

I M M E D I A T E

CONFIDENTIAL

No.25013/33/85-Estt.(A)
Government of India/Bharat Sarkar
Ministry of Personnel, Public Grievances
and Pensions
(Department of Personnel & Training/Karmik
Aur Prashikshan Vibhag)

New Delhi, the 7th March, 1986.

OFFICE MEMORANDUM

Subject :- Pre-mature retirement of Central government servants- Guidelines relating to action where the government servant is found ineffective.

Department of Personnel & A.R. O.M.No. 25013/14/77-Estt.(A) dated the 5th January, 1978 had spelt out the scope and amplitude of the provisions of FR 56(j) and laid down the criteria, procedure and guidelines for reviewing the cases of government servants for their retention in service or pre-mature retirement with a view to strengthening the administration. This Department's Office Memorandum No. 25013/30/85-Estt.(A) dated the 7th August, 1985 has been issued elaborating/clarifying further the scope of the provisions of FR 56(j), in so far as these apply to retirement of government servants on grounds of doubtful integrity. The following guidelines are now being issued, to supplement those conveyed under the Office Memoranda referred to above, to assist Ministries/Departments in taking action for pre-mature retirement of government employees who have outlived their utility and have become ineffective.

Let us defeat the 'Peter Principle'

2. The aphorism that 'in a hierarchy every employee tends to rise to his level of incompetence', which has come to be known as 'Peter Principle' was laid down in the book by that name, written by L.J. Peter and R. Hull in 1969. The application of Peter Principle need not be inevitable, if only care is exercised to scrutinise diligently the performance of every officer who has reached his present level having secured a series of promotions. It is of course true that promotion beyond a certain level, in each Service, is on the basis of selection by merit, as distinct from promotion by seniority subject to fitness. All the same, it has to be remembered that promotion is given on the assessment of performance in the lower post; and it

need not follow that performance continues to be at least as good, in the post to which promotion has been given. The provisions of F.R. 56(j) do enable the competent authority to retire compulsorily an officer who is found ineffective at the level he has reached in a Service; once the decision to retire an officer compulsorily is arrived at, there is also the possibility of offering the lower post, as an alternative to the Officer, in case he desires to continue in Service till he reaches the normal date of superannuation. Our endeavour should, therefore, be to make use of the provisions of F.R. 56(j) thereby virtually ending the application of Peter Principle to the organisations under Government.

Provisions of F.R. 56(j) are in the public interest.

3. There need be no hesitation to take action under F.R. 56(j) where such action is eminently justified. The Supreme Court has observed that the provisions contribute towards maintenance of the highest efficiency in administration, obviously desirable in the public interest. While interpreting the scope of the provisions of Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, which is analogous to F.R. 56(j), the Supreme Court observed in the case Union of India vs. M.E. Reddy and another (AIR 1980-SC 563):

- (i) "The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all time to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment."
- (ii) "Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative..... so as to meet the expanding needs of the nation which require exploration of "fields and pastures new". Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of administration."

4. In the case Union of India vs. Col. D.M. Sirha and another (1971(1) SCR 791), the Supreme Court observed:

"In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is good deal of dead wood."

5. It will thus be seen that the judicial pronouncements are clearly to the effect that premature retirement is not a punishment, does not involve a stain or stigma and that it is in the public interest. The higher the level reached by a government servant, the higher will be the responsibilities entrusted to him and hence higher will be the expectations of Government that those responsibilities are discharged with exemplary competence, efficiency and effectiveness. It is with a view to assess whether such expectation is being fulfilled that a procedure for reviewing the performance of government servants, who have attained the age of 50/55 years or have rendered 30 years' qualifying service, has been laid down in the Office Memorandum dated 5th January, 1972; and for the compulsory retirement of those government servants who do not fulfil this expectation. It is not sufficient if a government servant, having reached the present level, functions only as a passenger, with performance that is just satisfactory. However, it is not possible to lay down any elaborate guidelines regarding the manner in which the performance of a government servant is to be assessed, since the requirements of a particular position occupied by a government servant will only be known better to the Department concerned and these requirements will vary from one position to another.

Perusal of entire service record

6. Para II(3) (a) of the Office Memorandum dated 5th January, 1972 lays down that the entire service record of an officer should be considered at the time of review. In this Department's Office Memorandum dated 7th August, 1985, it has been explained that the term, "Service Record" is all embracing and a review should not be confined to the consideration of only the annual confidential remarks recorded on the officer. It was pointed out in the said Office Memorandum that matters found in the personal file of the officer should also be placed before the Review Committee and not only the CR dossier of the officer. The

other guidelines laid down in the said Office Memorandum would also be relevant while reviewing the case of an officer on grounds of ineffectiveness or inefficiency. In particular, the guidelines laid down in paragraphs 4 and 6 of the said Office Memorandum would be attracted in the case of such a review. It is, therefore, reiterated that the guidelines contained in the Office Memorandum dated 7th August, 1985 would apply to a case where it is proposed to prematurely retire an officer on grounds of incompetence, inefficiency or ineffectiveness.

Consideration of record prior to promotion or crossing of efficiency bar

7. It has been laid down in para II(3)(c) of the Office Memorandum dated 5th January, 1973 that while the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding five years or where he has been promoted to a higher post during that five year period, his service in the higher post has been found satisfactory. However, there may be cases where it becomes necessary to review the record of an officer after he has been allowed to cross the efficiency bar or after he has been promoted to a selection or non-selection post. What are the circumstances in which the entire service record of such an officer could be considered? This question has been the subject of consideration by the Supreme Court in *D. Kanarey vs. State of Tamil Nadu*, AIR 1982 SC 783. The Supreme Court observed: "After his promotion as Deputy Commissioner there was no entry in the service book to his discredit or hinting even remotely that he had outlived his utility to the Government. If there was some entry not wholly favourable to the appellant after his promotion one might look back to similar or like entries in the past, read them in conjunction and conclude that the time had arrived for the Government servant to be retired prematurely from Government service....."

.....The learned Counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it prior to his promotion. We do not say that the previous history of a Government servant should be completely ignored once he is promoted. Sometimes past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past....."

These observations were approved by the Supreme Court in J.D. Shrivastava vs. State of Madhya Pradesh, AIR 1984 SC:630. In the light of these observations, the position that emerges is that the period immediately preceding the review (which may be taken as five years) or the period after promotion or crossing of efficiency bar would be of utmost importance. However, if during the aforesaid period of review, there is evidence of deterioration in efficiency or unsatisfactory performance, then it would be in order for the Review Committee to examine the entire service record to arrive at a total picture about the suitability or otherwise of the officer for further retention in service.

Pre-mature retirement when less than one year's service remains

8. In para II(3)(d) of the Office Memorandum dated 5.1.1978 it has been laid down that ordinarily no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. This instruction was issued on compassionate grounds, keeping in mind the impending superannuation. While this instruction will continue to be applicable, it is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for pre-mature retirement, in accordance with the Office Memorandum dated 5.1.1978 and this Office Memorandum.

Annual Confidential Remarks

9. It has been mentioned in para 9 of the Office Memorandum dated 7th August, 1985, 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. In any case, reliance should not be placed only on the CR dossier, but the entire service record including personal or other files relating to the officer should be taken into account, when pre-mature retirement is under consideration, as has been advised in para 11 of the Office Memorandum dated 7th August, 1985 and has also been reiterated earlier in this Office Memorandum.

10. It is hoped that with these supplementary instructions, Ministries/Departments will now take effective action under F.R. 56(j) against officers who are found to be incompetent, inefficient or ineffective.

11. Hindi version will follow.

(K. Ramanujam)
Secretary to the Government of India.

To

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

No. 25013/33/35-Estt.(A)

dated the 7th March, 1936.

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(Aarti Khosla)
Joint Secretary to the Government of India.