

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 3493 of 2011 (O&M)
Date of decision:- 16.07.2015

Brij Bhushan

...Appellant

Versus

State of Punjab & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Gurcharan Dass, Advocate
for the appellant.

Mr. Vaibhav Sharma, DAG, Punjab

RITU BAHRI J. (Oral)

Plaintiff-Appellant (for short 'the appellant') is in second appeal against the concurrent finding of fact recorded by both the Courts below whereby the suit of the appellant for setting aside order dated 25.02.2005, vide which he was compulsory retired, was dismissed.

Appellant joined the services of the respondents from December, 1981. He had been awarded 51 punishments from the year 1982 to 1999, which includes punishment of stoppage of increments permanently and temporarily. The maximum number of cases were of embezzlement and other of deposit of less cash. In cross examination, the appellant himself has admitted that he was on duty on bus No. 9005 on 25.06.2000. He further admitted that his bus was checked by the checking staff and report

was made against him. He also admitted in his cross examination that he was put under suspension and was served a charge sheet and regular enquiry was also ordered against him by the respondents. He appeared before the Enquiry Officer and his statement was recorded therein. He cross examined the witnesses produced by the department against him in the enquiry proceedings.

Before passing the impugned order of compulsory retirement, the department had examined the entire service record of the appellant, he had been awarded 51 punishments w.e.f 1982 to 1999, which included major punishment of stoppage of increments permanently or temporarily after affording an opportunity of hearing to the appellant and after supplying the enquiry reports to him. This fact was further evident from enquiry file (Ex P8). The object of considering the case of an employee for compulsory retirement at an age of 55 years is to remove the dead wood from the service. It is not a punishment neither it causes any stigma to any employee as held in a case of Baikuntha Nath and others vs. Chief District Medical Officer, Baripada, 1992(2) SCC 299 wherein the following guidelines have been laid while considering the order of compulsory retirement:

“(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any

suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order. (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls.

both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

Thereafter the Supreme Court has been consistently holding that the order of compulsory retirement is not a punishment and the object is to remove the dead wood from the service. Supreme Court of India in the case of Union of India and others vs. P. Gunasekaran, 2015 AIR (SC) 545, upheld the finding of the Central Administrative Tribunal that the punishment of compulsory retirement is not outrageous or shocking to its conscience. In paragraph 24 of the judgment, it was observed as under:

24. The Central Administrative Tribunal, in the order dated 01.02.2001 in O.A No.521 of 2000 after elaborately discussing the factual as well as the legal position has come to the conclusion that the punishment of compulsory

retirement is not outrageous or shocking to its conscience, it was not open to the High Court to interfere with the disciplinary proceedings from stage one and direct reinstatement of the respondent with back wages.

In *Rajashtan State Road Transport Corp. and others vs. Babu Lal Jangir* 2013 (4) SCT 438 , it was held by Hon'ble the Supreme Court of India that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non-application of mind, mala fide, perverse or arbitrary or if there is noncompliance of statutory duty by the statutory authority. Power to retire compulsorily, government servant in terms of service rules is absolute provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

In view of all that has been discussed above, there is no infirmity or illegality in the judgments passed by the Court below. No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 16, 2015
G Arora

(RITU BAHRI)
JUDGE