

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 14th October, 2011

+ WP(C) No.7471/2011

HC (GD) OM PRAKASH Plaintiff
Through: Mr.Anil Mittal, Advocate

versus

CENTRAL INDUSTRIAL SECURITY FORCE ...Respondent
Through: Mr.P.S.Parmar, Advocate with
Mr.Abdus Salam, Asst.Comdt./CISF

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Exercising power under Rule 56(j) of the Fundamental Rules read with Rule 48(1)(b) of CCS (Pension) Rules 1972, upon completion of 30 years service by the petitioner, the Commandant CISF Unit Korba has passed the impugned order dated 16.8.2011 retiring the petitioner prematurely with immediate effect directing that sum equivalent to pay for 3 months shall be paid.

2. Relevant record concerning the impugned decision has been produced at the first hearing today itself inasmuch as the Rules of this Court require an advance copy of a writ petition to be served upon the respondents who have to appear in court at

the first hearing and we are happy to note that the respondents have been rendering utmost cooperation to the Court by producing the relevant record on the date of the first hearing. Since record is produced today and the only issue which needs to be decided is whether the service record of the petitioner justifies impugned order being passed, learned counsel concede that the matter may be disposed of after considering the record.

3. We note the service profile of the petitioner as tabulated in the record produced, which record was considered by the competent Authority when decision was taken to retire the petitioner upon completing 30 years' service in exercise of power under FR 56(j). But before that we note that the petitioner joined service in CISF in the year 1981. During this period 9 penalties were inflicted upon the petitioner as under:-

DETAILS OF PUNISHMENT INFLICTED UPON THE PETITIONER

S.No.	Year	Brief of Charge	Punishment awarded
01	1986	Overstayed from joining time for 22 days	"Censure" Awarded on 31.12.1986
		U/R-36-02	U/R-37-07
02	1990	OSL for 17 days	"Censure" Awarded on 07.09.1990
03	1992	Quarreling with man handling C/W personnel while on duty U/R-36	"Reduction of pay by two stages for one year" awarded on 06.05.1992
04	1993	Illegal gratification from transporter while on duty U/R-36	"Reduction of pay by minimum stage in pay scale for three years" awarded by DIG/NZ on 10.09.1993
05	1995	Absent from duty	"Censure" Awarded on 04.04.1995

06	1998	Absent from duty	"01 day pay fine" Awarded on 30.10.1998
07	1999	Absent from duty fallen	"01 day pay fine" Awarded on 03.02.1999
08	2005	Sleeping on duty	"04 day pay fine" Awarded on 21.03.2005
09	2008	Overstayed from joining time for 02 days	"02 day pay fine" Awarded on 17.05.2008

4. The ACR gradings of the petitioner are as under:-

ACR GRADINGS OF THE PETITIONER

FROM	TO	GRADING
01.01.1982	31.12.1982	SATISFACTORY
01.01.1983	31.12.1983	AVERAGE
01.01.1984	31.12.1984	AVERAGE
01.01.1985	31.12.1985	SATISFACTORY
01.01.1986	31.12.1986	SATISFACTORY
01.01.1987	31.12.1987	GOOD
01.01.1988	31.12.1988	AVERAGE
01.01.1989	31.12.1989	AVG./GOOD
01.01.1990	31.12.1990	GOOD
01.01.1991	31.12.1991	GOOD
01.01.1992	31.12.1992	BELOW AVG.
01.01.1993	31.12.1993	AVERAGE
01.01.1994	31.12.1994	GOOD
01.01.1995	31.12.1995	GOOD
01.01.1996	31.12.1996	V.GOOD
01.01.1997	31.12.1997	AVG./GOOD
01.01.1998	31.12.1998	GOOD
01.01.1999	31.12.1999	GOOD
01.01.2000	31.12.2000	AVERAGE

01.01. 2001	31.12.2001	V.GOOD
01.01.2002	31.12.2002	GOOD
01.01.2003	31.12.2003	GOOD
01.01.2004	31.12.2004	GOOD/VG
01.01.2005	31.12.2005	GOOD
01.01.2006	31.12.2006	GOOD
01.01.2007	31.12.2007	GOOD
01.01.2008	31.12.2008	VG/GOOD
01.01.2009	31.12.2009	V.GOOD
01.01.2010	31.12.2010	AVERAGE

5. Premature retirement under Rule 56(j) of the Fundamental Rules relates to the branch of law which deals with the weeding out of '*dead wood*' from the system by testing the integrity, utility and efficacy of the concerned Government employee on the anvil of public interest. This flows out of the language of FR 56(j) which says that on issues of integrity, utility and efficacy the requirement to continue with the employment or not have to be considered. The dictionary meaning of '*dead wood*' is '*one that is burdensome or superfluous*'. The public interest to be kept in mind is that it serves the public if efficient persons discharge duties as public servants and if somebody is found to be a dead wood, he better be replaced by an efficient person. Law guarantees to a public servant a minimum pensionable service and beyond that he must earn the right to serve by dint of hard work by proving his worth.

6. It was settled by a Constitution Bench of the Supreme Court, in the decision reported as 1955 (1) SCR 26 *Shyam Lal vs. State of UP*, that compulsory retirement or premature retirement is not a punishment and no stigma is attached as there is no

element of charge or imputation. This is the reason why, even with respect to un-communicated adverse entries in the ACRs of a civil servant, it has been held that it is permissible to take them into account while considering the service record of a Government servant as per the decision reported as AIR 1992 (SC)1020 Baikuntha Nath Das And Anr vs Chief Distt. Medical Officer, Baripada & Anr. which decision also recognizes that although the entire service record has to be kept in view, but primacy has to be accorded to the service profile preceding up to last 5 years for the reason it may happen that a person may be Average in the beginning but with passage of time would become Very Good and vice-versa.

7. We have for our guidance the decision of the Supreme Court reported as 1992 SCR (2) 338 P&T Board & Ors. vs. CSN Murthy, wherein for the last 5 years CSN Murthy had 3 'Goods' and 2 'Average' ACRs, with the 2 'Average' ACRs being in the last 2 years and the Supreme Court observed:- *"In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last 2 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 respondent had declined and was not satisfactory, that was certainly material enabling the department to come to a conclusion under FR 56(j)".*

8. Tested on the anvil aforesaid it assumes importance to note that the petitioner was promoted as a Head Constable on 14.6.2000 and thus penalties imposed prior to the year 2000 have to be ignored while determining petitioner's suitability to be

retained in service. 2 penalties of sleeping on duty and overstaying leave by 2 days were inflicted in the year 2005 and 2008 and we note that they are minor penalties. The ACR gradings of the petitioner which have to be considered with greater focus are the 5 year preceding ACRs. We are conscious that we have to consider even the prior ACRs. Since the year 1990 till the year 2009 the ACRs of the petitioner were either 'Good' or 'Very Good'. The ACR grading 'Average' for the year 2010 has not been conveyed to the petitioner, in violation of the law that being adverse it needed to be communicated to the petitioner. The ACR gradings of the petitioner, do not justify the decision to treat the petitioner as a dead wood.

9. We allow the writ petition and quash the impugned order dated 16.8.2011. The petitioner is reinstated in service with all consequential benefits.

10. No costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SUNIL GAUR)
JUDGE**

**October 14, 2011
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