

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

CWP No.7721 of 2017

Date of Decision: 29.05.2020

Dharmbir Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.K. Malik, Senior Advocate,
with Mr. Sandeep Dhull, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RITU BAHRI, J. (ORAL)

Petitioner is seeking quashing of the order dated 06.04.2017 (Annexure P-7), whereby he has been ordered to be compulsorily retired.

Date of birth of the petitioner is 05.05.1961 and his date of superannuation was 31.05.2019. Petitioner was appointed as Conductor on adhoc basis on 04.07.1987. Later on, his services were regularized w.e.f. 31.12.1990. He was conveyed adverse confidential report for the period 2015-2016 (Annexure P-1). Against the said adverse remarks, petitioner made a representation dated 28.12.2016 (Annexure P-2). He also obtained copy of the confidential report for the period 2015-2016 (Annexure P-3) under the Right to Information Act, 2005. Thereafter, the petitioner was issued a show cause notice dated 14.12.2016 (Annexure P-4), as to why he should not be retired from service on attaining the age of 55 years. To the said notice, petitioner gave his reply dated 21.12.2016 (Annexure P-5).

Apart from this, he also made a representation dated 06.03.2017 (Annexure

P-6) to the effect that there were no remarks of integrity in the confidential report for the year 2015-2016. Ultimately, vide order dated 06.04.2017 (Annexure P-7), petitioner was ordered to be compulsorily retired.

Learned counsel for the petitioner has argued that while passing the impugned order dated 06.04.2017 (Annexure P-7) under Rule 3.26 (d) of Punjab Civil Service Rules, Volume I, neither three months' notice nor three months' pay in lieu of the notice, was given to the petitioner. Hence, the impugned order is liable to be quashed on this ground itself. In support of his arguments, reference has been made to the order dated 20.10.2003 passed by this Court in CWP No.10002 of 2002 (Annexure P-9).

Learned counsel for the petitioner has further argued that as per confidential report for the period 2015-2016 (Annexure P-3), which has been obtained by the petitioner under the Right to Information Act, 2005, there is no mention that honesty of the petitioner is doubtful. Hence, in the entire service career, especially for the last 10 years, he had 100% good reports. Learned counsel further argued that the impugned order (Annexure P-7) is stigmatic in nature and keeping in view the judgment passed by Hon'ble the Supreme Court in **R.K. Panjetha vs. Haryana Vidyut Prasaran Nigam Ltd.**, 2002 (10) SCC 590, the impugned order being stigmatic, is liable to be set aside. Further reference has been made to the judgment passed by the Division Bench of this Court in **S.B. Panihar vs. Haryana Vidyut Prasaran Nigam Limited**, 2001 (3) SCT 320 (Annexure P-11).

Upon notice, written statement on behalf of the respondents has been filed. Along with the written statement, they have placed on record detail of punishment awarded to the petitioner as Annexure R-1. It is stated that in the ACR of the petitioner for the year 2015-2016, his integrity has

been reported as 'doubtful.' Thereafter, a show cause notice dated 14.12.2016 (Annexure R-2) was issued to him, as to why he should not be compulsorily retired as per Rule 3.26 of Haryana Civil Services Rules. Vide letter dated 02.12.2016 (Annexure R-3), information under the Right to Information Act, 2005, was supplied to the petitioner. Against the adverse remarks mentioned in the ACR for the year 2015-2016, petitioner filed a representation, which was sent to the competent authority vide letter dated 03.01.2017.

On 05.09.2018, learned State counsel had sought time to file affidavit giving information in respect of last 10 years' ACRs of the petitioner. Thereafter, an affidavit was filed on 26.04.2019, whereby ACRs of the petitioner, for the last 10 years, were reproduced. Annexure R-1/A is the ACR for the year 2015-2016. Learned State counsel has argued that keeping in view the ACR for the year 2015-2016, the petitioner has been rightly compulsorily retired from service after giving him necessary show cause notice.

As per ACR for the year 2015-2016 (Annexure P-3), there is no reference with regard to the honesty of the petitioner. If, the argument of learned counsel for the petitioner is accepted that in the ACR for the year 2015-2016 (Annexure P-3), there was no adverse report regarding his honesty, then the next question would be, 'as to why the petitioner gave his representation dated 28.12.2016 (Annexure P-2) against the said ACR.' A perusal of the representation dated 28.12.2016 (Annexure P-2) shows that the petitioner was seeking removal of adverse remarks with respect to his 'honesty' from the ACR for the year 2015-2016. Once, the petitioner has made a representation, it cannot be held that ACR (Annexure P-3) given to

him, did not carry the adverse remarks as reflected in the ACR for the year 2015-2016. Hence, the adverse ACR was conveyed to the petitioner and then, he gave his representation (Annexure P-2). In the present case, after issuing show cause notice dated 14.12.2016 (Annexure P-4) to the petitioner, he gave his reply dated 21.12.2016 (Annexure P-5) and thereafter, the impugned order dated 16.04.2017 (Annexure P-7) was passed after granting him a period of more than three months. Hence, necessary period of three months was granted to the petitioner before passing of the final order as per Rule 3.26 (d), Volume-1, Part-I of Punjab Civil Service Rules. The said rule is reproduced as under:-

“3.26 (d) The appointing authority shall, if it is for the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three month's pay and allowances in lieu of such notice:-

(i) If he is in Class-I or Class-II Service or post and had entered Government Service, before attaining the age of thirty five years, after he has attained the age of fifty years; and

(ii) (a) If he is in Class-III Service or post, or

(b) If he is Class-I or Class-II Service or post and entered Government service after attaining the age of thirty five years; after he has attained the age of fifty five years.

The Government employee would stand retired immediately on payment of three months' pay and allowances in lieu of the notice period and will not be in service thereafter.”

As per above said rules, petitioner was given three months' notice while issuing show cause notice dated 14.12.2016 (Annexure P-4) and passing the impugned order dated 06.04.2017 (Annexure P-7). Hence, necessary provisions of Rule 3.26 (d), Volume-1, Part-I of Punjab Civil Service Rules, as applicable to Haryana, have been complied with in this case.

Along with an affidavit dated 26.04.2019 filed by the General Manager, Haryana Roadways, Rohtak, he has placed on record ACRs of the petitioner for the last 10 years i.e. from 2006-2007 to 2016-2017. A perusal of the ACR for the year 2015-2016 (Annexure R-1/A) shows that in column No.12, it has been recorded as under:-

“12. Assessment of Integrity: No. Taking pay of absent period when the remarks of absent in attendance register. Pressurized for making false muster roll. For making efforts to file the charge-sheets on the basis of making false reports.”

In this ACR, petitioner has been observed to be habitual absentee and his behaviour with the passengers is negative. He is not discharging his duty with responsibility. With respect to the integrity, it is stated that he takes pay of absent period and makes false muster roll. However, with respect to the ACRs from 2006-2007, his work and conduct has been consistently good.

The petitioner along with his replication, has placed on record copies of orders dated 12.11.1991, 21.11.1990, 26.07.1999, 13.06.1995 and 14.06.1995 (Annexures P-12 to P-17). A perusal of these orders shows that his punishment orders, on appeal, were withdrawn and period of suspension was treated as 'earned leave'. The petitioner has been warned to be careful in future. However, in the present case, apart from punishments, the basis for compulsory retirement is the ACR for the year 2015-2016, where his honesty has been doubted. In **S.B.Panihar's** case (supra), the order of compulsory retirement had given a detail of short punishments awarded to the petitioner (therein) during the last 10 years, apart from referring the

adverse ACR. The order of compulsory retirement was set aside on the ground that it was stigmatic in nature. The said petition was allowed keeping in view the judgment passed in **R.K. Panjetha's** case (supra), where also in similar circumstances, the compulsory retirement order was passed. These judgments are not applicable to the facts of the present case because in this case, when show cause notice dated 14.12.2016 (Annexure P-4) was given to the petitioner, it only contained the ACR for the year 2015-2016. Thereafter, he was finally retired vide impugned order dated 06.04.2017 (Annexure P-7) after giving three months' time. The show cause notice dated 14.12.2016 (Annexure P-4), nowhere gives details of the punishments awarded to the petitioner, which have been attached with the written statement as Annexure R-1. Hence, the show cause notice dated 14.12.2016 (Annexure P-4), in no manner, is stigmatic in nature. Further, the impugned order dated 06.04.2017 (Annexure P-7) has been passed after giving him opportunity of filing the reply, which he filed on 21.12.2016 (Annexure P-5). This Court in **Harpreet Singh vs. State of Punjab and others**, 2017 (1) SCT 471 was examining the case of premature retirement of an employee, where the order of compulsory retirement was passed after taking into account the material with regard to utility outlived by the petitioner in not performing his duty in an effective manner and by considering the allegations of acceptance of bribe and in not maintaining an efficient administration. The said order was held not to be stigmatic as the entire material was taken into account for form an opinion to retire a public servant in public interest. In para no.9, it was observed as under:-

“9. Undisputedly, the State Government has an absolute right to retire the petitioner in public interest but such an opinion is to be based on subjective satisfaction and performance of the petitioner or concerned

employee during his entire service record and especially the record of last 10 years before the date of passing of order of compulsory retirement. It is not disputed that sometimes un-communicated service record can also be taken into consideration. In judgment of **Baikuntha Nath Das's case** (supra), the Hon'ble Apex Court has also observed that interference is permissible but only in case the order passed is mala fide or is based on no evidence or found to be perverse. Same view was taken by Hon'ble the Apex Court in cases **Union of India vs. Ajoy Kumar Patnaik**, 1995 (4) SCT 692 (SC) as well as in **Chandra Saikia Vs. State of Assam** (2003) 4 SCC 50. Similarly, in cases of **Jarnail Singh vs. State of Haryana, 2007 (1) SCT 492**, **Baikuntha Nath Das's case** (supra) and **Chandra Saikia's case** (supra), it was held that communication of adverse remarks is not necessary while considering the case for retention of an employee in service beyond 50/55 years of age. In the present case also, the case of the petitioner was reviewed and he was not found to be useful in larger public interest and the impugned order of compulsory retirement was passed. As per judgment in **Baikuntha Nath Das's case** (supra), the order of compulsory retirement is not a punishment and it implies no stigma. Only an opinion is to be formed which is in the public interest to retire a Government servant compulsorily and the order is passed on the subjective satisfaction of the Competent Authority. The review Committee is to consider the entire record of the concerned employee before taking a decision in the matter.”

In **Trilok Nath Passey vs. State of Punjab and another**, 2016

(1) SCT 498, this Court was considering the case of an officer, who was member of the Punjab Civil Services (Executive Branch) and had challenged the order of compulsory retirement being stigmatic in nature. While passing impugned order, the Chief Secretary, Punjab had used the expression that the petitioner (therein) was “unsuitable for further continuation in public service.” With respect to this language, even though these words were used in the order, but the same was not held to be stigmatic in nature. In para no.25 of the order, it has been observed as under:-

“25. I am of opinion that when the Chief Secretary, Punjab recorded the allegedly offensive words he meant no offence or an imputation of misconduct on the person. It may have been the motive behind the order but certainly not its foundation. While saying this I am not at all charmed by the words expressly penned down in the order which to my mind is not punitive in nature and saying that it will not be punitive alone will not by itself act as the blinding shield or the controlling value to determine “cause and consequence” of the order. I would not accept such an argument. Even if there is the slightest degree of ambiguity in using the phrase “unsuitable for further continuation in public service” I would lean towards an interpretation that the petitioner is found no longer suitable to continue beyond 55 years and that does not *per se* spell a stigma on character, conduct for the future in some other employment, which is the measuring rod to apply in such cases. No employee has a fundamental right to continue in service till superannuation and that is what Rule 3(1) (a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 is designed for. Not to injure but to weed out those government finds no place in its scheme of things so long as power is exercised reasonably and in overriding public interest, the satisfaction remaining subjective to the pleasure of the Governor and the Government under Article 310 of the Constitution. Besides, malafides has not been alleged against the Government or the members of the Review Committee that the decision was coloured or in abuse of power to prematurely retire the petitioner from service. It also cannot be said that no reasonable person would have taken the decision to prematurely retire the petitioner on the materials on record and duly considered. It is equally well settled that judicial review is not directed against the decision but the decision making process. There is no shimmer of irrationality or perversity in the impugned decision crying for judicial intervention. No fault on these three accounts could be pointed out from the case papers placed before me.”

Hon'ble the Supreme Court in **Punjab State Power Corporation Ltd. & Ors. vs. Hari Kishan Verma**, 2015 (2) RSJ 544 had allowed the SLP and quashed the judgment passed by this Court, whereby order of compulsory retirement in respect of Hari Kishan Verma had been set aside. Petitioner (therein) had challenged the order of compulsory

retirement by referring to the order passed by Hon'ble the Supreme Court in R.K. Panjetha's case (supra) treating the order to be stigmatic. Hon'ble the Supreme Court examined the order of compulsory retirement of Hari Kishan Verma and held that in the case of R.K. Panjetha's case (supra), the order reflected pendency of charge-sheet against the incumbent and there was also reference putting responsibility on him for making excess payment to the private contractors and also taking excess measurement through technical subordinates. These allegations graphically revealed violation of instructions. The order in Hari Kishan Verma's case did not reflect pendency of any such charge sheet. It only referred to the details of the punishments awarded and his ACR record, which was examined by the committee. The order further reflected taking note of ACR and that he was unfit to be retained in service. The said order was not held to be stigmatic in nature. In para no.18 of the judgment, Hon'ble the Supreme Court observed as under:-

“18. In the present case, on an anxious and careful scrutiny of the words used in the order, there can be no quarrel over the fact that previous misconduct and the punishment visited to the respondent have been stated. The decision-making process of the Committee has been reflected in the order. It includes the disciplinary proceedings, personal records and the reputation. The reputation here has insegregable nexus, as is seen, with his ACRs and poor performance. The use of words like “inefficiency” and “not fit” cannot be put on a pedestal to confer on them such status so that they convey the meaning of “stigmatic.” It cannot be remotely so. On the contrary, the order in R.K. Panjetha (supra) was ex facie stigmatic.”

In the above said judgment, appeal filed by the Punjab State Power Corporation Ltd. was allowed.

In the facts of the present case, the impugned order refers to only one ACR with regard to 'honesty' of the petitioner. Details of the punishments have been reflected in the written statement filed by the

respondents. Applying the ratio of the above judgments on the facts of

present case, the show cause notice dated 14.12.2016 (Annexure P-4) and the order of compulsory retirement dated 06.04.2017 (Annexure P-7), in no manner, are stigmatic in nature. Therefore, no ground is made out to interfere therein.

No merits. Dismissed.

29.05.2020
ajp

(RITU BAHRI)
JUDGE

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