

CWP-4066-2024

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2024:PHHC:024785

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-4066-2024

Date of decision : 22.02.2024

Jai Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.G.S.Sandhu, Advocate
for the petitioner.

Ms.Palika Monga, DAG, Haryana.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned notice dated 12.01.2024 (Annexure P-5) issued by respondent no.4 vide which the petitioner has been served notice of retirement under Rule 9.18 (1) (c) of the Punjab Police Rules (as applicable to Haryana).

2. Brief facts of the present case are that the petitioner had joined the respondent department on 19.11.2008 as a Constable and was thereafter promoted to EHC on 20.11.2021 and a regular departmental enquiry was initiated against the petitioner along with other employees on the charges of demanding illegal gratification and accepting the same from a vehicle driver. In the said departmental proceedings, statements of 7 PWs were recorded and due opportunity of cross-examination was given to the petitioner and other persons and after following the due procedure, the

Enquiry Officer submitted its report dated 03.11.2021 holding the delinquent officials including the petitioner guilty of the charges levelled against them. The Superintendent of Police vide order dated 07.01.2022 (Annexure P-1) after giving due opportunity to the petitioner and other persons to file a reply to the show cause notice, awarded a punishment of stoppage of 4 annual increments with permanent effect to the petitioner. The petitioner filed an appeal before the Inspector General of Police, Karnal Range, Karnal, who vide order dated 14.02.2022 (Annexure P-2) observed that the charge against the petitioner has been proved beyond doubt but as far as quantum of punishment was concerned, the same was reduced to stoppage of two annual increments with permanent effect. The petitioner thereafter filed a revision petition before the Director General of Police, who vide order dated 23.12.2022 (Annexure P-3) rejected the said revision petition. The said orders were not challenged and have not been challenged before this Court. Learned counsel for the petitioner has fairly submitted that although a second revision petition dated 23.01.2024 (Annexure P-4) (after a delay of more than 1 year and 1 month and after the issuance of the impugned notice dated 12.01.2024) has been filed by the petitioner but the same is not maintainable as there is no provision under which the second revision petition is maintainable and thus, admittedly the orders from Annexures P-1 to P-3 have attained finality.

3. The ACR of the petitioner for the period from 01.04.2021 to 31.03.2022 reads as under:-

<i>S.No.</i>	<i>Column</i>	<i>Remarks</i>
<i>1</i>	<i>Discipline</i>	<i>Indiscipline</i>
<i>2</i>	<i>Integrity</i>	<i>Dishonest</i>
<i>3</i>	<i>Reliability</i>	<i>Unreliability</i>
<i>4</i>	<i>Moral Character</i>	<i>Below Average</i>

It is not the case of the petitioner that the ACR of the said period has been challenged and during the course of the arguments, learned counsel for the petitioner has fairly submitted that the representation against the said ACR has been rejected and no further challenge has been made against the same. The said ACR or its rejection has not been challenged before this Court also. Vide impugned notice dated 12.01.2024 (Annexure P-5), three months notice of retirement on pension from government service in public interest has been issued to the petitioner under Rule 9.18(1) (c) of PPR (as applicable in Haryana) and it has been stated in the said notice that after the expiry of the said period of notice, the petitioner would be treated as retired from service as per rules. It is the said notice which has been challenged by the petitioner in the present writ petition.

4. Learned counsel for the petitioner has submitted that no prior hearing was given to the petitioner prior to the issuance of the said notice dated 12.01.2024 and thus, the issuance of the said notice is in violation of the principle of natural justice and deserves to be set aside on the said ground alone.

5. This Court has heard the learned counsel for the petitioner and has perused the paper book.

6. It is not in dispute that in the ACR of the petitioner for the period from 01.04.2021 to 31.03.2022 in the column of integrity, it has been mentioned as “Dishonest” and in the column of moral character, it has been mentioned as “Below Average”. It has been fairly submitted by learned counsel for the petitioner that the representation against the said ACR has been rejected and no further challenge either to the ACR or to the rejection of the representation was made by the petitioner. It is not in dispute that one

adverse entry with regard to integrity in the ACR of last 10 years would entitle the authority to not grant an extension of service beyond the period of 55 years which has been done in the present case and thus, no fault could be found with the action taken by the authorities. The relevant portion of the Rules i.e., Rule 9.18 which have been reproduced in paragraph 10 of the writ petition is reproduced hereinbelow:-

“Rule 9.18 for Haryana

9.18. Retiring pension - (1) Notwithstanding anything contained in these rules, as retiring pension is granted to an officer-

(a) who is permitted to retire from service after completing qualifying service for twenty-five years or such lesser period as may, for any class of officers, be prescribed;

or

(b) who is compulsorily retired under sub-rule (2) after completing twenty five years' qualifying service;

(c) who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less than three months' notice; or

(d) who is retires on or after attaining the age of 55 years by giving not less than three months' notice of his intention to retire to the appointing authority:

Provided that where the notice is given before the age of fifty-five years so attained, it shall be given effect to from a date not earlier than the date on which the age of fifty-five years is attained.

Note:- Appointing authority retains an absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years.”

A perusal of the above Rule would show that as per the note appended to Rule 9.18 sub rule (1), it has specifically been provided that the appointing authority retains an absolute right to retire any government servant on or after he has attained the age of 55 years without assigning any reason. There is nothing in the above said Rule which even remotely

indicates that hearing is required to be given to the petitioner prior to the issuance of the said notice / order of retiring an employee on or after he attains the age of 55 years. No law has been cited by learned counsel for the petitioner in support of his argument that a personal hearing is required to be given to the petitioner prior to the issuance of said notice / order.

7. The Hon'ble Division Bench of this Court in the case of ***Ram Dhari vs. State of Haryana and others, LPA no.1890 of 2018 decided on 22.01.2019*** had observed that only one adverse entry in the ACR with respect to integrity being doubtful would require the employee who is a dead wood to be chopped off in larger public interest. The relevant portion of the said judgment is reproduced hereinbelow:-

“10. Note appended to Sub Rule 1 makes it abundantly clear that for retiring a police official on or after he attains the age of 55 years, whosoever may be the Appointing Authority, has an absolute right of retiring him without assigning any reason. Any previous sanction from the Government is not stipulated in this contingency.

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*13. In so far as the submission advanced with respect to retirement on the basis of only one adverse entry in ACR being bad in law and illegal is also without any substance. A perusal of the adverse remarks recorded in the ACR of the appellant-petitioner for the period from 01.04.2006 to 31.03.2007 specifically shows that his integrity during the period is doubtful. It is well settled that if integrity of an employee is in doubt even once, then such employee is a dead wood needing to be chopped off, in larger public interest. The proposition stands well settled by the pronouncement of the Hon'ble Apex Court in the case of ***Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another 1992(2) SCC 299.****

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*14. The issue of compulsory retirement of an employee after he attains the age of 55 years by giving three months' notice without assigning any reason has again been the subject matter of consideration before the Hon'ble Apex Court in ***National Aviation Company of India v. SMK Khan (2009) 5 Supreme Court Cases 732.*** In the said case the consideration was being made of Regulation 12 of the Indian Airlines*

Employees Service Regulations which is almost para-materia to Rule 9.18 (C) of the Punjab Police Rules. It may be relevant to extract Regulation 12 of the Indian Airlines Employees Service Regulations which reads as under:-

“An employee shall retire from the service of the Corporation on attaining the age of 58 years provided that the competent authority may ask an employee to retire after he attains the age of 55 years on giving three months' notice without assigning any reason”.

Analyzing the aforesaid Rule, the Hon'ble Apex Court observed as under:-

“13. An order of compulsory retirement in pursuance of a rule/regulation which enables the competent authority to prematurely retire an employee, on the formation of a bona fide opinion that continuation of the employee in service will not benefit the institution or be in the interest of the institution (or will not be in public interest where the employee is a government servant), on review of the performance/service record of the employee, on the employee attaining the specified age or completing the specified period of service, is valid and not open to challenge. It is neither a punishment nor considered to be stigmatic. Where the compulsory retirement, is not by way of punishment for a misconduct, but is an action taken in pursuance of a valid condition of service enabling the employer to prepone the retirement, the action need not be preceded by any enquiry and the principles of natural justice have no application.

14. The unsatisfactory service of the employee which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and that he should be retired compulsorily. Such “compulsory retirement” is different and distinct from imposition of a punishment of compulsory retirement (or dismissal/removal) on a specific charge of misconduct, where the misconduct is the basis for the punishment. The difference is on account of two factors: firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a dead wood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct (which if separately considered may constitute a

misconduct subject to punishment) when considered as a whole, leads the reviewing authority to the conclusion that the employee in question is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement under the relevant rule, in the letter of compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct.”

A perusal of the above judgment would also show that in the said judgment, reference was made to the judgment of the Hon'ble Supreme Court in ***National Aviation Company of India vs. SMK Khan*** reported as ***(2009) 5 Supreme Court Cases 732*** in which Regulation 12 of the Indian Airlines Employees Service Regulations which was stated to be almost para-materia to Rule 9.18(c) of the Punjab Police Rules was considered and while considering the same, it was observed by the Apex Court that where compulsory retirement was not by way of punishment for misconduct but was an action taken in pursuance of a valid condition of service enabling the employer to prepone the retirement, then the said action need not be preceded by any enquiry and the principles of natural justice would have no application. In the present case, the notice for retiring the petitioner prematurely after having attained the age of 55 years has been issued under Rule 9.18 (1)(c) of the Punjab Police Rules (as applicable in Haryana) and the petitioner is not sought to be compulsory retired by way of punishment and thus, as per the law laid down in the above said judgment, the principle of natural justice would have no application in the present case and the sole argument raised on behalf of the petitioner to challenge the said notice is meritless and deserves to be rejected and is accordingly rejected.

8. Keeping in view the abovesaid facts and circumstances and

also the law laid down in the above said judgment, there is no merit in the present writ petition and the present writ petition deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

February 22, 2024
Davinder Kumar

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