IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14414 of 1993
Date of decision: 6.4.2016

FS Nagra … Petitioner

Versus

The State of Punjab & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S. Khehar, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl.A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Challenge in this petition is to the order dated October 29, 1993 retiring the petitioner from Government service prematurely at the stage of review at 55 years.

2. This Court feels very sorry for the petitioner to read the summary of his ACRs for the period 1962-63 and 1992-93 which leave hardly any manner of doubt that the petitioner was grossly wronged in retiring him before superannuation by the decision taken under the provisions of Rule 3(1) (a) (b) of the Punjab Civil Services (Premature Retirement) Rules, 1975 retiring the petitioner from Government service prematurely which is entirely perverse and irrational. He was paid three months advance pay in lieu of notice as required by the Rules. The Financial Commissioner Taxation & Secretary to Government of Punjab,

Department of Excise and Taxation has ostensibly passed the order in public interest. Though the opinion of the competent authority is subjective in nature but the decision has to rest on objective criteria in evaluation of the entire service record with emphasis on the graph of more recent entries. The law on the subject of premature retirement/compulsory retirement has been settled in Baikuntha Nath Das & Anr. v. Chief Medical Officer, Baripada & Anr, AIR 1992 SC 1020 and needs no elaboration. The principle laid down therein would not support the conclusion that the petitioner had been rendered dead wood, inefficient or a drone and a parasite on the administration in the Excise & Taxation Department or of no continued utility in government service.

3. The summary of ACRs has been produced by the State in its reply at Annex R-1 at pg. 58 of the paper-book which speaks for itself. They are reproduced below:-

“Summary of ACR's of Sh. F.S. Nagra, E.T.O.

10-8-62 – 16-11-62	Under Training
62-63(11/62-3/63)	Obedient and submissive.
63-64 Picking	Picking up his work well.
64-65(2.5.64 to 31.3.65)	+B
65-66	An intelligent and hard worker, yet he has not cleared departmental examination in all the papers.
66-67	+B but adverse conveyed about working.
67-68	+B But adverse. Conveyed about working.
68-69	Satisfactory

69-70(5/69-3/70)	+B
70-71(5/70-3/71)	'A'
71-72(7/71-3/72)	'A'
72-73	'A'
73-74	'A'
74-75	+A
75-76	'A'
76-77(5/76-3/77)	+B
77-78(12/77-3/78)	'A'
78-79	Not on the file.
79-80	Very good.
80-81	Very good.
81-82	A very good official.
82-83(12/82-3/83)	Average
83-84(4/83-11/83)	+B
<u>As E.T.O.</u>	
(12/83-3/84)	+B
84-85(5/84-3/85)	+B but adverse conveyed about leaving head quarter without permission.
85-86	'A'
86-87	Very good.
87-88	Good
88-89	Very good.
89-90	+A
90-91	Good

91-92	'A'
92-93	'A'

4. Mr. Manuja to salvage the case to the advantage of the State he represents has pointed out from para.11 the stand taken by the State eschewing the petitioner as an employee carrying "a stinking reputation with regard to his integrity" averring that he worked against the revenue interest of the State and there were lots of reports of his connivance with the transporters and the traders for allowing their trucks to pass unchecked through the Sales Tax Check Barriers set up in the State to collect revenue. In the light of poor reputation enjoyed by the petitioner with regard to his integrity, it was [it is said] absolutely necessary in the public interest to retire him pre-maturely from Government service under Rule 3(1) (a) (b) of the Punjab Civil Services (Premature Retirement) Rules, 1975. Suspicion cannot take the place of proof. If the allegations were true they should be reflected in the service record of the government servant. If the petitioner's integrity was doubtful it should have been recorded in the ACRs. It is not enough to dunk an employee in the pool of corruption without tangible evidence creating serious doubt as to his character rendering him unfit for retention in service beyond 55 years of age. The confidential rolls speak to the contrary. The service record bears no stamp of misdemeanour, corruption or the like. Hearsay evidence or a hunch alone would not do. The decision has to be based on informed reason taken dispassionately on the available material.

5. For the foregoing reasons, I find substance in the petition worthy of acceptance. The petition is allowed. A writ of certiorari is

issued quashing the impugned order. As a corollary, the petitioner will be entitled to all consequential benefits flowing from the quashing of premature retirement order. The arrears of pay and allowances will earn interest @ 12% per annum.

6. One last word needs to be said before parting. Though a charge-sheet was issued to the petitioner during his service but an enquiry officer was not appointed nor was an investigation conducted, either preliminary or regular into the allegations levelled against the petitioner. Be that as it may, with the setting aside of the impugned order, the charge-sheet has been rendered infructuous which is not open to be reopened at this distance of time applying principles in MD, ECIL v. B. Karunakar, (1994) SCC Suppl. (2) 391, given that the petition was filed in 1997 and the charge-sheet was even older. It will, I think, be a travesty of justice for this Court to now grant liberty to the State after admission of the writ for regular hearing to conduct an enquiry or to permit revival of the stale charge-sheet only to harass the petitioner and keep his rights at bay for an indefinite period of time. Consequently, the charge-sheet is also quashed to serve the ends of justice, the petitioner being beyond employable age.

(RAJIV NARAIN RAINA)
JUDGE

6.4.2016
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