

CWP-7467-2017(O&M)

and connected case

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

1. CWP-7467-2017(O&M)

Veer Bhan

.....Petitioner

Versus

Haryana Urban Development Authority and others

.....Respondents

2. CWP-12862-2020(O&M)

Veer Bhan

.....Petitioner

Versus

Haryana Shehri Vikas Pradhikaran and another

.....Respondents

Date of decision: 23.04.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.K.Malik, Sr. Advocate with
Mr. Sunil Hooda and Mr.Digvijay, Advocates, for the
petitioner in CWP-7467-2017

Mr.V.K.Jindal, Sr. Advocate with
Mr. K.S.Banyana, Advocate, for the petitioner
in CWP-12862-2020

Mr. Hitesh Pandit, Advocate for the respondents
in CWP-7467-2017

Mr. Arvind Seth, Advocate for the respondents
in CWP-12862-2020

ANIL KSHETARPAL, J.

By this order two Civil Writ Petitions i.e CWP-7467-2017

and CWP-12862-2020 shall stand disposed of.

1. The petitioner-Veer Bhan has filed these two separate writ petitions assailing the correctness of the order passed by the respondents compulsorily retiring the petitioner on attaining the age of 55 years in the exercise of its powers under Rule 3.26 (d) of the Civil Service Rules Vol.I (Part I) as applicable in the State of Haryana. In the second writ petition, the petitioner prays for issuance of a writ in the nature of Mandamus to direct the respondents to release all the retiral benefits due towards him.

2. Some facts are required to be noticed. The petitioner was appointed as a Junior Engineer on 03.12.1985. He was ordered to be compulsorily retired by the appointing authority on 31.01.2017. The aforesaid order has been passed in the exercise of powers as noticed above. Hence, Rule 3.26 (d) is extracted as under:-

'Rule 3.26(d) Compulsory Retirement

The appointing authority shall, if it is of 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 months 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:

[Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age;]

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.”

3. Heard learned counsel for the parties at length and with their able assistance perused the respective paper books. It may be noted here that the record of the Annual Confidential Reports with respect to the petitioner has been sent on the official email of the Court and the same has also been examined.

4. Learned senior counsel appearing for the petitioner in CWP-7467-2017 contends that the order passed on 31.01.2017 is stigmatic in nature and is based upon two charge-sheets which were never finalized. He submits that the second charge-sheet issued on 12.01.2017 was served upon the petitioner on 17.01.2017, directing him to submit his reply within 15 days. However, before waiting for the reply, the order in question was passed. He further submits that from the perusal of the Annual Confidential Reports, it is apparent that the petitioner was marked as 'Good' or 'Very Good'.

5. In CWP-12862-2020, learned senior counsel appearing

for the petitioner contends that the petitioner retired from service on 31.03.2019 on attaining the age of superannuation and therefore, the respondents are not justified in not releasing his pensionary benefits.

6. Per contra, in both the writ petitions, two separate counsels have appeared for the respondents. Mr. Hitesh Pandit, Advocate, for the respondents in CWP-7467-2017 contends that the appointing authority has passed an order after considering the complete record and therefore, the Court should not interfere. In support of his contention, he relies upon a judgment passed by the Division Bench of this Court in '**State of Haryana and another vs. ASI Balwan Singh**' LPA-1124-2011 decided on 07.09.2011.

7. On the other hand, Sh. Arvind Seth, Advocate, for the respondents in CWP-12862-2020 contends that in a regular departmental inquiry, the petitioner has been found guilty and therefore, the petitioner is not entitled to promotion from the date on which his juniors were promoted.

8. Having heard learned counsel for the parties at length, this Court is of the considered view that the petitioner deserves to succeed. On careful perusal of the order dated 31.01.2017, it is apparent that the same is based on two charge-sheets. The first charge-sheet is with respect to the allegation that the petitioner has failed to supply the information under the Right to Information Act, 2005. The second charge-sheet dated 12.01.2017 is alleging that the petitioner gave the revised possession of industrial plot no. 2-P Sector 27-A/28, Hisar, in a wrongful manner. The authority has observed that the charges against

the petitioner in the second charge-sheet are of a serious nature and cast an aspersion towards his integrity.

9. Rule 3.26 (d) enables the authority to take a decision as to whether a particular employee is required to be retained in service in public interest on attaining the age of 55 years or above. The purpose of such power is to weed out the dead wood. No doubt, the scope of judicial review in such matters is limited as held in '**Bai Kuntha Nath Das & another vs. Chief Medical District Officer, Bariparda and another**' (1992) 2 SCC 299. It has further been observed that the Court does not sit in appeal over such orders.

10. However, the question is whether a stigmatic order could be passed in the exercise of powers under Rule 3.26 (d) or not. In the considered opinion of this Court, the answer has to be an apathetic 'No'. The object of power conferred under Rule 3.26 (d) is to order premature retirement of an employee if he is found to be inefficient or incompetent. Rule 3.26(d) does not give jurisdiction to the appointing authority to pass an order punishing the employee. For that purpose, the powers can be exercised in accordance with the relevant rules governing the punishment. In these circumstances, the order impugned herein does not deserve to be sustained. This Bench has also examined the Annual Confidential Reports which have been sent on the official email of the Court. From the perusal of the Annual Confidential Reports, it is not safe to conclude that the petitioner is either inefficient or a dead wood. In majority of the reports, the competent authority has marked him to be 'Good' or 'Very Good'. In few reports, he has been marked as

'Outstanding'.

11. This Bench has gone through the judgment passed in the State of Haryana (supra). The Division Bench of this Court has already laid down that the Court does not sit in appeal over the order of a competent authority directing the pre-mature retirement of an employee in accordance with the rules because such an order is not a punishment order. There is no doubt about the observation made by the Division Bench. However, in the present case, the order in question has been passed as a measure of punishment. The operative part of the order passed by the appointing authority reads as under:-

“The charges of illegally and unauthorized revised possession of Industrial Plot are also very serious nature and cast aspersion towards the integrity. I, accordingly after considering the overall record and after examining the relevant record of the official/charges levelled against him in both the charge-sheets, reached on the conclusion that Sh.Veer Bhan, Junior Engineer may not be retained in services beyond the age of 55 years.

Therefore, as per provision contained in rule 3.26(d) of CSR Vol-I, Part-I, order that Sh. Veer Bhan, Junior Engineer O/o Estate officer, HUDA, Hisar shall stand compulsorily retired from HUDA Services after three months from the date of issue of this order.”

A reading of the operative part of the order clearly shows that the competent authority has held that the integrity of the petitioner is doubtful. Such an order could not be passed in the exercise of powers under Rule 3.26 (d). The competent authority has not found in the present case that the petitioner is not entitled to be retained in the service in public interest. Hence, the judgment passed by the Division Bench with greatest respect, is not applicable in the present case.

12. Keeping in view the aforesaid facts, the order dated 31.01.2017 is clearly unsustainable and therefore, the same is set aside. It may be noted here that on 28.04.2017, operation of the order dated 31.01.2017 was stayed and the petitioner continued to serve the Department upto 31.01.2019, the day on which he attained the age of superannuation.

13. Now, let us examine the second writ petition. It may be noted here that with respect to the first charge-sheet dated 24.09.2014, a departmental inquiry report has been produced by the respondents according to which the petitioner has been found guilty of certain lapse. With respect to the second charge-sheet dated 12.01.2017, the inquiry report has been produced which has also gone against the petitioner.

14. Keeping in view the aforesaid facts, the second writ petition is disposed of with a direction to the respondents to pass an appropriate order after granting an opportunity of hearing to the petitioner. Needless to observe that the claim of the petitioner for grant of promotion would also be considered by the authority in accordance with law. Let the proceedings against the petitioner be concluded

within a period of three months from the date of judgment of the Court.

It is expected that the competent authority would take a pragmatic view of the matter. With these observations, the second writ petition is also disposed of.

Hence, both the writ petitions stand disposed of.

23 .04.2021
rekha
Whether speaking/reasoned
Whether Reportable

Yes /No
Yes / No

(ANIL KSHETARPAL)
JUDGE