

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP no. 15869 of 1994(O&M)

Date of Decision : 02.12.2015

Om Parkash Sehra

....Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present : Mr.Subhash Ahuja, Advocate for the petitioner

Mr. Hitesh Pandit, Addl. AG, Haryana

MAHESH GROVER, J.

The petitioner impugns order dated 15.9.1994 (Annexure P-6) by which a show cause notice was issued to him to retire him compulsorily at the age of 55 years by giving him three months notice.

The petitioner joined services of the respondents as Clerk on 1.1.1962 and was promoted as Sub Divisional Clerk in 4.10.1970 and further promoted as Accounts Clerk on 9/11.4.1977 from which post he retired pursuant to the impugned order (Annexure P-6).

The contention of the learned counsel for petitioner is that his service record was good and therefore he could not have been retired compulsorily in the

exercise of the powers under Rule 5.32(a) of CSR Vol.II read with Rule 3.26 CSR(d) of CSR Vol.I Part I.

The respondents justify the impugned order by referring to the adverse remarks earned by the petitioner for the period 1.4.1992 to 15.2.1993 where against the column of integrity it was written not satisfactory by the reporting officer. Apart from this the entire report is average or below average. The respondents have further justified their stand by referring to previous entries of 1969-70 where integrity was recorded as doubtful and some punishments of warning on three occasions and stoppage of two grade increments. Besides, the petitioner is said to have remained under suspension from 27.11.1973 to 19.7.1974. On the basis of this learned counsel for the respondents contends that the overall record of the petitioner being unsatisfactory he was retired compulsorily from the service at the age of 55 years.

Upon hearing the parties, I am of the opinion that the impugned order is unjust. Considering the fact that previous reports of 1969-70 and warning on three occasions as also the suspension of the petitioner and stoppage of increments would have no bearing considering the fact that the petitioner was promoted in the year 1970 as Sub Divisional Clerk and further promoted as Accounts Clerk on 9/11.4.1977. Besides he was permitted to cross efficiency bar as a Sub Divisional Clerk vide order dated 4.11.79 w.e.f. 1.1.1974 and similarly permitted to cross efficiency bar as Accounts Clerk vide order dated 5.1.1983

w.e.f 1.4.1982.

These would imply that the effect of the previous reports and the effect of punishments recorded by the respondents stand washed off. Respondents themselves found him fit enough to promote and therefore they cannot say now that his entire record is unsatisfactory and so far as last report is concerned which is stated to reflect adversely on the integrity of the petitioner is concerned, the petitioner had made a representation against the same which remained pending till the time when impugned order (Annexure P-6) was issued. The petitioner had a right to file a representation which he exercised and therefore the respondents were obliged to decide the same in accordance with law before passing the impugned order. Having not done so the cause of the petitioner has been prejudiced. Undeniably the petitioner's service record from 1983 onwards i.e last 10 years is good except for the last report i.e 1992-93 against which the petitioner had represented. It is a settled law that the report of the previous 10 years have a bearing on the decision of weeding out the dead wood at the age of 55 years. Since the entire record of the petitioner for the previous 10 years is good except for one which he represented and there being no other adverse material against him except for the one referred in the reply the effect of which also stood washed off in view of the subsequent promotions granted by the respondents themselves, there is hardly any material which can be termed to be adverse to sustain the impugned order (Annexure P-6). Consequently, writ

petition is allowed and the impugned order is hereby set aside.

December 02, 2015
rekha

(MAHESH GROVER)
JUDGE