GAHC010192722023

2026:GAU-AS:12385

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WP (C) No.5038 of 2023

Sri Sushil Tirkey, aged 57 years,

Son of Sri Emil Tirkey,

Permanent resident of Village Tainser Banjari, Post Tainser District Simdega, Jharkhand-835223, Presently resident of Birajnagar, Bardwan Compound, Lane No. 8, Lalpur, Ranchi, Jharkhand-834001.

.......Petitioner

-Versus-

1. Food Corporation of India,

   Through its Chairman cum Managing Director, Headquarters, 16-20, Barakhamba Lane, New Delhi-110001.

2. The Chairman cum Managing Director, Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, New Delhi-110001.

3. Review Committee constituted under Circular No. EP-01-2021-24, through its Members, c/o Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, New Delhi-110001.

4. Representation Committee constituted under Circular No EP-01-2021-24, through its Members, c/o Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, New Delhi-110001.

5. General Manager (Region), Food Corporation of India, Assam Region, MT Tower, Paltan Bazar, Guwahati-781008.

……***..Respondents***

– B E F O R E –

HON'BLE MR. JUSTICE NELSON SAILO

For the Petitioner : Mr. R Dubey, Advocate.

For the Respondent(s) : Mr. KN Choudhury, Senior Advocate assisted by Mr. BK Singh, Advocate.

Date of hearing : 18.08.2026, 20.08.2026 & 24.08.2026

Date on which judgment is reserved : 24.08.2026

Date of pronouncement of judgment : **28.08.2026**

Whether the pronouncement is of the operative part of the judgment? : Not applicable.

Whether the full judgment has been pronounced? : Yes.

JUDGMENT & ORDER (CAV)

Heard Mr. R Dubey, learned counsel for the petitioner. Also heard Mr. KN Choudhury, learned senior counsel assisted by Mr. BK Singh, learned counsel for the respondents.

[2.] By filing this writ petition, the petitioner has challenged the Order, dated 08.05.2023 (Annexure-1) by which he has been compulsorily retired under Regulation 22(2) of the FCI Staff Regulations and also the Order, dated 19.07.2023 (Annexure-5) by which his representation against his compulsory retirement was rejected by the Managing Director, FCI.

[3.] The brief facts of the case is that the petitioner joined the FCI as Assistant Manager on 12.05.1997 and was promoted to the post of Assistant General Manager (Technical) on *ad-hoc* basis, vide Order dated 16.09.2009 and was regularized in the said post by Order, dated 08.10.2010. Thereafter, the petitioner was promoted to the post of Deputy General Manager (General), vide Order, dated 25.06.2021 and he joined the said post on 07.07.2021.

[4.] The petitioner was discharging his duties as the Deputy General Manager (General) at Assam Region in Guwahati till the issuance of the impugned Order, dated 08.05.2023. According to the petitioner, he joined the Assam Region on 07.07.2021 and there was no adverse reports/remarks against him, while working as such from any quarters and therefore, he was shocked and surprised to receive the impugned Order, dated 08.05.2023 compulsorily retiring him from service.

[5.] The petitioner therefore, submitted a representation before the

Chairman and Managing Director, FCI Headquarters, New Delhi on 15.05.2023. But the same came to be rejected, vide the impugned Order, dated 19.07.2023. Aggrieved, the petitioner is before this Court through the instant writ petition.

[6.] Mr. Dubey, learned counsel for the petitioner submits that although the impugned Order, dated 19.07.2023 states that the petitioner was retired in the interest of the Corporation and public interest in general, but the same has only been passed mechanically by the respondent No. 2, without there being any adverse materials against the petitioner. The same being a non-speaking order and passed in an arbitrary manner, cannot be sustained and should be set aside. He submits that the petitioner was required to have 5 (five) years experience as Assistant General Manager in order to be considered for the post of Deputy General Manager (General). The minimum bench mark in order to be eligible to be considered for promotion is "Good" in the previous 5 (five) APARs alongwith Vigilance and Administrative Clearance. That the APAR grading of the petitioner from 01.01.2019 to 31.12.2021 was "Outstanding". As for the period from 01.01.2022 to 31.03.2023, the APAR was not reported due to leave taken by the petitioner on medical grounds.

[7.] The learned counsel for the petitioner submits that the guidelines for periodic review of the performance of the employees of the Corporation has been circulated by the FCI Headquarters, vide Circular, dated 09.07.2021 and Clause-10 of the Circular provides for the broad criteria to be followed by the Review Committee. He submits that Clause10(iv) provides that no Corporation employee should ordinarily be retired on ground of ineffectiveness, if his service during the preceding 5 years or where he has been promoted to a highest post during that 5 year period, his service in the higher post, has been found satisfactory. Since the petitioner's APAR for the period July 2021 to December

2021 has an outstanding grading, the decision of the respondent No. 2 is only in violation of the guidelines for review under Regulation 22(2).

[8.] The learned counsel further submits that the representation submitted by the petitioner was also not given due consideration that it deserves and that the order of rejection does not reveal any such consideration that the respondents ought to have undertaken. The learned counsel submits that the order of compulsory retirement can be passed only if a subjective satisfaction is arrived at by the authorities concerned. In order to come to such a finding, the Review Committee is required to consider the entire service records before arriving at a decision and in doing so, more importance is to be given on the performance of the employees during the later years. He submits that not only did the petitioner have a good performance and grading, but he was also promoted to the post of Deputy General Manager (General), which only goes to indicate that he had performed well.

[9.] The learned counsel submits that in some of the APARs against the remark column for integrity, it was remarked as "Nothing adverse". Such a remark is not a negative remark, but an expression, which says that there is no doubt on the integrity of the employee. However, the respondent authorities have construed the same, as a negative remark and therefore, the impugned action on the basis of such consideration cannot be sustained. The impugned orders by which the petitioner was compulsorily retired and his representation was rejected should be set aside.

[10.] Mr. Dubey, learned counsel for the petitioner in support of his submissions has relied upon the following authorities:-

(i) *Baikuntha Nath Das & Anr. v. Chief District Medical Officer,* *Baripada & Anr., (1992) 2 SCC 299.*

(ii) *M.S. Bindra v. Union of India & Ors., (1998) 7 SCC 310.*

(iii) *K. Kandaswamy v. Union of India & Anr., (1995) 6 SCC 162, and*

(iv) *Prasant Kumar Satapathy v. Food Corporation of India & Ors., 2026:DHC:4051*

[11.] Mr. KN Choudhury, learned senior counsel for the respondents, by referring to the affidavit-in-opposition filed by the respondents/FCI on 08.11.2023 submits that Regulation 22(2) of the FCI (Staff) Regulations, contains the provision for premature retirement of Category-I and Category-II, where employees after attaining the age of 50 years, and it confers on the appropriate authority, the absolute right to retire any Corporation employees by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice if he is in a Category-I and Category-II service or post and had entered service before attaining the age of 35 years. That in respect of any other case, after the employee attains the age of 55 years, the learned senior counsel submits that it is a settled position that orders of compulsory retirement are not required to be speaking orders and the basic spirit of the guidelines is that the order of compulsory retirement shall be passed on *bonafide* opinion and subjective satisfaction of the competent authority and in public interest. That the order of compulsory retirement is neither punitive nor stigmatic. Before coming into the conclusion that the petitioner should be compulsorily retired, the respondent authorities took into account the entire service records of the petitioner and not only his APARs. The petitioner was only graded "Fair" during the year 2013 and while working with seven different Controlling Officers. That he was barely graded with the minimum bench mark of "Good" to keep his promotional avenues open. Although the petitioner contends that he was promoted to the post of Deputy General Manager (General) in the year 2021, but such promotion was not based on merits, but based on seniority-cum-fitness.

[12.] The learned senior counsel submits that at any rate, the entire service record was taken into account before a decision was taken to compulsorily retire him from service. The petitioner in fact has suppressed about the penalties that was imposed on him, which amounts to suppression of facts. The petitioner in fact was given two major penalties and one minor penalty as per the service records and therefore, taking into account the service records of the petitioner, the competent authorities decided to give the petitioner compulsory retirement. He submits that unless such an order is passed on *malafide* grounds and is based on no evidence and also arbitrary, the same may not be interfered with by the Court. He submits that compulsory retirement is not a punishment and the employee is entitled to draw all retiral benefits, including pension. The power has been exercised only to remove the deadwood to augment efficiency. He submits that the petitioner, on his retirement has been paid an amount of Rs. 79,26,036/- towards CPF, Rs. 20,00,000/- towards gratuity, Rs. 7,39,458/- for the unutilized earned leave and Rs.3,64,832/- towards HPL leave. He therefore, submits that the petitioner cannot be said to have any legitimate grievance and the writ petition should be dismissed. In support of his submissions, he has relied upon the following authorities:-

(i) *Baikuntha Nath Das & Anr. v. Chief District Medical Officer, Baripada & Anr., (1992) 2 SCC 299, and*

(ii) *S. Ramachandra Raju v. State of Orissa, 1994 Supp. (3) SCC 424.*

[13.] I have heard the submissions made by the learned counsels for the rival parties and I have also perused the materials available on record.

[14.] As may be noticed, the contention of the petitioner is that the compulsory retirement given to him is without proper consideration of his entire service records and by ignoring the later part of his ACR which was an outstanding grading and the promotion earned by him to the post of Deputy General Manager (General) in the year 2021. The petitioner being an employee of the FCI, the guidelines for periodic review of the FCI employees has been provided in the Circular, dated 09.07.2021. Clause 10 of the Circular, which is relevant on this issue may be abstracted hereunder for ready perusal:-

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

(i) Corporation employees whose integrity is doubtful shall be retired.

(ii) Corporation employees found to be ineffective shall also be retired. The basic consideration in identifying such Corporation employees should be their fitness/competence to continue in the post held.

(iii) No Corporation employee 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 Corporation employee, it would be open to review such a case also for premature retirement. The said instruction of not retiring the Corporation employee 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 Ineffectiveness, but not on the ground of doubtful integrity.

(iv) ***No Corporation employee 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 Corporation employee is to be retired on grounds of doubtful integrity. In case of those Corporation employees who have been promoted during the last 5 years, the previous entries in the APARs 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 Corporation employee 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 APAR dossier. The personal file of the Corporation employee 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 concerned Internal Committee puts together all the data available about Corporation employee and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the APARs may be taken into consideration."***

[15.] From the above extract, it may be seen that employees, whose integrity is doubtful and who are found to be ineffective are to be retired. However, no employee 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 years period, his service in the highest post, has been found satisfactory. In the case of employee, who has been promoted during the last 5 years, the previous entries in the APARs may be taken into account, if he was promoted on the basis of seniority-cum-fitness and not on the basis of merit. It is also provided that the entire service record of the employees are to be considered at the time of review and the expression "Service Records" refers to all relevant records and not confined to APARs dossier only. Even uncommunicated remark in the APARs may be taken into account at the time of review.

[16.] The respondents in paragraph 18 of their counter-affidavit has reflected the Vigilance and Administrative profile of the petitioner stating that a penalty of reduction of time scale of pay by two stages for a period of three years was imposed upon him, vide order, dated 11.03.2014. He was charge-sheeted under Regulation 60 of the Staff Regulation and imposed with a penalty of withholding one increment for a period of one year without cumulative effect, vide order, dated 26.07.2016. He was again charge-sheeted under Regulation 58 of the Staff Regulation and imposed with a penalty of stoppage of one increment for a period of one year without cumulative effect, vide order, dated 05.12.2019. Further, he was graded "Fair" during the year 2013 while working with seven different Controlling Officers and his integrity during the year 2012 was not recorded by his Controlling Officer and also not clearly certified as "Beyond Doubt" by his seven Controlling Officers. Rather, it was stated as "Nothing adverse/Nothing adverse came to notice", which casts serious doubts on his fitness to be considered for continuance in service. Further, the Review Committee also took inputs from his personal file, field offices on general reputation of the officer and the same was not found satisfactory as far as his performance and integrity is concerned.

[17.] Despite the above penalties imposed upon the petitioner, the fact remains that he was given promotion to the post of Deputy General Manager (General), vide order, dated 25.06.2021, which admittedly shows that he possessed the required bench mark to get such promotion. The petitioner has also specifically contended in paragraph 12 of the writ petition that his APAR for the period from July 2021 to December 2021 had "Outstanding" grading, which clearly reflects his promotions. In reply to the said contention, the respondents in their counter-affidavit have not offered any comments except saying that the promotion of the petitioner was on the basis of seniority-cum-fitness and not on the basis of merit.

[18.] Clause-10(iv) of the Circular, dated 09.07.2021 provides that no employee 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 years period, his service in the highest post, has been found satisfactory. Having regard to the bench mark required for being considered for promotion to the said post, i.e., the bench mark of "Good", it cannot be said that the services rendered by the petitioner could have been not satisfactory.

[19.] It is also the case of the respondents that since the petitioner was not given the remark of "Beyond Doubt" against his integrity, but only "Nothing adverse/Nothing adverse came to notice", the same has raised serious doubts on his fitness to be considered for continuation in service. The High Court of Delhi in ***Prasant Kumar Satapathy (supra)*** in the given facts of that case held that in ordinary service parlance "Nothing adverse reported" is a neutral certification, not a disguised censure. To construe the absence of the expression "Beyond Doubt" as evidence of doubtful integrity would be to read suspicion into what is, by definition, neutral. Such an approach cannot be sustained.

[20.] The Apex Court in ***State of Gujarat v. Umedbhai M. Patel***, reported in ***(2001) 3 SCC 314*** held that if the officer was given the promotion, despite adverse entries made in the confidential record, that is a fact in favour of the officer and that compulsory retirement shall not be imposed as a punitive measure.

[21.] The Apex Court in the case of ***Baikuntha Nath Das (supra)*** laid down the underlying principles on compulsory retirement at paragraph 34 of the judgment, which is abstracted hereunder:-

"***34. The following principles emerge from the above discussion:***

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose

their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interfere."

[22.] From the above abstract, it may be seen that the Court can examine the compulsory retirement given to an employee and interfere with the same, in the event if it is found that the order was passed *malafide*, based on no evidence or the same is arbitrary. It further provides that the order has to be passed by the authority on forming an opinion that it is in the public interest to retire an employee compulsorily and there was subjective satisfaction of the employer for doing so.

[23.] In the present case, this Court has noticed that the grading of "Outstanding" given to the petitioner as claimed by him for the period from 01.01.2019 to 31.12.2021 has not been disputed by the respondents, the promotion given to him to the post of Deputy General Manager (General) has also not been denied except for saying that the same was not on merit, but by way of seniority-cum-fitness. However, what exactly would be the difference between the promotion made on seniority-cum-fitness and one with seniority-cum-merit has not been specifically explained by them in their counter-affidavit. Under the circumstance, this Court is not inclined to travel beyond what is available in the record. Promotion cannot but be understood as an advancement in one's career. Further, the narrow or negative interpretation given about the remarks "Nothing adverse/Nothing adverse came to notice" on the petitioner's integrity is also found to be not justified, in view of the authorities that was discussed in the preceding paragraphs.

[24.] It is further noticed that the representation of the petitioner, dated 15.05.2023 was rejected summarily by simply stating that "after perusal of the report made by the Representation Committee and the representation of the petitioner, the same is rejected". Since the exercise undertaken and the considerations that was made by the appellate authority/authorities is not discernible from the said rejection order, dated 12.07.2023, this Court is of the considered view that the impugned Order, dated 08.05.2023 and the Order, dated 19.07.2023 are not sustainable and they are accordingly set aside.

[25.] Having regard to the age of the petitioner at the time of filing the writ petition, he may by now have attained the age of superannuation and in such circumstance, the respondent authorities shall proceed in accordance with Clause-14 of the Circular No. EP-01-2021-24, dated 09.07.2021, which is annexed to the writ petition as Annexure-3.

[26.] With the above observations and directions, this writ petition stands disposed of as allowed. Parties are directed to bear their own costs.

JUDGE

Comparing Assistant