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(1999) 1 ILR (P&H) 382 : (1999) 122 PLR 245

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13952 of 1998

Daya Nand Dalal		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: Jan. 19, 1999

Acts Referred:
Constitution of India, 1950 â€" Article 226#Punjab Civil Services Rules â€" Rule 3.26

Citation: (1999) 1 ILR (P&H) 382 : (1999) 122 PLR 245

Hon'ble Judges: Iqbal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Narender Hooda, for the Appellant; Amol Rattan, Assistant A.G., for the Respondent

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.
The petitioner has challenged his retirement from service under Rule 5.32A (C) of the Punjab Civil Services Rules Volume

II read with Rule 3.26 (d) of the Punjab Civil Services Rules Volume I Part I, as applicable to the employees of the State of Haryana.

2. The facts necessary for deciding the legality and justification of order Annexure P-8 passed by the Principal Chief Conservator of Forests,

Haryana are that the petitioner joined service as Deputy Range Officer. He was promoted as Range Officer on 14.6.1972. His claim for

promotion to the post of Divisional Forest Officer with effect from 25.4.1990, the date on which his junior Shri Maya Ram was promoted has not

been entertained by the respondents. By the impugned order he has been retired from service.

3. The petitioner has challenged his retirement on the following two grounds:-

i) The impugned action is vitiated by mala fides and ill-will; and

ii) The decision taken by respondent No. 2 is ex facie arbitrary and unjust.

4. The respondents have justified the impugned order by stating that the competent authority has, after thorough evaluation of his service record

came to the conclusion that the petitioner''s retention in service is not in public interest.

5. Shri Narender Hooda argued that the impugned order should be declared as vitiated due to malafide because respondent No. 2 was annoyed

with the petitioner on account of his making claim for promotion to the post of Divisional Forest Officer and also on account of his having filed

C.W.P. No. 13850 of 1997 for quashing the order of transfer dated 4.9.1997. Learned counsel submitted that respondent No. 2 could not digest

the fact that the High Court has stayed the petitioner''s transfer and, therefore, as soon as he got an opportunity, he misused the power vested in

him and secured the petitioner''s ouster from service. The second contention urged by Shri Hooda is that the petitioner''s record does not contain

any adverse material which could constitute basis for forming a bona fide opinion that his retention in service is not in public interest or that he had

out lived his utility for public service and, therefore, the impugned decision should be declared arbitrary and be quashed.

6. Shri Amol Rattan controverted the submissions of Shri Hooda by arguing that the petitioner''s retirement, which has been passed on the basis of

an objective assessment of his service record by a Committee consisting of the Chief Secretary, the Financial Commissioner, the Administrative

Secretary and the Head of Department, does not suffer from any illegality. He submitted that charge of malafide levelled against the Principal Chief

Conservator of Forest must be regarded as baseless because he has passed the impugned order on the basis of recommendations made by the

high powered Committee.

7. We have thoughtfully considered the respective contentions and have carefully gone through the record of the case. There is no dispute between

the parties that the Annual Confidential Reports of the petitioner for the last 10 years contain the following entries:-

Year Grading

1986-87 Average

1987-88 Good

1988-98 Below Average (Honesty average)

1989-90 Good

1990-91 Good

1991-92 Good

1992-93 Average

1993-94 Good

1994-95 Good

1995-96 Outstanding

8. During this period of 10 years, the petitioner has been punished on various counts, the particulars of which are detailed below: -

1) While working as Range Officer in Sonepat Division during 1982-83, the petitioner was charge-sheeted for mis-use of 50 cement bags. He did

not reply to the charge-sheet. Shri Ajaib Singh Bajwa, who was appointed as Enquiry Officer held him guilty of mis- appropriating 45 cement

bags. A copy of the enquiry report was sent to him along with letter dated 3.5.1988 but the petitioner did not reply. Finally, the penalty of

stoppage of one increment with cumulative effect was imposed on the petitioner vide order No. 90/CFN dated 15.9.1988.

2) While he worked as Range Officer, Karnal during 1977-78, shortage of material, store articles and wood was detected against him. He was

found guilty in the regular departmental enquiry. By order dated 17.5.1990, the Chief Conservator of Forests ordered recovery of Rs. 5,792/-

from the petitioner''s pay,

3) He was placed under suspension vide order dated 29.6.1990 for not handing over the charge of Panipat (P) Range and non-compliance of the

orders of higher authority. His explanation was called by the Principal Chief Conservator of Forests but the petitioner did not reply. By an order

dated 30.4.1991, he was treated as absent from duty for the period from 29.6.1990 to 2.8.1990.

4) While working as Range Officer, Sonepat during 1992-83 he is said to have charged un-sanctioned vouchers amounting to Rs. 22,465/-. His

explanation was called but the petitioner did not reply. Ultimately, the Conservator of Forests (North) passed order dated 9.3.1992 for recovery

of Rs. 22,465. 10 from him (in respect of this punishment the petitioner has averred in the replication that the charge levelled against him was not

correct and, therefore, no recovery was effected from him).

9. In the light of the above noted favourable and adverse factors available in the petitioner''s record, it is to be decided whether the exercise of

power by the competent authority under Rule 3.26(d) of the Punjab Civil Service Rules, Volume I, Part I read with Rule 5.32A(C) of the Punjab

Civil Service Rules, Volume II, is vitiated due to malafide, arbitrariness or any patent illegality. However, before deciding that, it will be appropriate

to analyse the relevant statutory provisions and the some of the judicial precedents on the subject.

10. Rule 3.26(a) and (d) of the Punjab Civil Service Rules Volume 1, 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 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.

xx xx xx xx xx

(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

allowance 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 fifty-five 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.

(e) A Government employee, other than a Class IV Government employee, may by 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 HI 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.

11. 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 Government 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 proforma 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 a

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.

12. 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. Reddy and Anr. 1979(2) S.L.R. 792;

(iii) Brij Bihari Lal Agrawal v. Hon''ble High Court of Madhya Pradesh and Ors. 1980(3) S.L.R. 583;

(iv) Baldev Raj Chadha v. Union of India and Ors. 1980(3) S.L.R. 1;

(v) H.C. Gargi v. State of Haryana 1986(3) S.L.R. 57;

(vi) Brij Mohan Singh Chopra v. State of Punjab 1987(2) S.L.R. 54;

(vii) Ram Ekbal Sharma Vs. State of Bihar and another, ;

(viii) Shri Baikuntha Nath Das and Anr. v. The Chief District Medical Officer, Baripada and Anr. 1992(2) S.L.R. 2;

(ix) Post and Telegraphs Board v. C.S.N. Murthy 1992(2) S.L.R. 352;

(x) S. Ramachandra Raju v. State of Orissa 1995(1) R.S.J. 18;

(xi Narasingh Patnaik v. State of Orissa 1996(2) S.L.R. 615;

(xii) Sukhdeo v. The Commissioner, Amravati Division, Amravati and Anr. 1996(4) S.L.R. 8;

(xiii) State of Haryana v. Surja Mal Hooda 1991(1) R.S.J. 450;

(xiv) K.K. Vaid v. State of Haryana 1990(1) S.L.R. 1;

(xv) Daya Nand Vs. State of Haryana and Another, ;

(xvi) Ram Kishan v. State of Haryana 1995(3) S.L.R. 452;

(xvii) Chander Bhan Arya v. Secretary to Government, Haryana and Anr. 1997(3) R.S.J. 626; and

(xviii) Dharam Singh v. State of Haryana and Anr. 1998(1) R.S.J. 10.

13. 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.

.....

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 facts 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 energise its machinery and make it more efficient by compulsorily retiring

those who in its opinion should not be there in public interest.

14. In Union of India etc. v. M.E. Reddy and Anr. (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.

15. 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 instill 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.

16. 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.

17. 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 hereinabove 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 loose 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.

18. 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 starting. 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 (b)

of this rule,

19. 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 rule 3.26 referred to above.

20. 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"" report 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 Officers 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 KK. Vaid''s case cannot be followed. Even

otherwise the decision in K.K. Vaid''s case, that instructions of the Government to retain in service only Government Officer''s possessing more

than 70% ""good"" reports in 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 interests. 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 compulsory 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 (dd) 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 Math''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.

21. 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 if 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.

The proposition, which emerge from the above analysis of the Rules, the instructions and the various judicial precedent referred to hereinabove,

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 guide-lines 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 year 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 the power of pre-mature retirement.

(h) The Court will ordinarily not interfere with the bona fide 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 of where the appropriate authority fails to apply its mind to the record of the employee in the

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.

22. If we examine the petitioner''s case in the light of the above discussion, there is little difficulty in holding that the recommendations made by the

Screening Committee for petitioner''s retirement from service and the order passed by respondent No. 2 do not suffer from any legal error

warranting interference by the Court. It is not a case of no evidence or a case of non-application of mind or consideration of extraneous material.

No doubt, the Annual Confidential Reports do not contain many adverse entries but the various acts of financial irregularities committed by the

petitioner, for which he has been punished by the competent authority, have been rightly taken into consideration by the Committee for forming an

opinion that his further retention in service is not in public interest. The orders of punishment passed by the competent authority, coupled with one

below average"" entry constituted adequate material on the basis of which any person of ordinary prudence can form a bonafide opinion that the

petitioner does not deserve to be continued in service. Therefore, we are unable to agree with Shri Hooda that impugned order is arbitrary or it is

vitiated due to non-application of mind.

23. The petitioner''s attempt to link the stay of his transfer by the High Court and the impugned action does not merit our approval. The very fact

that the impugned order has been passed by respondent No. 2 on the recommendations of Screening Committee is sufficient to negative the plea

of malafide exercise of power. That apart, as the Principal Chief Conservator of Forests has not impleaded as party respondent, no finding of

malice-in-fact can be recorded against him.

24. There is one more reason for entertaining the petition, namely, the highly contumacious conduct exhibited by the petitioner while invoking extra-

ordinary and equitable jurisdiction of the Court. He deliberately avoided reference to the various orders of punishment passed by the competent

authority and tried to paint a rosy picture of his service record by stating that he has earned good reports throughout his service career and has

earned very good and outstanding remarks in his Annual Confidential Reports of the recent past and but for the fact that the respondents have

disclosed the darker side of the petitioner''s service record, the Court would have been mislead to believe that the exercise of power vested in

respondent No. 2 is vitiated by arbitrariness and malafide. Learned counsel for the petitioner could not explain as to why the petitioner did not

make a mention in the writ petition about the orders of punishment. In the absence of any explanation on this count, we are constrained to observe

that the petitioner has approached the Court with tainted hands and, therefore, he does not deserve any indulgence.

25. In Civil Writ Petition No 15448 of 1993 Jai Bhagwan Jain v. Haryana State Electricity Board, Panchkula, a Division Bench of this Court took

note of the growing tendency among the litigants to pollute the pure fountain of justice and observed as under:-

Satya (truth) and Ahimsa (non-violence) are the two basic values of life, which have been cherished for centuries in this land of Mahavir and

Mahatma Gandhi. People from different parts of the world come here to learn these fundamental principles of life. However, post-independence

era and particularly the last two decades have witnessed the sharp decline in these, two basic values of life. Materialism has over-shadowed the

old ethos and quest for personal gain is so immense that people do not have any regard for the truth. Proceedings in the Courts, which were at one

time considered to be pious and the people considered it their duty to tell the truth in the Court, now stand vitiated by the attempts made by the

parties to pollute the ends of justice.

26. While dismissing the writ petition of Jai Bhagwan Jain, the Court held as under:-

It is the duty of the party seeking relief under Article 226 or 136 of the Constitution to make full and candid disclosure of all the facts and leave it

to the Court to determine whether relief deserves to be given to the petitioner or not. The petitioner is also under a duty to make all efforts to find

out full facts of the case before filing the petition and he cannot be heard to say that he is not aware of the fact concerning him. The petitioners has

to demonstrate his bona fides before seeking relief from the Court in exercise of its equitable jurisdiction. It is not for the petitioner to decide as to

which of the facts are relevant and which are not relevant. The petitioner cannot become a Judge on the question of relevancy of facts. Non-

disclosure of all the facts in candid and straight forward manner will necessarily warrant dismissal of a petition.

The Division Bench further held:-

We may further add that a petitioner will not be entitled to be heard on the merits of the case where he is found guilty of concealment of facts or of

making mis-statement before the court only on the ground that no stay order has been passed by the Court. It is to be remembered that the Court

considers a petition with the assumption that the averments made in the petition are true and correct. In a given situation, the Court may finally

decide a petition ex parte where the non-petitioner does not appear despite service of notice. If a party suppressed facts from the Court, such ex

parte decision may be rendered on the basis of incorrect or incomplete facts. Therefore, it is no answer to the charge of suppression of facts or

misstatement of facts before the Court to say that no interim relief has been given to the petitioner or that he has not derived any benefit. In our

opinion, the very issue of a notice on a petition is a benefit derived by the petitioner. If subsequently it is found that the petitioner has mislead the

Court or persuaded it in issuing notice by concealment of true facts of the case there will be ample jurisdiction for dismissing the petition.

27. In Rex v. Kensington Commissioner 1917(1) K.B. 486, Cozens Hardy M.R. commented on the conduct of a party in a ex parte application in

the following words:-

On an ex parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court,

the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done.

Lord Scrutton L.J. said:

It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court

to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, facts not law.....The applicant must state

fully and fairly the facts and the penalty by which the Court enforces that obligation is that it finds out that the facts have been fully and fairly stated

to it the Court will set aside any action which it has taken on the faith of the imperfect statement.

28. In R. V. Churchwardens of All Wigan (1876)1 A.C. 611, Lord Haterlay observed :-

Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it -- matters connected

with delay or possibly with the conduct of the parties.

29. In Reg. v. Gerland (1870)39 L.J. QB 86, it was held:-

Where a process is ex debito justitiae the Court would refuse to exercise its discretion in favour of the applicant where the application is found to

be wanting in bona fides.

30. Their Lordships of the Supreme Court have time and again emphasised the necessity of the litigant approaching the Court with clean hands. In

Hari Narain Vs. Badri Das, , the Apex Court revoked the special leave to appeal granted to the appellant solely on the ground that he made

misstated the facts before the Court, some of the observations made in that decision are extracted below:-

It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of

the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special

leave, the Court naturally takes statements of facts and grounds of fact contained in the petitions at their face value and it would be unfair to betray

the confidence of the Court by making statements which are untrue and ""misleading. Thus, if at the hearing of the appeal the Supreme Court is

satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is

entitled to contend that the Supereme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for

special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.

31. In Welcome Hotel and Ors. v. State of Andhra Pradesh and Ors. etc. AIR 1983 S C 1215 and in S.P. Chenqalvarara Naidu (dead) by LR.s

v. Jagannath (dead) by LRs. and Ors. J.T. 1993(6) S.C. 631, their Lordships held that one who comes to Court must come with clean hands and

the Court will refuse to hear a party whose conduct is found to be un-fair. In the latter case, their Lordships further held that where a preliminary

decree was obtained by playing fraud on the Court in as-much-as a vital document was withheld in order to gain advantage on the other side, the

party doing so deserves to be thrown out at any stage of the litigation.

32. In G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, , the Apex Court declined relief to the

appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11A of the

Land Acquisition Act on account of interim stay order passed in a writ petition. While. rejecting the special leave petition, their Lordships of the

Supreme court observed :-

Curiously enough, there is no reference in the SLP to any of the stay orders and we come to know about these orders only when the respondents

appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised

and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable

to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this

Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to

be dismissed. We accordingly dismiss the Special Leave Petitions.

33. This Court has also taken a serious view of the contumacious conduct of a party and has declined relief in a large number of cases. In Smt.

Bhupinderpal Kaur v. The Financial Commissioner (Revenue), Punjab (1968)70 P.LR. 169, a learned Single Judge held that if the High Court

comes to the conclusion that affidavit in support of the application for grant of writ was not candid and did not fully state the facts but either

suppressed the material facts or stated them in such a way as to mislead the Court about the true facts, the Court ought, for its own protection and

to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits and where there is such a conduct which is

calculated to deceive the Court into granting the order of rule nisi the petition should on that short ground be dismissed.

34. In Chiranji Lal and Ors. v. Financial Commissioner, Haryana and Ors. (1978)80 P.L.R. 582, a Full Bench approved the observations made in

Bhupinderpal Kaur''s case (supra) and held that where there has been a mala fide and calculated suppressions of material facts which, if disclosed,

would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the

merits on both the interim and ultimate relief claimed, the writ petition should not be entertained.

35. In Harbhajan Kaur v. State of Punjab and Ors. 1994 P.L.J. 287, a Division Bench held as under: -

The writ petitioners have tried to approach the Court. They did not bring the correct facts to the notice of the Court and obtained an order from

us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab

Wakf Board since 1986 as is revealed from a perusal of the order passed in petition No. 363 of 1986 (Sham Singh and Anr. v. Punjab Wakf

Board). They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales) and, on appeal, the order were

affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner: that the Punjab Wakf Board had been

contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial

proceedings Smt. Kuldip Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land.

36. In Pawan Kumar v. State of Haryana and Anr. 1994(5) S.L.R. 73, another Division Bench held that a party who seeks relief from the High

Court in the exercise of its equitable jurisdiction under Article 226 of the Constitution, must come with all bona fides, must make true, candid and

full disclosure of all the relevant facts. Its conduct must be above board and there should be no attempt by a party to mislead the Court.

37. By applying the ratio of the decision referred hereinabove and keeping in view the fact that the petitioner intentionally withheld material facts

from the Court, we declare that he is not entitled to any relief under Article 226 of the Constitution of India.

38. For the reasons mentioned above, the writ petition is dismissed. The interim order passed on 8.9.1998 is vacated forthwith. It shall be the duty

of respondent No. 2 and officers working under him to relieve the petitioner by tomorrow. It is also made clear that the petitioner shall not be

entitled to get any benefit of the service rendered by him under the interim order of the Court. However, the pay and allowances paid to him during

that period shall not be recovered by the respondents.