

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

LPA No.593 of 2013(O&M)
Date of Decision: 07.09.2015

State of Haryana and another

.....appellants

Versus

Hakumat Rai Malhotra

...Respondent

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Ms. Tanisha Peshawaria, DAG, Haryana.

SNEH PRASHAR, J.

CM No.1571 of 2013

This is an application filed under Section 5 of the Limitation Act for condonation of delay of 25 days in filing the appeal.

For the reasons mentioned in the application, the delay of 25 days in filing the appeal is condoned.

Application stands disposed of.

LPA No.593 of 2013

1. This letter patent appeal under Clause X of the Letters Patent Act has been filed assailing the order dated 05.12.2012 passed by learned Single Judge whereby the writ petition CWP No.380 of 2002 filed by the respondent assailing the order dated 11.05.2001 (Annexure P-4) was quashed.

2. The relevant facts garnered from the record are that:

Hakumat Rai Malhotra-respondent/petitioner was appointed as

a clerk in the department of Employment, Haryana on 22.11.1965. He was promoted as an Assistant on 29.07.1976 and thereafter was promoted as Deputy Superintendent on 03.04.1998. The criteria for the promotion to the post of Deputy Superintendent was seniority cum merit.

However, on the basis of an adverse remark recorded in his Annual Confidential Report for the year 1992-93 which was taken as amounting to “integrity doubtful”, he was made to compulsorily retire on attaining the age of 55 years vide order dated 11.05.2001 passed by the Director of Employment Haryana-appellant No.2.

The respondent-petitioner approached this Court assailing the order dated 11.05.2001 by filing CWP No.380 of 2002. The writ petition was allowed and the impugned order dated 11.05.2001 was quashed. The direction was given to the appellants to release all consequential benefits to respondent-petitioner within a period of three months from the date of receipt of certified copy of the order.

Since the appellants are unsatisfied with the order passed by the learned Single Judge, the instant Letters Patent Appeal has been preferred.

3. We have heard the submissions made by learned counsel for the appellants and have gone through the impugned order passed by the learned Single Judge.

4. Learned counsel for the appellants asserted that in the Annual Confidential Report for the year 1992-93, there was an adverse remark recorded against integrity of the respondent. The entry mentioned that the 'reputation for integrity of the respondent is not sufficient', which amounted to the 'integrity being doubtful'. Even though subsequent to the adverse

remarks the respondent was promoted in the year 1998 to the post of Deputy Superintendent and all his Annual Confidential Reports thereafter are very good, yet it would not mean that earlier adverse remarks in the Annual Confidential Report relating to his integrity could not be taken into consideration. The order retiring Government Servant compulsorily is passed on the subjective satisfaction of the Government. The Government has to consider the entire record of service before taking a decision in the matter. An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. To support her arguments learned State counsel relied upon (i) *Baikuntha Nath Das and Another Vs. Chief District Medical Officer, Baripada and Another (1992)2 Supreme Court Cases 299* (ii) *Daya Nand Vs. State of Haryana, 1994(3) PLR 652*

5. To us, there appears to be no force in the arguments of learned State Counsel. The facts in hand are also on different footing.

6. A gist of the Annual Confidential Report for the year 1992-93 of the respondent and the remarks recorded therein were noticed by learned Single Judge as under:

“1992-93 Good

Adverse Remarks conveyed:

1. Lacks quick disposal of work-is slow at work.

2. Reputation for integrity not sufficient.

(Imandari Ke Liye Khayati Koi Vishesh Nahin)

3. Doesn't maintain filing work properly.

24.03.93 Punishment of warning.”

7. Considering the above remarks in the Annual Confidential

Report and the service record of the respondent-petitioner the findings of the learned Single Judge of this Court are as under:

The admitted fact is that out of ten preceding years form the date of his compulsory retirement vide order dated 11.05.2001 (Annexure P-4) there are five very good reports, four good and one average report. It is also not in dispute that the petitioner after his promotion to the post of Deputy Superintendent on 03.04.1998 has been granted four very good reports for the years 1997-98, 1998-99, 1999-2000 and 2000-2001. If that be so, the first criteria which has been laid down for making a person eligible for consideration for continuation in government service beyond the age of 50/55 years stands fulfilled as the petitioner has more than 70% good reports in the ten preceding years of his order of retirement. Only one annual confidential report i.e. for the year 1992-93, cannot be treated as a doubtful integrity especially when the overall assessment by the competent authority with regard to his conduct is good.

8. The respondent-petitioner has 70% good reports in the ten preceding years of his retirement. The only remark regarding his integrity in the Annual Confidential Report for the year 1992-93 is completely ambiguous and is not supported by any evidence. The said

“adverse remark” cannot be treated as “integrity doubtful” especially when the overall assessment by the Competent Authority with regard to the conduct of the respondent-petitioner is recorded as 'good'. The impugned order dated 11.05.2001 is indeed not sustainable.

9. Thus, we are of the opinion that the order dated 05.12.2012 passed by the learned Single Judge does not require any interference and the appeal being devoid of merit, it is hereby dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

07.09.2015
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