

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19793 of 2011

Date of Decision: 25.10.2017

Vinod Kumar Goyal

.....Petitioner

vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. Tejpal Singh Dhull, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana with
Mr. Sidharth Sanwaria, D.A.G., Haryana.

AMOL RATTAN SINGH, J.

This is a petition filed under Article 226 of the Constitution, with the petitioner (now represented by his LRs), seeking a writ of *mandamus* that he be declared to have voluntary retired w.e.f. 14.12.2010 and therefore, once he is deemed to have retired on that date, the impugned order of dismissal, Annexure P-10 dated 30.08.2011, be quashed, by issuing a writ of *certitiori qua* that order.

He further seeks that all retirement benefits as are due to him, with effect from the date of his voluntary retirement, be also released to him.

2. The background of the matter is that the petitioner having been appointed as a Junior Engineer on ad hoc basis on 10.06.1973, continued as such till his appointment on regular basis on 01.07.1974.

He was promoted to the rank of a Sub-Divisional Engineer in November 2006.

His date of birth being 10.10.1953, he was to otherwise attain the age of superannuation on 10.10.2011 and to superannuate from service on 31.10.2011.

3. Upon disciplinary proceedings having been initiated against him on charges of disobeying orders of higher authorities, failing to join his duty at the head office on his transfer from Sub-Division Julana, and being wilfully absent from duty since 13.06.2007, an enquiry officer was appointed who is stated to have duly served notice of enquiry proceedings upon the petitioner through his wife, but with the petitioner not having joined enquiry proceedings at all, the enquiry officer eventually, on the basis of evidence produced before him, came to the conclusion that the petitioner was guilty of “flouting of conduct rules”, disobedience of orders of higher authorities and willful absence from duty.

A copy of the enquiry report has been annexed as Annexure P-2 with the petition.

4. The competent authority thereafter issued a memorandum-cum-show cause notice to the petitioner on 02.07.2009 (a copy of which has been annexed as Annexure P-1 with the petition), informing him that the Governor of Haryana having considered the enquiry report and having agreed with the conclusions reached by the enquiry officer, was of the opinion that a punishment of dismissal from service be awarded to the petitioner.

Hence, the aforesaid memorandum asked him to show cause as to why he should not be taken action against as proposed, and that he may file any representation, if he so wished, within 15 days from the date of receipt of the aforesaid communication.

5. As per the petition, the petitioner submitted a detailed reply to the show cause notice on 03.01.2010, a copy of which has been annexed as Annexure P-4, which, other than citing various judgments including “*The Managing Director E.C.I.L. vs. B. Karunakar*”, and stating that no service of notice of enquiry proceedings had actually been served upon him, further stated that he had been manhandled on duty by two Junior Engineers, at the instance of one Angad Bishnoi, XEN, on 27.04.2007, allegedly on account of some bogus travelling allowance bills etc. having been presented to him by the JEs, which he (the petitioner) refused to sign.

It was further contended therein that due to the beating, a rib of the petitioner was fractured, which was reported in newspapers and thereafter, he having remained under treatment and shock, as also due to running from one place to the other to get an FIR registered, (which was eventually registered on 25.12.2017), he had to remain absent, with him having also filed CWP No. 590 of 2008 before this Court.

(It is further stated that this Court however, “did not take notice by finding that the FIR had already been registered by that time”).

Consequently, that writ petition is stated to have been withdrawn.

6. It is also stated in the petition that other than the aforesaid reply to the show cause notice, on 03.01.2010, the petitioner also submitted another reply dated 14.05.2010, and yet another one on 03.12.2010. Copies of those replies have also been annexed as Annexures P-5 and P-6 with the petition, respectively.

7. It is further stated that the petitioner had also sought voluntary retirement vide a letter dated 14.09.2010, a copy of which has been annexed as Annexure P-7, stated to have been duly forwarded by the Superintending

Engineer to the Engineer-in-Chief.

He thus contends that, in fact, he stood retired from service, three months after the issuance of the letter, his application seeking voluntarily retirement not having been rejected.

8. On his right to voluntary retirement, the petitioner has cited Rule 5.32-B of the Punjab Civil Services Rules, Volume II (as applicable to the State of Haryana), which reads as follows:-

“5.32-B (1) At any time a Government employee has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason thereof. On receipt of a request, the appointing authority may consider such request for curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority subject to rule 2.2 of Punjab Civil Services Rules Volume-II.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub rule (1) supra, the retirement shall become effective from the date of expiry of the said period:

Provided further that before a Government employee gives notice of voluntary retirement with reference to sub rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years service

qualifying for pension.

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Explanation- *For the purpose of this rule the expression “appointing authority” shall mean the authority which is competent to make appointments to the service or post from which the Government employee seeks voluntary retirement.*

9. Thus it is contended that as per the first proviso to sub-rule 2, if permission is not refused on the notice seeking voluntary retirement, on the expiry of three months from the date of issuance of the notice by the employee, the retirement would become effective from such date.

Therefore, as the petitioners' request for temporary retirement was made on 14.09.2010, after he had completed more than 37 years of service, he would be deemed to have retired three months thereafter, i.e. on 14.12.2010. Consequently, the impugned order dated 30.08.2011, dismissing the petitioner from service, (even while noticing that he had personally also appeared before the first respondent herein and shown him some medical certificates), is contended to be an order that is wholly unsustainable, the petitioner having retired with effect from 14.12.2010.

10. In the reply filed by the Under Secretary to the Government of Haryana, on behalf of the State and its Department, firstly it has been stated that the petitioner willfully did not receive the charge-sheet, consequent upon which a notice was published in the newspaper on 15.02.2008, after which the enquiry officer was appointed.

It has also been stated that the petitioner also has a right to file a memorial to the Governor of Haryana against the punishment order, even as per the Haryana Civil Services (Punishment and Appeal) Rules 1987, with the petitioner not having availed of that remedy but instead having approached

this Court by way of the present petition.

11. As regards the notice given by the petitioner seeking voluntary retirement, on 14.09.2010, the receipt of the notice is not denied in the written statement but it is stated that as per Government instructions dated 01.08.1980 (a copy of which has been annexed as Annexure R-1 with the written statement), such a notice would require acceptance by the appropriate authority, if the date of retirement on the expiry of the notice “would be earlier than the date on which the Government employees concerned could have retired from service under clause (d) of Rule 3.26 of the Punjab Civil Services Rules, Volume I, Part I voluntarily.”

(The aforesaid provision relates to the Governments' right to retire an employee upon attaining the age of 50 years/55 years).

It is further stated that acceptance of a request of voluntary retirement is generally given in all cases, except where, firstly, disciplinary proceedings are pending or contemplated against a Government employee by which a major penalty is proposed against him, or secondly, where prosecution is contemplated or has been launched in a Court of law against the employee.

12. Yet further, the reply of the Government states that even if it is proposed to accept the notice of voluntary retirement, approval of the Minister in-charge has to be obtained in the case of Class I and Class II employees and therefore, with disciplinary proceedings pending against the petitioner, the competent authority approved the punishment of dismissal on 06.05.2010, with the Haryana Public Service Commission also having been requested to give its concurrence for the imposition of the punishment, which was subsequently received.

Hence, in the aforesaid circumstances, it is stated that the proposed punishment almost having become final, the petitioners' request for voluntary retirement was not considered by the competent authority and instead, the punishment order was passed on 30.08.2011.

It has also been stated that other than the disciplinary proceedings culminating in the petitioners' dismissal on 30.08.2011, two other charge-sheets under Rule 7 of the aforesaid Rules of 1987 (proposing the imposition of major punishments), were also issued to the petitioner on 22.04.2009 and 22.05.2009, which were still pending; hence, his claim for voluntary retirement could not be considered at this stage. (However, the nature of the charges in those proceedings have not been given in the Governments' reply).

It has also been stated that the competent authority approved the punishment of dismissal from service, as per the file noting, on 06.05.2010, after which the Haryana Public Service Commission was requested vide a letter dated 01.03.2011 to give its concurrence for imposing such punishment.

13. The petitioner having cited the judgment of a Division Bench of this Court in CWP No. 4030 of 1999 titled as **Suresh Kumar Gupta vs. State of Haryana** in paragraph 8 of his petition, in which case the petitioner therein had sought voluntary retirement during the pendency of disciplinary proceedings against him, with the stand of the Government being the same as is in the present case, and with that writ petition having been allowed in terms of the first proviso to Rule 5.32-B of the Punjab Civil Services Rules, in the present case the written statement of the respondents simply states that the said judgment is not applicable, the facts being different.

14. As regards the petitioners' reply to the memorandum-cum-show cause notice dated 02.07.2009 (Annexure P-1), it is stated that the enquiry

report was sent along with the said memorandum, but the petitioner initially did not reply to the notice within the stipulated period, but was thereafter given another opportunity to do so vide a memo dated 25.11.2009, after which he submitted a reply. The factum of non-supply of the enquiry report has been specifically denied.

15. The allegation that the Presenting Officer (Angad Bishnoi, Executive Engineer) had appeared as PW-1 is not denied in the written statement, though it is stated that the petitioner having remained absent from duty and having raised no objection to the examination of the aforesaid witness, 'no prejudice was caused to him'.

The factum of the aforesaid presenting officer-cum-witness having had the petitioner beaten up has been denied, though a "scuffle" between him and Junior Engineers has not been denied, including the registration of the FIR.

16. Addressing arguments, Mr. R.K. Malik, learned Senior Counsel for the petitioner, reiterated what has already been noticed hereinabove from the pleadings made in the writ petition. He further cited a judgment of the Supreme Court in **Union of India and others** vs. **Sayed Muzaffar Mir** 1995 Supp (1) Supreme Court Cases 76, wherein also, in similar circumstances, the appeal of the government had been dismissed, with a similar provision stated to be contained in Rule 1802 (b) of the Indian Railways Establishment Code, as is contained Rule 5.32-B of the Punjab Civil Services Rules, (pertaining to voluntary retirement taking effect upon the end of the statutory notice period provided in the rule, in the absence of refusal by the competent authority).

He also cited earlier judgments of the Supreme Court, in **Dinesh Chandra Sangma** vs. **State of Assam** (1977) 4 SCC 441 and **B.J. Shelat** vs.

State of Gujarat (1978) 2 SCC 202, in which Rule 63 (c) of the Fundamental Rules was referred to, which is also contended to be *pari materia* to the Rule in question now, to uphold the voluntary retirement of the Government employees in those cases.

17. Mr. Hitesh Pandit, Addl. A.G., Haryana, while again reiterating what is stated in the written statement, submitted that allowing voluntary retirement to an employee facing a charge-sheet would defeat the purpose of the charge-sheet, with the employee getting away, with misconduct remaining unpunished.

18. When the aforesaid arguments had initially been made before this Court, without looking at Rule 5.26-B in detail, this Court had expressed a *prima facie* opinion that the charge-sheet having been issued in the year 2009, for absence between 30.06.2007 to 20.01.2008, and the application seeking temporary retirement having been made by the petitioner on 14.09.2010, the contention of learned State Counsel would seem to be correct.

At that stage, the judgment of the Supreme Court in Sayed Muzaffar Mir (supra) had been cited by Mr. Malik, to distinguish which learned State counsel had sought time, with the matter thereafter having been heard on a subsequent date and judgment reserved.

19. Having considered the pleadings as also the arguments of counsel on both sides, other than the pure question of law to be considered by this Court on voluntary retirement taking effect at the end of the statutory three months notice period, it is to be noticed that the factual position of the late petitioner having been involved in a “scuffle with two engineers” and an FIR having been registered at the instance of the petitioner, has not been denied by the Government in its reply.

20. It has also not been denied that he suffered a fracture, or that he actually served in the department for 33 years till the time of his absence from duty in the year 2007.

In my opinion, though otherwise even 33 years of service cannot condone an absence of six months, unless supported by medical evidence of complete bed rest for that period, which is not forthcoming, yet, firstly, in the opinion of this Court, the punishment of dismissal from service, with no other adverse record shown to this Court against the petitioner, is wholly disproportionate.

Secondly, though I have no doubt that the petitioner actually deliberately did not appear before the enquiry officer, the enquiry officer in his report (Annexure P-2) having specifically stated that the petitioner was also contacted telephonically by him and the date for the enquiry proceedings having been mutually agreed upon, yet, making a presenting officer a prosecution witness in the disciplinary proceedings, would be wholly contrary to norms of natural justice in my opinion.

However, the disciplinary proceedings themselves *per se* not having been challenged, other than the impugned order of dismissal, nothing further is stated in that regard, because eventually it would not make any difference to the outcome of this petition.

21. Coming therefore to the issue on which the petition has been essentially argued on both sides, i.e. the petitioners' application for voluntary retirement having come into effect upon the expiry of the three month notice period, served by him on 14.09.2010 (Annexure P-7), he therefore having voluntarily retired from service w.e.f. 14.12.2010, I am in agreement with what has been argued on behalf of the petitioner.

Other than the fact that in similar circumstances, the Supreme Court in Sayed Muzaffar Mir (supra), and a Division Bench of this Court in Suresh Kumar Guptas' (case), have held that in the absence of refusal of permission to voluntary retire, a Government servant would be deemed to have retired at the end of the notice period, it is also seen that even the reliance by the respondents on the instructions Annexure R-1, dated 01.08.1980, is wholly and completely misconceived and in fact misleading.

22. As already noticed, it has been stated in the written statement that the aforesaid instructions [in Clause 2 (vi)] provide that a notice of voluntary retirement given after 20 years of qualifying service, would be accepted by the appropriate authority unless there are disciplinary/judicial proceedings pending or contemplated against an employee. However, the latter part of the clause has not been referred to all in the Governments' reply.

The said clause is reproduced hereinunder:-

“A notice of voluntary retirement, given after completion of 20 years' qualifying service will require acceptance by the appropriate authority if the date of retirement' on the expiry of the notice would be earlier than the date on which the Government employees concerned could have retired from service under clause (d) of rule 3.26 of Punjab C.S.R Volume I, Part I, voluntarily. Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government employees concerned for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case; or (b) in which prosecution is contemplated or may have been launched in a court of law against the Government employee concerned. If it is proposed

to accept the notice of voluntary retirement even in such cases, approval of the Minister-in charge should be obtained in regard to Class I and Class II Government employees and that of the Head of the Department in the cases of Class III and Class IV Government employees. Even where the notice of voluntary retirement given by a Government employee requires acceptance by the appropriate authority, the Government employee giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice.

(Emphasis applied in this judgment).

23. Thus, even as per the aforesaid instructions themselves, even where notice of voluntary retirement requires acceptance by the appropriate authority in case of pending/contemplated disciplinary/judicial proceedings, retirement would be presumed to become effective unless the competent authority issues an order to the contrary before the expiry of the period of notice.

The written statement filed by the Under Secretary, with holding the aforesaid part (underlined hereinabove in this judgment), of sub-clause (vi) of Clause 2 of the aforesaid instructions (Annexure R-1 with the reply), actually amounts to an attempt by the respondent Government to mislead this Court, which is highly reprehensible to say the least.

24. Of course, had the aforesaid clause not been existent in the said instructions, this Court would still have been inclined to hold that the said instructions are contrary to the statutory rule, i.e. Rule 5.32-B of the Punjab Civil Services Rules Volume II Chapter V and therefore are unsustainable, even in terms of the judgment of the Supreme Court in **State of Haryana and**

others vs. Shamsher Jang Bahadur AIR 1972 SC 1546.

However, the aforesaid part of the instructions actually not being contrary to, but inconsonance with, the aforesaid rule, very obviously the Government has tried to read the instructions to suit its own convenience in the present case, which is something not acceptable, coming in a reply on behalf of the State.

25. To conclude, it not having been denied that no order was passed by the competent authority prior to 30.08.2011, (i.e. the impugned order by which the petitioner was dismissed from service), simply a file noting stated to have been made on 06.05.2010, approving punishment of dismissal from service, would not make the statutory provision contained in the first proviso to Rule 5.32-B nugatory.

Having held as hereinabove, it is also to be noticed that the charges against the petitioner are not of embezzlement or bribery, corruption etc., at least as regards the disciplinary proceedings in question, with not even a whisper to that effect having been made in the written statement of the respondents. Hence, there is obviously no question of fraud having been played upon the Government or the public exchequer, due to which even continuation of disciplinary proceedings in terms of Rule 2.2 (b) of the Punjab Civil Services Rules Volume II may have been directed by this Court. That not being so, the impugned order cannot be sustained in any manner.

26. Consequently, this petition is allowed and the impugned order, Annexure P-10, is quashed, with a further direction issued to the respondents to treat the petitioner to have voluntarily retired from service with effect from 14.12.2010.

His LR's would therefore now be paid all consequential benefits,
with interest @ of 6% per annum, within a period of three months from the
date of receipt of a certified copy of this order.

27. The Registry of this Court is directed to send a copy of this order
to the Chief Secretary to the Government of Haryana, with reference to what
has been observed in paragraphs 20 to 22 supra.

October 25, 2017
nitin/Davinder Kumar

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes