

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

**LPA-707-2018 (O&M)
Date of Decision: 15.05.2018**

Raj Kumar

... Appellant

Versus

State of Haryana & others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Shakti Singh, Advocate for
Mr. Balraj Gujjar, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J.

CM-1953-LPA-2018:

1. Prayer in the instant application is for condonation of delay of 40 days in filing the accompanying appeal.
2. The only justification put forth in the application is that delay has occurred on account of processing of the case file and such delay was not deliberate or intentional.
3. We do not find the same to be a good ground to condone the delay.
4. Application is dismissed.

Main case:

1. Instant appeal has been filed under Clause X of the Letters Patent against the judgment dated 07.02.2018 passed by the learned Single

Judge and whereby writ petition filed by the appellant assailing the order of his compulsory retirement has been dismissed.

2. Learned counsel would submit that the appellant was serving as a Conductor in Haryana Roadways and upon attaining the age of 55 years, a decision was taken not to retain him in service and as such, he was served with an order of compulsory retirement dated 16.01.2013. Precise argument raised is that learned Single Judge while negating the challenge to the order of compulsory retirement has overlooked the aspect that there was only one adverse report for the year 2005-06 and since emphasis was to be laid on the last 10 years service record, the order of compulsory retirement was not justified. The instance of one Rajpal serving as Conductor under Haryana Roadways has been cited to contend that such employee also possessed a chequered service record but in spite thereof, has been retained in service.

3. Learned counsel for the appellant has been heard at length and pleadings on record have been perused.

4. The Apex Court in **Baikuntha Nath Das V. Chief District Medical Officer, Baripada, 1999 (2) SCC 299** had held that an order retiring an employee on completion of 55 years of age is not passed as a punishment and it does not cast any stigma. The competent authority has the discretion to retire an employee after he attains a particular age or completes a particular period of service. It was further observed that even though performance of an employee during the recent past would have to be given more weightage but the entire record of service should be taken into reckoning while forming an opinion not to retain an employee in service beyond the age of 55 years.

5. It is also well settled that if there is an entry of doubtful integrity in the service record of the employee then a view can well be taken to retire such employee prematurely in public interest. A reference in this regard may be made to the decisions of the Apex Court in **Union of India V. Ajay Kumar Patnaik, (1995) 6 SCC 442** and **Jugal Chander Saikia V. State of Assam, (2003) 4 SCC 59**.

6. Learned counsel for the appellant does not rebut that in the ACR for the year 2005-06, integrity of the appellant had been doubted. Further he had been penalized by as many as 9 orders of recovery of money between the period 18.03.2002 to 19.03.2011 and as has been observed by the learned Single Judge.

7. In our considered view, the writ Court while examining the validity of an order of compulsory retirement is not to act as an Appellate Court and interference would be justified only if the order is found to be vitiated by malafides or is passed on no evidence or is arbitrary to the extent that no reasonable person could form the opinion to compulsorily retire on the basis of the given material. In the instant case, we find that there was sufficient material to form an opinion not to retain the appellant beyond the age of 55 years.

8. The instance furnished by learned counsel for the appellant of another Conductor of the Haryana Roadways, namely, Raj Pal and who has been retained in service in spite of a poor service record, would be of no consequence. Even, if such assertion was taken as factually correct, still no right would vest in the appellant to continue in service beyond the age of 55 years in spite of his integrity having been doubted. Article 14 of the

Constitution of India envisages a positive concept and cannot be cited to invalidate an order of compulsory retirement which otherwise has been passed in accordance with law.

9. We are in agreement with the view taken by learned Single Judge while upholding the order of compulsory retirement of the appellant being inconsonance with the dictum laid down by the Apex Court in the case of **Baikuntha Nath Das (supra)**.

10. There is no merit in the appeal.

11. Consequently, the appeal is dismissed on merits as well as on the ground of delay.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

15.05.2018

harjeet

- | | | |
|-----|----------------------------|-----|
| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |