

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(226)

RSA-3570-2016

Date of decision:- 15.01.2024

Amar Singh

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rakesh Nagpal, Advocate
counsel for the appellant.

Mr. Sharad Aggarwal, DAG, Haryana.

SUVIR SEHGAL, J. (ORAL)

1. Amar Singh, plaintiff-appellant, is in second appeal before this Court challenging the concurrent finding of fact recorded by both the Courts below.
2. Factual matrix, leading to filing of the appeal, is that the plaintiff-appellant, who was working as Conductor with the Haryana Roadways, filed a suit for declaration and mandatory injunction challenging order dated 05.05.2014, whereby he has been retired from service on attaining the age of 55 years by defendant-respondent No.3. Averring that he has been retired on the basis of adverse remarks in the ACRs for the year 2011-12 and 2012-13, which were not communicated to him, plaintiff-appellant has sought the setting aside of the order. It has been pleaded that no opportunity of hearing was afforded to him and he had filed representations against the adverse remarks for both the years and by letter dated 12.09.2014, defendant No.3 accepted one of the representations and the adverse remark

was upgraded. Upon being served, defendant-respondents contested the suit by filing the written statement, wherein reference was made to government instructions dated 19.11.1991, Ex.-D-1. It has been further submitted that the plaintiff-appellant has a blemished service record and has been punished several times for embezzlement of government funds. The details of the punishment have been mentioned in the written statement. He was served with a Show Cause Notice dated 22.01.2014, Ex.-D-10, to which he submitted a reply, Ex.D-11, which was found to be unsatisfactory. After personally hearing him and following the due procedure, he was retired from service. It was admitted that the ACR for the year 2011-12 was upgraded, however representation for the year 2012-13 is still pending.

3. On the basis of the pleadings of the parties, issues were framed and after they led evidence, the learned Trial Court by judgment and decree dated 29.05.2015, dismissed the suit. Plaintiff-appellant filed an appeal, which has been rejected by the Appellate Court on 05.02.2016.

4. Counsel for the appellant has contended that the appellant has been compulsorily retired on the basis of a single adverse entry and impugned judgments cannot be sustained. He submits that as the adverse entry pertaining to the year 2012-13 was never communicated, it cannot be taken into consideration. Reliance has been placed by him upon a judgment passed by this Court in ***Angoori Lal Versus State of Haryana and another, 2015 (1) RSJ 4.***

5. Learned State counsel on the other hand has made a reference to the government instructions, Ex.-D-1, to submit that as the appellant has a blemished record, the order compulsorily retiring him from service, has been passed after following the due procedure.

6. I have considered the submissions made by counsel for the parties and examined the record with their able assistance.

7. Scrutiny of the evidence produced by the defendants shows that by order dated 03.11.2004, Ex.-D-2, order dated 20.06.2005, Ex.-D-3, order dated 08.09.2006, Ex.-D-4, order dated 13.06.2006, Ex.-D-5, order dated 08.09.2011, Ex.-D-6 and order dated 27.12.2012, Ex.-D-8, punishments were imposed upon the plaintiff-appellant for embezzlement of bus fare. Some of these orders have been passed after the plaintiff-appellant admitted his guilt. By order dated 09.07.2013, Ex.D-7, punishment of stoppage of two annual increments with cumulative effect was passed against him. It is, therefore, apparent that during the ten years prior to the passing of the impugned order of compulsorily retirement, punitive action has been taken against the appellant on several occasions. In the ACRs of the years 2011-12 and 2012-13, his integrity has been recorded as doubtful and over all performance has been assessed as below average. Even if the ACR of one of the two years has been upgraded, the second ACR still stands against him. Representation submitted by him against the ACR for the subsequent year, i.e., 2012-13 has been filed and duly communicated to him during the pendency of litigation. The latter entry in the ACRs is adverse. Plaintiff-appellant has been served with a show cause notice, 22.01.2014, Ex.D-10 and afforded with an opportunity of showing cause as well as hearing before the order of compulsory retirement was passed, although there is no requirement to do so.

8. Case law on the subject may be noticed. In ***Allahabad Bank Officers Association and another Versus Allahabad Bank and others, (1996) 4 SCC 504***, Hon'ble Supreme Court discussed the objective of compulsory retirement of a government servant and observed as under:-

“5. The power to compulsorily retire a Government servant is one of the facets of doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. Generally speaking, Service Rules provide for compulsory retirement of a Government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the Government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of the dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held - and there is no duty to hold an enquiry - is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in Shyamlal vs.State of U.P. AIR 1954 SC 369 and State of Bombay Versus Saubhagchand M. Doshi AIR 1957 SC 892. Thus, by its very nature the power to compulsorily

retire a Government servant is distinct and separate from the power to punish him by way of removal, dismissal etc. for misconduct. A Government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences.....”

9. In a subsequent judgment in ***State of Orissa and others Versus Ram Chandra Dass, (1996) 5 SCC 331***, it was held that:-

“3.....It is needless to reiterate that the settled legal position is that the Government is empowered and would be entitled to compulsorily retire a Government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking such decision to retire a Government employee compulsorily from service, have to consider the entire record of the Government servant including the latest reports.”

10. When analysed on the basis of the above reproduced observations of the Apex Court, it is evident that the plaintiff-appellant has a dubious service record. Not only numerous punishments have been imposed upon him for embezzling government funds, but his integrity has also been recorded to be doubtful. Merely because he has more than 70% good

reports, does not vest any right in him to continue in service. In the background of the damning material against the plaintiff-appellant, the government has formed an objective opinion that his retention in service is not justified. This Court is, therefore, does not find any illegality or infirmity in the findings recorded by both the Courts below.

11. In so far as the judgment in *Angoori Lal's* case (supra), cited by the counsel for the appellant, his integrity was never under suspicion. Therefore, the appellant cannot draw any strength of this judgment.

12. In view of the above discussion, this Court is of the view that the judgments and decrees passed by both the Courts below do not warrant any interference.

13. Finding no merit in the appeal, it is hereby dismissed.

15.01.2024
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No