

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

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**CWP-13585-2014 (O&M)
Date of decision: 22.03.2017**

Umesh Kumar

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Jatinder Nagpal, Advocate for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of communication dated 12.03.2014 vide Annexure P5 by which the petitioner's claim for extension of service beyond 58 years up to 60 years has been rejected with reference to disability of 73.5% of both ears. The petitioner while he was in service as an Assistant Excise & Taxation Inspector attained age of superannuation and retired from service on 31.07.2014.

2. Short question for consideration in the present petition is whether the petitioner is entitled for extension of two years of service with reference to policy decision dated 31.01.2006 vide Annexure P1A or not. It is

undisputed that the petitioner is suffering from disability. To that extent a certificate has been issued on 14.03.2013 vide Annexure P2. Certificate reveals that petitioner is suffering from ASSR. There is hearing disability to the extent of 73.5%. It was also mentioned that “as PTA report shows mixed hearing loss, this disability is not permanent as conductive part can improve/change.” The petitioner in support of his claim for extension of 2 years of service has submitted this certificate. The Commissioner for Excise and Taxation, State of Haryana has rejected the petitioner's claim for extension of service. An extract of communication dated 12.03.2014 reads as under:-

“On the subject cited above, it is intimated that your extension case beyond 58 years has been examined by the Government and the same is filed”.

Thus, the petitioner is aggrieved by the decision of the competent authority presented this petition.

3. Learned counsel for the petitioner submitted that Annexure P5 dated 12.03.2014 is a non-speaking order. No reasons have been assigned as to why petitioner is not entitled to extension of 2 years of service. Even though, he is suffering from hearing disability to the extent of 73.5% and the petitioner's case is covered by policy decision dated 31.01.2006 where the disability has been fixed as 70% or above for the purpose of extending the benefit of 2 years of extension of service from 58 years to 60 years. Therefore, the petitioner is entitled for extension of service for a period of 2 years.

4. Per contra, learned State counsel submitted that even though,

Annexure P5 dated 12.03.2014 is not a speaking order at the same time having regard to the fact that petitioner is suffering from disability to the extent of 73.5% and disability is not a permanent as conductive part can improve/change. Having regard to these factual aspects read with Form IV under "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 it is evident that certificate is required to be given with reference to permanent physically impairment/mental disability (in percentage) having regard to the employee in Form no. IV and the fact that the petitioner's disability is not permanent. Therefore, he is not entitled for extension of 2 years of service with reference to disability of 73.5%.

5. Heard learned counsel for the parties.

6. The petitioner has challenged the validity of Annexure P5. Perusal of Annexure P5 dated 12.03.2014 it is evident that it is not a speaking order on that score itself Annexure P5 dated 12.03.2014 is liable to be set aside. Accordingly, it is set aside. Having regard to the contention of the petitioner that the petitioner's case is covered by policy decision of the State Government dated 31.01.2006 vide Annexure P1A it is evident that nowhere in the policy it is stated that whether an employee who seeks extension of service for the period of 2 years after attaining age of 58 years should be permanently disabled person. That apart, under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 definition of disability does not reveals to the extent whether disability is to the extent of permanent or temporary.

Therefore, one must go by Act even though if there is error committed under the Rules, with reference to Form No. IV Rule will not prevail over the Act, 1995, in the present case so as to point out that disability is temporary or permanent.

7. In view of these facts and circumstances, the contentions of the State-respondents is hereby rejected. Consequently, petition is allowed. Respondents are directed to extend the service benefits with reference to Annexure P1A policy. Necessary action shall be taken by the respondents within a period of 3 months from today.

8. At this stage, learned counsel for the petitioner submitted that the petitioner has completed 60 years therefore, question of continuation of petitioner do not arise. Having regard to the fact that the respondents have prohibited the petitioner in discharging duty of the post on extension basis vide Annexure P5 by not appreciating the factual aspects that petitioner is a disabled person and impugned order is not a speaking and reasoned order. Therefore, the respondents are directed to pay arrears of pay for 2 years -pension without interest. The arrears shall be calculated and disbursed within a period of 3 months.

22.03.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No