IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 18508-2017
Date of Decision:- 29.05.2020

Ramesh Kumar **...Petitioner**

vs.

State of Haryana and ors. **...Respondent**

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. G.S. Dhillon, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana

RITU BAHRI, J.

Petitioner has filed the present petition seeking quashing of impugned order dated 27.04.2017 (P-4) whereby he stands compulsorily retired.

Petitioner was appointed in Haryana Roadways Department and his services were regularized in the year 2004. On 24.04.2010, he was posted at the office of The General Manager, Haryana Roadways, Hissar and was on duty on Bus No. HR 39-A-8537 from Delhi to Dabwali. Then three Inspectors namely Balwan Singh, Sunder Shyam and Hoshiar Singh checked the bus at Hissar Cantt, Hisar. No embezzlement was found and no passenger was put to any query. However, the petitioner received an office order dated 29.04.2010 whereby he stood suspended and an enquiry was sought to be opened against him. The petitioner was then issued a charge sheet vide letter dated 07.06.2010 (P-1) regarding the alleged embezzlement of Rs.320/- to which petitioner gave his reply. Feeling not satisfied with the reply, a regular enquiry was sought to be initiated against him by the department by appointing an Enquiry Officer

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vide order dated 19.07.2010. The petitioner was called for personal hearing where he admitted his guilt and was then reinstated back in to service with an assurance of no further action. The enquiry proceedings initiated by the respondents were dropped. Vide order dated 03.08.2010 (P-2), two increments of the petitioner with non-cumulative effect were stopped and he was ordered to remain under suspension from 29.04.2010 to 04.06.2010. However, as per letter dated 23.06.2011, an adverse entry has been made by the Reporting Officer in his Annual Confidential Report for the year 2010-11 mentioning therein that the integrity of the petitioner was doubtful. The petitioner was then transferred in the office of the General Manager, Haryana Roadways, Nuh. The petitioner gave his representation (P-4) against the adverse entry in his ACR to the Managing Director, State Transport Haryana, Chandigarh that a false report of embezzlement was made against him without any concrete evidence. Petitioner was called for personal hearing and his representation was declined without assigning any reasons, vide order dated 07.04.2014 (P-6). The petitioner then preferred his appeal dated 06.04.2015 (P-7) but the petitioner received a show cause notice dated 18.01.2017 as to why he should not be retired compulsorily at the age of 55 years as per the provisions contained in Rule 3.26 (D) of CSR Vol-I, Part I read with Rule 5.32A (c) of CSR Vol -II. The petitioner gave his reply to the show cause notice (P-9) The petitioner again gave a representation (P-10) to the General Manager, Nuh to the effect that he be not compulsorily retired. But vide impugned order dated 27.04.2017 (P-11), the petitioner was compulsorily retired. The petitioner earlier approached his Court by way of filing CWP No. 6828-2017 seeking quashing of order dated 18.01.2017 but the said petition was withdrawn on 05.04.2017 (P-12) being premature.

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At the very outset, learned counsel for the petitioner has referred to instructions dated 09.06.2016 (P-13) wherein it has been stated that if an irregularity is found in the accounts of conductor, of an amount up to a maximum of Rs.500/-, no adverse entry in the ACR of concerned Conductor can be made.

Learned counsel for the petitioner further contends that the General Manager was not competent to compulsorily retire the petitioner. Reference has been made to Annexure P-14 whereby the decision to compulsory retire Ram Pal by the General Manager was stayed by the Government as per instructions dated 11.04.2005 (P-14) wherein it has been stated that the competent authority is the Head of the Department/Administrative Secretary only.

Learned counsel for the petitioner further contends that the respondents have erred in issuing show cause notice for compulsorily retiring the petitioner on the basis of single adverse entry in the ACR for the year 2010-11 in the 13 years of service tenure of the petitioner whereas a majority of ACR are good. There is not even a single complaint against the petitioner regarding his work and conduct, except this one entry that too made on the basis of alleged admission of the petitioner under protest in order to save his service.

On the other hand, learned State counsel has argued that even a single adverse entry is sufficient to compulsorily retire an employee, as per government instructions issued from time to time and as per Rule 3.26 (d) of CSR Vol-I Part I read with Rule 5.32 (C) CSR Vol II.

The short point for consideration in the present writ petition is that whether the petitioner can be compulsorily retired keeping in view one adverse entry in his ACR for the year 2010-11.

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Reference at the very outset can be made to instructions dated 09.06.2016 wherein it has been stated that if the embezzled amount is below Rs.500/- then the employee shall be punished as per Rule of the Haryana Civil Services (Punishment and Appeal) 1987 only. It has further been clarified that no adverse remarks shall be made in the ACR against the honesty of an employee. These instructions are thus very clear that the petitioner can at best be punished under Rule 4 of the Haryana Civil Services (Punishment and Appeal) 1987 and no adverse entry shall be made in his ACR.

The State in their reply has not denied these instructions and has stated that the petitioner has rightly been retired in view of Rule 3.26 (d) of CSR Vol-I Part I read with Rule 5.32 (C) CSR Vol II.

The impugned order has been passed in violation of instructions dated 09.06.2016 wherein it has been stated that no adverse entry shall be made in the ACR of an employee if the embezzled amount is below Rs.500/- Further there is not even a single complaint against the petitioner except this adverse entry in his ACR. The respondents should have considered the entire record of the petitioner before compulsorily retiring him.

In view of the discussion made above, the present writ petition is allowed and order dated 27.04.2017 is set aside and the petitioner is entitled to consequential benefits along with 6 per cent interest per annum.

(RITU BAHRI)
JUDGE

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Whether speaking/reasoned : Yes
Whether reportable : No

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