

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

**CWP No.8661 of 1994 (O&M)
Date of decision : 17.05.2023**

ASI Balwant Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Dr. Payel Mehta, Advocate (Amicus Curiae)
for the petitioner.

Mr. Shivani Sharma, Dy. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Instant writ petition has been filed impugning the order dated 10th of June, 1994 (Annexure P-7) whereby the petitioner has been ordered to be retired prematurely.

2. The petitioner was working with the respondent-Department and was promoted as Assistant Sub Inspector vide order dated 19th of October, 1986 (Annexure P-6) before passing of the impugned order. The main thrust as pleaded in the writ petition was on the fact that once the petitioner was promoted in the year 1986 all adverse entries prior thereto would lose their sting and only adverse entries five years prior to the date of the order of pre-mature retirement have to be taken into consideration. Respondents in their written statement have enlisted the adverse entries and the punishments imposed upon the petitioner prior to the passing of the impugned order as under :-

A-Bad Enteries :-

1. Three year service forfeited in 1984.
2. Censured in 1989.
3. Two year service forfeited on permanent basis in 1989.
4. Censured in 1990.
5. Censured in 1991.
6. One year service forfeited on temporary basis in 1991.
7. On year service forfeited on temporary basis in 1991.
8. Two year service forfeited in 1991 on permanent basis.
9. Two year service forfeited on permanent basis in 1992.
10. Two year service forfeited on permanent basis in 1993.
11. Censured in 1993.

B- ADVERSE ACRs :-

- 1) For the period from 5.12.91 to 31.3.92
- | | | | |
|----|--|---|---|
| 1. | General power of control and organising ability. | = | Poor |
| 2. | Interest in modern methods of investigation and in modern Police methods generally. | = | poor |
| 3. | Defects, if any and whether these have been already brought to the notice of the concerned in any other communication. | = | Did not show interest in the investigation of cases given to him. |
| 4. | Other remarks by the SSP/Ropar. | = | He was awarded three major punishments during the period as follows:- |

- 1) One year service forfeited for not completing the investigation of case FIR No.224 dt. 12.9.89 PS. Rajpura.
- 2) One year service forfeited for delay in investigation of case FIR No.285/89 PS Kotwali, Patiala.
- 3) Two years service forfeited for delay in investigation of case FIR No.78/89 PS Sdr. Patiala.

2. For the period from 1.4.92 to 27.12.92.

Remarks by the Senior Supdt. of Police, Ropar :- He is habitual absentee for which he was punished as per details given below. In my view he is below average xxxxx

- i) Two year service forfeited for absence of 60 days, 12 hours and 25 minutes.
- ii) Two year service forfeited for absence for 41 days and 9 hours.
- iii) Censured for not conducting of investigation properly of case FIR No.243/89 PS Sdr. Patiala.

They have thus reiterated that the petitioner being a dead wood ought to have been chopped and was thus chopped. The factum of the punishments and the adverse entries as enlisted by the respondents have not been denied by the petitioner though replication has been filed.

3. Ld. Amicus does not dispute that the only adverse entry which has been enlisted prior to the date of promotion relates to three years forfeiture of service in the year 1984 and all the punishments/adverse entries post 1986 would definitely be the necessary basis for the employer

to consider continuation of the petitioner in service.

4. Full Bench of this Court in the case '**Daya Nand vs. State of Haryana, 1995(1) S.C.T 423**', held as under :

“21. When the entire service record of an officer is considered, especially the record of the later years, the impact/impression of all the entries therein is to be gathered and is only from such record that the Appointing Authority is to decide whether it would be in the public interest to compulsorily retire a Government servant. Opinion expressed by the Courts with respect to attaching degree of weight to one or few entries of "average" recorded in the service record cannot be held to be a "Rule of Law" which could be followed as such in subsequent cases. The purpose of communicating adverse remarks is to give an opportunity to a Government Officer to improve in his conduct and functioning as such Officer. If the State Government decides as a policy that "average" reports which are communicated are to be treated as adverse and taken into consideration at the time of deciding the question of compulsory retirement of Government officers, no fault can be found with such instructions. Such remarks would be treated as adverse though ordinarily, literally speaking they may not be extremely bad. When K.K. Vaid's case was decided Haryana Government instructions regarding communication of adverse remarks of "average" to the Government Officers were not in existence. Now when such a question is to be examined in the light of such instructions the Rule of Law laid down in K.K. Vaid's case cannot be followed. Even otherwise the decision in K.K. Vaid's case, that instructions of the State Government to retain in service only Government Officers possessing more than 70% "good" reports is contrary to the spirit of Rule 3.26 cannot be held to be good law. Under Rule 3.26(a) as reproduced above, the Government servant is to retire on attaining the age of 58

years and beyond that he can be retained in service only in exceptional circumstances with the sanction of the competent authority in public interest. While interpreting Rule 3.26(d) the public interest is to be seen in the context of allowing a person to continue in service beyond the age of 55 years and obviously not only average but persons with meritorious record are to be allowed extension and that would serve the public interest. Normally meritorious persons are not to be denied promotion in the garb of allowing extension to such officers who are good officers or meritorious officers. It is only an exception that for reasons to be recorded and in exceptional circumstances that extension in service is to be allowed. The phraseology used in Rule 3.26(d) is entirely different though the element of public interest is prominent therein also. An absolute right has been given to the Government if it is of the opinion, in the public interest to retire an officer who completes the age of 55 years in class I and class II service or after completing service of 35 years of service to compulsorily retire the Government servant. This opinion is subjective but formed on data, i.e. on appraisal of the entire service record especially service record of the later years. The use of the word "absolute right" is significant that no Government servant can claim that he must be retained in service beyond the prescribed time as mentioned therein upto the age of 58 years only when the action of the State Government is considered arbitrary or mala fide that the same can be questioned in the Court of law. Since the State has absolute right to retire any Government employee, it is taken that the State Government can issue instructions on this subject which would be in the nature of guidelines for the Competent Authority to be kept in view while passing orders under this Rule. The instructions of the Government issued in 1983 that retention beyond 55 years be granted to officers having 70% or above good record in the last ten years do not infringe Rule 3.26 (a) or (d). The approach of the Division Bench in K.K. Vaid's

case that the instructions of 1983 aforesaid were against the letter and spirit of Rule 3.26(a) as mentioned in para 9 of the judgment, cannot be accepted as laying down good law. The concept of 'weeding out dead wood' as embedded in Rule 3.26 (a) or (d), is inherent but that is not the only ground available therein to pass order. The same is to be read along with the other grounds as mentioned in J.N. Sinha's case and Baikuntha Nath's case i.e., the object of these rules is also to maintain high standard of efficiency and initiative in the State services. There should be spirit of dedication and dynamism in the working of the State services. Officers who are lax, corrupt, inefficient or not upto the mark and have outlived utility should be weeded out. Thus the view expressed that Rule 3.26 will be attracted only to chop off dead wood is not correct. There may be varied reasons to be taken into consideration, that would constitute public interest that an order as required under Rule 3.26(d) can be passed as briefly noticed above.”

5. Apex Court in the case of '**Punjab State Power Corporation Ltd. And others vs. Hari Kishan Verma**', (2015) 13 SCC 156 held as under :-

“12. ...There is no cavil over the fact that the respondent was extended the benefit of promotion to the higher post. The issue that has been raised by the learned counsel for the respondent is that after the promotion the earlier adverse entries totally lost their significance.

13. xxxx

14. In *State of Orissa v. Ram Chandra Das*, 1996(4) S.C.T. 288 : (1996) 5 SCC 331 a three-Judge Bench has emphatically held that object behind compulsory retirement is public interest and, therefore, even if an employee has been subsequently promoted, the previous entries do not melt into insignificance. To quote:-

"7. . Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension."

15. The aforesaid dictum has been approved and followed in *State of Gujarat v. Umedbhai M. Patel, 2001(2) S.C.T. 339 : (2001) 3 SCC 314*, wherein emphasis has been laid on the factum that entire service record of the Government servant is to be examined. Same principle has also been followed in another three-Judge Bench decision in *Pyare Mohan Lal v. State of Jharkhand and Others, 2010(4) S.C.T. 663 : (2010) 10 SCC 693*. Slightly recently, a Division Bench in *Rajasthan SRTC v. Babulal Jangir, 2013(4) S.C.T. 438 : (2013) 10 SCC 551*, after discussing number of authorities, has held thus:-

"22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in *Badrinath v. State of Tamil Nadu, (2000) 8 SCC 395* is not correct and the observations of this Court in *State of Punjab v. Gurdas Singh, 1998(2) S.C.T. 165 : (1998) 4 SCC 92* to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up

higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in *Pyare Mohan Lal v. State of Jharkhand* is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the Government employee is to be considered for further promotion. However, this "washed-off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the Government servant."

16. In view of the aforesaid statement of law, there can be no iota of doubt that the entire record can be scrutinised by the employer to adjudge the justification of continuance of the

employee after reaching a particular age as contemplated in the Regulations ”

6. Keeping in view the afore-referred law laying precedents, punishments and the adverse entries earned by the petitioner prior to the passing of the impugned order, no fault can be found in the action of the respondents which would warrant interference at the hands of this Court.
7. In view of the above, present writ petition is ordered to be dismissed.
8. Amicus Curiae will be entitled for fee as per the fee schedule of the High Court Legal Services Committee.

May 17, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No