
(2001) 03 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4827 of 2000

Brig Satya Dev (Retd.)	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 20-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 310, 311
Haryana Civil Services (Punishment and Appeal) Rules, 1987 — Rule 4, 7

Citation : (2001) 2 ILR (P&H) 415

Hon'ble Judges : V.S. Aggarwal, J; A.S. Gill, J

Bench : Division Bench

Advocate : Mr. T.S. Dhindsa, for the Appellant; Mr. Surya Kant, General, Mr. Sanjay Vashisth, D.A.G. and Mr. Anil Malhotra, for the Respondent

Judgement

Amar Bir Singh Gill, J.—The petitioner is a retired Brigadier from Indian Army. In response to advertisement Annexure P-I, dated 6.6.1997, published by the State of Haryana, the petitioner applied for the post of Secretary, Rajya Sainik Board and after due selection, he was given appointment on 4.9.1997. The appointment letter, Annexure P3, contained the following terms and conditions :-

Sub: Appointment to the post of Secretary, Rajys Sainik Board, Haryana on temporary basis.

1. The Governor of Haryana is pleased to offer you a temporary appointment as Secretary, Rajya Sainik Board, Haryana, on a purely provisional basis in the pay scale of Rs. 3700-125-4700-150-5000 plus usual allowances as may be admissible from time to time, till the date of superannuation i.e. 58 years.⁵
2. In the event of abolition of the post of Secretary, Rajya Sainik Board, you services will be terminated without any notice.
3. If, at any stage, you desire to resign from your post, you will be required to give one month's clear notice or forfeit, in lieu thereof, your salary including allowances, for one month or for the period by which the notice falls short of one

month. Such a notice will be given to you by the Government also in case it is proposed to terminate your services for reasons other than the mentioned in para 2 above. In this case, the Government will also be liable to pay your salary, including allowances, for one month, or for the period by which the notice falls short of one month.

4. You will also be governed by the provisions of the Public Civil Services Rules, Conduct Rules and Punishment and Appeal Rules as applicable to the employees of Haryana Secretariat Service Cadre and general instructions issued by the Haryana Government from time to time.

5. No T.A./p.A. will be granted to you for joining this appointment.

6. If you are willing to accept this offer on the conditions mentioned above, you should report for duty to the Rajya Sainik Board, Haryana, Sainik Bhawan, Sector 12, Panchkula immediately but not later than 15 days from the date of issue of this letter. If you fail to join within the stipulated period, this offer of appointment will be treated as cancelled."

2. The petitioner served on this post till the petitioner was issued the following impugned order dated 23.4.2000, copy Annexure P-5, which reads as under :-

ORDER OF THE GOVERNOR OF HARYANA.

The Governor of Haryana is pleased to terminate the services of Brig. Satya Dev (Retd) Secretary, Rajya Sainik Board, Haryana, being no longer required in accordance with the terms and conditions of his appointment with immediate effect after paying him one month's salary in lieu of one month's notice;

2. The Governor of Haryana is also pleased to sanction the withdrawal and disbursement of his salary from 1.4.2000 to 3.4.2000.

Sd/r Ram S. Verma Chief Secretary to Govt. Haryana.

3. The petitioner assails the order (Annexure P-5) of his termination from service on various grounds inter-alia that the order was passed at his back without affording any opportunity of hearing what-so-ever, nor any show cause notice as contemplated for the purpose of terminating the service of the petitioner was never served upon him and his service has been terminated on account of political vendetta and smacks of vice of colourable exercise of power. He seeks the issuance of writ in the nature of certiorary for quashing the impugned termination order Annexure P-5.

4. The case of the petitioner is that he being a reputed officer of the Indian Army, after retirement was appointed to the post by a high powered Selection Committee consisting of Chief Secretary of the State, Principal Secretary to the Chief Minister, another officer of the State of the rank of Secretary and a Major General of Head-quarter, Western Command, a representative of Ministry of Defence and was selected out of 30 to 35 candidates for the post solely on his own merit. During his service he accomplished various achievements concerning

the welfare/re-settlement of the Ex-servicemen and he was never communicated any adverse remarks. No inquiry what-so-ever was ever initiated against him by the competent authority rather the State of Haryana through its department issued press note on 11/6/1999 which was published in the newspaper highlighting the steps taken by the petitioner for the welfare of the retired army personnel and their dependants. The petitioner was made Head of the Department. The Govt. of India created department of Director General, Re-settlement (D.G.R.) in the Ministry of Defence for the welfare of Ex-servicemen and their dependants which formulates policy/scheme for adoption by the State. It also lays down guide-lines for the functioning of Sainik Boards at State and District levels. Fifty percent funds were made available by the Central Govt. through D.G.R. and it has specifically been conveyed to the State Govt. that the post in the department especially Secretary, Rajya Sainik Board is meant for Ex-servicemen not less than rank of Brigadier from the Armed Forces and Navy. Even otherwise under Rule 4 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987, which were made applicable to the service of the petitioner lays down the procedure to be adopted for imposition of penalty and in case of imposition of major penalty no such action is permissible under the rules unless reasonable opportunity of show cause, against the action proposed, is given to the person concerned. Thus the order of termination from service issued to the petitioner is against the rules, principles of natural justice besides vindictive in nature. The petitioner claims that he is close relation of Shri B.S. Hooda, President of the Congress Party in the State, who has defeated Chaudhary Devi Lal in the election to the Parliament and as such the impugned order smacks of vindictiveness at the hands of respondent No. 2, the present Chief Minister, and the action has been taken at his behest.

5. In the written statement filed by respondent No. 1, the State, there is no factual denial in respect of appointment of the petitioner of the post and his termination from service. However, it is sought to be justified on the basis of letter dated 16.4.1998 from the Govt. of India, Ministry of Defence, copy Annexure R-1, which required that the appointment to the post of Secretary, Rajya Sabha Sainik Board, be made on tenure basis initially for two years subject to extension likewise upto 6 years or 58 years of age whichever is earlier. The appointment of the petitioner was not on tenure basis and rather being continuous it was contrary to the guidelines issued by the Govt. of India and thus was terminated.

6. On merits as well it has been reiterated that the appointment of the petitioner was not in consonance with the guide-lines issued by the Ministry of Defence i.e. by the D.G.R. and as such the petitioner could not continue on the post. The achievements claimed by the petitioner on the post are part of normal duties attached to the post for which the petitioner cannot claim any credit. It is admitted that the petitioner was granted the status of Head of the Department. It is denied that the action against the petitioner is the out-come of any mala fide or vindictive intention and that the order has been passed by the

competent authority after due care and diligence. The service of the petitioner has been terminated strictly in accordance with condition No. 3 of the appointment letter. Furthermore the service of the petitioner being on continuous basis was violative of the guide-lines issued by the department. It is claimed that since the termination of service of the petitioner was strictly in accordance with his, appointment letter and not as a punitive measure, no show cause notice was required to be issued to the petitioner before terminating his service.

7. In a separate written statement filed by respondent No. 3, the D.G.R., Ministry of Defence, it is submitted that the Rajya and Zila Sainik Boards are governed by the instructions/policies issued from time to time by the Govt. of India, Ministry of Defence, and precisely the policy letters Annexures R3/1 dated 9.5.1994 in respect of appointment of officers, letter Annexures R3/2 dated 16.4.1998 and letter dated 6.9.1999 Annexure R3/3. In the case of appointment of petitioner, guide-lines as contained in Annexure R3/1 issued on 9.5.1994, were applicable at that point of time which stipulate that it is desirable that the ex-serviceman appointed shall be given tenure service for a minimum period of three years at the time of his appointment. That the Chief Minister of Haryana vide his demi official letter dated September 25, 1998, Annexure R3/5, had assured the Ministry of Defence, Govt. of India that the appointment shall be only of Ex-servicemen to the Rajya Sainik Board and they shall serve till they attain the age of 58 years in case they discharged their duties with due diligence.

8. On merits, it has been submitted by respondent No. 3 that as per their record there is no complaint against the petitioner which point out anything derogatory against him. Rather, the work and conduct of the petitioner has been appreciated. It has been observed in his report by Brig. Spndhi from Kendriya Sainik Board along with the D.G.R. that the petitioner was a dedicated and conscientious officer. The respondents further claimed that respondent No. 2 did not inform about the termination of petitioner's service and action of respondent No. 2, without any reference to the Kendriya Sainik Board is in utter violation of the rules and Articles 14 and 16 of the Constitution of India.

9. Amended written statement was filed by respondent No. 1 as well wherein plea was taken that the petitioner was fully aware of condition No. 3 contained in the letter of appointment and the same was accepted. Thus he is estopped from challenging his termination order. In a separate written statement filed by respondent No. 2, the Chief Minister, the allegations of political vendetta levelled by the petitioner have been totally denied as incorrect. It is submitted that whenever the services of the class 1 employee are terminated, the competent authority which passes the order takes concurrence of the Chief Minister. The present case is not different one and he had given his consent for terminating the service of the petitioner and the service of the petitioner was terminated in accordance with law.

10. Learned counsel for the parties have been heard.

11. A perusal of the appointment letter, Annexure P-3, indicates that the appointment of the petitioner was on temporary basis on a permanent post. Admittedly, the appointment of the petitioner was on the recommendations of duly constituted high powered Selection Committee. The petitioner thus acquired a right to continue in service till the date of his superannuation or till such time, the competent authority decide to terminate his service on the basis of his performance being not satisfactory or mis-conduct in service.

12. Admittedly, the work and conduct of the petitioner was in no way adversely commented upon at any time rather the petitioner was made Head of the Department and his achievements in respect of rehabilitation/re-settlement of the Ex-servicemen were duly appreciated by the State Govt. The appointment letter Annexure P-3 envisages the termination of service of the petitioner firstly on the abolition of the post of Secretary, Rajya Sainik Board; by the respondents; in case it was proposed to terminate his service for the reasons other than the abolition of the post. Otherwise, the petitioner was to retire on superannuation i.e. at the age of 58 years. The appointment letter also made it clear that the service of the petitioner was governed by Punjab Civil Service Rules, Conduct Rules, Punishment and Appeal Rules, as applicable to the State of Haryana. The appointment of the petitioner falls under the protective umbrella of Article 311 of the Constitution of India even though his appointment letter referred to his appointment as temporary and provisional. If the temporary appointment is made for a definite period, the termination of service before that period will prima facie amount to punishment so as to attract the application of Article 311 of the Constitution. Article 310, in terms, makes no distinction between permanent and temporary members of the services or between persons, holding permanent or temporary posts. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , it was observed as under :-

"Just as Art. 310, in terms, makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts in the matter of their tenure being dependent upon the pleasure of the President or the Governor so does Art. 311, makes no distinction between the two classes, both of which are, therefore, within its protections. To limit the protection of Article 311 only to persons who are permanent members of the services or who hold permanent civil posts will be to add qualifying words to the Article which would be contrary to sound principles of interpretation of a Constitution or a statute".

13. Admittedly the petitioner had right to hold the post till it was not abolished or for the reasons other than the abolition of the post. The impugned order of termination does not indicate if the post was abolished or the other reasons with the respondents to terminate his service. In the impugned order, it is mentioned that the service of the petitioner is no longer required in accordance with the terms and conditions contained in the letter of appointment. For the purpose of service of the petitioner being no longer required there has to be a reason which

can be observed by the expression "other than the abolition of the post."

14. The petitioner admittedly was neither served with any show cause notice nor opportunity of hearing was given to him. The order of termination being punitive in nature is against the Punishment and Appeal Rules besides being against the rules of natural justice. Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987, envisages and requires that before the imposition of certain penalties including the termination, reasonable opportunity to show cause to the delinquent Official against the action proposed to be taken, should be given to him. It is apparent that in the present case no such procedure has been followed. It has mainly been contended on behalf of the respondents that the service of the petitioner has been terminated in terms of the appointment letter. The terms of the appointment letter are crystal clear. In the order of termination, it has been mentioned that the services of the petitioner is no longer required, which is sought to be covered under clause (3) of the appointment letter, Annexure P-3, which empowers the respondents to terminate the service of the petitioner for the reasons other than the reasons mentioned in para 2 i.e. the abolition of the post. The reason "other than the abolition of post" could only relate to the conduct and performance of the petitioner as Secretary of the Rajya Sainik Board, Haryana and on the basis of such conduct the service of the petitioner can be terminated as no longer required. However, it is not the case of the respondents that the termination emanates from any mis-conduct of the petitioner while in service whereas the plea is that as per the guide- lines issued by the Director General (Re-settlement), Ministry of Defence, the petitioner was required to have been appointed on tenure basis and not on continue basis and as such the service of the petitioner has been terminated. In this respect the written statement filed by respondent No. 3 i.e. the Director General Resettlement, Ministry of Defence, contradicts the case of the respondent-State. It is mentioned that when the petitioner was given appointment, the guide-lines in respect of appointment of officers in the Department of Sainik Welfare, dated 9.5.1994 copy of which is Annexure P3/1, were in operation. Clause 4 of Annexure R3/1, provides as under :-

"For the purpose of continuity and efficient functioning, it is desirable that the ex-service officers appointed to the post of Directors, Sainik Welfare, be given a tenure of service of minimum three . years at the time of appointment. Similarly in the case of ZSWO, it is desirable that the minimum appointment is 3 to 5 years".

15. The appointment letter Annexure P-3 was issued to the petitioner on 4.9.1997. Even in Annexure R3/1, the appointment to be made on tenure basis is mentioned as desirable only. It is to be noted that the guide-lines and instructions stand on different footings. At the time of making appointments the guidelines are kept in view whereas the instructions are to be followed. None of the guide-lines relied upon by the respondents were mandatory in nature because the respondent No. 3 was not the Controlling Authority of the State or

the District Level Sainik Boards. The guide-lines Annexure R3/2 are dated 16.4.1998. Clause (c) of para 3 provides that "All the employees will be employed on tenure basis initially for two years and extendable by two years at a time subject to satisfactory performance but in no case extendable beyond a total of ten years or 55 years of age whichever is earlier for Group C & D posts and six years or 58 years of age whichever is earlier for Group A & B posts". The post of Secretary Rajya Sainik Board admittedly is Group A post.

16. In response to D.O. letter dated 10.7.1998 from the Defence Minister in which he referred to the problems regarding Sainik Boards arising out of non-appointments of ex-servicemen officers of suitable rank, the then Chief Minister, Haryana, issued Demi Official letter dated 25.9.1998, copy of which is Annexure R3/5, referring to the manner of making appointments in the State Sainik Boards. The relevant part of that D.O. Letter reads as under :-

"We have not adopted the policy of giving a tenure appointment to Secretaries of RSB and ZSBs. These officers once appointed continue till the age of 58 years in case they discharge their duties satisfactorily and efficiently. We find that there is no lack of effectiveness because of this. In fact, we feel whole heartedly as they would be haunted by insecurity and would be for ever looking for other avenues of employment. I would also like to inform you that we invariably associate the Director General of Resettlement in the appointment of Secretaries of RSB and ZSBs and maintain a close liaison with him in all matters of policy and its implementation".

17. Thus the State of Haryana took a conscious policy decision, in respect of the terms of appointment of the Secretary, Rajya Sainik Board and thereby justified the appointment of the petitioner on continuous basis. The respondent-State has, no doubt, in the written statement filed, dis-associated itself with the letter of the then Chief Minister although unfortunately because as a successor Govt. it is obligatory for it to endorse/support the stand taken by its predecessor. It has been mentioned that the Chief Minister was not aware of the guide-lines. It is not expected that the concerned staff of the Chief Minister did not brief him on the subject before he wrote the D.O. letter to the Defence Minister of the Country. The plea is self defeating as it casts reflection on the State bureaucracy. In the written statement solitary ground taken in support of terminating the service of the petitioner is that the appointment was required to be on tenure basis rather than on continuous basis, is a circumstance against the policy decision of the State Govt. reflected in the letter of the Chief Minister dated 25.9.1998, copy of which is Annexure R3/5. What suddenly prompted the State Govt. to terminate the service of the petitioner, is not justifiable in the circumstances of the case. It is well settled principle of service jurisprudence that the service conditions cannot be changed to the disadvantage of an employee subsequent to his employment and as such the action of the respondents in terminating the service of the petitioner solely on the ground that the appointment was not in accordance with the guide-lines, appears to be a made up excuse. If otherwise,

there was nothing against the petitioner and his appointment letter in any manner did not reconcile with the guidelines, the same could have been modified to bring the same in line with the guide-lines without affecting his tenure of appointment.

18. In the written statement filed by respondent No. 3, it is claimed that no information or any complaint against the petitioner was received which was adverse or derogatory against the petitioner. Rather, on 30.4.1998 Brig. Ashok, Ex-Secretary of Kendriya Sainik Board in his report in respect of his visit along with the Director General, Major General Ugarsen Yadav has commented upon the work of the petitioner quoting that "during our visit to the three districts i.e. Gurgaon, Rewari and Faridabad on 30.4.1998 I observed that the Secretary Rajya Sainik Board, Brig. Satya Dev (Retd), is a dedicated and a conscientious officer who is sincere and devoted to the welfare and cause of the Ex-servicemen. None of the ESM/offi-cials we met/addressed, had any complaint against the Secretary. In fact they were only complementing Brig. Satya Dev for the number of important and worthwhile good changes he had brought in the overall interest of the ESM/dependents". It is further mentioned that respondent No. 3 and the Kendriya Sainik Board were and are still fully satisfied with the work of the petitioner who is held in very high esteem by the officials of respondent No. 3 and Kendriya Sainik Board. In para No. 12 of the written statement, it is mentioned that the impugned order of termination was passed without even reference to respondent No. 3 or the Kendriya Sainik Board leaving alone being consulted, does appear to be in utter violation of the rules of natural justice and Articles Hand 16 of the Constitution.

19. In view of the pleas taken by respondent No. 3, the Director General Resettlement, Ministry of Defence, there was no occasion to utilize the guide-lines in respect of tenure appointment to terminate the serv- ice of the petitioner by the impugned order Annexure P-5. It is not the case of the respondent-State that there was any shortcoming in the functioning of the petitioner on the post of Secretary, Rajya Sainik Board.

20. The impugned order as already indicated above, has been passed without issuiug any shaw cause notice to the petitioner. The principal of "audi alterant partem" requires that no one should be condemned unheard and it is apart of rule of natural justice. In the present case the order of termination was passed with-out issuing any show cause notice which otherwise is required to have been issued under the Conduct Rules already referred to above. Since the service of the petitioner has been terminated and the action of the respondents being punitive in nature, the respondents were required to follow the procedure as envisaged under Rule 7 of the Punishment & Appeal Rules. The action of the respondents in terminating the service of the petitioner contravenes Articles 14 and 16 of the Constitution as well. It is well settled that every State action must be free from arbitrariness. The same must be informed by reasons and must be in public interest. The ambit and reach of Articles 14 and 16 are not limited to

cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State. See *E.P. Royappa Vs. State of Tamil Nadu and Another*,

21. The post of Secretary, Rajya Sainik Board continues to exist. The termination order Annexure P-5 is also against public interest. As per the guide-lines, the post of Secretary is to be manned by an officer of the rank of Brigadier duly selected by the selection committee. Admittedly, after the termination of service of the petitioner, an officer of IAS rank is working on the post as a stop-gap arrangement. The requirement of an officer of the rank of Brigadier for the post of Secretary Rajya Sainik Board is on account of his expertise in dealing with the problems of ex-servicemen and resettlement/rehabilitation of the ex-servicemen or their dependents for which a bureaucrat may not be suitable at all to carry on the guide-lines issued by the authorities of the Defence Ministry.

22. In a similar case/controversy where the services of a temporary employee were dispensed with by the Municipal Committee, the question whether the Municipal Committee had a absolute right to dispense with the services of the employee without any notice or reason and whether such employee can complain of violation of Articles 14 and 16, was considered by this Court in *Rohtas Singh v. State of Haryana and others* 1996 (2) RSJ 578 and it was held that termination of service of the petitioner which has been brought about without any reason or rhyme and which is ex facie contrary to the public interest, is liable to be declared as arbitrary and violative of Articles 14 and 16 of the Constitution.

23. The action of the respondents in the circumstances is not tenable under the law as the service of the petitioner has been terminated without following the Rules and the order passed in arbitrary and needs to be quashed.

24. In the light of what has been observed above, this writ petition is allowed. The termination order Annexure P-5 is quashed. The petitioner shall be deemed to be in service as if no such order was passed.

No order as to costs.

25. Writ petition allowed.