

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

% Date of Decision: 7<sup>th</sup> July, 2010

+ **W.P.(C) NO.9029/2008**

MANGAT RAM SHARMA (since deceased  
Through L.R.s) .... Petitioner  
Through: Mr.Gurinder Pal Singh, Advocate

versus

DDA & ANR. ... Respondents  
Through: Mr.Arun Birbal, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

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. The short grievance raised in the writ petition is to the denial of arrears of salary payable to the deceased petitioner on account of the order compulsorily retiring the petitioner being set aside by the Central Administrative Tribunal.

2. It is not in dispute that where a Government servant is compulsorily retired in exercise of power conferred by FR-56j and the same is set aside resulting in the Government servant being reinstated in service, FR-56jj (i)&(ii) is applicable. The same reads as under:

(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 date of premature 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.

(ii) Where the order of premature retirement is set aside by a Court of Law with specific directions in regard to regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the Court.

3. It is thus apparent that where an order of compulsory retirement is set aside the Government servant concerned gets a right for a fair consideration of the entitlement to be granted pay & allowances by treating the intervening period as spent on duty, meaning thereby, denial of the same is justiciable and requires legally sustainable reasons to be recorded while denying the same.

4. Late Mangat Ram Sharma joined service under the Delhi Development Authority in the year 1969 as a Junior Engineer and earned promotions, finally reaching the last but one highest post in the cadre i.e. the post of Superintending Engineer when he was compulsorily retired vide order dated 24.02.2003, the order being in exercise of power vested in the competent authority under FR-56j.

5. The Rule envisages an appeal to the Appellate Authority against the order of compulsory retirement. This right was exercised promptly by Mangat Ram Sharma who filed an appeal on 12.03.2003 which was kept pending without any justifiable reasons, the reason being the usual bureaucratic delay, and was finally disposed of after one year and six months on 06.09.2004.

The appeal was dismissed. Mangat Ram Sharma filed a petition challenging the order compulsorily retiring him from service as also the order rejecting the appeal and before the same could be decided he died on 09.11.2007. His legal heirs were brought on record.

6. The Central Administrative Tribunal has found vide impugned order dated 03.09.2008 in favour of Mangat Ram Sharma. In paras 13 to 17 of the impugned order, it has been held as under:

13. It is admitted in clear terms that the conduct of the officer from 1980-1996 was reviewed and it formed the basis of the decision. The records made available also indicate the same. A Committee had reviewed the case of the employee, so as to see whether it should have been possible to apply FR 56 (j) in his case. In Paragraph 5 of the report, they have commented that he had committed serious irregularities after he became Executive Engineer i.e. when he got independent charge of field unit. The works, which were executed under his supervision, the Committee found, during 1980-83, were discovered to be substandard in nature. Thereafter he was assigned duties mostly in Headquarters and Planning. It is also noted that confidential reporting about the officer is made in a very hurried manner and in the absence of independent reporting and review, the remarks in the reports are not to be considered as acceptable guidelines.

14. If this was the basis for the decision, we have to find that the proceedings suffer from arbitrariness. He could not have been answerable if hastily the columns of CR were filled up. It was also not his duty to get the remarks reviewed. Remarkably, there is nothing adverse against him after the year 1996. Even the two punishment orders served on him were about the alleged lapse of suspension, which was there in the course of his work during 1982-83. It is surprising that in spite of the High Court quashing the charge sheets, the Committee has thought it fit to consider them as charges substantiated. Presumably the only reason is that there was an occasion for issuing charge sheets. The presumption was totally erroneous. The approach was totally unwarranted and shows lack of application

of mind. Most probably the issue had been pre-decided.

15. Above all, the Committee has thought it fit to examine the officer's work for a period upto 1996 and has simply omitted to take notice that he has been cleared by the DPC for appointment as Superintending Engineer in the year 1998 and also that he had been entrusted with very important projects during the period 2001-03. While exercising powers, we do not think the authority had noticed the law declared by the Hon'ble Supreme Court, to which reference has already been made. It could not have been a situation where a conclusion could have been arrived at that the usefulness of the officer was no more there. There is nothing to disclose that it was in public interest Annexure P-7 was issued.

16. We also note that there was inordinate delay in disposing of the appeal filed by him. Sub-rule (jj) refers to a review to be made on a representation and it should have been, therefore, ensured that the matter was looked into with a sense of urgency. The inordinate delay of almost 2 years in disposing of the application for review had made inroads to the rights of the officer, for him to take useful legal measures. The appellate authority also had committed the very same mistakes as attributable to the original authority. In the aforesaid circumstances, we set aside the impugned orders.

17. But, however, since the officer was not discharging duties, we think, it may not be justifiable to order actual arrears of salary as payable to the legal representatives. But for all other purposes, his date of retirement should be deemed as 31.08.2005, i.e. his normal date of superannuation. His pay should be notionally refixed for the purpose of grant of pension and other pensionary benefits.

7. DDA has accepted and implemented the impugned decision and thus the finding returned by the Tribunal that the decision to compulsorily retire Mangat Ram Sharma was totally mis-directed and was the result of presumptions which were totally erroneous.

8. The question which arises before us is whether the ground

that the officer did not discharge duties and hence it would not be justifiable to order arrears of salary to be paid is a sound reason.

9. It may be noted that in para 16, the Tribunal has itself noted that the Appellate Authority delayed (inordinately) the consideration of the appeal. As noted by us hereinabove, the Appellate Authority decided the appeal after one year and six months of it being filed.

10. Now, where a person is wrongly compulsorily retired, it is not his fault that he could not work. Thus, merely because Mangat Ram Sharma did not work would be no reason by itself to deny him or his legal heirs the benefit of arrears of salary to be paid. This issue has to be decided on objective facts. If the employee concerned has delayed the matter or there are otherwise sustainable grounds to deny arrears of salary to be paid, the same can be denied. But not in a case of the instant kind, where a positive finding is returned that the authority concerned has acted on presumptions which are totally erroneous. Further, it assumes importance that Mangat Ram Sharma was due for promotion to the post of Chief Engineer when the order compulsorily retiring him was passed, and for which, as noted by the Tribunal in para 13 of its decision, the notings pertaining to his confidential reports were prepared hurriedly, to be placed before the Screening Committee. While acting in haste, it was lost sight of, as held by the Tribunal, that the charge-sheets which were quashed by Courts, were considered as indictments. The Tribunal, while denying arrears of salary, has noted the fact that the Appellate Authority delayed decision in the appeal but did not consider the effect thereof.

11. In our opinion, it is the Appellate Authority of DDA which has contributed to Mangat Ram Sharma not being able to rejoin duty and the fact that the Screening Committee acted post

haste and proceeded on totally erroneous presumptions in passing the order to compulsorily retire Mangat Ram Sharma, to whom no blame can be attributed, considered objectively, it must be held that his legal heirs would be entitled to the salary which he would have earned had he continued to work under DDA till he died or would have superannuated from service on attaining the age of retirement, which ever date is earlier; of course, this would require adjustment of whatever has been received by Mangat Ram Sharma as a result of his being compulsorily retired.

12. The writ petition stands disposed of directing that Mangat Ram Sharma would be entitled to all pay and allowances to which he would have been entitled to had he not been compulsorily retired till he would have superannuated or the date of his death, which ever date is earlier in point of time. Of course, while complying with our direction, such money which was paid to him as a result of his being compulsorily retired would be adjusted.

13. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MOOL CHAND GARG)**  
**JUDGE**

**JULY 07, 2010**  
**ag**