

RSA no. 4875 of 2001 (O&M) 1

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

RSA no. 4875 of 2001 (O&M)

Date of Decision : 18.12.2018

Bal Kishan Tyagi

....Appellant(s)

Versus

Haryana State through Collector, Gurgaon and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr.Hari Om Sharma, Advocate for the appellant(s)

Ms. Kirti Singh, DAG, Haryana

MAHESH GROVER, J.(ORAL)

This is a Regular Second Appeal preferred by the appellant questioning the judgments of the learned Trial Court dated 19.4.2000 and First Appellate Court dated 30.7.2001.

The appellant was in serve since 1961 and worked as a Forester. He was due to superannuate on 31.5.1999 but was compulsorily retired from service vide letter dated 20.3.1996 wherein it was noticed that his service record for the last 10 years did not carry 70% of the 'Good' reports. Representations were submitted against the proposed order of compulsory retirement but he was informed on 22.8.1996 that he stood retired and relieved from service w.e.f. 20.6.1996 after completion of the statutory period of notice of three months.

The appellant then filed a civil suit questioning the compulsory retirement and prayed that order dated 20.3.1996 and 22.8.1996 be set aside

by declaring them null and void and the appellant be retained in service till the age of his superannuation. Consequential, relief of entire emoluments was prayed for.

The respondents filed their reply and took up preliminary objections of maintainability of suit, cause of action, locus standi etc. On merits it was pleaded that work and conduct of the appellant was not up to the mark as he failed to earn 70% 'Good' reports during 10 years.

Learned Trial Court framed the following issues and went on to conclude against the appellant:-

1. Whether the notice-cum-order bearing no.7043 dated 20.3.1996 and 22.8.1996 by the defendants are illegal, unlawful and void, if so what effect? OPP
2. Whether the plaintiff has no cause of action/locus standi to file the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the civil court has no jurisdiction to entertain the present suit? OPD
5. Whether the plaintiff has not given a proper notice under section 80 CPC ? OPD
6. Relief.

Likewise, District Judge who heard the First Appeal declined interference which is now cause of grievance to the appellant in the present Regular Second Appeal.

The controversy is limited and confined to a very narrow compass. The stand of the appellant is of having good service record and

the impugned orders are questioned on the ground of arbitrariness and the fact that adverse entries, if any, were not conveyed to him and consequently could not be taken into account. There is a specific averment made in the plaint that the adverse entries, if any, were never communicated to the appellant and hence even if the respondents have taken them into account they could not have done so in view of the settled proposition of law laid down in case bearing Civil Appeal No. 7631 of 2002 titled as **'Dev Dutt vs. Union of India and others'** decided on 12.5.2008. That apart reliance has been placed on case titled as **'Brij Mohan Singh Chopra vs. State of Punjab'** AIR 1987 SC 948 wherein it has been held that the entire service record has to be considered before an employee can be compulsorily/ prematurely retired and failure to do so can invite an inference of arbitrariness.

Learned counsel for the respondents on the other hand has justified the action by reiterating what has been stated in the reply.

Upon consideration of the matter, I am of the opinion that following questions of law arise for determination:-

- i) whether an employee can be prematurely retired on the basis of adverse remarks which have not been communicated to him.
- ii) whether an employee can be compulsorily retired in public interest even though he has no adverse remarks against him.

I have heard learned counsel for the parties and have perused the impugned orders.

The matter is no longer res integra. In case titled as **Brij**

Mohan Singh Chopra vs. State of Punjab AIR 1987 SC 948 Hon'ble

Supreme Court held that the object of compulsorily retirement is to weed out inefficient, corrupt, dishonest or dead wood from Government service but powers are subject to rules and constitutional limitations. It was specifically laid down that in relation to compulsory retirement, the public interest means retention of honest and efficient employees and weeding out dishonest and corrupt employees. The Hon'ble Supreme Court laid down guidelines that record of last 10 years of service should be seen by the authorities.

During the course of hearing, this Court had summoned the record of the appellant for the last 10 years and the entries are extracted herebelow:-

Period	Grading
28.6.1986 to 31.3.1987	Good
17.12.1987 to 31.3.1988	Good
06/88 to 03/89	Below Average
1989 to 1990	Good
21.7.1990 to 31.3.1991	Average
16.8.1991 to 31.3.1992	Good
1.4.1995(94-95)	Good
7.8.1995 to 31.3.1996	Very Good
1.4.1992 to 8.6.1992	Very Good

Clearly there is nothing against the appellant that could have justified the order of compulsory retirement. Only one report which is stated to be adverse (i.e Below Average) and conveyed to the appellant does not contain any serious shortcomings except to say that he is habituated to absentism, nothing more has been stated. Reply is also silent as to whether any disciplinary proceedings against the appellant on account of unexplained absence, were initiated or not. Learned Courts below were in error by

reasoning that since the appellant failed to produce the relevant service record of the last 10 years and failed to cross examine respondent witnesses an adverse inference ought to be derived against him.

This to my mind is not a correct approach and rather it resulted in lending weight to an arbitrary action of the respondents. The record clearly suggests so and in the absence of any adverse entry except one against the appellant there was absolutely no justification in retiring him compulsory.

In Dev Dutt's case (supra) it has been observed that uncommunicated adverse entries cannot be taken into account while passing any adverse order against an employee. In the instant case there is hardly any adverse entry and even if one entry is taken to be adverse to the appellant being 'below average' cannot be made the basis of his compulsory retirement in the absence of any serious allegations contained therein. The respondents reply before the Court is absolutely silent in this regard.

Looking at it from any angle, I am of the view that orders dated 20.3.1996 and 22.8.1996 passed against the appellant compulsorily retiring him from service were unjust and arbitrary and the learned Trial Court and First Appellate Court were wrong in upholding the same.

Judgments of the learned Trial Court and First Appellate Court are therefore set aside and the suit of the appellant is decreed. Orders dated 20.3.1996 and 22.8.1996 are set aside and it is held that the appellant shall be deemed to be in service till the date of his superannuation. He thus would be entitled to all the service benefits that would have accrued to him had he been in service till the age of superannuation. The benefits shall be released

entitled to costs of Rs.10,000/- and monetary consequences flowing from the release of service benefits shall carry interest at the rate of 7% per annum from the date of filing of the suit till the date of its realisation.

Appeal stands allowed.

Questions of law are answered as below:-

- i) an employee cannot be prematurely/compulsorily retired on the basis of adverse remarks which have not been communicated to him.
- ii) an employee cannot be compulsorily retired in the name of public interest if he has no adverse remarks against him.

(Mahesh Grover)
Judge

18.12.2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No