
(1998) 12 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 273 of 1988

Sh. Kartar Singh	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 21-12-1998

Acts Referred:

Constitution of India, 1950 — Article 310, 311
Punjab Reorganisation Act, 1966 — Section 82

Citation : (1999) 121 PLR 574

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mr. B.N. Sharma, for the Appellant; Mr. Jaswant Singh, D.A.G., for the Respondent

Judgement

G.S. Singhvi, J.—In this appeal filed under Clause X of the Letters Patent, the appellant-petitioner has prayed for setting aside the order of the learned Single Judge vide which the writ petition filed by him for quashing the notice of retirement has been dismissed.

2. A perusal of the averments made in the writ petition and the appeal and the record produced by the learned Deputy Advocate General shows that the appellant, who joined service as peon on 28.6.1949 in the Industries Department of the erstwhile State of Punjab, received the following promotions/confirmation in his service career extending over 36 years :-

- (i) Promoted as Restorer (Class - III post) w.e.f. 1.11.1951.
- (ii) Confirmed as Restorer w.e.f. 1.3.1954
- (iii) Promoted as Junior Clerk during the years 1953, 1954 and 1955 against the short term vacancies.
- (iv) Promoted as Junior Clerk on regular basis w.e.f. 5.7.1955.
- (v) Allowed to cross efficiency bar in the pay scale of Clerk w.e.f. 7.2.1961.

(vi) Confirmed as Clerk w.e.f. 5.8.1966.

(vii) Allowed to cross efficiency Bar in the revised pay scale of Clerk w.e.f. 9.7.1969.

(viii) Promoted as Assistant on 27.5.1966.

(ix) Confirmed as Assistant w.e.f. 1.2.1975.

(x) Given retrospective seniority in the cadre of Assistant w.e.f. 18.5.1962.

3. Other features of the appellant's service record :-

(a) He was not allowed to cross efficiency bar with effect from 1.4.1984 on the ground that he had earned only 4 good reports and 6 average/below average reports in the last 10 years and as such, he did not have atleast 50% good reports which could entitle him to cross efficiency bar.

(b) The appellant was retired from service pursuant to the notice dated 23.2.1985 issued by the Director of Industries, Haryana under Rule 3.26(d) of the Punjab Civil Service Rules, Volume-I, Part-I read with Rule 5.32(A)(C) of the Punjab Civil Service Rules, Volume-II.

4. In his annual confidential reports of the 10 years preceding the date of retirement, the appellant earned the following overall grading :-

Integrity/Honesty	Remarks	Year	Overall assessment
-----	-----	1975-76	Below Average
Not doubted	Adverse remarks conveyed vide memo No. Admn. /CA/AR/1975-76/ 11/904B dated 12.7.1976.	1976-77	Average -do- Adverse remarks conveyed vide memo No. Admn/CA/AR/ 1976-77/26840-A dated 1.7.1977
1977-78	Average -do-	1978-79	Average -do-
1979-80	Average -do-	1980-81	Average -do-
1981-82	Average -do-	1982-83	Good -do-
1983-84	Good -do-	1984-85	Good -do-
Very	Good		
-----	-----		

5. The appellant challenged his retirement on the following grounds :-

(a) The instructions issued by the Government of Haryana regulating the exercise of power by the competent authority under Rule 3.26(d) of the Punjab Civil Service Rules, Volume-I, Part-I and Rule 5.32(A)(C) of the Punjab Civil Service Rules, Volume-II are ultra vires to Section 82 of the Punjab Re-organisation Act, 1966 because prior approval of the Central Government had not been obtained before the issuance of those instructions and the order of retirement passed on the basis of such instructions is liable to be declared illegal.

(b) Uncommunicated average reports, which were treated as adverse entries in terms of the instructions issued by the Government of Haryana could not be taken taken into consideration for forming an opinion that the appellant was not

fit to be retained in service after the age of 55 years.

(c) The decision of the respondents is ultra vires to the instructions issued by the Government of Haryana because the notice of retirement was not issued in public interest.

(d) In the absence of any adverse reflection on his integrity in the entire service career, the respondents could not treat him unfit for retention in service beyond the age of 55 years.

6. In the written statement filed on their behalf by the Joint Director (Administration), Industries Department, the respondent Nos. 1 to 3 pleaded that the appellant has been retired from service keeping in view the rules and the instructions issued by the Government vide letter dated 16.8.1983. They also averred that the power vested in the competent authority is absolute and the Court cannot review the decision taken by competent authority. The respondents further averred that the petitioner could earn only 50% good reports during the last 10 years and, therefore, he had to be retired keeping in view the instructions contained in the circular letter dated 16.8.1983. They controverted the appellant's assertion that uncommunicated average reports could not be considered for forming an opinion about the suitability of the employee to be retained in service after a particular age and pleaded that the average reports earned by the appellant constituted relevant material for forming an opinion that he was not suitable to be continued in service,

7. After hearing the learned Counsel for the parties, the learned Single Judge held that the petitioner (appellant herein) has failed to make out a case for invalidation of the notice of his retirement. Some of the findings recorded by the learned Single Judge are reproduced below :-

"The instructions require that the extension in service beyond the age of 55 years is only to be given to the officers/officials who have earned at least 70 per cent good or better than good reports during the last ten years of service and it is for that purpose that the reports are looked into objectively by the Department to see whether the employee comes upto the standard of the requisite percentage or not. So long as the reports are average, they even if not conveyed, do not debar the Department from arriving at the decision regarding compulsory retirement as it is well settled that compulsory retirement is not punitive in character and does not amount to taking action against the employee which of course can only be taken on the basis of the material of which the official concerned is duly apprised of and it is from that point of view that communication of average reports might become relevant. Otherwise also it is the adverse remarks which are to be conveyed and if the employee is adjudged as "average" there being no adverse entry against him - nothing remains to be conveyed. No such situation arises in this case. Admittedly the petitioner did not earn more than 50 per cent of the reports to be good or better than good in the last ten years. That being so this contention has no merit. The judgments

referred to have no applicability to the facts of the present case.

The next contention raised on behalf of the petitioner is that the instructions issued by the Haryana Government, vide copy Annexure P. II, are violative of Section 82 of the Punjab Reorganisation Act, 1966, as it changes the conditions of service to his disadvantage. In support of his contention he referred to T. R. Kapur and Others v. State of Haryana and Others 1986 (4) S.L.R. 155. There is no merit in this contention either. There is no question of changing any conditions of service when the officer is retired on attaining the age of 55 years. The case referred to above has no applicability to the facts of the present case. In that case the rule which affected the right of a person to be considered for promotion was held to be a condition of service, and therefore the same has no applicability to the instructions issued by the State Government. As a matter of fact the validity of such like instructions has been upheld by the Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab, wherein the Punjab State also issued instructions in 1978 adversely varying its instructions of 1964 and no question of violation of Section 82 was even raised and to my mind advisedly. It has been held therein that the executive instructions issued as contained in two Government orders provide sufficient guidelines for the exercise of powers under Rule 3 of Punjab Civil Services (Premature Retirement) Rules, 1975. According to these instructions the service record of an employee has necessarily to be considered while taking decision for the premature retirement of an employee and if there was a single entry casting doubt on the integrity of an employee, his premature retirement would be in public interest. In the absence of any details by which the question of public interest could be determined in the rules it was open to the State Government to issue executive instructions for the guidance of the appropriate authority to exercise the power of premature retirement and the instructions so issued as contained in the aforesaid Government orders have binding character.

It was also contended on behalf of the petitioner that by these executive instructions the Average reports given prior to the issuance of instructions could not be taken to be bad reports. The contention is misconceived. By virtue of the said instructions the Average reports have not been changed into bad reports rather it has been provided therein that the extension in service beyond the age of 55 years should be given to the officers/officials only in case they have earned 70 per cent good or better than good reports during last 10 years of service."

8. Mr. B. N. Sharma challenged the correctness of the order of the learned Single Judge on the following grounds :-

(a) The learned Single Judge has erred in holding that the exercise of power by the competent authority is not vitiated by arbitrariness. Learned Counsel argued that the record of the appellant does not contain any material casting adverse reflection on the appellant's integrity and as such, his pre-mature retirement is legally unsustainable.

(b) He reiterated the other arguments urged before the learned Single Judge.

9. The learned Deputy Advocate General supported the order of the learned Single Judge and argued that in view of the instructions issued by the Government vide circular dated 16.8.1983, the appellant could not have been retained in service on the basis of his service record containing only 50% good entries. He relied on the Full Bench judgment in *Daya Nand v. State of Haryana and Another* 1995 (1) SLR 57.

10. Before advertng to the respective contentions, we consider it necessary to take notice of an important feature of the appellant's case, which is clearly discernible from the record produced by the learned Government Counsel.

11. The appellant's case for extension of service beyond 55 years was initiated by the officials of the Directorate of Industries in September 1984. In the first note prepared on 17.9.1984, it was noted that as per the latest instructions, the employee is not entitled to extension of tenure for a period of three years because he has not earned 70% good reports but it was suggested that his case may be considered for relaxation of guidelines because there was no adverse entry doubting his integrity. Upon this, the office of the Additional Director recorded the note that as per Government instructions, it is a fit case for retirement at the age of 55 years because the official has earned only 3 good reports in the preceding 10 years and even if his report for the year 1983-84 is good, he cannot be continued in service. Thereafter, appellant's ACR for the year 1983-84 was taken into consideration and the case was put up for further consideration. The Additional Director, Industries again opined on 23.10.1984 that the appellant's case is not covered by the instructions for grant of extension. On 25.10.1984, the Joint Director (Administration) called for a special report on the work and conduct of the appellant during the current year i.e. 1984-85. In the special report, the Additional Director, Industries (DIC) informed that his work and conduct upto September 30, 1984 was found very good. He described the appellant as a conscious and hard working official who put in lot of labour during this period. After receiving this report, the office prepared a note suggesting extension of the appellant's service on the ground that in the early part of his service, entries have not been quite good but he has shown improvement in the last 4-5 years and all his reports from 1980-81 onwards are good/very good and in the special assessment report also, he has been described as hard working official. It appears that the case of the appellant was sent to the Government for relaxation of the guidelines because the Directorate of Industries felt that in view of the instructions issued by the Government, the appellant cannot be retained in service. However, no reply was received from the Government and, therefore, the petitioner was served with the impugned notice of retirement.

12. Rule 3.26(a) and (d) of the Punjab Civil Service Rules Volume f, as applicable in the State of Haryana, reads as under :-

"3.26 Compulsory Retirement :

(a) Except as otherwise provided in other clauses of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He must not be retrained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing.

xxxx xxxx xxxx (d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice :-

(i) If he is in Class I or Class II Service or post and had entered Government service, before attaining the age of thirty-five years, after he has attained the age of fifty-five years : and

(ii) (a) If he is in Class III Service or post) or

(b) If he is in Class I or Class II Service or post and entered Government service after attaining the age of thirty-five years, after he has attained the age of fiftyfive years.

The Government employee would stand retired immediately on payment of three months pay and allowances in lieu of the notice period and will not be in service thereafter.

(c) A Government employee, other than a Class IV Government employee, may be giving a notice of not less than three months in writing to the appointing authority, retire from service -

(i) If he is in Class I or II Service or post and had entered Government Service before attaining the age of thirty-five years after he has attained the age of fifty years; and

(ii) (a) If he is in Class III Service post : or (b) if he is in Class I or Class II service or post and entered Government service after attaining the age of fifty five years;

Provided that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this clause."

13. The instructions issued by the Government vide letter dated 16.8.1983, which is in the centre of controversy are also reproduced below :-

"I am directed to invite your attention to the Haryana Govt. letter No. 3586-4GSI-75, dated 30.6.1975 and letter No. 3575-4GSI-35/24237, dated 9.8.1975 and to state that in accordance with S. No. 10 of the profoma attached

with letter dated 30.6.1975, it is necessary to intimate whether the 50% Confidential Reports of an officer are good.

2. Now the Government after considering this matter has taken a decision that the extension in service beyond the age of 55 years should be given to the officers/officials only in case they have earned 70% good or better than good reports during last 10 years of service. Accordingly, an amended proforma is enclosed herewith.

3. In the matter of giving extension to Gazetted Officers in the service beyond the age of 50 years, it is necessary that they should have earned 50% good or better than good reports during the last 10 years as per the previous decision. Average report should be conveyed to the officer. In case of representation against such a report is received within 6 months, the same should be decided.

Action in accordance with these instructions may kindly be taken in future and these instructions be got noted by all concerned."

14. The nature of the power vested in the Government and the competent authority to retire an employee before he attains the age of superannuation has become subject matter of decisions by the Supreme Court and all other Courts. Some of the decisions on the subject are :-

- (i) Union of India (UOI) Vs. Col. J.N. Sinha and Another, ;
- (ii) Union of India etc. v. M. E. Ruddy and Another. 1979 (2) SLR 792;
- (iii) Brij Bihari Lal Agrawal v. Hon"ble High Court of Madhya Pradesh and Others 1980 (3) SLR 583
- (iv) Baldev Raj Chadha v. Union of India and Ors. 1980 (3) SLR 1
- (v) H. C. Gary v. State of Haryana. 1986 (3) SLR 57
- (vi) Brij Mohan Singh Chopra v. State of Punjab 1987 (2) SLR 54
- (vii) Ram Ekbal Sharma Vs. State of Bihar and another, ;
- (viii) Shri Baikuntha Nath Das and Another. The Chief District Medical Officer, Baripada and Another 1992 (2) SLR 2
- (ix) Post and Telegraphs Board v. C. S. N. Murthy 1992 (2) SLR 352
- (x) S. Ramchandra Raju v. State of Orissa. 1995 (1) RSJ 18
- (xi) Narsingh Patnaik v. State of Orissa, 1996 (2) SLR 615
- (xii) Sukhdeo v. The Commissioner, Amravati Division, Amravati and Another 1996 (4) SLR 8
- (xiii) State of Haryana v. Suraj Mal Hooda, 1991 (1) RSJ 450
- (xiv) K. K. Vaid v. State of Haryana 1990 (1) SLR 1

(xv) Daya Nand v. State of Haryana and Another 1995 (1) SLR 57

(xvi) Ram Kishan v. State of Haryana 1995 (3) SLR 452

(xvii) Chander Bhan Arya v. Secretary to Government, Haryana and Another 1997 (3) RSJ 626 and

(xviii) Dharam Singh v. State of Haryana and Another 1998 (1) RSJ 10.

15. The proposition of law laid down in J. N. Sinha's case (supra) reads thus :-

"The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rules, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.

xxxx xxxx xxxx

Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energies its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

16. In Union of India etc. v. M. E. Reddy and Another (supra), the proposition of law has been stated in the following words :-

"The compulsory retirement after the employee had put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311(2) of the Constitution. The object of the rule to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. Further clarifying it was observed that there may be cases of officers who are corrupt or of doubtful

integrity and who may be considered fit for being compulsorily retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue, they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years."

17. Explaining the object of the rule of premature retirement, their Lordships observed :-

"It seems to us that the main object of this Rule is to instil a spirit of dedication and dynamism in the working of the State Services so as to ensure purity and cleanliness in the Administration which is the paramount need of the hour as the Services are one of the pillars of our great democracy. Any element of constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has outlived his utility has to be weeded out."

18. Commenting on the scope of the power of judicial review, their lordships remarked :-

"The safety valve of public interest is the most powerful and the strongest safeguard against any abuse or colourable exercise of power under this Rule. Moreover, when the Court is satisfied that the exercise of power under the Rule amounts to a colourable exercise of jurisdiction or is arbitrary or mala fide it can always be struck down."

19. In *Brij Bihari Lal Agrawal v. Hon'ble High Court of Madhya Pradesh* (supra) their Lordships of the Supreme Court held as under :

"What we would like to add is that when considering the question of compulsory retirement, while it is no doubt desirable to make an overall assessment of the Government servant's record more than ordinary value should be attached to the Confidential Reports pertaining to the year immediately preceding such considerations. It is possible that the Government servant may possess a somewhat erratic record in the early years of service. But with the passage of time, he may have so greatly improved that it would be of advantage to continue him in service upto the satisfactory age of superannuation. Whatever value the Confidential Reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance."

20. In *Shri Baikuntha Nath Das v. The Chief District Medical Officer, Baripada* (supra), their Lordships of the Supreme Court reviewed various decisions, most of which have been referred to here in above and then laid down the following principles :-

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

(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 has 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 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 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 uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

21. In *K. K. Vaid. v. State of Haryana* (supra), a Division Bench of this Court struck down the instructions issued by the Government of Haryana vide letter dated 16.8.1983 on the ground that it amounts to an encroachment on the power of the competent authority to decide whether or not an employee should be retained in service. The ratio of that decision can be found in the following observations :-

"The simplicity of articulation of these instructions and the breadth of their scope is startling. As per these instructions the emphasis is on the positive merit of the employee to continue in service rather than on his desirability to be retained in service. The approach is wholly fallacious and apparently contrary to the test of dead wood as pointed out above. As has been pointed earlier, under Rule 3.26(a) a Government employee retires from service on the afternoon of the last day of the month in which he attains the age of 58 years, i.e., he has to normally continue in Government service upto that point of time. A reading of the impugned instructions as noted above clearly brings out that the Government authorities presuppose the retirement of a Government employee at the age of 55 years. That is why the instructions record "extension beyond the age of 55 years may be granted to the officials/officers with the condition that more than 70% of the last 10 confidential reports are good or above." This is totally against the letter and spirit of Rule 3.26(a). Therefore, these instructions have to be held

to be violative of Clauses (a) and (d) of this rule."

22. In para 10 of the judgment it was observed as under :-

"The word "average" means nothing more than medium or ordinary. There may well arise three situations while examining the service record of an employee for purpose of his premature retirement. He may be positively good or positively bad and may neither be good nor bad. It is only the last category which can be rated or evaluated as average. Though it is interesting to note in the light of these instructions that the Haryana Government expects all of its employees not only to be above "average", but something more also, i.e., good or above, yet it appears difficult to hold that an average entry has to be taken as an adverse entry. It is only in the case of employees who are positively bad that the Government may be justified in retiring them at an early age in terms of Clause (d) of Rules 3.26 referred to above."

23. The judgment in K. K. Vaid's case (supra) has been partially reversed by the Full Bench in Daya Nand's case (supra). Para 21 of the decision of the Full Bench which contains discussion on the subject is extracted below :-

"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 it 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 of 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 Officer's 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 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 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 guide-lines 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 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."

24. In *S. Ramachandra Raju v. State of Orissa* (supra), while quashing the order of compulsory retirement their Lordships of the Supreme Court held as under :-

"Therefore, before exercising the power the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total evaluation of the entire record of service if the Government or the Governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the Court may not interfere with the exercise of such bonafide exercise of power but the Court has power and

duty to exercise the power of judicial review not as a Court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the Government Officer compulsorily from service."

25. In *Narasingh Patnaik v. State of Orissa* (supra), a two Judges Bench of the Supreme Court quashed the order of compulsory retirement on the ground that after having earned adverse reports for the years 1975-76 and 1977-78, the appellant was promoted and in the years subsequent to year 1978-79 his performance was appraised as good. Their Lordships held that the adverse remarks of the earlier years were not sufficient to form an opinion leading to compulsory retirement of the appellant on the premise that his further retention in service was not in public interest.

26. In *Ram Kishan v. State of Haryana* (supra) (decided by one of us), the Court outlined the scope of judicial review in such matters in the following words :-

"No hard and fast rule can be laid down and no strait-jacket formula can be prescribed for exercise of power of judicial review, by the Courts in matters relating to compulsory retirement. In each case of compulsory retirement which is assailed before a Court of law, the Court is required to examine as to whether the power of compulsory retirement has been exercised by a competent authority and as to whether the competent authority has objectively considered the material placed before it for forming an opinion that the employee, concerned has out-lived his utility or that his retention in public service is not justified. If the Court finds that the order has not been passed by a competent authority, there will be ample justification for interference with the order of retirement on the ground of lack of authority. Likewise where the Court finds that the power of compulsory retirement has been exercised without consideration of relevant material or where it is found that the competent authority has relied on extraneous factors or has not applied its mind or has reached to a conclusion which no reasonable man would have arrived in similar circumstances, the Court will be justified in upsetting the order of premature retirement. Exercise of power of compulsory retirement for extraneous considerations or by ignoring relevant factors can appropriately be construed as exercise of power which suffers from malice in law inviting interference by the Court. The Court will, no doubt not act as an appellate authority and will not re-evaluate the material placed before the competent authority for the purpose of forming an opinion as to whether the employee should be kept in service or not but it will be the duty of the Court to look into such record with a view to find out as to whether the competent authority has objectively applied its mind to the relevant considerations."

27. The propositions which emerge from the above analysis of the Rules, the instructions and the various judicial precedents referred to here in above are :-

(a) The employer is not required to comply with the principles of natural justice

before an order of premature retirement of an employee is passed because such an order is not punitive and it does not cast any stigma on the employee. However, where the order of retirement is passed as a measure of punishment, the employer has to make an inquiry in accordance with the rules and the principles of natural justice.

(b) The decision to retire an employee is to be taken by the Government/appropriate authority on forming the opinion that it is in public interest to retire a Government servant compulsorily.

(c) Though the satisfaction of the Government about the utility and fitness of the employee to be retained in service is subjective, the same has to be formed on an objective consideration of the relevant factors.

(d) The Government or the Committee, who is entrusted with the task of making an evaluation of the record of the employee, must consider the entire record of service before taking a decision in the matter, but greater importance should be attached to the record of the employee and his performance during the later years. The record to be so considered would only include the entries in the confidential reports (bad as well as good) and the punishment, if any, imposed.

(e) If the Government servant is promoted to higher post after consideration of the adverse reports, if any, then such reports will lose their sting. This principle will apply with greater rigour where promotion is based purely on merit.

(f) Where the rule empowering the Government/appropriate authority to prematurely retire a servant is silent, the Government can issue administrative instructions laying down guidelines for exercise of power of premature retirement. Such guidelines are to be kept in view while considering the case of the employee for premature retirement/compulsory retirement but they cannot be read as controlling the discretion of the Government/appropriate authority.

(g) If the record of the employee in relation to earlier years contains average and not so good entries but in the later years his performance shows positive improvement, then there must exist some cogent reasons for exercise of power of compulsory retirement.

(h) The Court may ordinarily not interfere with the bonafide exercise of power by making an evaluation of the service record of the employee as an appellate authority but where the exercise of power by the Government or the appropriate authority is vitiated by violation of the statutory provisions governing the exercise of such power or where the appropriate authority fails to apply its mind to the record of the employee in an objective manner or where the appropriate authority forms opinion about the utility of the employee by relying on extraneous factors, then the Court not only has power but duty to exercise the power of judicial review to invalidate the order of retirement.

28. Having said all this, we shall now proceed to determine whether the exercise of power of premature retirement in the appellant's case is legally sustainable

and whether the learned Single Judge has rightly declined interference with the exercise of such power by the Director of Industries, Haryana.

29. The normal age of superannuation specified in Rule 3.26(d) is 58 years but that rule empowers the appointing authority to retire any Government employee other than Class IV employee but including Class III employee on his/her attaining the age of 55 years by giving three months notice in writing or pay in lieu thereof. A bare reading of the plain language of Rule 3.26(d) does suggest that the power conferred upon the appointing authority is absolute and unbridled but) in our considered view, the exercise of such power is always subject to judicial review else it will amount to total negation of the rule of law which constitutes the core of our Constitution. This is how the Courts have interpreted the power conferred under the various rules upon the Government and the appointing authorities/ appropriate authorities to retire the Government servants and other public employees on attaining a particular age or after completion of a particular length of qualifying service.

30. In what type of cases and under what circumstances the power of retiring an employee after his attaining the age of 55 years is to be exercised have not been outlined in Rule 3.26(d). In other words, the rule is silent about the guidelines for the exercise of power by the appointing authority. However, the administrative instructions issued by the Government from time to time do lay down the broad paramotors which the appointing authority is required to keep in mind while exercising the power conferred upon it. This, however, does not mean that the appointing authority is not required to make an objective assessment/ evaluation of the work, conduct and performance of the employee, as reflected in his service record, in order to determine whether he should be retired before the age of superannuation. In our view, it is one thing to say that the instructions issued by the Government should be kept in view by the appointing authority while forming an opinion about the desirability of retaining a person in service after his attaining the age of 55 years, but it is a different thing to say that the instructions issued by the Government can control the discretion vested in such authority. We are also of the view that the true ratio of the judgment of the Full Bench in Daya Nand's case (supra) is that the appointing authority must apply its mind independently to the record of the employee and from an opinion about the suitability and the desirability of continuing an employee/officer in the service after he/ she attains the age of 55 years and while doing so, it shall take into consideration the guidelines issued by the Government. This is how the Full Bench must be understood to have upheld the instructions issued by the Government. If the instructions issued by the Government are read as prescribing a strait-jacket formula completely ousting the discretion of the appointing authority or precluding it from applying mind independently to the record of the employee extremely anomalous consequences may ensue. This can be illustrated by giving the following hypothetical example :-

(a) X and Y belonging to Class III Service. Both have attained the age of 55

years Through out their service career, neither of them has earned adverse remarks casting reflection their integrity. In the annual confidential reports of the last 10 years they have earned following remarks :-

X Y Average Very good Average Good Average Good Average Good Very good Good Very good Good Very good Good Very good Average Very good Average Outstanding Average

If the instructions issued by the Government are applied blind-folded then X will have to be retired from service in spite of the fact that in the six years immediately preceding the date of retirement he has earned very good and outstanding reports whereas "Y" may be continued in service up to the normal age of superannuation though in the last three year of consideration, he has earned average reports, Therefore, at the cost of repetition, we deem it appropriate to observe that the instructions issued by the Government vide circular letter dated 16.8.1983 etc. cannot be treated as eliminating the application of mind by the appointing authority to the record of the employee for making an objective analysis evaluation and assessment with a view to find out whether the employee is fit to be continued in service and his retention in service is in public interest after he has attained the age of 55 years.

31. A brief recapitulation of the service record of the appellant shows that in his entire service career, he has not earned any report casting adverse reflection on his integrity and honesty. In the ten years preceding the date of retirement, he has earned one below average, four average, three good and two very good entries. He has been rated as good/very good in the five years immediately preceding the date of retirement (i.e. 1980-81, 1981-82 1982-83, 1983-84 and 1984-85). The record produced by the learned Deputy Advocate General also shows that in the special report prepared by the Additional Director, Industries (DIC), under whom he was working during the year 1984-85, found his work and cod to be very good. He described the appellant as a conscious and hard working officials put in lot of labour during the year. All this unmistakably proves that the appellant, win integrity and honesty was not doubted throughout his service career did not perform so well in the first five of the ten years preceding his retirement, inasmuch as, he was rated as below average in the first year and average in the next four years. However, he had shown consistent improvement in his work and performance. The rating of his ACRs as good and very good and the extremely favourable special report of the Additional Director. Industries (DIC) constitute sufficient evidence of the inclining graph of his performance. On their of such record, no prudent person could form a bonafide opinion that the appellant has out lived his utility for public service and that he has become a dead wood or that his retention in service beyond the age of 55 years is not in public interest.

32. What the appointing authority, i.e., the Director of Industries has done in the appellant's case is illustrative of mechanical exercise of power by the concerned officer, who appears to have acted on the assumption that in view of the

Government instructions, he has no discretion to make his own objective assessment of the appellant's record in order to decide whether or not he should be continued in service after 55 years. The fact that the Directorate of Industries had proposed the relaxation in the rigour of the instructions issued by the Government is clearly indicative of the satisfaction of the appointing authority about the appellant's continued utility for public service and if the officer concerned was conscious of his right to make an evaluation of the record of the appellant independently, then he may not have issued the impugned notice of retirement. Therefore, we are inclined to agree with Shri Sharma that the exercise of power by the Director of Industries under Rule 3.26(d) of the Punjab Civil Service Rules, Volume-I, Part-I read with Rule 5.32(A) (C) of the Punjab Civil Service Rules, Volume-II is vitiated by arbitrariness.

33. Indeed, the respondents have not pleaded that the appointing authority decided against the extension of the appellant's service because some other official having better record had become available and he, i.e., the appointing authority, thought that the said official will prove better than the appellant for Government service. They have also not pleaded that the appointing authority has, on its own assessment of the appellant's record, come to the conclusion that he was no longer useful for the Government service. Rather, the notings made in the office of the Director show that the appellant's case had been forwarded to the Government for relaxation of the rigour of instructions. This, by itself, is sufficient to show that the appointing authority was in favour of retaining the appellant in service.

34. The fact that the appellant was not allowed to cross-efficiency bar w.e.f. 1.4.1982 cannot, in our opinion, be relied upon for supporting the opinion formed by the Director of Industries about the suitability of the appellant to be continued in service because the consideration which weighed in the mind of the competent authority while assessing the appellant's suitability to be allowed to cross-efficiency bar are different than those which should have been kept in mind while deciding whether he should be allowed to continue in service after the age of 55 years. Moreover, as his ACRs of 1982-83, 1983-84 and 1984-85, which are posterior to the date on which he was not allowed to cross-efficiency bar, show positive improvement in the performance of the appellant, the notice of retirement cannot be sustained in the eye of law.

35. A careful reading of the impugned judgment shows that the learned Single Judge did not examine the matter in a correct perspective and decided the petitioner's case simply on the premise that as per the instructions issued by the Government he was not entitled to be continued in service beyond 55 years of age.

36. In view of the above conclusion, we do not consider it necessary to decide other points urged by Mr. Sharma.

In the result, the appeal is allowed. The order of the learned Single Judge is set

aside. The writ petition filed by the appellant is accepted and the notice of retirement issued by the Director of Industries on 23.2.1985 is quashed. The appellant shall get all consequential benefits.

37. Appeal allowed.