

ENSURING PROBITY AND EFFICACY IN PUBLIC SERVICE THROUGH PERIODICAL REVIEW UNDER RULE FR46(J): A STUDY OF THDC INDIA LIMITED

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Abstract:

Retirement is when the services in an organization completely come to an end. Retirement may be compulsory or voluntary. Compulsory Retirement generally is considered to be a penal provision but now-a days companies are resorting to compulsory retirement not only as a penal provision but the decision of compulsory retirement now is based on several factors viz. performance, efficiency, integrity etc. There has been a clause in Government Services Rules also known as FRSR and the clause widely has become popular as Rule FR 56(J) which speaks of periodical review on certain grounds on attaining a certain age. Today, there is a push by the Government to carry out compulsory periodical review to maintain probity and efficacy in public service based on certain guidelines laid down. The Central Public Sector Enterprises(CPSE) in India are now being directed to devise the guidelines pertaining to carrying out such periodical review under Rule 56(J) to ensure, maintain and augment efficiency, integrity, character and dedication to public Service at the age of 50 and 55 years. Almost every CPSE has designed its procedure for carrying out the periodical review and the rule is under implementation now. However, every decision has its benefits and pitfalls or to say the other side as well. There has been mixed reaction among large chunk of employees who are put under review. The periodical review to maintain probity and efficacy under Rule 56(J) has its implications both for the organizations and employees.

Keywords: Compulsory Retirement, FR 56(J), Probity & Efficacy, Efficiency, Public Service, Periodical Review

Practitioner Notes:

What is already known about the topic:

- The concept of Compulsory Retirement has been there in Government Services under Rule 56(J)
- Public sector Undertakings have such provision of compulsory retirement generally on health or medical issues.
- In recent years the Indian Government has pushed periodical review to maintain probity and efficacy in public service under FR56(J) and weed out the deadwoods.

What this paper adds:

- The paper describes the general shift in approach of Indian Government towards periodical review to ensure probity and efficacy in public service.
- The paper also describes how pursuant to directions from Government Department Public Sector Undertaking have implemented the policy of such periodical review
- How it is being done in particular reference to THDC India Limited a CPSE under Ministry of Power, Govt. of India.
- The paper describes about the process and procedure being followed in such review with outlook of employees towards such periodical review.

Implications for practice and/ or policy

- This paper may help other companies to take build their own system of periodical review
- To deal with the complexity and people issues involved in carrying out such review in cases of employees attaining 50/55 years of age.
- The paper also reveals the employee perspective on such reviews and other related issues viz. compensation, social and family responsibility and the role of performance appraisal system in determining the employee efficacy.
- This would help understand the people issues involved in carrying out such periodical reviews.

Introduction:

The word “Performance” mean a lot in the organizational sector. Organizations need to perform well continuously to sustain its place in the competitive market. An organization can perform well only when the contribution from each individual employee working for it reaches its height. However, performance is a multidimensional construct and its measurement entirely depends on a number of factors. But one thing is established that performance matters.

There is variety of views about what a performance can be. It can basically be regarded as the record of outcomes achieved in relation to what was the plan to achieve. Performance is the true litmus test for survival in the marketplace. High-performing employees contribute superior performance, giving the companies they work for a competitive advantage and their extra effort differentiates great organizations from merely good ones. Performance leads to productivity which ultimately results in better profit and competitiveness of Organizations.

Performance is the litmus test for survival. Organizations have always understood the importance of employee performance but in recent years there is growing focus of Government on cultivating a culture of performance and fixing the accountability of officers and making them more accountable. There are directions to identify deadwoods and forcibly retire them if the performance is continuously poor.

The present paper is a study of this shift from the Government's point of view and also from the employee point of view and how the employees of Public Sector Undertaking have responded to the rule of FR 56J a provision under Fundamental Rules that the Government has the absolute right to retire Government officials prematurely on the ground of lack of integrity and ineffectiveness, in public interest, under the provisions of Fundamental Rules (FR) 56(j).

Statement of Problem

There is a general principle, one who is hired is ought to be retired. The retirement is generally a notion attached to an age or length of service. Generally, when it comes to retirement Voluntary Retirement and Compulsory Retirement are terms widely used. The number of reasons for VRS could be alternate business thought, job dissatisfaction, health and personal reasons etc. But there is also a provision of compulsory retirement which generally is penal leaving the medical ground where the employer has the right to terminate the services if not found physically fit. But in recent years especially in Government Services the terms Compulsory retirement is now being associated beyond the reason of physical incapability and is related to performance, integrity, probity and efficacy. An employee whose efficiency has become a liability for the employer or whose integrity is doubtful is ought to be compulsorily retired. The Indian Administrative System though had this provision for long but never so widely discussed and used as has been done in recent years and even Public Sector Undertaking have been directed to implement the provision. Keeping this in view, the study is focused to find our major reason behind the provision of review under FR56(J) and to highlight the issues involved in implementation and other related social issues involved in decisions of periodical review based on performances owing to compulsory retirement.

Significance & Scope of Study

The study has wide implication for the human resource managers and policy makers in the present time. The HR manager has to ensure quality of manpower for larger organizational benefit but at the same time also understand human relation and emotions. It is difficult to fire a person who is hired after lots of effort and who has put a good number of services in the organization. HR has a role to act as a facilitator personal and organizational excellence and therefore because of this dual role it has to strike a balance between the two. The present study helps to extracting the merits and demerits of the compulsory retirement through periodical review and suggests certain measures for effective implementation of this provision especially in context of Public sector Undertakings with special reference to THDC India Limited, a Power PSU.

Objectives of the Study

- a) To define the term Compulsory retirement through the process of periodical review under Rule FR 56(J).
- b) To analyze & highlight the impact of Compulsory retirement provision
- c) To analyze the process followed by THDC India Limited for periodical review

Methodology

The purpose of research is to find out the implication of implementing the probity and efficacy FR56(J) periodical review through the application of scientific procedures.

Research Design

The research design is basically a broad frame work or a plan for a study that guides the collection of data and analysis of data. This research is based on a “Descriptive Research Design” analysis. It includes the survey and fact finding enquiry through questionnaire and discussion. The main purpose is to find out he changes if any in overall work atmosphere after implementation of compulsory retirement through periodical review under FR56(J).

Methods of Data Collection

The data for research were collected both from primary and secondary sources.

Sampling Technique

In this research, the sampling technique adopted was a Convenience Sampling. The participants are selected based on availability and willingness to take part. Useful results can be obtained through this technique. However, volunteer bias is a risk of all non-probability sampling methods.

Sample Size The Total Sample Size is 80 Respondents. They have been selected based on the category viz. Executives and Supervisors and only those who have reached the age of 50 or have crossed 55 years as the guidelines for periodical review is only for those who have attained either 50- or 55 years of age.

Limitations of the Study

The limitations of the present study areas fallows.

1. The area study confined to THDCIL only.
2. The information collected for the present study is more of a primary in nature.
3. The sample size is limited to 80.

Introduction:

Companies are banking on its Human Resources to gain competitive advantage. People matter so there performance also does matter. There was a time when there was a popular belief that once you are able to fetch a Government job in India you are safe and need not to work. Hardly, there was a system of measuring and managing performance but gradually the system changed and suddenly there is tremendous focus on performance and employees who are not performing are being prematurely retired. Although, there was a dedicated clause in fundamental Rules known as FR56(J) which stipulated that the Government has the absolute right to retire Government officials prematurely on the ground of lack of integrity and ineffectiveness, in public interest but it was enforced with full vigour. But with the changing times the Government is pushing the culture of performance and accountability together with integrity probity and efficacy.

A lot of emphasis was made on growth of Public sector Enterprises Post Independence for rapid industrial growth and economic self reliance. Over the years, the government's participation in industrial and commercial ventures has come to be regarded as sine qua non for rapid economic growth. Public Sector Enterprises have been accepted as effective instrument of socio-economic transformation and economic development. Since independence, the growth of public enterprises, both at the central and State level has been phenomenal.

Genesis of Periodical review under FR 56(J):

In 1965, Bureau of Public Enterprises(now DPE) was set up as a centralized co-coordinating unit, which would also appraise the performance of these bodies.

The department acts as nodal agency for all PSEs and assists in policy formulation pertaining to the role of PSEs in the economy. It lays down policy guidelines on performance improvement and evaluation, financial accounting, personnel management and related areas.

In the government sector, focus on performance is now widely recognized as a key instrument for improving the delivery of services and infrastructure to the people.

In 2015 Department of Public Enterprises(DPE) issued an Office memorandum regarding periodical review for ensuring probity and efficacy among employees of CPSEs which stipulated that in the matter of recruitment and personnel management in Central Public Sector Enterprises (CPSEs), the Government has in the past issued general guidelines in the form of model Recruitment Rules (RRs), Conduct, Discipline & Appeal (CDA) Rules 1 Service Rules for adoption by CPSEs. Based on such model guidelines & rules, the concerned CPSEs have been drawing up Recruitment Rules, CDA and Service Rules applicable to their respective organizations.

Vide the said Office memorandum DPE invited attention of CPSEs to Office memorandum issued by DoPT vide OM No. 25013/01 12013-Estt.A-IV dated 11-09-2015 in terms of provisions under FR 56 (U) prescribing review of Government employees upon completion of specified years of service or attaining specified years of age. DPE directed that all the CPSEs are required to ensure that similar provisions as laid down under FR 56 (U) are to be incorporated in the respective Conduct Discipline and Appeal Rules, Service Rules of CPSEs and be implemented in the spirit of government instructions.

Hon'ble Supreme Court of India has observed in State of Gujarat Vs. Umedbhai M. Patel, 2001 (3) SCC 314 as follows: i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest. (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution, (iii) "For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer." (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order. v) Even un-communicated entries in the confidential record can also be taken into consideration. (vi) The

order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable. (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer. (viii) Compulsory retirement shall not be imposed as a punitive measure. In every review, the entire service records should be considered. The expression 'service record' will take in all relevant records and hence the review should not be confined to the consideration of the ACR /APAR dossier. The personal file of the officer may contain valuable material. Similarly, the work and performance of the officer 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 Ministry/Department puts together all the data available about the officers and prepares a comprehensive brief for consideration by the Review Committee. Even un- communicated remarks in the ACRs/ APARs may be taken into consideration.

As far as integrity is considered, the Hon'ble Supreme Court of India while upholding compulsory retirement observed that :

The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest.

As per the Hon'ble Supreme Court in *Slate of UP. and Others vs Vijay KumarJain, Appeal (civil) 2083 of 2002*:

If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest.

The term 'public interest' in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a government servant who with passage of years has prematurely ceased to possess the standard of efficiency, competence and utility called for by the Government service to which he belongs. (*Gian Singh Mann v. High Court of P&H, AIR 1980 SC 1894: (1980)4 SCC 266*)

The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing with services of those who are inefficient, dead-wood or corrupt and dishonest. (*Brij Mohan Singh v. State of Punjab (1987)2 SCR 583: AIR 1987 SC 948*)

Probity & efficacy defined:

The quality of having strong moral principles, honesty and decency, service of the employee should be free from corruption and efficacy is defined as power or capacity to produce a desired result/output; effectiveness.

Though this system of periodical review was there in Government departments for long but even now the CPSEs have been directed to incorporate the provision of probity and efficacy in light of FR56(J) and start taking action in this regard.

Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution. It was also said that the order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.

The Role of Performance Management System:

In CPSEs the method of measuring the performance of employee is through Performance Appraisals or Performance Management System. In implementing the order regarding ensuring probity and efficacy, performance management system of CPSEs is acting an important tool. In recent years the Performance Management System of CPSEs in India have underwent great change moving towards being more robust, objective and transparent.

Respective CPSEs have drafted their own rules to maintain probity and efficacy and identify deadwoods and issues of doubtful integrity. However, there has been mixed reaction after the implementation of this FR 56(J) rule. There are several reasons behind.

The basic rule regarding ensuring probity and efficacy among employees of CPSEs contain following provisions:

1. Employees whose integrity is doubtful.
2. Employees who are found to be ineffective. The following factors shall be taken into consideration while deciding the ineffectiveness of an employee:
 - a) fitness/competence of the employee to continue in the post which he/she is holding,
 - b) limited efficiency,
 - c) continued non-performance,
 - d) proved misbehavior,
 - e) willful disobedience,
 - f) indiscipline,
 - g) unauthorized absenteeism,
 - h) the employee has caused loss to corporation.
 - i) the employee has indulged in unethical conduct.However, the list is not exhaustive.
3. Employees whose conduct is unbecoming of a public servant.

Almost all the Public Sector Undertakings in India are carrying on this periodical review based on probity and efficacy.

Periodical Review under FR56(J) for ensuring Probity and Efficacy in THDCIL

THDC India Limited is a Schedule "A" MiniRatna CPSE under Ministry of Power, Govt. of India. The company is proud to have Tehri Dam and Tehri Hydro Power Plant as its flagship plant which is considered as marvel of civil engineering. Although the General terms and conditions of Service Rules contained provision related to probity and efficacy but there was no provision for periodical review.

In the year 2016 after DPE specifically issued directions to carry periodical review of employees on attaining the age of 50 and 55 years based on performance, probity and efficacy, THDCIL also framed its own guidelines.

The guideline framed is to ensure that the power of compulsory retirement is availed of in proper cases to weed out all those employees whose integrity is doubtful, whose actions or omissions are unbecoming of public servant and whose efficiency has become a liability to the employer. The basic purpose is to maintain and augment efficiency, integrity, character and dedication to public service with the consequential end of serving public interest.

Process of Review

(A) Applicability

(1) The provision of compulsory retirement on review shall be made applicable on all Executive and Supervisor grade employees.

(B) Screening Authority

(1) There shall be a Screening Authority. The Screening Authority after looking into service record of employees shall form a prima facie opinion for submitting the cases of the employees for review.

(2) The GM (P&A), at Corporate Office, shall be the Screening Authority. Provided that in the case of executives in the grade of Manager and above level the Screening Authority shall be Director (Personnel).

(3) The Screening Authority shall ensure that the service record of the employees being reviewed is submitted to the Review Committee at least three months before the due date of Review. The Screening Authority shall prepare and submit a summary of the service record for consideration of the Review Committee.

The term “service record” is all inclusive. The screening as well as the review shall not be confined to confidential records of the employees.

The Review Committee shall take into consideration the employee’s Performance Management Report, confidential records and personal file.

(2) The Record to be considered should include favorable and adverse, communicated and uncommunicated remarks. The work and performance of the employee shall also be assessed by looking into files dealt with by him/her and papers or reports prepared and submitted by him.

(3) The entire service record of an employee is to be considered, provided no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years has been found satisfactory.

Provided no employee should ordinarily be retired on the grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of his/her case. However in case of sudden and steep fall in the effectiveness of an employee, it would be open to review his case for compulsory retirement even within the period of one year prior to his/her superannuation. Provided that there is no such stipulation where the employee is to be retired on grounds of doubtful integrity.

The Review committee shall take its decision taking into consideration that the post has to be manned by a more efficient and dynamic person. The Review Committee should bonafide form an opinion and record its opinion in the file that it is necessary to retire the employee in public interest. The opportunity of hearing may be given to the employee either in person or in writing.

The review is carried out bimonthly at THDCIL. The employee against whom the order of compulsory retirement is passed has the opportunity to make appeal against. In cases of employee who are compulsorily retired after review are entitled to full retirement benefits which the employees otherwise would have been entitled to in case of retiring on reaching the age of superannuation.

There has been several suits filed in various Hon'ble courts of India challenging the validity of administrative power to compulsory retire any employee after 55 years of age without assigning reason if it is in public interest. However, the decision of such retirement is not on the whims of any authority rather there has to be a procedure, further it should not be violative of enshrined articles of the Indian Constitution viz. Article 14 and Article 16 and principle of natural justice.

In order to conduct survey a questionnaire was served to employees in executive and supervisory category working in THDCIL. The details of the survey results are as under:

Table -1 : Distribution of Respondents Level of Opinion on the Basis Of Various Impacts after Compulsory Retirement

Questions	Strongly Agree (SA)	Agree	N0	Do not agree(D.A.)	Strongly Do Not Agree(SD A)	Total
Do you agree that compulsory retirement on periodical review under FR 56(J) is pro employee.	17	26	27	10	6	80
Do you agree that honesty and efficiency should be the criteria to determine continuity of service.	24	40	11	3	2	80
Do you agree that periodical review based on work efficiency be carried out.	7	40	15	15	3	80
Do you agree that periodical review done under FR56(J) at the age of 50 and 55 years is harsh	26	13	10	18	16	80
Do you agree that compulsory Retirement after review under FR56(J) is penal and blameworthy.	4	40	13	22	1	80

Do you agree that the review should be done based on entire service record and not that of past 5 years.	6	40	7	15	12	80
Do you agree that counseling session should be imparted to such candidate who are found eligible for compulsory retirement after review	7	39	16	15	3	80
Do you agree that it is hard to meet social responsibility after getting compulsorily retired at the age of 50/55 years.	17	22	6	21	14	80
Do you agree that it is difficult to find new job at the age of 50/55 years.	13	17	9	28	11	80
Do you agree that opportunity should be given before compulsory retirement in cases of poor work efficiency	18	34	8	13	7	80
Do you agree that periodical review on probity and efficacy is a social stigma	6	41	16	15	3	80
Do you agree that such periodical review will improve work efficiency	5	14	10	37	12	80
Do you agree that such periodical review will improve issues related to integrity and honesty	15	7	10	26	11	80
Do you agree that there should be additional compensation given to employees being compulsorily retired under periodical review.	16	36	7	14	7	80
Do you agree that the procedures to carry periodical review under FR556(J) is transparent and provides natural justice	14	25	6	21	14	80
Do you agree that with age the work efficiency deteriorates therefore the review should only be done for cases related to dubious integrity	7	40	15	15	3	80

Analysis of responses received from Respondents

On analysis of the responses received it is clear that majority of the respondents believe that the periodical review to ensure probity and efficacy is pro-employee and a necessary process to ensure probity, honesty and efficiency. However, there was an opinion that the age at which the review is being made and that in cases where an employee is compulsorily retired is such that he or she has several family and social obligation to meet and therefore there is likelihood of hardship, therefore, although the decision of compulsory retirement is not blameworthy but the compensation should be enhanced or at least there should be a lumpsum compensation as in case of VRS. Although, there may be differential treatment in cases where the retirement is due to issues related to integrity and honesty. Further, it also became clear that the age at which periodical review based on efficiency is being carried out is such that the employee may not be able to deliver due to health or age related ailments.

Conclusion:

Efficiency and Honesty in Public Service is a mandatory condition to be ensured. The periodical review therefore is necessary to ensure, maintain and augment efficiency, integrity, character and dedication to public service with the consequential end of serving public interest. Government Departments and Public Sector Undertakings many a times are under scanner for their lackadaisical approach towards ensuring and maintaining efficacy and probity in service. In recent years the focus of Government has been on using all possible measures to ensure the same and several directions has been furnished. Public Sector Undertakings known to be professional entities ought to have such mechanism to identify and weed out the deadwoods so as to give opportunity to deserving people to serve.

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