

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

CWP No.18372 of 1995 (O&M)

Date of decision: 19.05.2020

Dr. Swaran Singh Bamal

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Dhankhar, Advocate,
for Mr. Ashok Kumar Sehrawat, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the order dated 01.12.1995 (Annexure P-4), whereby he has been ordered to be compulsorily retired from service under Rule 5.32 (C), Volume-II read with Rule 3.26 (d) of the Punjab Civil Services Rules, Volume-I, Part-I. He is further seeking direction to the respondents to allow him continue to work as Sub Divisional Officer (AN) till the date of superannuation.

Petitioner had joined as Veterinary Surgeon in the Animal Husbandry Department, Haryana. There was one adverse entry in the Annual Confidential Report (ACR) for the year 1978-79, which was conveyed to the petitioner after a gap of more than seven years i.e. 1986. This adverse ACR was conveyed to him vide letter dated 07.10.1986, where his integrity was found to be doubtful and average. Petitioner made an appeal against the said adverse entry on 18.12.1986 taking a stand that the adverse ACR had been conveyed to him after almost eight (08) years and as

per instructions dated 01.05.1975, the department should have conveyed the same to him within three months. Appeal dated 18.12.1986, filed by the petitioner was dismissed. Petitioner, thereafter, filed a review petition on 13.06.1988, which was also dismissed vide order dated 15.07.1988.

The petitioner was allowed to cross the efficiency bar w.e.f. 01.02.1976 vide order dated 11.01.1985. Subsequently, vide order dated 03.03.1993 (Annexure P-2), petitioner was promoted to the post of Sub Divisional Officer (AH)/Assistant Director (AH).

Learned counsel for the petitioner argued that a frivolous complaint was filed against him by some persons and on the basis of said complaint, a charge-sheet was served upon under under Rule 8 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987, vide letter dated 15.07.1992. Subsequently, vide order dated 30.09.1994, one increment without cumulative effect was stopped. Allegations in the aforesaid complaint were with respect to the incident, which was pertaining to the year 1988. Appeal against the order dated 30.09.1994 was still pending. However, on 07.12.1989, petitioner received an order dated 01.12.1995 (Annexure P-4), whereby he was ordered to be retired compulsorily under Rule 5.32 (C), Volume-II read with Rule 3.26 (d) of the Punjab Civil Services Rules, Volume-I, Part-I. Along with the order, he was also given a demand draft in lieu of three months' salary.

Learned counsel for the petitioner has vehemently argued that as per instructions dated 22.03.1990 (Annexure P-3), the report of doubtful integrity of an employee beyond the last 10 years may be ignored. However, in the present case, while passing the impugned order dated 01.12.1995 (Annexure P-4), this entry has been made the basis for retiring the petitioner.

In the last 10 years' ACRs of the petitioner, there is no adverse remarks, which have been conveyed to him. The petitioner was allowed to cross the efficiency bar w.e.f. 01.02.1976 vide order dated 11.01.1985 (Annexure P-1). After crossing the efficiency bar, he was promoted as Sub Divisional Officer (AH)/Assistant Director (AH) vide order dated 03.03.1993 (Annexure P-2). Learned counsel for the petitioner while referring to the judgment passed in **Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another**, 1992 (2) SCT 92, contended that while considering the case of compulsory retirement, more importance has to be given to the later years of an employee. If, a Govt. employee is promoted to the higher post, adverse remarks lose their sting. He further argued that an employee can be retired, if his last 10 years' record, to the extent of 70%, is not good or very good. In the present case, there is no adverse entry in the last 10 years' ACRs of the petitioner. Learned counsel has further referred to the judgments passed by Hon'ble the Supreme Court in **Narasingh Patnaik vs. State of Orissa**, 1996 (2) SCT 635 and by this Court in **Risal Singh vs. State of Haryana**, 2003 (2) SCT 992 to contend that if, no adverse remarks have been conveyed for the last 15 years preceding the date of order, they will be deemed to be wiped out by virtue of promotion. If the case is not referred the Officers Committee, impugned decision is vitiated by arbitrariness and legal *mala fides*. After promotion, the performance of later years has to be given more importance.

Learned State counsel, on the other hand, has referred to the judgments passed by Hon'ble the Supreme Court in **State of U.P. vs. Vijay Kumar Jain**, 2002 (2) SCT 408; **State of Punjab vs. Gurdas Singh etc.**, 1998 (2) SCT 165 and another judgment passed by this Court in **Jarnail**

Singh vs. State of Haryana, 2007 (1) SCT 492 on the point that the competent authority has an absolute right to retire any Government employee on attaining the age of 50 years to weed out the Government servant in the public interest, if he has out lived his utility in service. The order can be challenged only on the ground of arbitrariness and *mala fide* exercise of power. Even old and stale adverse entries regarding integrity in the record with emphasis on the later entries, can be taken into consideration for compulsorily retirement of an employee. The order cannot be set aside merely on the ground that only last 10 years old entries regarding integrity are to be taken into consideration. Hon'ble the Supreme Court in Vijay Kumar Jain's case(supra) has observed as under:-

“15. The aforesaid decisions unmistakably lay down that the entire service record of a Government servant could be considered by the Government while exercising the power under FR 56 (C) of the Rules with emphasis on the later entries. FR 56 (C) of the Rules read with sub-rule (2), empowers the State Government with an absolute right to retire an employee on attaining the age of 50 years. It cannot be disputed that the dead woods need to be removed to maintain efficiency in the service. Integrity of a Government employee is foremost consideration in public service. If a conduct of a Government employee becomes unbecoming to the public interest or obstruct the efficiency in public services, the Government has an absolute right to compulsorily retire such an employee in public interest. The government's right to compulsorily retire an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to Screening Committee or the State Government, as the case may be, to find out whether a Government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll, the Government is expected to form its opinion whether an employee is to be compulsorily retired or not.

16. Withholding of integrity of a Government employee is a serious

matter. In the present case, what we find is that the integrity of the respondent was withheld by an order dated 13.06.1997 and the said entry in the character roll of the respondent was well within ten years of passing of the order of compulsorily retirement. During pendency of the writ petition in the High Court, the U.P. Services Tribunal on a claim petition filed by the respondent, shifted the entry from 1997-98 to 1983-84. Shifting of the said entry to different period or entry going beyond ten years of passing of order of compulsory retirement does not mean that its vigour and sting of the adverse entry is lost. Vigor or sting of an adverse entry is not wiped out merely it is relatable to 11th of 12th years of passing of the order of compulsory retirement. The aforesaid adverse entry which could have been taken into account while considering the case of the respondent for his compulsory retirement from services, was duly considered by the State Government and said single adverse entry in itself was sufficient to compulsorily retire the respondent from service. We are, therefore, of the view that entire service record or confidential report with emphasis on the later entries in the character roll can be taken into account by the Government while considering a case for compulsory retirement of a Government servant.”

In another judgment passed by Co-ordinate Bench of this Court **Jarnail Singh's** case (supra), it has been held that once there is an entry of 'integrity doubtful' in the service record of an employee, it is considered to be in larger public interest to retire such an employee in terms of Rules 5.32-A (C) and 3.26 (d) of Punjab Civil Service Rules. In para nos. 13 and 14 of the judgment, it has been observed 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, 1995 (4) SCT 692 (SC)** and **Jugal Chandra Saikia v. State of Assam, (2003) 4 SCC 59**. 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 Court has followed and applied the principles of law as laid down in Baikuntha Nath Das's case(supra).

14. When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court in the aforementioned judgments, no doubt is left that the impugned order dated 25.11.1986 (P-9) deserves to be upheld as the same is in larger public interest because it seeks to get rid of an inefficient and dishonest officer. The order has been passed in consonance with the requirements of Rule 5.32-A (c) and Rule 3.26 (d) as has already been observed in the preceding paras. Therefore, there is no merit in this petition.”

In the facts of the present case, even if the entry of 'doubtful integrity' for the year 1978-79 was conveyed to the petitioner after a gap of almost eight (08) years, the petitioner had already availed his remedy by filing an appeal, which was dismissed by the competent authority. Even, review petition was also dismissed. Even though, after recording the adverse entry, petitioner was allowed to cross the efficiency bar and was promoted to the post of Sub Divisional Officer, but the competent authority had a right to retire the petitioner compulsorily on the basis of 'doubtful integrity' which related back to the year 1978-79.

After hearing learned counsel for the parties and going through the entire record in the light of aforesaid judgments, no ground is made out to interfere in the impugned order.

Resultantly, finding no merits, present petition is dismissed.

(RITU BAHRI)
JUDGE

19.05.2020
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No