

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 8312 of 2016

Date of Decision : May 24, 2016

Amarjit Singh Petitioner
vs.
Chandigarh Housing Board
and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Arvind Singh, Advocate
for the petitioner.

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DEEPAK SIBAL, J. :

The present petition has been filed to challenge the order dated 31.03.2016 compulsorily retiring the petitioner from service.

Shorn of unnecessary details, the facts, which are borne out from the record of the case and which have emerged from the arguments raised at the bar are that the petitioner, who was serving the respondent Chandigarh Housing Board (hereinafter referred to as – the Board) as a Junior Engineer, has been ordered to be compulsorily retired under Rule 3 (1) of the Punjab Civil Service (Premature Retirement) Rules, 1975 (hereinafter referred to as – the Rules).

Learned counsel for the petitioner submits that before passing

opportunity of hearing. He further submits that the reasons for the petitioner's compulsory retirement have not been conveyed to him, rendering the impugned order illegal.

Before proceeding further in the matter, it would be appropriate to refer to Rule 3 of the Rules, which is reproduced below :-

“3. *Premature Retirement* -

(1) (a) *The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.*

(b) *The period of such notice shall not be less than three months :*

Provided that where at least three months notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months, or, as the case may be, for the period by which such notice falls short of three months.”

A perusal of the above quoted Rule clearly shows that the

appropriate Authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right to retire that employee on the date on which he completes 25 years of his qualifying service or attains 50 years of age or on any date thereafter to be specified in the notice. It is further stipulated that the employee is required to be issued prior notice in writing and that the notice period shall not be less than three months, provided that in lieu thereof, an employee can be paid a sum equivalent to the amount of his allowances at the same rates that he was drawing immediately before the date of his retirement, for a period of three months.

The principles governing compulsory retirement were laid down by the Constitution Bench of the Apex Court in **Baikuntha Nath Das and another vs. Chief Medical Officer, Baripada and another – (1992) 2 SCC 299**, as under :-

“32. *The following principles emerge from the above discussion:*

(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 interfere. Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 above.”

A perusal of the afore-quoted principles laid down by the Apex Court, as reproduced above, shows that the order of compulsory retirement is not a punishment and that it implies no stigma nor any suggestion of misbehaviour. It has further been held that the order is passed on the

subjective satisfaction of the Appointing Authority and that the principles of natural justice have no place in the context of an order of compulsory retirement.

The afore-quoted principles clearly lead to the rejection of the argument of the learned counsel for the petitioner to the extent that the impugned order should be set aside being violative of the principles of natural justice.

Even otherwise, on merits also, the petitioner has no case. In the reply to the legal notice sent on behalf of the petitioner, he, through his counsel, has been informed that the petitioner had been conveyed two adverse entries qua his service including an entry doubting his integrity, which was for the period 2005-06. The adverse entry is reproduced below :-

“The report of the officer is highly irresponsible. He was suspended for demanding money during this tenure. I have been informed on my inquiry that he has been punished after the charge has been proved. He is a corrupt official.”

The adverse remarks given by the Reviewing Officer for the period 01.04.2006 to 06.09.2006 are also reproduced hereunder :--

“The report of the first supervisory officer is casual and irresponsible. This employee, Mr. Amarjit Singh had been warned earlier too about complaints against him for demanding money. His integrity is absolutely not fit for government job as he has been making money in the enforcement work. He has been wrongly recommended for promotion. In fact, he is not fit to be retained in government service because of his moral turpitude. An inquiry was ordered in a

complaint against him in a Manimajra Duplex house case for wrong report and demand for money. The supervisory reporting officer should also be hauled up for wrong reporting.”

On the charges of making money and giving incorrect survey reports, the petitioner was charge-sheeted on 16.11.2006 and in the departmental inquiry, which ensued on these charges, having been proven, he was imposed penalty of reduction of his pay.

It is not controverted by learned counsel for the petitioner that the afore-referred adverse remarks conveyed to the petitioner, doubting his integrity, as also the punishment meted out to him of reduction of his pay, have attained finality. No challenge to them has been made even in the present petition.

In the petition, no allegations of mala fide have been raised.

In the light of the above, the only question that now needs to be determined is whether it was in larger public interest to chop-off the petitioner as dead-wood on account of the adverse entry recorded against him doubting his integrity, as also for having been found guilty in a regular departmental inquiry for having served the respondent Board with utter inefficiency and for allegations with regard to making of money through illegal means.

This issue would not detain me for long as the same stands settled through a catena of judgments rendered by the Apex Court as also this Court. In **Head Constable Som Nath No. 883 vs. State of Haryana and others – 2012 (3) SLR 481**, a Division Bench of this Court has held that a solitary entry of 'integrity doubtful' is enough to compulsorily retire

an employee, by holding as under :-

“10. *For all the reasons aforementioned, this appeal is partly allowed. The punishment of stoppage of five increments with cumulative effect inflicted on the appellant is hereby quashed. However, notice of compulsory retirement and his subsequent retirement is upheld. The ACR of integrity doubtful dated 05.08.2010 (P-6) is sufficient to pass such an order as has been held by a Division Bench in Davinder Singh's case (supra). The appeal stands disposed of in the above terms. [Emphasis supplied]”*

To the same effect, is another Division Bench judgment of this Court in **Randhir Singh vs. Hon'ble High Court of Punjab and Haryana and another – 2013 (1) SLR 380**, wherein it has been held that the sting of a single adverse remark is sufficient to compulsorily retire an employee and that the same is not removed *ipso facto* by the subsequent unblemished reports and while considering the issue of retention in service after a particular age, the competent Authority is well within its rights to rely upon such adverse remarks to compulsorily retire an employee in public interest. Paragraph 25 of the judgment, which is relevant, is reproduced below :-

“(25) *The plea that no order of compulsory retirement in 'public interest' could be passed on the basis of a single adverse report, is also totally misplaced. The sting of adverse remarks against 'integrity' is not removed ipso facto by the subsequent unblemished report(s) and while considering the issue of retention in service after a particular age or length of service, the competent authority is well within its right to consider and*

rely upon such adverse material against the officer. [Emphasis supplied]”

A Division Bench of this Court in **Mohinder Pal vs. State of Haryana and others – 2006 (6) SLR 69**, while considering the same issue, has held as under :-

“13. It is equally well settled that once there is an entry of 'integrity doubtful' in the service record of an employee then it is considered to be in larger public interest to retire such a person prematurely. In that regard, reliance may be placed to the judgments of Hon'ble the Supreme Court in the cases of [Union of India v. Ajoy Kumar Patnaik](#) and [Jugal Chandra Saikia v. State of Assam](#). In para 5 of the judgment in Jugal Chandra Saikia's case (supra) it has been noticed that the review committee had concluded that the delinquent employee had outlived its utility and was of doubtful integrity. In Jugal Chandra Saikia's case (supra), Hon'ble the Supreme has followed and applied the principles of law as laid down in Baikuntha Nath Das's case (supra). The controversy with regard to communication or non-communication of the adverse report regarding integrity of the petitioner would not survive in view of the law laid down by Hon'ble the Supreme Court in Baikuntha Nath Das's case (supra). In the proposition (v) as extracted above, it has been categorically observed that the non-communication of adverse report alone cannot constitute a basis for interference of the Court. We further find that in the present case the report, in

fact, has been communicated and the petitioner has made incorrect averments in that regard. [Emphasis supplied]”

It is thus clear that the matter stands settled that even a single entry doubting the integrity of an employee can lead to his compulsory retirement, especially in the facts of the case in hand, when that adverse entry had attained finality and in addition thereto, for the same charges in a regular departmental inquiry, the petitioner was found guilty and punished vide an order, which has also become final.

That being so, the subjective satisfaction of the Authority based on adequate material should not be interfered with by this Court in exercise of judicial review, especially in the absence of even an allegation of mala fide.

In view of the above, finding no merit in the present petition, I order dismissal of the same with no order as to costs.

(DEEPAK SIBAL)
JUDGE

May 24, 2016
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