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**(2014) 02 P&H CK 0053**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 17033 of 1995**

Angoori Lal

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

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**Date of Decision : 13-02-2014**

**Acts Referred:**

**Citation : (2014) 4 SCT 156**

**Hon'ble Judges : Tejinder Singh Dhindsa, J**

**Bench : Single Bench**

**Advocate : J.V. Yadav, for the Appellant; Baldev Singh, Additional Advocate General, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Tejinder Singh Dhindsa, J.—The petitioner who was serving as Assistant Food and Supplies Officer under the Food and Supplies Department, State of Haryana, instituted the instant writ petition in the year 1995 impugning the order dated 14.8.1995, Annexure P8, whereby he was pre-maturely retired from service upon attaining the age of 55 years. Further challenge laid in the instant writ petition is to the order dated 3.7.1995 at Annexure P7 whereby a penalty of stoppage of four annual increments with cumulative effect and recovery to the extent of Rs. 1,08,928.56P has been imposed upon the petitioner. At the very outset, Mr. J.V. Yadav, learned counsel appearing for the petitioner would make a statement that he is giving up the challenge to the order dated 3.7.1995 at Annexure P7 and, as such, is confining the scope of the instant writ petition only as regards questioning the action of the respondent-State in having retired the petitioner pre-maturely upon attaining the age of 55 years. Even in this regard, learned counsel would submit that since the petitioner has already crossed the normal age of superannuation, in the eventuality of this writ petition being allowed, the petitioner shall not claim any arrears of salary for the period in question.

2. Brief facts that would require notice are that the petitioner joined service on the post of Sub Inspector in March 1960 under the Department of Food and

Supplies in the erstwhile State of Punjab. The petitioner was promoted as Inspector Food and Supplies in the year 1963 and upon re-organization of the State of Punjab, his services were allocated to the state of Haryana. The petitioner was promoted as Assistant Food and Supply Officer in August, 1973.

3. Vide memo dated 23.12.1986, respondent No. 2 issued a charge sheet to the petitioner under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 raising the following two articles of charge:

i) That Shri Angoori Lal neither inspected the godown and stocks at Jakhal in accordance with the provisions contained in P.R. Manual para-1, para-II nor bothered to intimate the condition of stocks to the District Food and Supplies controller when the stocks were infested with khapra. He has been found negligent in the discharge of his duties.

ii) That Shri Angoori Lal did not inspect the P.R. Centre every month in accordance with the instructions contained in letter No. AFSO-F-85/247777 dated 1.8.85. He neither recorded certificate on P.R. 38 on emptied of godown. He failed to discharge his duties as supervisory officer and caused heavy loss to Government.

4. The reply submitted by the petitioner having been found to be unsatisfactory, an Enquiry Officer was duly appointed. The Enquiry Officer upon due appreciation of evidence adduced on record submitted enquiry report dated 31.7.1990 exonerating the petitioner of both the charges. However, respondent No. 2 issued show cause notice dated 23.1.1992 upon disagreeing with the findings furnished by the Enquiry Officer and provisionally formed an opinion to impose the penalty of reduction in rank from the post of Assistant Food and Supply Officer to the post of Inspector, Food and Supplies for a period of five years apart from effecting recovery of Rs. 2,59,638.08P. In the light of a subsequent memo dated 2/8.7.1992, the figure as regards recovery was modified to read as Rs. 2,72,321.41P. The petitioner duly responded to the show cause notice. However, after a period of more than two years, order dated 29.11.1994, Annexure P6, was issued reverting the petitioner to the post of Inspector, Food and Supplies for a period of five years and directing a recovery of Rs. 2,72,321.41P. The petitioner availed of his remedy by filing a statutory appeal which was partly accepted in the light of passing an order dated 3.7.1995 and the earlier order of penalty passed by the Director, Food and Supplies was modified. The order of reversion to the post of Inspector, Food and Supplies was set aside and punishment to the extent of stoppage of four annual increments with cumulative effect and recovery to the tune of 20% of the total loss of Rs. 5,44,642.82P which translated to Rs. 1,08,928.56P was imposed.

5. A few weeks thereafter, the impugned order dated 14.8.1995 prematurely retiring the petitioner from service was served upon him.

6. Learned counsel for the petitioner has vehemently argued that the order of premature retirement is arbitrary and has been passed in a malafide manner

with a view to punish the petitioner for having preferred the statutory appeal against the order dated 29.11.1994 passed by respondent No. 2. It has been argued that the order, as such, is punitive in nature. That apart, learned counsel would contend that for the last ten years, the petitioner has more than 70% "Good" reports and there was no basis for the competent authority to form an opinion that the petitioner has outlived his utility and can be considered as deadwood.

7. Per contra, learned State counsel would justify the action of prematurely retiring the petitioner upon attaining the age of 55 years by referring to the joint written statement filed on behalf of respondents No. 1 and 2 by stating that if integrity of an employee has been suspected during the last ten years, then such matter was required to be placed before a duly constituted Officers Committee for decision as to whether such employee is to be retained in service beyond the age of 55 years or not.

8. Learned counsel would refer to the averments made in para 3 of the preliminary objections to contend that a punishment of stoppage of three increments with cumulative effect has been imposed upon the petitioner in pursuance to a charge sheet dated 31.1.1986 having been issued. That apart, learned State counsel would submit that another penalty of stoppage of four increments with cumulative effect besides recovery of Rs. 1,08,928.56P had been imposed upon the petitioner in the year 1995 itself. As per learned State counsel, the charges levelled against the petitioner which had culminated in the imposition of the afore-noticed penalties reflected adversely on his integrity, and under Rule 3.26(d) of the Punjab Civil Services Rules, Volume-I as applicable to the State of Haryana, the State Government had an absolute right to retire an Officer upon completion of the age of 55 years in Class I and Class II service or after completing 35 years of service in public interest. Reliance has further been placed on a Full Bench decision of this Court titled as Daya Nand Vs. State of Haryana and Another,

9. Learned counsel for the parties have been heard at length.

10. The principles governing pre-mature retirement are no longer res-integra. In Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , the Hon"ble Supreme Court of India had culled out the following principles:

32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of mis-behaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of

compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary-in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter-of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it un-communicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above.

11. During the course of hearing, in the instant writ petition, an order was passed on 28.11.2013 to produce the service record of the petitioner so as to ascertain as to what was the material before the Officers Committee upon the recommendation of which the impugned order of premature retirement had been passed.

12. Mr. Baldev Singh, learned Additional Advocate General, Haryana has produced the summary of ACRs of the petitioner from the year 1966-67 onwards. A perusal of the record would reveal that in the last ten years prior to passing of the impugned order, the petitioner has earned only one "Average" report for the period 1987-88, whereas all the other reports are either "Good" or "Very Good". Even if his entire service record was to be taken into account i.e. from the year 1966-67 onwards, the petitioner has not been graded as adverse and rather has earned one outstanding report i.e. in the year 1968-69, 13 "Very Good" reports, 10 "Good" reports and only two "Average" reports.

13. Even though the State Government would have an absolute right to retire the petitioner in public interest, but such opinion by the competent authority would be subjective and would have to be formed on data i.e. on appraisal of the entire service record, especially service record of the later years. This Court would have no hesitation in holding that there was no material before the competent Authority on the basis of which an opinion could have been formed to weed out the petitioner at the age of 55 years. Even the two penalties that have been imposed upon the petitioner were in relation to charges of dereliction in duties and having not discharged the role of a supervisory officer. Such charges would

not adversely reflect on his integrity. A Division Bench of this Court in Faqir Chand Aggarwal, Executive Engineer v. State of Haryana and others (Civil Writ Petition No. 1984 of 1987) decided on 21.1.1988 has taken a view that an employee who lacks in integrity cannot be evaluated as an average Officer and in such case the Officer has to be graded as "Below Average". Admittedly, the petitioner in the last ten years has been granted only one "Average" report. Such solitary "Average" report in the last ten years cannot justify the forming an opinion for the petitioner to have outlived his utility as chopped off as deadwood. The impugned order of premature retirement, as such, cannot sustain.

14. The judgment relied upon by State counsel in Daya Nand's case (supra) would be distinguishable on facts. In the facts of that case in the ten years preceding the order of premature retirement, Daya Nand had earned only one "Good" report and all the other reports were "Average". To the contrary, the petitioner herein has had a consistently good service record.

15. There is yet another aspect of the matter. The Director, Food and Supply, Haryana passed an order dated 29.11.1994 reverting the petitioner to the post of Inspector, Food and Supplies and further imposing a recovery of a sum of Rs. 2.72 approximately. The statutory appeal preferred by the petitioner against such order of punishment was accepted by the Financial Commissioner and Secretary to Government Haryana, Food and Supplies Department on 3.7.1995 thereby setting aside the order of reversion and converting the same to stoppage of four increments with cumulative effect. Even the quantum of recovery was reduced. A few days thereafter, the Director, Food and Supplies, Haryana had passed the impugned order dated 14.8.1995 at Annexure P8. The chain and sequence of events are clearly suggestive of the vindictive attitude adopted by respondent No. 2. On such basis also, the impugned order, dated 14.8.1995, of premature retirement is held to be punitive.

16. For the reasons recorded above, the writ petition is allowed. The order of premature retirement dated 14.8.1995 is set aside. The petitioner is held entitled to all the consequential benefits by deeming him to be continuing in service till he attained the normal age of superannuation i.e. of 58 years. However, the arrears of salary for such period are being denied in the light of the statement having been made by the learned counsel for the petitioner himself. The petition is allowed in the aforesaid terms.