

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

**RSA-4139-2015 (O&M)
Date of decision : 08.12.2015**

Chander Bhan

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Kamboj, Advocate for
Mr. Paramjit Singh Jammu, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM No. 10043-CII of 2015

This is an application under Section 5 of Limitation Act seeking condonation delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 03 days in filing the appeal is condoned.

The application stands disposed of.

CM NO. 10044-CII of 2015

This is an application under Section 151 CPC seeking condonation of delay in re-filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 46 days in re-filing the appeal is condoned.

The application stands disposed of.

RSA No. 4139 of 2015

The appellant/plaintiff is in regular second appeal against the concurrent findings of the fact whereby, the suit for mandatory injunction and declaration that order dated 13.01.2010 vide which plaintiff has been retired compulsorily at the age of 55 years being illegal, null and void, has been dismissed by both the Courts below.

It has been argued that the appellant-plaintiff had compulsorily retired on 14.01.2010, on the basis of ACR for the period 2003-04 which was never communicated. Without any communication, the adverse order of compulsory retirement could not have been passed. This fact has not been noticed by both the Courts below.

I have heard the learned counsel for the appellant and appraised the paper book.

It is a categorical stand of the respondents that the appellant-plaintiff was charge-sheeted as per Rule 7 of the Haryana Civil Services Rule. He did not file any representation or appeal against the communication of the adverse remark which has been proved to be served/conveyed to him.

For the sake of the brevity, findings given by the Courts below reads thus:-

"11. After hearing learned counsel for the plaintiff and learned G.P. For defendants and after having gone through the case file very carefully, this court is of the considered view that in the present suit, the plaintiff has sought the relief of declaration and mandatory injunction to the effect that order dated 13.01.2010 Ex.P-4 is illegal, null and void

on the ground that defendants have not follow the proper procedure and violate the statutory rules but the plaintiff is not entitled for the above said relief because in the order dated 13.01.2010 Ex.P-4, it is clearly mentioned that in the ACR of plaintiff, his integrity was mentioned as doubtful and a show cause notice was issued to the plaintiff vide letter No.5092-ECC dated 29.09.2009 and after receiving the same, plaintiff has not filed any representation and as per rules, it is essential that the Govt. employee must have earned at least 50%-70% good or above reports during the last 10 years as the case may be and there is no entry regarding doubtful integrity during this period. Since, during the period of last 10 years from the date of retirement i.e. 14.01.2010, integrity of the plaintiff was doubtful in the ACR and this fact is proved from Ex.D-1 ACR for the year 2003-04. Thereafter, a show cause notice Ex.D-4 was also served upon the plaintiff vide receipt Ex.D-5. From these documents, it is clear that the ACR for the year 2003-04 Ex.D-1 is well within the knowledge of plaintiff and the same was conveyed but the plaintiff has not filed any representation.

12. Therefore, keeping in view the fact that plaintiff has not fulfilled the condition for further extension in service that's why the appointing authority/defendants passed order dated 13.01.2010 Ex.P-4, hence, the same is legal, valid and as per rules. Therefore, issues No.1 and 2 are decided against the plaintiff."

Keeping in view the aforementioned facts, I am of the view that the integrity of the appellant-plaintiff had been found doubtful and it has rightly been decided not to retain the plaintiff beyond the age of 55 years. I do not intend to differ with the findings rendered

by both the Courts below which are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

08.12.2015
yogesh

(AMIT RAWAL)
JUDGE