

CWP No.1444 of 2000;
CWP No.5818 of 2003 &
CWP No.10209 of 2005

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

Date of decision: 29.09.2016

CWP No.1444 of 2000

Surinder Kumar Mittal

...Petitioner

Vs.

State of Haryana & others

...Respondents

CWP No.5818 of 2003

Surinder Kumar Mittal

...Petitioner

Vs.

The Chief Secretary to Government of Haryana & others ...Respondents

CWP No.10209 of 2005

Surinder Kumar Mittal

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. No one appears for the petitioner despite the case shown in the urgent list for disposal from old cases. Neither request is made for a pass

over. I have proceeded to hear the law officer for Haryana for final disposal and have perused the record of file with her assistance.

2. This order will dispose of aforementioned three writ petitions brought by Surinder Kumar Mittal. In CWP No.1444 of 2000, challenge is to the adverse remarks recorded in the ACR of the petitioner for the year 1998-99 vide order dated 07.06.1999 (Annex P-1); in CWP No.5818 of 2003, challenge is to the order dated 20.01.2003 (Annex P-2) vide which the petitioner stands compulsorily retired from service; while in CWP No.10209 of 2005, challenge is to the vires of Rule 3.26 (d) of the Punjab Civil Services Rules, 1970, Volume I, Part 1, as applicable to Haryana prior to coming into force of the Haryana Civil Services (General) Rules, 2016 repealing in Haryana the Punjab rules which held the field for half a century.

3. The petitioner's integrity was doubted by the Reporting Officer of the petitioner in his annual confidential report. The petitioner worked in the Haryana Employment Services Class II posted as District Employment Officer in Town Employment Exchange, Mahendergarh, Haryana. This was the position on the date of filing of the petitions. His service record was reviewed at the age of 50 years being a Class II employee and the competent authority invoked Rule 3.26 (d) of the Punjab Civil Services Rules, as applicable to Haryana, Volume I Part I and retired him from service compulsorily. In sub-para.(vii) of Para.7 (CWP No.5818 of 2003), the petitioner relies on the judgment of the Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab, AIR 1987 SC 948 to assert that it is "absolutely" applicable to the present case, but in this argument, he fails to see that the ruling in Brij Mohan Singh Chopra's case was overruled by the three member Bench in Baikuntha Nath Das & another Vs. Chief District Medical Officer, Baripara & another;1992 (2) SCC 299, and it was

specifically recorded so in subsequent judgment of the Supreme Court in the case of the State of Punjab Vs. Gurdas Singh; 1998 (4) SCC 92. Therefore, it is no longer necessary that all ACRs should be conveyed and communicated before they can be used in cases of compulsory retirement while forming opinion in a bona fide manner and in public interest not to retain an employee in service. That is the necessary evil in invoking Rule 3.26 (d). The purpose of Rule 3.26(d) is not punitive. It only removes from service those, who have become dead-wood and who are liability on the State. The petitioner is incorrect in his averment that compulsory retirement is a punishment.

4. The challenge to the vires of Rule 3.26(d) in CWP No.10209 of 2005 being violative of sub Rule 4 (viii) of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 is misconceived and against the settled position of law and, therefore, procedure under Rule 7 of the 1987 Rules for major penalty was not required to be followed.

5. Ms. Shruti Jain Goyal relies on the Supreme Court decision in Rajasthan State Road Transport Corp. & others Vs. Babu Lal Jangir, (2013) 10 SCC 551, in which the principles in Baikuntha Nath Das's case have been reiterated elaborately and it has accordingly been reaffirmed that adverse remarks doubting integrity can be used for purposes of compulsory retirement without them having been conveyed and served on the official. The principle of conveying ACRs in time is relevant in cases of promotion, which is not necessarily true in a case of compulsory retirement. The power to retire compulsorily or pre-maturely is absolute, provided the authority forms an opinion bona fide to compulsorily retire person in public interest and the decision is not actuated by malice.

6. Now coming to the case involving adverse ACR and challenge thereto, it is pointed out by Ms. Goyal that there is no challenge to the adverse remarks recorded in the year 1992-93, where the integrity of the petitioner was doubted. The representation against the adverse remarks was rejected and those remarks have attained finality. In CWP No.1444 of 2000, the challenge is limited only to the adverse remarks entered in the confidential rolls of the petitioner for the year 1998-99. The challenge to adverse remarks in confidential rolls is very limited and ordinarily a writ would not lie or issue to upset those remarks unless they are touched by bias, unreasonableness, perversity and rank arbitrariness or the entire record of service is unable to justify the order. No such vice is apparent on the face of record to warrant interference by certiorari or mandamus.

7. For the foregoing reasons, no interference is called for in the present set of writ petitions. Consequently, all the writ petitions are dismissed.

29.09.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes