



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.8634 OF 2012

SUSHIL SHARMA

.... APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

.... RESPONDENTS

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1) The present Appeal assails the judgment and order passed by the High Court of Delhi, at New Delhi, in W.P.(C) No.307/2011, whereby the High Court dismissed the said writ petition filed by the appellant and upheld the orders of compulsory retirement passed against him *vide* order dated 06.06.2010 by the competent authority.

2) Shorn of unnecessary details, the facts can be adumbrated as thus: the appellant joined the Central Industrial Security Force¹ as an Assistant Sub-inspector on 28.06.1982. While in service, he was promoted twice, firstly to the post of Sub-Inspector on 29.03.1990 and later to the post of Inspector on 19.09.2003. Upon attaining the age of 50 years, the appellant's case was placed before the Internal Screening Committee² for assessment under Rule 56(j) of the Fundamental Rules. The Committee found the

¹ For brevity, "CISF"

² For brevity, "the Committee"

appellant to be unfit for retention in the service. The said view was affirmed by the Review Committee *vide* order dated 06.06.2010; consequently, the appellant was compulsorily retired from service. The appellant's representation submitted being aggrieved by the aforesaid order was also rejected by the Representation Committee.

3) Assailing the order of compulsory retirement, the appellant filed a writ petition before the High Court. The High Court, after considering the appellant's Annual Confidential Reports³ opined that the efficiency of the appellant to perform his duties slackened in the last 2 years of the period under review and held that the decision of the Committee in compulsorily retiring the appellant was not arbitrary or unreasonable. Aggrieved thereby, the appellant is before us in this Appeal.

4) Heard the learned Counsel for either side and perused the material on record.

5) The object underlying compulsory retirement is to weed out the dead wood so as to maintain a high standard of efficiency and integrity in public service. It is trite law that an order of compulsory retirement is not punitive in nature and implies neither stigma, prejudice nor any suggestion of misbehaviour. The order of compulsory retirement is in public interest and is passed on the subjective satisfaction of the Government. Furthermore, the principles of natural justice, *audi alteram partem* find no application in the context of compulsory retirement. However, this cannot be construed to mean that the order of compulsory retirement is insulated from judicial

³ For brevity, "ACR"

scrutiny. Albeit, the High Court or this Court would not examine the matter as an Appellate Court, but nevertheless, can interfere, if the order so passed is *malafide*, based on no evidence or is arbitrary and perverse.

6) It is also well settled that the Government or the Review Committee, as the case may be, shall take a decision considering the entire record of service, attaching more importance to records and performance during the subsequent years, weighing in both favourable and adverse remarks. Equally well settled is the principle that an order of compulsory retirement cannot be invalidated merely because uncommunicated adverse remarks formed part of the material considered by the authority. Such circumstance, by itself, does not furnish a ground for judicial interference. [*see: Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another*]⁴

7) Speaking in consonance with aforementioned adjudication and the limited role of judicial interference in an order of compulsory retirement, this Court in the case of *Ram Murti Yadav v. State of Uttar Pradesh and Another*⁵ observed as follows:

“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.”

⁴ (1992) 2 SCC 299

⁵ (2020) 1 SCC 801

8) On perusal of the appellant's ACR, it emerges that his gradings from 1983 to 1999 fluctuated between "Average", "Good" and "Very Good", with the appellant earning his first promotion in 1990 during a period of improved performance, and his second promotion in 2003 on the string of "Very Good" gradings from 2000 to 2003. While the appellant's entire service record is required to be considered, consistent with the settled position of law, greater weight must necessarily be accorded to the service record of the immediate preceding years before the order of compulsory retirement. It is, therefore, the appellant's performance during the period 2004-2009 which assumes particular significance in the present case. During this period the appellant was graded "Average" in 2004, "Very Good" in 2005, "Good" in 2006 and 2007 and "Good" for the first quarter of 2008 but thereafter declined to "Average" for the remainder of 2008 and continued to be graded "Average" through 2009.

9) It is, thus, apparent that in the last two years immediately preceding to order of compulsory retirement, the appellant's performance suffered discernible decline, with the gradings dropping from "Good" to "Average" and remaining stagnant thereafter. This is coupled with the fact that after his last promotion in 2003, the appellant was inflicted with one minor penalty of censure for furnishing a false reason to obtain leave, apart from being warned on four occasions for negligence in duties and cautioned twice for lethargic attitude.

10) At this juncture, it is necessary to deal with the appellant's contention that the penalties and adverse material preceding his promotion as Inspector could not have been considered while assessing his suitability for retention in service. In this regard, a beneficial reference can be made to a decision of this Court in ***Rajasthan State Road Transport Corporation and Others v. Babu Lal Jangir***⁶, wherein it was observed as follows:

“23. The principle of law which is clarified and stands crystallised after the judgment in *Pyare Mohan Lal v. State of Jharkhand* [(2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this “washed-off theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.”

(emphasis supplied)

11) As is clear from the above, while the “washed-off theory” may operate in matters relating to promotion, it has no application where the competent authority assesses the suitability of an employee for continued retention in service. The Committee was, therefore, justified in considering the appellant's entire service record, including adverse material preceding the appellant's promotion.

⁶ (2013) 10 SCC 551

12) A similar factual situation arose for consideration before this Court in the case of ***Posts and Telegraphs Board and Others v. C.S.N. Murthy***⁷ wherein, despite the respondent having an otherwise satisfactory service record, his standard of work had declined during the last two years immediately preceding the review. While upholding the order of compulsory retirement, this Court observed thus:

“5.We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable....It is true that the earlier record of the respondent was good but if the record showed that the standard of work of the respondent had declined and was not satisfactory, that was certainly material enabling the department to come to a conclusion under F.R. 56(j).”

13) The aforesaid view also stands re-affirmed in ***Central Industrial Security Force v. HC (GD) Om Prakash***⁸ wherein this Court, while dealing with an order of compulsory retirement passed under Rule 56(j) in respect of a member of the CISF, reiterated that the entire service record is to be considered, albeit with greater weight to the recent record of service.

14) In view of the aforesaid discussion, we find no infirmity in the decision of the Committee. The Committee considered the appellant's entire service record while according due weight to his declining performance during the immediate preceding years, in conformity with the settled principles governing compulsory retirement. We concur with the view taken by the High Court affirming the same.

⁷ (1992) 2 SCC 317

⁸ (2022) 5 SCC 100

15) It also cannot be lost sight of that the appellant was serving in the CISF, a disciplined and uniformed force entrusted with vital security functions. Members of such force are expected to maintain a consistently high standard of efficiency, vigilance and discipline. Viewed in that light, the decision of the competent authority warrants no interference.

16) Accordingly, the Civil Appeal is *sans* merit and dismissed.

.....**J.**
(PRASHANT KUMAR MISHRA)

.....**J.**
(SHREE CHANDRASHEKHAR)

NEW DELHI;
AUGUST 06, 2026.