

I M M E D I A T E .

CONFIDENTIAL

No.25013/30/85-Estt.(A)
Government of India/Bharat Sarkar
Ministry of Personnel & Training, Administrative
Reforms and Public Grievances and
(Department of Personnel & Training/Karmik
Aur Prashikshan Vibhag)

New Delhi, the 7th August, 1985.

OFFICE MEMORANDUM

Subject:- Premature retirement of Central Government servants - Guidelines relating to action where integrity of the Government servant is doubtful -

Consolidated Instructions relating to premature retirement of Central government servants with a view to strengthening of administration were issued under the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) Office Memorandum No.25013/14/77-Estt.(A) dated the 5th January, 1978. Para II (3) (a) of that O.M. lays down that Government employees whose integrity is doubtful will be retired. This guideline has not, however, been adequately followed by the appointing authorities. With the Government's commitment to provide clean administration, it is essential that the power for premature retirement in public interest is availed of to weed out all those employees whose integrity is doubtful, with due regard to the appropriate procedure laid down for action for premature retirement. Further instructions to supplement those conveyed under the Office Memorandum referred to above are now being issued to assist Ministries/Departments in taking action for premature retirement of Government employees whose integrity is doubtful.

Perusal of entire service record:

2. Para II (3) (c) of the Office Memorandum dated the 5th January, 1978 lays down that the entire service record of an officer should be considered at the time of review. Consideration has ordinarily to be confined to the preceding 5 years or to the period in the higher post, in case of promotion within the period of 5 years, only where retirement is sought to be made on grounds of ineffectiveness. There is no such stipulation, however, where the employee is to be retired on grounds of doubtful integrity.

3. The term 'service record' is all-embrasive and review should not hence be confined to the consideration of only the annual Confidential Remarks recorded on the officer. In the case of a number of Ministries/Departments, officers take action for concluding contracts, settling claims, assessing taxes or duties payable etc. Doubts may

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have arisen relating to the bonafide nature of action taken by the officer, but on account of inadequate proof, it may not have been possible to initiate action or a regular departmental inquiry, leading finally to punishment of the nature that may find entry in the C.R. dossier of the officer. But the personal file of the officer may have details of the nature of doubt that arose regarding the integrity of the officer and the result of the preliminary investigation that was carried out. Matters found on the personal file of the officer can and should also, therefore, be placed before the Review Committee and not only the C.R. dossier of the officer.

4. It is likely that each allegation that comes to notice against the integrity of the officer may have been handled on a separate file and that details thereof may not be available on the personal file of the officer, which is confined only to establishment matters, like increments, promotions, leave, P.F. advances etc. In such a situation, well ahead of the meeting of the Review Committee, the Ministry/Department will have to compile together all the data available in the separate files and prepare a comprehensive brief for the consideration of the Review Committee.

5. There are a number of judicial pronouncements in support of the instruction above that a total assessment of the performance of the Government servant can be made. There have also been observations that have approved any measure by which the assessment by superiors, with an opportunity to watch the work and conduct of an officer, is taken into account while deciding premature retirement. In *Union of India vs. M.E. Reddy and another* (AIR 1980 - SC 513) the Supreme Court observed:-

"It will indeed be difficult, if not impossible, to prove by positive evidence that a particular officer is dishonest, but those who have had the opportunity to watch the performance of the said officer in close quarters are in a position to know the nature and character not only on his performance but also of the reputation that he enjoys." In *R.L. Butail vs. Union of India and another* (1971) 2 S.C.R. 55, the observation was:

"It may well be that in spite of the work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors, such as the history of the appellant's entire service and confidential reports throughout the period of the service, upon which the appropriate authority may still decide to order appellant's retirement under P.F.56(1)".

6. For preparing a comprehensive brief on each officer, for being placed before the Review Committee, each Ministry/Department may consider the setting up of an internal Screening Committee to assist the Reviewing Committee consisting to the extent possible of those senior

officers who have had occasion to know about the work and conduct of the officer proposed to be reviewed. Such Screening Committees may be constituted for each different rank or each different functional area, as may be necessary or convenient. These may be set up as a standing arrangement and a Screening Committee is not to be constituted as a separate ad-hoc measure, only at the time when the case of a particular officer is taken up for consideration of premature retirement.

Annual Confidential Remarks:

7. Entries in the C.R. dossier of an officer will of course form a very important part of the total service record taken into consideration while reviewing any proposal for premature retirement. There are, however, certain misconceptions relating to the procedure to be adopted in this behalf; and clarifications are being given below, again based on judicial pronouncements.

8. The general impression prevalent that the Review Committee shall not take into account any remark that has not been communicated to the officer, is not a self-restraint that should invariably hold good in all circumstances. Non-communication of an adverse entry in regard to the doubtful integrity may not be fatal in certain circumstances. The Supreme Court observed in the case Union of India vs. M.E. Reddy and another, already referred to in para 5 above:-

" Mr. Krishnamurthy Iyer appearing for Reddy submitted that the order impugned is passed on materials which are non-existent in as much as there are no adverse remarks against Reddy who had a spotless career throughout and if such remarks would have been made in his confidential report, they should have been communicated to him under the rules. This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the various rules on the subject, it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous or may be connected with general reputation of honesty or integrity that a particular officer enjoys".

9. However, even though Reddy's case was referred to in the case of Brij Behari Lal vs. High Court of Madhya Pradesh (AIR 1981-SC-594), the Supreme Court, taking into account the fact that certain adverse remarks had not been communicated, held the order under FR 56(j) as invalid. The position that emerges, therefore, is that, in a particular case, while an odd adverse remark that may not have been communicated to the officer concerned, could be taken into account as part of the total service record considered by the Review Committee, it would not, as a matter of course, be appropriate to take into account adverse remarks which have not been communicated to the officer.

The Supreme Court has also not accepted the contention that a remark of a general nature, without basing it on a specific instance, does not give an adequate opportunity for representation against it and should not, therefore, be taken into account. In the case *R.L. Bhatnagar vs. Union of India*, already referred to in para 5 above, it has been observed:-

"The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of the omission, the appellant could not make an adequate representation and that, therefore, the confidential reports are vitiated."

10. Another point to be kept in view is that when an overall assessment is made of the record of a government servant, more than ordinary value should be attached to the confidential remarks pertaining to the years immediately preceding the review. It is possible that a government servant having a somewhat erratic record in the early years of service may have so greatly improved with the passage of time that it would be appropriate to continue him in service upto the prescribed age of superannuation. Whatever value the confidential remarks of earlier years may possess, those pertaining to the later years immediately preceding the review are of direct relevance and hence of utmost importance. This view has been expounded in the case of *Brij Behari Vs. High Court of Madhya Pradesh*, referred to above and has been followed in *J.D. Srivastava vs. State of Madhya Pradesh (AIR 1984 SC 630)*.

11. The Department of Personnel and Training is aware of the general tendency noticed among reporting/reviewing officers to desist from expressing their suspicions against the integrity of an officer reported upon, while recording annual confidential remarks. The instructions at present in force relating to entries regarding the integrity of an officer are being reviewed. In any case, reliance should not be placed only on the C.R. dossier, but the entire service record including personal or other files relating to the officer should be taken into account, when premature retirement is under consideration, as already explained in paras 3 to 6 above.

Action should be in the public interest:

12. The Office Memorandum dated 5th January, 1978 referred to in para 1 above, has already drawn attention to the rulings by the Supreme Court that principles of natural justice do not get attracted in the context of the specific provisions in F.R. 56(j). This means that no opportunity to show cause against the proposed action of

premature retirement is to be given to the officer concerned. The order issued to the officer has to specify that action has been taken in the public interest, as the form appended to the Officer Memorandum dated 5th January, 1978 makes the requirement abundantly clear. Action taken should, in fact, be bonafide and in the public interest based upon relevant grounds and not be arbitrary or actuated by malafides. Any contention that the action has been influenced by extraneous or irrelevant considerations, arbitrariness or malice will be closely inquired into by the Courts; and if the contention is upheld, the order of premature retirement is liable to be struck down. It is, therefore, absolutely essential that Ministries/Departments ensure that action for premature retirement is taken in an appropriate manner.

13. Para II(3) (d) of the Office Memorandum dated 5th January, 1978 lays down that no employee should ordinarily be retired on ground of ineffectiveness, if he would be retiring on superannuation within a period of one year. It is clarified that this instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest could be marginal if an old employee, in the last year of his service, is found ineffective; but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.

14. Para II(5)(a) of the O.M. dated 5th January, 1978 also lays down that premature retirement should not be used to retire a government servant on grounds of specific acts of misconduct, as a short cut to initiating formal disciplinary proceeding. It is clarified that the intention is not that when an officer has reached the stage in service when review under F.R. 56(j) can be initiated and, at that time, a specific act of misconduct also comes to notice, action under F.R. 56(j) cannot be taken. It is well settled that premature retirement under F.R. 56(j) is not a punishment, that there is no stigma and that no civil consequences follow. These conclusions will apply to an individual case only when an order under F.R. 56(j) is not a cover for what is, in fact, a punishment sought to be imposed. Hence illustratively where on an alleged misconduct, a departmental inquiry has been conducted and the stage has been reached as to the decision by the competent authority of the punishment to be imposed, it would not be appropriate to issue, instead, an order of premature retirement under FR 56(j). But where no departmental inquiry has been initiated and the specific allegation of misconduct involving lack of integrity is only one fact on the service record of the officer, which has to be considered in toto, an order under FR 56(j) can quite appropriately be passed if the same is otherwise justified.

Each case has to be considered and decided on its own merits. Rules 16(3) of the All India Services (Death-cum-retirement benefits) Rules, 1950 corresponds to F.R.56(j) and in the case of State of Uttar Pradesh vs. Chandra Mohan Nigam and others 1978(1) SLR 12 it was observed:

" We should hasten to add that when integrity of an officer is in question, that will be an exceptional circumstance for which orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government."

15. It is hoped that with these supplementary instructions Ministries/Departments will now take effective action under F.R.56(j) against officers whose integrity is doubtful.

16. Hindi version will follow.

A. Jayaraman
(A. Jayaraman)
Director

To

All the Ministries/Departments of the Government of India with usual number of spare copies.

No.25013/30/85-Estt(A) New Delhi, the 7th August, 1985.

Copy, with usual number of spare copies, forwarded for information to:-

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2. Union Public Service Commission, New Delhi.
3. Central Vigilance Commission, New Delhi.
4. Commissioner for Linguistic Minorities, Allahabad.
5. Lok Sabha Secretariat/Rajya Sabha Secretariat, New Delhi.
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7. All attached and subordinate offices of the Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension and Ministry of Home Affairs.

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8. All Administrative Sections of the Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension and Ministry of Home Affairs.
9. Copy to:- JS(E)/JS(S)/Establishment Officer/Director(E).

A. Jayaraman
(A. Jayaraman)
Director

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