(1989) 11 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4180 of 1986

K.K. Vaid		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: Nov. 1, 1989

Acts Referred:

- Punjab Civil Services Rules - Rule 3.26, 5.32A

Citation: (1991) 1 ILR (P&H) 109

Hon'ble Judges: I.S. Tiwana, J; Amarjeet Chaudhary, J

Bench: Division Bench

Advocate: K.K. Jagia and Gurdip Singh, for the Appellant; Madan Dev, for the Respondent

Final Decision: Allowed

Judgement

I.S. Tiwana, J.
The matter is before us on a reference primarily to judge the vires or validity of the Haryana Government instructions dated August 13, 1983 (Annexure P-3 to the petition). The relevant part of these instructions reads as follows:

Subject : Extension in service beyond the age of 50/55 years. Change in policy for granting extension after the age of 55 years.

XXX XXX XXX

After reconsidering the matter, it has been decided by the Government that the extension beyond the age of 55 years may be granted to the officials/officers with the condition that, more than 70 per cent of the last 10 confidential reports are good or above.

In the case of Gazetted Officers

... ...

Average report should be conveyed to the officers and if any representation against such reports is received within six months, necessary decision thereon should be taken.

... ...

2. As the learned Single Judge before whom the case initially came up for hearing was of the opinion that the question involved is likely to govern the fate of a large number of employees and a good number of similar cases pending in this Court, it is worthwhile that the question be decided by a larger Bench. This is how we are seized of the case.

3. In order to appreciate the respective contentions raised by the parties, it is necessary to notice the following facts:

The Petitioner stands prematurely retired,--vide the impugned order Annexure P.5. It reads:

Whereas the Governor of Haryana is of the opinion that it is in the public interest to retire Shri Krishan Kumar Vaid, Sub Divisional Officer, Public Works Deptt. (Irrigration Branch) Haryana, from service after his attaining the age of 55 years by giving him three months notice.

Now, therefore, in pursuance of the provisions contained in Rule 5.32-A(c) of the Punjab Civil Services Rules, Volume II and Rule 3.26(d) of the Punjab Civil Services Rules, Volume I, Part I, as applicable to the employees of the State of Haryana the Governor of Haryana, in the public interest, hereby orders that Shri Krishan Kumar Vaid, Sub Divisional Officer, Public Works Department Irrigation Branch Haryana shall stand retired from service under the State Government of Haryana on the expiry from three months from the date of issue of this notice.

Dated Chandigarh the 17th July, 1986. (M.C. Gupta), Financial Commissioner & Secy. to Govt. Haryana Irrigation Deptt.

4. It is the categoric case of the Respondent authorities (para 13 of the written statement) that the Petitioner has been retired in terms of the rules referred to in the order and the Government instructions Annexure P.3. Their precise stand is that since the service record of the Petitioner did not meet the criteria laid down in Annexure P.3, they had no choice but to retire him compulsorily. In other words, the stand is that since the Petitioner failed to get 70 per cent ''good or above'' confidential reports during the last ten years of his service career, he had to be shunted out in public interest. On the other hand, what is urged on behalf of the Petitioner is that the above noted criteria as contained in the Government instructions is not only violative of the test laid down in Rule 3.26(d) of the Punjab Civil Services Rules, Volume I, but is also in direct conflict with 3.26(a) of these rules. Before proceeding any further it appears appropriate to notice the contents of these provisions and to have a glance at the balance-sheet of the Petitioner''s service

record as disclosed in the written statement itself. The relevant contents of Clauses (a) and (d) of Rule 3.26 are as follows:

3.26 (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 retained 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:

... ...

(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 month''s 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 years; and

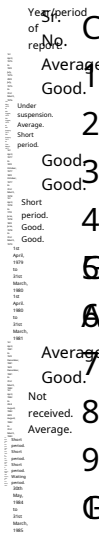
(ii)(a) If he is in class III service or post, or

(b) If he is class I or class II or post and entered Government service after attaining the age of thirty-five years;

after he has attained the age of fifty-five years.

5. Though in the impugned order a reference has also been made to Rule 5.32-A(c) of the Punjab Civil Services Rules, Volume II, yet it has neither been pleaded nor shown in any manner that this rule was complied with at the time of taking the impugned action against the Petitioner. Therefore, a detailed reproduction of this rule is not necessary. Vide, Haryana Government Notification dated July 12, 1983 (copy Annexure R.1), note under Clause (B) of this rule was substituted by two notes. Whereas note (1) entitled the State Government to retire a Government servant who has completed. 25 years of service qualifying for pension without giving any reasons, but on account of inefficiency, dishonesty, corruption or infamous conduct, note (2) made it incumbent upon the Government to give "a reasonable opportunity to show cause against the proposed action" and not to retire the employee "without the approval of Council of Ministers". As pointed out earlier, it is not the case of the Respondents that either the Petitioner was guilty of any of the misconducts specified in note (1) or the procedure prescribed in note (2) was complied with. Therefore, this rule does not sustain the impugned retirement of the Petitioner in any manner.

The extract of Petitioner''s service record is as follows:



Sr. No.	Year/period of report.	Category
1.		Average.
		Good.
2.	Under suspension.	Average.
3.	Short period.	Good.
4.		Good.
5.	Short period.	Good.
6.	Good.	Good.
7.	1st April, 1979 to 31st March, 1980	Average.
		Good.
8.	1st April, 1980 to 31st March, 1981	Not received.
9.		Average.
10.	Short period. Short period. Short period. Waiting from 20th May, 1984 to 31st March, 1985	Good.

6. A bare reading of Clause (a) of Rule 3.26 referred to above clearly indicates that in the normal course every Government employee is to retire from service on the afternoon of the last day of the month in which he attains the age of 58 years unless the appointing authority forms an opinion to retire him earlier, i.e., on attaining the age of 55 years as has been done in the case of the Petitioner. This opinion has, obviously not to be subjective satisfaction but objective and bona fide based on relevant material. In other words, the opinion cannot be personal, political or based on any other interest except the public interest, i.e. in the interest of the service. No doubt it is true that public interest has not been defined anywhere yet by now as a result of various judicial pronouncements by the apex Court as well as the different High Courts, it has come to acquire a definite concept or meaning so far as service matters are concerned. We find it wholly unnecessary to make a reference to all these judgments of the final Court and of the various High Courts except to record that the test in this regard is as to whether the employee sought to be retired prematurely is a dead wood or a drone or a do-nothing sort of employee. This conclusion we derive from the pronouncements of the final Court as recorded in Union of India (UOI) Vs. Col. J.N. Sinha and Another, and Baldev Raj Chadha v. Union of India and Ors. 1980 (3) S.L.R. 1. In the light of this test or concept of public interest as recorded in Clause (d) of the above noted rule, we find that the criteria laid down in the impugned instructions that only an officer having more than 70 per cent "good or above" reports is entitled to continue in service after the age of 55 years is totally against the spirit of this rule. The simplicity of articulation of these instructions and the breadth of their scope is just 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. This approach is wholly fallacious and apparently contrary to the test of ''dead wood'' as pointed out above. Not only this, these instructions appear to have been issued under a misconception about the tenure or term of service of a Government employee. As has been pointed out 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 per cent of the last ten 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.

7. The impugned order Annexure P. 5 also appears to suffer from arbitrariness. It is beyond comprehension as to how and why the State Government takes an average entry in the service record of its employees as something adverse to them. 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 purposes 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 Rule 3.26 referred to above. For recording that an average entry cannot possibly be treated as adverse entry, we seek support from at least three judgments--two of the apex Court and the third one of this Court, i.e., Baldev Raj Chadha v. Union of India and Ors. H.C. Gargi v. State of Haryana 1986 (3) S.L.R. 57 and Hans Raj Puri v. State of Haryana and Anr. 1989 Lab. I.C. 1310. The latter two judgments deal with the very rule which we have examined above, i.e., 3.26 of the Punjab Civil Services Rules, Volume I.

8. In addition to all that has been held above we find that the impugned order, Annexure P. 5, suffers from two infirmities. It is not in dispute that the first two average reports--in case these are to be taken as adverse reports--of the Petitioner for the period (i) 1st April, 1975 to 19th July, 1975 and (ii) 5th August, 1976 to 4th January 1977, were never conveyed to him. So far as the other three reports at Serial Nos. 6, 7 and 8 are concerned, these of course were conveyed to him and he had duly represented against the same but these representations were finally disposed of on September 16, 1988; November 29, 1988 and April 1, 1987 respectively. In short, by the time the impugned order Annexure P.5 was passed, no final decision had been taken on these representations and the same were pending consideration. In the light of the observations of their Lordships of the Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab, an order of premature retirement of a Government employee cannot possibly be based on the adverse entries which have not been communicated to him or, if communicated,

representations made against those entries are not considered and disposed of. This is how the Supreme Court opined:

These decisions lay down the principle that unless an adverse report is communicated and representation, if any, made by the employee is considered it cannot be acted upon to deny promotion. We are of the opinion that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service. It would be unjust and unfair and contrary to principles of natural justice to retire prematurely a Government employee on the basis of adverse entries which are either not communicated to him or if communicated, representations made against those entries are not considered and disposed of.

9. Next it is the conceded case of the Respondents (para 6 of the written statement) that the Petitioner was allowed to cross the efficiency bar in the light of his service record with effect from April 1, 1979,--vide order dated May 8, 1981. It is thus patent that the service record or any so called adverse entry therein prior to April 1, 1979, had been rendered inconsequential and could not be taken into consideration while passing the impugned order Annexure P. 5. Therefore, the order is bad on this score too.

10. We, therefore, conclude that not only the impugned instructions, Annexure P. 3 are violative of the rule referred to above but the impugned order, Annexure P. 5 itself cannot be said to be beyond the pail of arbitrariness as for retiring the Petitioner prematurely the vital and relevant consideration to the decision, i.e., whether this retirement was subservient to public interest, was ignored in the light of instructions Annexure P. 3 and on the contrary obsolete material, i.e., service record prior to April 1, 1979, the date with effect from which the Petitioner had crossed the efficiency bar was taken into consideration. The order is also bad on account of the non-disposal of the representations of the Petitioner prior to the passing of the same.

11. We, therefore, set aside the order Annexure P. 5 and declare that the Petitioner continued to be in service upto the date of superannuation in the normal course. It is further clarified that the Petitioner would be granted all the benefits in terms of pay, increments, promotion, etc. which flow from the passing of this order. He is also held entitled to the costs of this litigation which we assess at Rs. 1000.