

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

**CWP No.599 of 1995
Date of decision: 26.02.2016**

Karan Singh Malik

...Petitioner

versus

State of Haryana

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. R.K. Malik, Senior Advocate,
with Ms. Rimple Kadyan, Advocate,
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

RITU BAHRI, J.

By way of present writ petition, the petitioner is seeking quashing of order dated 07.10.1994 (Annexure P14), whereby he has been retired after attaining the age of 55 years.

The petitioner was appointed as Junior Engineer and thereafter, was promoted as Sub Divisional Engineer on regular basis on 11.04.1985. He was conveyed adverse remarks in his four annual confidential reports and his representations against those remarks were rejected as under:-

- (i) First time annual confidential report for the year 1983-84 was conveyed to the petitioner, in which his overall assessment was 'average.'. His representation against the aforesaid

remarks was rejected vide Annexure P-1.

(ii) In his annual confidential report for the year 1988-89, overall assessment of the petitioner was made 'average.' His representation against the said remarks was rejected vide letter (Annexure P-4).

(iii) He was again conveyed adverse remarks in his annual confidential report for the year 1989-90 vide Annexure P-5. His representation against such remarks was rejected vide Annexure P-6.

(iv) Finally, the petitioner was conveyed the adverse remarks in his annual confidential report for the year 1990-91 vide Annexure P-7, against which, he made a representation, which was rejected vide order (Annexure P-9).

As per Haryana Government instructions dated 16.08.1983 (Annexure P-11), only those employees be retained in service after the age of 55 years, who have 70% good reports in last 10 years and those who have not 70% good reports in the last 10 years, be compulsorily retired from service. These instructions were challenged before this Court on the ground that under rule 3.26 of the Punjab Civil Services Rules, Vol. I, Part-I, an employee can be compulsorily retired in public interest and the object of public interest can be achieved by retiring an employee, who has become deadwood and have lost all the utility for the department. This Court in **K.K. Vaid Vs. State of Haryana**, 1990 (1) SLR 1, quashed the above instructions by considering the same as against the provisions of Rule 3.26 of SCR. Against this judgment, State of Haryana filed SLP No.1641 of 1990, which was dismissed by the Hon'ble Supreme Court on 21.02.1990.

Subsequently, the State of Haryana again issued instructions dated 19.11.1991 (Annexure P-12) to retain an employee in service, who has earned 70% good reports for the last 10 years. Thereafter, the Government of Haryana, as per policy decision dated 01.07.1991 (Annexure P-13), has laid down a criteria that when promotion has to be made by way of selection, an employee, who has earned 70% good reports during the last 10 years, shall be considered fit for promotion. As per instructions (Annexure P-12), the petitioner was given a notice/order dated 07.10.1994 (Annexure P-14) to retire him compulsorily after attaining the age of 55 years by taking into consideration his ACRs from 1983-84 to 1993-94. While passing the impugned order (Annexure P-14), the department has taken into consideration four adverse entries in the ACRs of the petitioner, which were conveyed to him.

Upon notice, written statement on behalf of respondent has been filed by Special Secretary to Government of Haryana, Public Works (Buildings and Roads), Department. Detail of the service record of petitioner has been annexed as Annexure R-1, which was taken into consideration at the time of considering his case for retention in service beyond the age of 55 years. Out of his last 10 years' reports for the period from 1983-84 to 1992-93, the petitioner earned 2/3 reports 'very good', 5-1/3 'good' and 4 reports as 'average.' The order of compulsory retirement has been passed after framing an opinion that it was in public interest and was in consonance with the spirit of Rules 5.32 (c) of Punjab Civil Service Rules, Volume II read with Rule 3.26 (d) Volume I, part-I. Reference has been made to a decision given in

Baikuntha Nath Das and another Vs. Chief Distt. Medical Officer,

Baripada and another, AIR 1992 SC 1020, whereby the Hon'ble Supreme

Court has laid down a criteria that the order of compulsory retirement is not to be examined by the Court as an appellate Court. Interference is required to be made only, if the Court satisfies that the order passed is; (a) *malafide*, (b) 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, meaning thereby that the order is found to be a perverse order. The opinion of the competent authority to retire the petitioner is based on the subjective satisfaction and scrutiny of his last 10 years service record. The matter is not required to be interfered with by the Court. In reply on merits, it is admitted that after conveying four adverse remarks, his representations have been rejected by the competent authority. It has been further explained that pursuant to the judgment given in **K.K. Vaid's** case (supra), the matter was examined by the Government and the revised instructions were issued vide Annexure P-12. In the instructions (Annexure P-12), it has been specifically provided that the appointing authority has absolute right to retire any Government employee, if it is of the opinion that it is in the public interest. Apart from earning 70% good record, there should not be any entry regarding doubtful integrity during this period. In the backdrop of instructions (Annexure P-12), the order of compulsory retirement of petitioner (Annexure P-14) does not require any interference because the object of these instructions is that the competent authority is to form an opinion on the basis of last 10 years' record, as to whether it is in the public interest to retain an employee after crossing the age of 55 years.

In compliance with the order dated 14.10.2015, entire record of ACRs of petitioner up to the year 1994 has been placed on record by way of affidavit dated 10.11.2015 of Neeraj Gupta, Superintending Engineer,

Haryana Public Works (B&R) Department. In this affidavit, it has been clarified that the department has not been able to trace out entire service record of the petitioner despite due diligence being 20 years old. However, summary of ACRs for the period from 1969-1970 and 01.04.1992 to 15.07.1992 has been traced out and placed on record as Annexure A-1. ACR for the period from 16.07.1992 to 31.03.1993 was 'V.Good' and information with regard to same has already been annexed as Annexure R-1 along with the written statement. Thereafter, the petitioner was suspended w.e.f. 28.10.1993 to 22.09.1994 vide order dated 28.10.1993 (Annexure A-2) and ACR for this period has not been written due to suspension. Vide Govt. order dated 22.09.1994 (Annexure A-3), the petitioner was reinstated. However, he was not posted from 22.09.1994 to 20.12.1994. Therefore, ACR for the period from 21.09.1994 to 20.12.1994 (being waiting period) had not been written.

Mr. R.K. Malik, learned senior counsel for the petitioner has referred to the Division Bench judgment passed in **K.K. Vaid's** case (supra), wherein this Court had examined the instructions dated 16.08.1983 (Annexure P-11), which provided that extension beyond the age of 55 years should be granted by the Government to those employees who have got more than 70% good ACRs for the last 10 years. These instructions were set aside by this Court being violative of Rule 3.26 (d) of Punjab CSR, Volume I and was in direct conflict with Rule 3.26 (a). The aforesaid judgment was referred in another judgment passed by a Co-ordinate Bench of this Court in **Chanwant Singh Patwari Vs. State of Haryana and another,** 1990 (2) SLR 301, wherein it was held that “average” reports cannot be treated as “adverse” reports and official cannot be prematurely retired from service on

the basis of such reports. An employee can be prematurely retired only in public interest. Learned senior counsel has further referred to a decision given by this Court in **Ram Kishan Vs. State of Haryana and another**, 1994 (3) Recent Service Judgments 298, wherein while considering a case of compulsory retirement of an employee, his ACRs for the last 10 years were examined. It was found that the average reports were adversely taken against the employee to reach to a conclusion that he was inefficient person. The petitioner, in that case, was a teacher and his performance was to be reflected from the results of his pupils and if, his work has been found to be average, the competent authority while considering his case for compulsory retirement cannot treat this entry as 'adverse.' It was held that the competent authority failed to apply its mind objectively to the record of the petitioner while making recommendation for his premature retirement. Ultimately, the order was set aside and the petition was allowed.

Learned State counsel, on the other hand, has argued that as per the provisions of Rule 3.26 (d) of Punjab SCR, the appointing authority has a right to form an opinion, if it was in public interest, to retire a Government employee. Instructions (Annexure P-12) were issued after passing of judgment in **K.K. Vaid's** case (supra), vide which earlier instructions had been set aside. As per instructions (Annexure P-12), apart from having 70% good reports for the last 10 years, an employee should not have any entry regarding doubtful integrity and as per Rule 3.26 (d) of Punjab CSR, a person can be compulsorily retired, if it is in public interest to retire him. These instructions came up for consideration before the Hon'ble Supreme Court in **Baikuntha Nath Das's** case (supra), whereby a criteria has been laid down that the order of compulsory retirement is to be interfered with

only, if the Court is satisfied that the order passed is *malafide*, arbitrary and perverse. It would be a total assessment of entire 10 years' record to reach to a conclusion, as to whether he is a deadwood or fit to be retained in service.

After hearing learned counsel for the parties, it would be necessary to examine the entire service record of the petitioner, which has been placed on record as Annexure A-1. Right from the year 1969-1970, there is no adverse entry regarding doubtful integrity in service record of the petitioner. A perusal of reports prior to 1983-1984 show that he has been a good employee. The petitioner was, however, placed under suspension vide order dated 28.10.1993 (Annexure A-2) and thereafter, he was reinstated on 22.09.1994. For this period, his ACRs have not been recorded. Further, the instructions dated 16.08.1983 (Annexure P-11) issued by the State of Haryana were quashed by a Division Bench of this Court in a judgment passed in **K.K. Vaid's** case (supra). Thereafter, instructions dated 19.11.1991 (Annexure P-12) issued by the State Government gave an extended scope of application of mind by the competent authority while taking into consideration Rule 3.26 (d) of the Punjab CSR, which provided absolute right to the Government to retire an employee in public interest. As per the above said provisions, apart from examining 10 years service record, if the Government comes to a conclusion that it would be in public interest to retire an employee, the order should not be interfered by the Courts as an Appellate Authority.

In **Baikuntha Nath Das's** case (supra), while considering the order of compulsory retirement, following guidelines have been laid down by the Hon'ble Supreme Court:-

“(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.

Even thereafter, the Hon'ble Supreme Court has been consistently holding that the order of compulsory retirement is not a punishment and the object is to remove the deadwood from the service. Further, in Union of India and others vs. P. Gunasekaran, 2015 AIR (SC) 545, the Hon'ble Supreme Court has 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.

Further, the Hon'ble Supreme Court in Rajasthan State Road Transport Corp. and others vs. Babu Lal Jangir 2013 (4) SCT 438, has held 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 nonapplication 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 the facts of the present case, after going through the summary of ACRs (Annexure A-1), it is apparent that in the last 10 years before his compulsory retirement, the petitioner had got five “good” reports and five “average” reports. Even though an “average” report is not to be taken as “adverse” report and there is no entry of doubtful integrity throughout his service career, but keeping in view that the petitioner had 50% good record in the last 10 years, the order of compulsory retirement has been rightly passed on the subjective satisfaction of the competent authority. Neither the impugned order has been passed on account of any punishment nor it has caused any stigma on the petitioner. Moreover, the petitioner has not alleged any *malafide* on the part of the department in passing this order. In view of the settled law laid down in Baikuntha Nath Das's case (supra), no illegality,

much less perversity, has been found in the impugned order of compulsory retirement.

Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

26.02.2016
ajp