



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

116

CWP-15868-2024  
Date of Decision: 15.07.2024

SANJEEV PANDEY

...Petitioner

Versus

FOOD CORPORATION OF INDIA AND OTHERS

...Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present:- Mr. Suvir Sidhu, Advocate for the petitioner.

Mr. Sunish Bindlish, Advocate for the respondents.

\*\*\*\*\*

ALOK JAIN, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking the issuance of a writ, order, or direction, particularly in the nature of certiorari, for quashing the impugned order dated 21.09.2023 (Annexure P-2), and order dated 11.12.2023 (Annexure P-5) passed by Respondent No. 2, whereby, the petitioner was ordered to be prematurely retired from the post of Manager (QC).

2. The brief facts of the case as narrated by the counsel for the petitioner which led to the filing of the present petition are that the petitioner was appointed on the compassionate ground and joined his duty on the post of Technical Assistant Grade-III. The petitioner was further promoted time to time on the basis of his performance. However, vide impugned order dated 21.09.2023, the petitioner was ordered to be pre-maturely retired without serving notice of three months as required to be served upon the employee as per the memorandum dated 28.08.2020 (Annexure P-3).



Further when the petitioner filed representation dated 29.09.2023 (Annexure P-4) before the Respondent no. 3, the same was rejected by passing the Impugned order dated 11.12.2023 (Annexure P-5).

3. The counsel for the petitioner submitted at the outset that the petitioner from last 30 years had dedicatedly and honestly performed his duties with exemplary service record, which is also reflected from his Annual Performance Assessment Report of last 6 years (Annexure P-1). He further submits that the impugned order was passed without considering the petitioner's entire service record, which includes positive performance feedback coupled with the fact that the mandatory 3 months notice was also not issued to the petitioner and thus violating the principle of natural justice and established legal procedure. The counsel for the petitioner also placed reliance upon the judgment of "**Central Industrial Security Force versus HC Om Prakash**" (CA/5482/2022) which emphasised that the entire service record, including ACRs prior to promotion, must be taken into account when deciding pre-mature retirement.

4. The counsel for the petitioner emphasized on Clause 10 (iv) of Office Memorandum dated 28.08.2020 which reads as follow:

*"(iv) No Government servant 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 Government servant is to be retired on grounds of doubtful integrity. In case of those Government servants who have been promoted during the last 5 years, the previous entries in the ACRs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit."*



4.1 Relying upon the above stated office memorandum the counsel for the petitioner submits that the office memorandum clearly stated that no government servant should ordinary be retired only on the ground of ineffectiveness except if the allegations are of doubtful integrity. He further submits that the last 6 ACRs of the petitioner do not demonstrate the same and hence the Representation Committee and the Review Committee fell in the error in passing the impugned order.

5. Furthermore, counsel for the petitioner submitted that the respondent had issued similar order against the other employees as well, who approached this Hon'ble Court by way of CWP No. 26180 of 2023, wherein, while passing order dated 22.12.2023, the Court instructing the respondents to reconsider the cases citing failure to adhere to the mandate and spirit of clause 4 of circular dated 09.07.2021 and the observation made by the court be read as under:

*“17. From the perusal of dossier which was put up before the Reviewing Committee, the noting/opinion of Reviewing Committee and Representation Committee, this Court finds that Reviewing Committee has not taken care of mandate and spirit of Clause IV of paragraph 10 of the circular dated 09.07.2021. It is settled law that circulars are not binding upon the courts, however, department is bound by its circulars. The circular dated 09.07.2021 was issued by FCI, thus, it is precluded to argue contrary to circular and was bound to meticulously follow the same. In the dossier, the fact of promotion of employees in preceding 5 years was noticed, however, this fact has not been noticed either by Reviewing Committee or by Representation Committee. This fact in the light of Clause (iv) read with Clause (v) of paragraph 10 of circular dated 09.07.2021 needs to be considered, thus, the respondents are directed to re-consider case of all those petitioners who were*



*promoted during 5 years preceding the date of premature retirement. It is made clear that this order would not be construed as reinstatement of the said employees. The respondent as conceded, in the light of Clause (iv) and (v) of paragraph 10 of aforesaid circular, would decide fate of these petitioners within 8 weeks from today.”*

5.1 In view of the above said order the petitioner submitted a revised representation to the respondents on 30.01.2024 (Annexure P-7), however no action had been taken by the respondent department till the date.

6. Learned counsel for the petitioner submitted that in view of the foregoing discussion and the law laid down, the impugned order is liable to be set aside and the instant petition may be allowed.

7. *Per Contra*, the counsel for the respondents opens his arguments with the submission that the scope of interference by Court in case of pre-mature retirement is very limited.

8. The learned counsel for respondents at the very outset submitted that Clause (iv) of the Office Memorandum dated 28.08.2020 cannot be read in isolation and the entire criteria in totality has to be read. Clause (v) is reproduced herein as:-

*“(v) The entire service record of a Government servant 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 ACR/APAR dossier. The personal file of the Government servant 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 Ministry/Department/Cadre puts together all the data available*



*about the Government servant and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRS/APARs may be taken into consideration.”*

8.1 The learned counsel for respondents vehemently submitted that when Clause (iv) is read with clause (v) of the Office Memorandum dated 28.08.2020, it makes absolutely clear that the entire service record of government servant has to be considered at the time of review and the extension of service and it cannot be confined only to the ACRs/APAR dossier. The counsel further handed over a copy of the Representation Committee Report before this Court, to demonstrate that the entire material and the entire service record was available before the authorities, who after going through and assessing the same had passed the impugned orders.

9. The counsel for the respondents also relied upon the judgment passed by the Coordinate Bench in CWP No. 7934 of 2024 which was filed after the decision on the representations filed in furtherance to the order passed in the CWP No. 26180 of 2023 whereby the similar matter was dismissed vide order dated 15.04.2024.

10. Heard learned counsel for the parties at length.

11. It has been observed that, for the correct interpretation of the Office Memorandum dated 28.08.2020, the co-joint reading of Clause (iv) and (v) collectively mandate consideration of the entire service record, including any indications of doubtful integrity or ineffectiveness, in premature retirement decisions. As submitted by the counsel for the respondent the Review Committee indeed assessed the petitioner's complete service history, beyond merely previous Annual Confidential Reports (ACRs) or Annual Performance Assessment Reports (APARs). Therefore, in



the absence of any claim of *mala fide* intent by the Review Committee while ordering premature retirement of the petitioner, and given that the petitioner’s sole contention relates to an alleged violation of Clause (iv), the court is of the opinion that the review was comprehensive and conducted as per the prescribed guidelines, and fulfilled all procedural requirements.

12. Considering the principle that judicial interference in matters of premature retirement is limited as in administrative law, courts are generally reluctant to interfere with decisions made by the employer, unless and until there is a clear violation of law or procedure. However, in the present case, the court finds no compelling reason or violation, to intervene, as the impugned order of retirement was based on a reasonable exercise of administrative discretion.

13. Accordingly, the instant petition being devoid of merits is dismissed.

14. Pending application, if any, also stands dismissed.

July 15, 2024  
*parul*

(ALOK JAIN)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No