

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

CWP No. 19538 of 2001

Date of decision: June 03, 2016

Smt. Rajeshwari Nagar

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sunil Narang, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana.

Mr. D.S. Nalwa, Advocate.

RITU BAHRI, J.

Petitioner is seeking quashing of the orders dated 24.08.2000(Annexure P-1),13.08.2001(Annexure P-7) and notice dated 14.08.2001(Annexure P-2), whereby she was compulsorily retired from service.

The petitioner joined as Auxiliary Nursing Midwife (ANM) on 15.06.1965 at Primary Health Centre, Raipur Rani (District Ambala). Her services were regularized on 05.12.1965. Vide order dated 10.03.1983 she was adjusted against the post of Lady Health Visitor. The post of Lady Health Visitor was changed to 'Multi Purpose Health Supervisor (Female) on the initiation of Multi Purpose Health Scheme in the State of Haryana. The superannuation of the petitioner was due on 30.05.2003 on

attaining the age of 58 years. However, vide impugned order dated 14.08.2001, she has been compulsorily retired on attaining the age of 55 years on 05.01.2002.

As per the contentions of the learned counsel for the petitioner while passing the above-said order before compulsorily retiring of petitioner; ACRs for last 10 years have to be considered.

The Annual Confidential Report of the petitioner for the year 1993-94 has average remarks. The original Annual Confidential Report for the year 1993-94 written by Dr. Surya Kant, the then Senior Medical Officer, Kalka, who actually saw the working of the petitioner during the year 1993-94 and countersigned by Dr. Gupta, the then Civil Surgeon, Ambala, was misplaced/lost by the Department. After a gap of 6½ years, the Annual Confidential Report for the year 1993-94, was got written from Dr. Rajinder Singh Chauhan, the present Senior Medical Officer, Kalka, who did not actually see the work and conduct of the petitioner during the above-said period and got countersigned from Dr. H.C. Nagpal, the then Civil Surgeon, Panchkula. Her representation against the 'Average' remarks in the ACR for the year 1993-94 was rejected by respondent No. 2 on 13.08.2001 (Annexure P-7).

Furthermore, the ACRs for the year 1994-95 and 1995-96 which were recorded as 'Average' and 'Below Average' respectively were never conveyed to the petitioner.

On notice, a written statement has been filed on behalf of respondents No. 1 to 4 in which the details of the last 10 years

of Annual Confidential Report have been given and which had been reproduced as under:-.

<i>S.No.</i>	<i>Year</i>	<i>Categorization</i>
1	1990-91	Good
2	1991-92	Good
3	1992-93	Good
4	1993-94	Average
5	1994-95	Average
6	1995-96	Below Average
7	1996-97	Average
8	1997-98	Good
9	1998-99	Good
10	1999-2000	Good

It has been further stated that the representation against the ACR for the year 1993-94 has been rejected vide letter dated 13.08.2001 (Annexure R-1). In paragraph 6 of the reply on merits, it has further been admitted that ACRs pertaining to the year 1994-1995 and 1995-1996 were never conveyed to the petitioner. The ACRs of the aforesaid year are as under:-

<i>S.No.</i>	<i>Year</i>	<i>Categorization</i>
1	1994-96	Average
2	1995-96	Below Average

However, in the written statement it has been justified that the adverse remarks would stand against the petitioner and they were considered by the competent authority while taking decision to compulsorily retire the petitioner on attaining the age of 55 years. The department followed the procedure laid down for

compulsorily retirement as per instruction dated 19.11.1991 and followed the provisions contained in the rules 3.26 (d) of Civil Services Rules Vol. I, Part I and 5.32 (B) (i) of the Haryana Civil Service Rules, Volume-II, Part-I.

As per instructions dated 19.11.1991(Annexure R-III) the petitioner is not having 70% good record during the last 10 years.

After going through the contents of the written statement the question for consideration would be that whether the adverse remarks of 1994-1995 and 1995-1996 which were never conveyed to the petitioner is to be considered as adverse remarks.

The Supreme Court has laid down the guidelines for examination of the case of compulsorily retirement of an employee.

The scope of judicial review in relation to an order of premature retirement has been well defined by the Apex Court in the case of **Baikunth Nath Das and another v. Chief District Medical Officer, Baripada and another, 1992(2) SLR 2 : 1992 (2)**

SCT 92 (SC), and the relevant para is reproduced as below:-

- “(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 a 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.

8. Emphasising that the basic object of compulsory retirement is to weed out inefficient and corrupt persons, who cannot be otherwise removed from service for insufficient evidence, the principles laid down in Baikunth Nath Das's case (supra) were further expanded by their Lordships of the Supreme Court in the case of **State of Gujarat v. Umedbhai M. Patel, 2001 (3) SCC 314 : 2001 (2) SCT 339 (SC)**, wherein it was held that:-

“(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of

public interest.

(ii) Ordinarily, the order of compulsorily retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood but the order of compulsorily retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsorily retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

In the facts of the present case the two reports for the year 1994-95 and 1995-96 which are average and below average would be taken into consideration. They were not conveyed to the petitioner but they could be taken into consideration while considering her case for compulsorily retirement on attaining the age of 55 years.

The argument of counsel for the petitioner that the unconveyed average remarks could not be taken into consideration for compulsorily retiring the petitioner would not be a ground to set aside this order. As far as the 'Average' remarks in

the ACR for the period 1993-94, is concerned the representation against the same has been rejected vide order dated 13.08.2001 (Annexure P-7). The initial ACR for the year 1993-94 had been written by Dr. R.S. Chauhan, SMO on the basis of her available record duly signed by Dr. H.C. Nagpal, Civil Surgeon, Panchkula. The said ACRs subject to satisfaction of the Officer cannot be taken into consideration, at this stage. The order to compulsily retire the petitioner does not suffer from any infirmity. The case has to be appreciated after taking into consideration the entire service record and the opinion of the competent authority. The order passed passed by the Director, Health Service (FW), Panchkula does not require any interference as the order compulsily retiring the petitioner is not a punishment.

In view of perusal of last 10 years ACR report of the petitioner and in view of all that has been discussed above, no interference is required in the present writ petition.

The present writ petition is dismissed.

June 03, 2016

poonam(II)

(RITU BAHRI)
JUDGE