/GD Kalu Singh of CISF Unit RHPP Pipri w.e.f. 16.07.2016 in public interest, he having already completed 30 years of service."

20. To paint a clearer picture, the order dated 12.01.2017 passed by the Appellate Authority is reproduced as under:

"On completion of 30 years of qualifying service, his Superannuation Review was conducted in accordance with Rule-48 of CCS (Pension) Rules, 1972 by a Superannuation Review Committee consisting of DIG/BCCL Dhanbad as Chairman and Sr. Commandant, BCCL Dhanbad as member. The Superannuation Review Committee scrutinized his entire service records including his ACR gradings, punishment details etc. and found him 'Not fit for retention in service'. Consequently, he was pre-maturely retired from CISF w.e.f. 16.07.2016 on completion of 30 years qualifying service when posted at CISF Unit, RHPP Pipri vide Commandant CISF Unit, ATPP Anpara Order No. E-22014/CISF/ATPP(A)/Doc/Sup.Rev/2016/4420 dated 08.07.2016.

Xxxxxxxx

The individual's record reveals that his date of birth is 15.07.1966 and he was appointed in CISF on 16.07.1986 and accordingly in consonance with provisions of FR-56G)/Rule-



2025:DHC:8-DB



48 of CCS (Pension) Rules, 1972, his case was considered by a Superannuation Review Committee and found him Unfit for further retention in service based on his previous conduct-both professional and personal-spanning over his entire length of 30 years of service. Accordingly, he was prematurely retired from service w.e.f. 16.07.2016, on completion of 30 years of service in the public interest. Hence, the order of premature retirement is within the ambit of rules and there is no incongruity involved here.”

21. The Appellate Authority, while dismissing the petitioner’s representation, observed as under:

“The Representation Committee does not find any reason cogent enough to interfere with the decision of the Superannuation Review Committee to retire him prematurely on completion of 30 years of qualifying service.”

22. It would be further beneficial to refer to the decision of a Division Bench of the High Court of Madhya Pradesh which considered a similar issue in the case of ***Ramjilal Burman v. Union of India***, 2012 SCC OnLine MP 11023 and observed that :-

“If this Court assumes that the petitioner's case falls under category D employee and he has not attained the age of 55 years but the order was passed under FR 56(j) by wrongly quoting the provision in place of rule 48 of CCS (Pension) Rules, 1972, it would not invalidate or vitiate the recommendations of the Committee because he was not found fit to be continue in the employment looking to his past performance and conduct relates to his integrity.”



2025:DHC:8-DB



23. From the tone and tenor of the orders passed by the Competent Authorities, we find that the intention of the Competent Authority was to retire the petitioner under Rule 48 of the CCS Rules however, the same has been mentioned along with FR 56(j). The Superannuation Review Committee had considered the case of the petitioner under FR 56 (j)/ Rule 48 of the CCS Rules but recommended that he be compulsorily retired on completion of 30 years of service, therefore, it can be gathered that the intention was never to retire the petitioner under FR 56(j). Further, the Commandant also considered the findings of the Superannuation Review Committee, however, by mentioning the provisions of FR 56(j) retired the petitioner, with effect from, 16.07.2016 in public interest, having already completed 30 years of service, retired him.

24. Thus, in these circumstances, the Impugned Order cannot be held to be vitiated as having been passed under FR 56(j), as the intention was to compulsorily retire the petitioner, not for attaining 50/55 years of age, instead, on completion of the 30 years of qualifying service. Even though the Order has been passed under FR 56(j), the said order is to be read as having been passed under Rule 48 of the CCS Rules.

25. Now turning to the issue that the petitioner was prematurely retired arbitrarily without being served with a Show Cause Notice by the respondents. To deal with the said issue, it would be apposite to refer to the Office Memorandum No. 25013/03/2019-Estt.A-IV (in



2025:DHC:8-DB



short, 'OM') dated 28.08.2020, titled "*Period Review of Central Government Employees for strengthening of administration under Fundamental Rule (FR) 56(j)/(1) and Rule 48 of CCS (Pension) Rules, 1972*" passed by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Establishment A-IV Desk, which has been referred to by the respondents by submitting that the Government has unfettered power to retire its employee under FR56(j)/(1) and Rule 48 of the CCS Rules in Public Interest. The said OM provides a broad criteria to be followed by the Review Committee while making recommendation for the compulsory retirement of an employee, which reads as under:-

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

- (i) Government servants whose integrity is doubtful, shall be retired.*
- (ii) Government servants found to be ineffective shall also be retired. The basic consideration in identifying such Government servants should be their fitness/competence to continue in the post held.*
- (iii) No Government servant 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, efficiency or effectiveness of a Government servant, it would be open to review such a case also for premature retirement. The said instruction of not retiring the Government servant 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*



2025:DHC:8-DB



ineffectiveness, but not on the ground of doubtful integrity.

(iv) No Government servant 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 Government servant is to be retired on grounds of doubtful integrity. In case of those Government servants who have been promoted during the last 5 years, the previous entries in the ACRs 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 Government servant 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 ACR/APAR dossier. The personal file of the Government servant 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 Ministry I Department/Cadre puts together all the data available about the Government servant and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration."

26. We may also refer to the decision of the Supreme Court in the case *State of Gujarat v. Umedbhai M. Patel*, (2001) 3 SCC 314, wherein the Supreme Court crystallized the law relating to 'compulsory retirement' into definite principles and summarized the same, which are reproduced herein below:-

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



2025:DHC:8-DB



- (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.”*

27. The principle of law that the power to retire compulsorily is absolute, provided that the authority concerned forms a *bonafide* opinion that the compulsory retirement is in the public interest, was reiterated in the case of ***Rajasthan State Road Transport Corp.*** (supra), which reads as under:-

“28. It hardly needs to be emphasized that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non application of mind, malafide, perverse, or arbitrary or if there is non-compliance of statutory



2025:DHC:8-DB



duty by the statutory authority. Power to retire compulsorily, the government servant in terms of service rule is absolute, provided the authority concerned forms a bonafide opinion that compulsory retirement is in public interest.”

28. What clearly follows from a reading of the above is that though the Competent Authority’s absolute power to retire an employee in public interest is with a view to improve efficiency of administration and to remove the dead wood on the basis of misconduct, inefficiency and integrity, however, while relying on the recommendations of the Superannuation Review Committee, the Competent Authority has to assess whether there was sufficient material available to take such an action in accordance with law, and whether the Review Committee has considered the entire service record of the government employee before making such recommendations. Without there being sufficient material before the Review Committee, the recommendation for compulsory retirement may become punitive and not justified, specifically when the issuance of a Show Cause Notice is not provided for in the said Rules. Moreover, only when the power exercised by the Competent Authority is perverse or arbitrary that it is open to judicial review.

29. In the present case, the submission of the petitioner that the Superannuation Review Committee has dealt with the case of the petitioner in a casual and mechanical manner and without assigning any reason, cannot be sustained. To appreciate this plea of the petitioner, it is relevant to note petitioner’s punishments and Annual



2025:DHC:8-DB



Performance Assessment Report (in short, 'APAR') Gradings. Having perused the record, we find that the petitioner has been awarded 9 punishments during his service span, which are as follows:-

SI No.	Punishment	Reason
01	2 days Pay fine	Absent from duty post.
02	7 days Pay Fine	Misbehaver with Civil driver
03	Censure	On 05.10.2006, he was detailed as outside sentry at the main gate from 13.00 hrs to 21.00 hrs in 2 nd Shift. The "Bomb Mock Drill" was conducted as per the schedule of the Safety Week organized by IOC Viramgam. The bomb material prepared for the said mock from the main gate of Mr. D. Mehta HRO drill kept in Car No. GJ01BP9147 entered in the plant at 14.41 hrs. On not checking the said car properly, the said goods were taken inside the plant.
04	With holding of one increment for a period of one year without cumulative effect.	Misbehaver with Const/GD Md. A Mir and use un-parliamentary language.
05	5 days pay fine	Misbehaver with civil labour, Coy. Commander and use un-parliamentary language.
06	7days pay fine	On 08.05.2023, he was found fallen at the BCD duty place during the first shift duty after consuming drugs. Again on 15.05.2013, he was found absent at night shift BCD duty place and on search he was found to be intoxicated.
07	Withholding of next annual increment for one year without cumulative effect.	On 20.06.2014, he was found absent during regular barrack checking at about 2200. On search by CHM and other CISF personnel, he was found unconscious in the drain between Cooperative Colony and 'A' type quarter.



2025:DHC:8-DB



08	<p>Rs. 11,320/- and grade pay of Rs. 2800/- by reducing two levels of pay to Rs. 10,500/- and grade pay of Rs. 2800/- for two years with the instruction that he will not earn increment during the said pay reduction and the reduction in pay will have an adverse effect on his future pay.</p>	<p><u>Allegation-1</u> On 29.11.2014, he had been detailed on Main gate of Koyla Bhawan Morcha No-01 duty post with arms and ammunition. During the said duty, he went to the toilet after obtaining permission from the shift in-charge to go to the toilet at about 1700 hours and when he returned from the toilet, he was found in a state of extreme intoxication and not performing his duty.</p> <p><u>Allegation-2</u> After perusing the service documents, it was found that a total of 07 convictions were given in the previous service period, out of which 02 convictions were given on the charge of consuming drugs.</p>
09	<p>Withholding of one increments for a period of two years which will not have the effect of postponing his future increments and pay</p>	<p><u>Allegation-1</u> On 01.05.2016 from 18.00 hrs to 06.00 hrs on 02.05.2016, he was detailed for duty at Gate No. 04, but on 01.05.2016 at 1720 hrs, he went to Kot to take arms in an inebriated state. Due to being in a state of intoxication, you were not given weapon and not taken for duty.</p> <p><u>Allegation-2</u> He was found absent unit line without any permission of competent authority on 01.05.2016 during 1900 hrs to 2300 hrs.</p>

30. From a reading of the punishment details of the petitioner, it is evident that on four occasions, that is, on 08.05.2013, 29.11.2014, and 01.05.2016, he was found intoxicated on either drugs or alcohol while on duty, and on 20.06.2014, during barrack checking, he was found lying in an unconscious condition under the influence of liquor near the VI-A Type Quarter. With regard to another incident dated



2025:DHC:8-DB



29.11.2014, while on shift at Bhawan Morcha No. 1 of CISF Unit, BCCL, Dhanbad along with arms and ammunition, he was found in an inebriated condition and was not in a position to perform duty, for which he was awarded 'Major Penalty'. Furthermore, on 05.10.2006, during a Bomb Mock Drill, the petitioner was posted as outside sentry at the main gate, but he allowed a car without checking it properly which was carrying material for preparing the bomb, thus, he failed to perform the Mock Drill properly.

31. From a perusal of the Impugned Order dated 12.01.2017 passed by the Deputy Inspector General, CISF, it emerges that the Superannuation Review Committee had scrutinized the entire service record, including APAR Gradings and the punishment details of the petitioner, and observed that despite the petitioner being promoted to the rank of Head Constable (GD) in the year 2008, he failed to improve his conduct and was awarded with one major and five minor penalties. Thus, the Review Committee was of the opinion that the petitioner lacked commitment towards his duties and that he was not amenable to the high degree of discipline expected from a member of the Force. Accordingly, the Appellate Authority rejected the representation of the petitioner, being devoid of merit.

32. In so far as the submission of the petitioner that the order dated 08.07.2016, passed by the Commandant is unreasoned, therefore, the same is not sustainable, is concerned, we find that the Commandant has based its decision on the report of the Superannuation Review



2025:DHC:8-DB



Committee. Even the Appellate Authority has considered the same and based its decision thereon. The reasons are, therefore, implicit/explicit in both the orders.

33. It is also not the case of the petitioner that the previous incidents of misconduct, for which he was punished, had occurred in remote past and, thereafter, his behavior had improved. Upon perusing the 'overall performance' of the petitioner on the basis of his service record, we are dismayed to find that on 08.05.2013, 20.06.2014, 29.11.2014 and 01.05.2016, the petitioner was found in an inebriated condition, mainly when he was on duty, which is highly undisciplined behavior and totally unbecoming of a Force personnel. Such a conduct cannot be tolerated from a member of the Force.

34. We, therefore, find that the service record of the petitioner portrays a doleful picture. Pertinently, the petitioner has failed to establish any defect in the Impugned Order as alleged by him. In view of the above, this Court finds no reason to interfere with the Impugned Order dated 12.01.2017 in exercise of its limited power of Judicial Review.

35. The petition is, accordingly, dismissed.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

JANUARY 07, 2025/fk/as

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