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

Date of decision: 02.09.2025

+ W.P.(C) 12675/2022

AVNISH KUMAR GUPTA

.....Petitioner

Through: Mr. Shivanshu Bhardwaj and
Mr. Himanshu Bhardwaj,
Advocates.

versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: Mr. Aditya Vaihav Singh,
Ms. Riya Pariwar and Mr. A. K.
Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 06.10.2021 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in RA No. 74/2021 in OA No. 1812/2020, titled *The Commissioner, North Delhi Municipal Corporation v. Avnish Kumar Gupta*, whereby the learned Tribunal allowed the Review Application filed by the respondent and recalled its earlier Order dated 19.04.2021, by which it had allowed the O.A. in favour of the petitioner.

2. The petitioner has further challenged the Order dated 21.07.2022 passed by the learned Tribunal in the above O.A., whereby the O.A. filed by the petitioner herein was later dismissed.

3. The limited facts relevant for the purposes of the present



petition are that, in exercise of power under FR 56 (j) read with Rule 48 of the CCS (Pension) Rules, 1972, the respondent passed an Order dated 31.10.2019, compulsorily retiring the petitioner. The said order was reiterated by the Commissioner, North Delhi Municipal Corporation, *vide* Order dated 13.11.2019, and a representation filed against the same was also rejected by the Order dated 17.02.2020, compelling the petitioner to file the above O.A..

4. As noted hereinabove, the O.A. was initially allowed by the learned Tribunal *vide* Order dated 19.04.2021, however, on a Review Application, the said order was recalled by the Impugned Order dated 06.10.2021 and, thereafter, on re-hearing the O.A., was dismissed by the Impugned Order dated 21.07.2022.

5. Aggrieved by the above order, the petitioner has approached this Court.

6. The learned counsel for the petitioner draws our attention to the ACRs of the petitioner from the period from 01.04.2009 to 31.03.2019, to submit that the petitioner has consistently been graded as 'Very Good' or 'Outstanding' and has been regarded as a person with 'integrity beyond doubt'. He further submits that although the petitioner was visited with two major penalties in the year 2006, he was subsequently promoted to the post of Assistant Engineer in the year 2010 and was also granted the second MACP benefit in the year 2013.

7. Placing reliance on the Judgment of this Court in ***Ajay Kumar Sharma v. The Commissioner, South Delhi Municipal Corporation & Anr.***, 2025:DHC:4466-DB, he submits that the order compulsorily



retiring the petitioner from service cannot be sustained.

8. On the other hand, the learned counsel for the respondents submits that the petitioner has been visited with various major and minor penalties, the details whereof have been set out in the reply filed by the respondent before the learned Tribunal, and are re-produced herein below:

“ 17. That DDO/Building Department (Karol Bagh Zone) has furnished a proforma to Review the Performance of Officer wherein in following RDA cases/penalties have been imposed upon the Applicants: -

Penalty	1/189/2001	Exonerated dt. 11.12.2009.
Penalty	2/39/2002	Stoppage of one inc. without cumulative effect vide O.O. No. 2/39/2002/Vig./P/RKC/2003/309 dated 18.02.2003.
Penalty	1/15/2003	Exonerated Vide O.O. No. 1/15/2003/Vig./P/RKC/2004/53 dt. 9.1.2004.
Penalty	2/134/2003	Censured vide O.O. No. 2/134/2003/Vig./P/RSY/2003/62 dt. 21.1.2004.
Penalty	1/80/2006	Reduction in time scale of pay by one stage with cumulative effect for one year vide Office order No. 1/80/2006/Vig./P/2006/632 dt. 31.3.2006.
Penalty	1/343/2006	Exonerated Vide O.O. No. 1/343/2006/Vig./P/GKG/2007/2586 dt. 3.5.2007.
Penalty	1/419/2006	Censure Vide O.O. No. 1/419/2006/Vig./P/NK/2007/2447 dt. 10.04.2007.
Penalty	1/146/2011	Exonerated Vide O.O. No. 1/146/2011/Vig./P/RS/2013/76 dt. 17.1.2014.
Penalty	1/102/2006	Reduction in the present time scale of pay by two stages for two years which shall have not postponing effect vide O.O. No. 1/102/2006/Vig./2006/1194 dt. 11.7.2006.

9. He submits that merely because the petitioner was subsequently granted promotion and/or the MACP benefit, the earlier penalties would not stand obliterated and could still be taken into consideration by the Competent Authority while deciding whether the petitioner should be compulsorily retired in exercise of powers under FR 56(j).



In support, he places reliance on the Judgment of the Supreme Court ***Pyare Mohan Lal v. State of Jharkhand & Ors.***, (2010) 10 SCC 693.

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

11. A Coordinate Bench of this Court, upon a detailed analysis of the law applicable to FR 56 (j), has culled out the governing principles applicable to the same as under:

“22.5 The Takeaway

From the above judgments, the following principles emerge, in the matter of compulsory retirement, where it is not awarded as a punishment:

(i) The scope of judicial review, in matters of compulsory retirement, is fairly limited.

(ii) Compulsory retirement involves no penal consequences.

(iii) At the same time, if unlimited discretion is permitted to the administration in the matter of passing orders of compulsory retirement, it would be the surest menace to public interest and must fail for unreasonable, arbitrariness and disguised dismissal. (iv) The exercise of power to compulsory retire an officer must be bona fide and to promote public interest.

(v) It is permissible to lift the veil in order to ascertain whether an order of compulsory retirement is based on any misconduct of the government servant and whether the order has been made bona fide without any oblique and extraneous purpose.

(vi) A bona fide order of compulsory retirement can be challenged only on the ground that the requisite opinion has not been informed, the decision is based on collateral factors or is arbitrary.

(vii) The court cannot sit in appeal over an order of compulsory retirement, but can interfere if it is satisfied that the order is passed mala fide, or is based on no evidence,



or is arbitrary, in the sense that no reasonable person would form the requisite opinion in the given material.

(viii) The object of compulsory retirement, where it is not awarded as a punishment, aims at weeding out dead wood to maintain efficiency and initiative in the service, and dispensing with the services of those whose integrity is doubtful so as to preserve purity in the administration.

(ix) If the order of compulsory retirement casts a stigma on the government servant or contains any statement casting aspersion on his conduct or character, it would be treated as an order of punishment, attracting Article 311(2) of the Constitution of India. If, however, the order of compulsory retirement refers only to an assessment of his work and does not cast an aspersion on his conduct or character, the order of compulsory retirement cannot be treated as an order of punishment. The test would be the manner in which a reasonable person would read or understand the order of compulsory retirement.

(x) FR 56(j) does not require any opportunity to show cause to be provided before an order of compulsory retirement is passed.

(xi) Before passing an order of compulsory retirement, the entire service record of the officer has to be taken into account.

(xii) The gradings in the ACRs of the officer are relevant. The performance of the officer in later years, including the gradings granted in later years, would be of greater relevance than those in earlier years. Where the ACRs continuously record the integrity of the officer as being “beyond doubt”, or grade him “outstanding” or “very good”, it is an important factor in favour of the officer, and would, in a given case, vitiate the order of compulsory retirement, unless it is shown that, between the last such entry and the passing of the order of compulsory retirement, there was sudden and unexplained deterioration in the performance of the officer.



(xiii) Uncommunicated adverse entries in the ACRs of the officer can also be taken into account before passing an order of compulsory retirement.

(xiv) Grant of promotion to an officer despite adverse entries in his confidential record is a factor operating in favour of the officer. Promotion to a higher post notwithstanding adverse remarks result in the adverse remarks losing their sting.

(xv) The fact that the officer was allowed to cross the efficiency bar, or was granted promotion after the events which formed the basis of the order of compulsory retirement, is also a relevant consideration.

(xvi) The subjective satisfaction of the authority passing an order of compulsory retirement must be based on valid material.

(xvii) Compulsory retirement is not required to be by a speaking order

(xviii) The principle of audi alteram partem has no application in the case of compulsory retirement.”

12. In the present case, though the petitioner does not deny that he had been visited with the penalties referred to hereinabove, the fact remains that all such penalties pertain to the period prior to 2006. Thereafter, his ACRs for the period from 01.04.2009 to 31.03.2019 are as under:

YEAR	INTERGRITY	RELATION WITH PUBLIC	FINAL GARDINGS IN ACR/APAR's
01.04.2009-31.03.2010	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2010-31.03.2011	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2011-31.03.2012	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2012-31.03.2013	BEYOND DOUBT	CORDIAL	VERY GOOD



01.04.2013- 31.03.2014	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2014- 31.03.2015	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2015- 31.03.2016	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2016- 31.03.2017	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2017- 31.03.2018	BEYOND DOUBT	CORDIAL	VERY GOOD
01.04.2018- 31.03.2019	BEYOND DOUBT	CORDIAL	OUTSTANDING

13. The petitioner was also promoted to the post of Assistant Engineer in the year 2010, and was granted the MACP benefit in the year 2013.

14. As held by a Coordinate Bench of this Court in *Ajay Kumar Sharma* (supra), before passing an order of compulsory retirement, the entire service record of the officer has to be taken into consideration, including the grading in the ACRs which are relevant. The performance of the officer in the later years is of greater relevance than reliance on old and historical punishments. Once the ACRs continuously record the integrity of the officer as 'Beyond Doubt' and grade him as 'Outstanding' or 'Very Good,' the order of compulsory retirement, if based on events that occurred much prior to the decision, may stand vitiated. The grant of promotion to an officer despite adverse entries in his confidential record, is also a significant factor that must be taken into account.

15. In the present case, we find that reliance has been placed by the respondent only on the punishments awarded to the petitioner prior to



the year 2006, without advertent to the ACR gradings of the petitioner for the period thereafter, particularly for the last almost ten years preceding the Impugned Order of compulsory retirement. The fact of grant of promotion and the MACP benefit to the petitioner also does not appear to have been considered by the Standing Committee.

16. Accordingly, we have no option but to set aside the Order dated 31.10.2019 directing the compulsory retirement of the petitioner from service. The Impugned Order passed by the learned Tribunal are also set aside.

17. The petitioner shall be entitled to consequential reliefs in accordance with law, including reinstatement with effect from the date of the Impugned Order of compulsory retirement, together with the benefit of notional fixation of pay and other consequential benefits, but without arrears of salary.

18. The consequential order shall be passed by the respondent within a period of four weeks from today and the benefits released to the petitioner within the same period.

19. The petition is allowed in the above terms.

20. There shall be no order as to costs.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 2, 2025/ssc/RM/DG