

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

**C.W.P. No. 18917 of 2013
Date of Decision:- 24.08.2016**

Nirmal Singh (Now deceased)

....Petitioner

vs.

The State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. A.K. Walia, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

DAYA CHAUDHARY, J.

Petitioner-Nirmal Singh (since deceased) filed this petition for quashing of impugned orders dated 30.3.2012 (Annexure P-2) issued by respondent No.4 whereby he was prematurely retired w.e.f. 31.3.2012 on attaining the age of 56 years, order dated 6.6.2012 (Annexure P-4) passed by respondent No.3 whereby the appeal filed by him was dismissed as well as order dated 26.4.2013 (Annexure P-6) whereby the revision filed against the order passed by the Appellate Authority was also dismissed. Subsequently, the legal representative, who is widow of deceased, Nirmal Singh, approached this Court by way of filing an application to pursue the case after the death of her husband.

Briefly, the facts of the case are that Nirmal Singh (since

deceased) was appointed as a Constable in the General Railway Police, Punjab. He continued to work upto the age of 55 years and thereafter, he was granted extension for a period of one year w.e.f. 31.3.2011. For that purpose, his medical examination was also conducted wherein he was found medically fit. Thereafter, his case was again considered for further extension beyond 56 years of age but the same was rejected vide order dated 30.3.2012 (Annexure P-2). The said order was challenged by way of filing an appeal which was also dismissed on 6.6.2012 (Annexure P-4). The said order passed in appeal was challenged by way of filing a revision petition and it was dismissed vide order dated 26.4.2013 (Annexure P-6).

Order of rejection of extension in service as well as orders passed by the Appellate Authority and Revisional Authority are the subject-matter of challenge in the present writ petition.

Learned counsel for the petitioner has challenged all the above-said three orders on the ground that the petitioner was prematurely retired whereas at the time of granting extension, after the age of 55 years, he was found medically fit. The order of premature retirement w.e.f. 31.3.2012 was illegal and mala fide as no reason whatsoever was assigned. Nothing was said with regard to adverse remarks to say that the work of the petitioner was not found satisfactory. Even no notice or any opportunity of hearing was given to him while passing impugned order (Annexure P-2). Learned counsel also submits that the orders passed by the Appellate Authority as well as by the Revisional Authority are non-speaking, cryptic and the same were passed without any application of mind. Nothing was mentioned with regard to the grounds in the appeal as well as in the revision petition that it

was not a fit case for extension whereas one year extension was already given to the petitioner on attaining the age of 55 years.

Learned counsel for the petitioner submits that it has not been mentioned as to on what basis the Authorities have formed their opinion and how the impugned orders were passed whereas one year extension was granted after conducting medical examination. Thus, previous service record of the petitioner was not considered whereas there was no adverse entry during one year of extension and there was no justification for a fresh review and denial of extension before prematurely retiring the petitioner at the age of 56 years. At the end, learned counsel for the petitioner submits that all three impugned orders are liable to be quashed.

Learned State counsel submits that it was not a case of premature retirement but it was a case where extension was not granted to the petitioner. The work and conduct of the petitioner did not remain satisfactory during his service as he was awarded punishments on different occasions. His two years' service was forfeited in the year 1991 and thereafter three years' service was forfeited in the year 1993 with permanent effect and one year service was forfeited with temporary effect while two years' service was forfeited in the year 1997. Again in the year 2001, three years' service was forfeited with permanent effect and one year service with temporary effect. Similarly, in the years 2002, 2004, 2005, his service was forfeited with permanent effect whereas in the year 2007 his service was forfeited with temporary effect. If all above said punishments are considered, then his 21 years' approved service was forfeited.

Learned State counsel also submits that punishments awarded

to petitioner were duly conveyed to him. On attaining the age of 55 years, he was declared medically fit and was allowed to work for a period of one year. Thereafter, further extension for one year was not granted to him as it was not found in the public interest. Learned counsel also submits that the order passed by the Appellate Authority as well as the Revisional Authority are well reasoned and speaking as well. Learned State counsel submits that the case of the petitioner was considered in view of the provisions of Rule 9.15 (3) of Punjab Police Rules, 1934 (hereinafter referred to as the Rules, 1934) which deals with the cases for extension in service of non-ministerial officers/officials of Punjab Police on attaining the age of 55 years.

I have heard learned counsel for the parties and perused the impugned orders as well as other documents on the file.

Admittedly, the petitioner was working as Constable and his service was extended beyond the age of 55 years. It is also not disputed that the petitioner was awarded many punishments as mentioned in the written statement as no replication denying the various punishments has been filed by the petitioner.

The controversy in the present case is not of premature retirement of the petitioner but of rejection of extension of his service. Rule 9.15(3) of “the Rules, 1934” is reproduced as under:-

“Officer other than ministerial, who have attained the age of 55 years should ordinarily be required to retire and should not be retained in service except where unquestionable public grounds for retention exist, and

there is no doubt as to the physical fitness of the officer.

Extensions may not be granted for any period exceeding one year at a time.”

It is also relevant to mention here that as per Section 85 of the Punjab Police Act, 2007, the provision of “the Rules, 1934” shall remain in force, which is reproduced as under:-

“The Punjab Police Rules, 1934, framed under the Police Act, 1861 (Central Act 5 of 1861), shall remain in force, unless those rules are specifically superseded.”

On completion of 55 years of age, the petitioner was declared medically fit by the Civil Surgeon, Roop Nagar and he was allowed to continue in service for a period of one year i.e. upto 31.3.2012 vide order dated 18.3.2011. Thereafter, on completion of one year service, the case of petitioner for further extension was considered by the Competent Authority and it was decided not to retain him in service in the public interest and as such he was not allowed to remain in service w.e.f. 31.3.2012.

As per written statement, the work and conduct of the petitioner was not satisfactory as he was awarded eleven punishments during the period from 1991 to 2007. His total 21 years' approved service was forfeited out of his total service.

On perusal of impugned orders, it is apparent that it was not a case of compulsory retirement but the petitioner was not granted extension in service after attaining 56 years of age. The petitioner has relied upon the rules of Punjab Civil Services (Premature Retirement) Rules, 1975 whereas said Rules are not applicable to the present case.

A perusal of the order passed by the Appellate Authority shows that simply it has been mentioned that the order passed by the Punishing Authority was as per law and as such, the order was just, legal and based on merits of the case. The order passed by the Appellate Authority is reproduced as under:-

“I have carefully perused the appeal and the entire relevant record. The competent authority (Punishing authority) has taken in to consideration the service record of the appellant while retiring him at the age of 56 years as per the Rules. The undersigned also granted personal hearing to him. I do not agree with the contentions raised by him. Therefore, I hereby order that this appeal is dismissed.”

Similarly, the order passed by the Revisional Authority also does not say as to how the grounds raised in the appeal or revision were not acceptable to the Authorities concerned. Simply, it is mentioned that the revision does not deserve to be accepted. Relevant portion of the order passed by the Revisional Authority is reproduced as under:-

“After obtaining the legal opinion and keeping in view all the facts of the case pertaining to the appeal mentioned in the subject, the same does not deserve to be accepted in accordance with Rule 9.15 of Punjab Police Rules, 1934.”

On a perusal of all these documents available on the file, it is apparent that extension cannot be claimed as a matter of right but the

competent Authority has to apply its mind to show as to why the extension was granted for one year and why it was declined for further one year. Various grounds were raised before the Appellate Authority as well as before the Revisional Authority but both the Authorities have not applied their mind and impugned orders have been passed. Simply by stating that there is no force in the appeal/revision and same is dismissed is not sufficient. In absence of any finding or application of mind, the impugned orders cannot sustain as it amounts to violation of principles of natural justice. In case, both the Authorities were in consonance with the findings recorded by the punishing Authority, then they were duty bound to give their respective finding in that regard. It appears that neither the order passed by the Appellate Authority nor by the Revisional Authority are speaking orders nor have been passed after application of mind.

Same view was held in judgment of Hon'ble the Apex Court in ***Chairman, Disciplinary Authority vs. Jagdish Sharan Varshney and others, 2009 (4) SCC 240***. The relevant portion of said judgment is reproduced as under :-

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in *Prabhu Dayal Grover* case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by

some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in *Divl. Forest Officer v. Madhusudhan Rao* (vide SCC para 20: JT para 19) and in *M.P. Industries Ltd. v. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India* (vide SCC para 6 : AIR para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.N. Mukherjee v. Union of India*, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at

least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in *S.N. Mukherjee* case, it has been observed that : (SCC p. 613, para 36)

“36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one-line orders stating that they agree with the view of the lower authority.

10. For the same reason, the decision of this Court in *State of Madras v. A.R. Srinivasan* (vide AIR para 15) has also to be understood as explained by us above.

11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order.”

Similar views have been observed in *Ram Chander vs Union of India and others 1986(3) SCC 103*, *Sengara Singh and others vs State of Punjab and others 1983(4) SCC 225*, *State of U.P vs Raj Pal Singh*

2002(1) SCT 205 as well as judgments of this Court in cases ***Hari Singh vs State of Punjab and another 2004(2) SCT 413, Pritam Singh vs Haryana State Electricity Board 1995(2) SCT 754, R.S. Bhatti vs State of Haryana 2001(2) SCT 1156.***

Accordingly, this petition is allowed and the order passed by the Appellate Authority dated 6.6.2012 (Annexure P-4) and order passed by the Revisional Authority dated 26.4.2013 (Annexure P-6) are set aside.

The appellate Authority is directed to reconsider the case of the petitioner and pass fresh speaking orders by giving reasons and to give opportunity of personal hearing, if necessary.

August 24, 2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes