

(1981) 02 P&amp;H CK 0002

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Regular Second Appeal No. 357 of 1975

Kartar Singh

APPELLANT

Vs

Punjab State and Others

RESPONDENT

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**Date of Decision:** Feb. 17, 1981**Acts Referred:**

- Constitution of India, 1950 - Article 162, 226, 309, 310, 310(1)
- Punjab Civil Services Rules - Rule 5.32

**Citation:** (1982) 1 ILR (P&H) 11**Hon'ble Judges:** S.S. Sandhawalia, C.J; Rajendra Nath Mittal, J**Bench:** Division Bench**Advocate:** D.V. Sehgal and P.S. Rana, for the Appellant; Inderjit Malhotra, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Rajendra Nath Mittal, J.

Briefly, the facts are that the Plaintiff joined the Punjab Police Service as a Constable in 1936. On March 17, 1971, he attained the age of 55 years. The case of his continuation in service was taken up by the Deputy Inspector-General of Police who, vide memo., dated January 1, 1971 extended his term till the age of 56 years. Before the expiry of the period of extension, he was served with a three months' notice dated July 8, 1971, to the effect that he would retire after the expiry of the period of the notice. He consequently filed a suit for declaration that the notice, dated July 8, 1971, retiring him from service before the expiry of the extended period was invalid inter alia on the grounds, that having once been granted extension in service beyond the age of 55 years, on the basis of his service record, he could not be retired before the expiry of the extended period and that it was not issued by the competent authority. The Plaintiff took up some other grounds for challenging the notice, but they do not survive in this appeal. The suit was contested by the Defendants who inter alia pleaded that the Government had absolute right to

retire him at any time after serving him with a three months notice and that the notice had been issued by the appropriate authority.

2. The trial Court held that the impugned order was illegal and it consequently decreed the suit of the Plaintiff. The State went up in appeal before the Senior Subordinate Judge, Amritsar, who reversed the finding of the trial Court and held that the Government had absolute right to retire him. He consequently accepted the appeal and dismissed the suit. The Plaintiff has come up in second appeal to this Court. The matter came up before me for hearing and I ordered that the case be heard by a Division Bench as the matter was of a great importance and was likely to arise in many cases. This is how the case has been listed before this Bench.

3. The first question that arises for determination is, whether after giving extension to a Government servant to continue in service after 55 years of age, can he be retired from service after serving him with three months" notice without taking into consideration any fresh material.

4. In determining the question, it will be relevant to refer to Rule 5.32 of the Punjab Civil Services Rules, Volume II (hereinafter referred to as the Punjab Rules) which relates to retiring power. In Note 1 to Clause (c) to the said rule, an absolute right has been conferred on the appointing authority to retire any Government employee, except a Class IV employee, without assigning any reason, on or after he has attained the age of 55 years. The said Note reads as under:

Appointing authority retains an absolute right to retire any Government employee, except a Class IV Government employee, on or after he has attained the age of 55 years without assigning any reason. A corresponding right is also available to such a Government employee to retire on or after he has attained the age of 55 years.

(Emphasis supplied by underlining.)

It will also be relevant to refer to instructions issued by the Government in 1964, wherein it was said that in order to ensure uniformity in the operation regarding retirement, after a Government servant has attained the age of 55 years, on three months notice, and also equitable treatment in all cases. it had been decided to observe the criteria and procedure prescribed in the instructions. Instruction (v) is relevant and it reads as follows:

Once it is decided to retain a Government employee beyond the age of 55 years, he should be allowed to continue up to the age of 58 years without any fresh review unless this is justified by any exceptional reasons, such as his subsequent work or conduct or the state of his physical health which may make earlier retirement clearly desirable. It is felt that in order that a Government employee who is cleared for continuance at a stage of attaining the age of 55 years may settle down to another three years of work with a sense of security and those working under him accept his control and discipline without any reservation and annual review between the ages

of 55 and 58 years would not be desirable.

5. Mr. Sehgal has argued that once the extension is given at the age of 55 years to the Government servant, he should be allowed to continue in service for the extended period unless his subsequent work and conduct or the state of physical health make his earlier retirement desirable. He has placed reliance on the instructions and a judgment of the Supreme Court reported as *State of Uttar Pradesh v. Chandra Mohan Nigam and Ors.* 1978 (1) S.L.R. 12.

6. We have given due consideration to the argument of the learned Counsel but regret our inability to accept the same. From a perusal of the note to Rule 5.32 of the Punjab Rules, it is evident that an appointing authority has an absolute right to retire any Government servant after he has attained the age of 55 years without assigning any reason. A similar right is also conferred upon the Government employee. The right is absolute and it is not incumbent on the appointing authority to decide the matter after taking into consideration his subsequent conduct or state of health. It is no doubt true that instruction (v), reproduced above, says that once a decision is taken to retain a Government employee beyond the age of 55 years, he cannot be retired unless that is justified by any exceptional reasons. The instructions have not been issued under any Act or Rules and, therefore, they cannot override or modify the provisions of the Punjab Rules. The matter is not *res integra*. This very question came up for consideration before a Full Bench of this Court in *Pritam Singh Brar v. The State of Punjab and Ors.* 1967 S.L.R. 688. A.N. Grover, J., as he then was, speaking for the Court observed that the procedure or the instructions cannot operate to limit or restrict the operation of the provisions of Rule 5.32 *ibid*. This matter again came up before a learned Single Judge of this Court in *Dev Dutt v. State of Haryana* 1973 (1) S.L.R. 30, who, after following the view of the Full Bench, held as follows:

These instructions were considered by a Full Bench of this Court in *Pritam Singh Brar v. The State of Punjab and Ors.* 1967 S.L.R. 688, and the learned Judges observed that◆

The procedure or the instructions contained in the aforesaid letter of the Chief Secretary to Government, Punjab, cannot operate to limit or restrict the operation of the provisions of Rule 5.32.

Rule 5.32(C) gives the power to the appointing authority to retire any Government employee except class IV Government servant on or after attaining the age of 55 years by giving him not less than three months' notice without assigning any reason. This power, in our opinion, can be exercised at any time during the three years from the date the employee attains the age of 55 years to the date he attains the age of 58 years. But the instructions issued by the Government referred to above were not issued under any constitutional provision or statutory law or rule and, therefore, cannot be made the basis for a legal right by the Petitioner to

continue in service till he attained the age of 58 years. Their Lordships of the Supreme Court held in [G.J. Fernandez Vs. State of Mysore and Others,](#) , as per head-note A, as under:

Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive power of the State. Of course, under such executive power the State can give administrative instructions to its servants how to act in certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. There is no statute which confers any authority on the State Government to issue rules in matters with which the Mysore Public Works Department Code is concerned. Thus the instructions contained in the Code are mere administrative instructions and not statutory rules. Therefore, even if there has been any breach of such executive instructions, that does not confer any right on any member of the public to ask for a writ against Government by a petition under Article 226. It is a matter between the State Government and its servants.

In the body of the judgment the last sentence set out above has been elucidated as under:

But assuming that there has been any breach, that is a matter between the State Government and its servant, and the State Government may take disciplinary action against the servant concerned who disobeyed these instructions. But such disobedience did not confer any right on a person like the Appellant, to come to Court for any relief based on the breach of these instructions.

It is quite clear from these observations that the Petitioner cannot claim any legal right to continue in service up to the age of 58 years on the basis of the executive instructions referred to above."

We are in respectful agreement with the said view.

The rule in Chandra Mohan Nigam's case (supra), which was interpreted by their Lordships of the Supreme Court, was Rule 16(3) of the All-India Services (Death-cum-Retirement Benefits) Rules, 1958. It reads as under:

The Central Government, in consultation with the State Government, may require a member of the Service who has completed 30 years of qualifying service or who has attained the age of 55 years to retire in the public interest provided that at least three months previous notice in writing will be given to the member concerned.

Later, by a notification the figures and words "55 years" were substituted by the figures and words "50 years" The instructions issued by the Central Government were interpreted by their Lordships in the light of the said rule. The rule, in Nigam's case, is materially different than the note under Clause (c) of Rule 5.32 of the Punjab

Rules and, therefore, the observations in that case are of no help to the Appellant. It is also well-settled that an order of compulsory retirement cannot be said to be a punishment or stigma and, therefore, does not attract the provisions of Article 311 of the Constitution. The rule of compulsory retirement has been framed for the purpose of weeding out corrupt and inefficient Government servants. The following observations of the Supreme Court in *Union of India v. M.E. Reddy and Anr.* 1979 (2) S.L.R. 792, may be read with advantage in this regard:

On a perusal of the impugned order passed by the Government of India, it would appear that the order fully confirms to all the conditions mentioned in Rule 16(3). It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employee has 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. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16 (3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, 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. Thus, the general impression which is carried by most of the employees that compulsory retirement under this condition involves some sort of stigma must be completely removed because Rule 16(3) does nothing of the sort.

7. We may also look into the merits of the case. The extension for one year was given to the Appellant as stated above on 1st January, 1971. Thereafter, his annual confidential remarks were recorded for the period from 1st April, 1970 to 21st February, 1971, wherein his honesty was stated to be doubtful and power of command as poor. It was further stated, that he was a good for nothing officer and gave a poor performance during the year under report. From the above remarks, it is evident that he cannot be categorised as an efficient officer. It is provided in the instructions that even after an extension has been given to a Government servant, his subsequent work, conduct and the state of physical health can be taken into consideration for retiring him earlier. In view of the above remarks, it cannot be said

that the order of retirement of the Appellant is against the provisions of Note 1 to Clause (c) to Rule 5.32 of the Punjab Rules read with the instructions. Consequently, we reject the contention of the learned Counsel for the Appellant.

8. The second question that arises for determination is whether an order of termination can be passed by an officer higher in rank than the appointing authority. It is contended by the learned Counsel for the Appellant that the Superintendent of Police was the appointing authority of the Appellant whereas the order of retirement was passed by the Deputy Inspector-General of Police, which could not be done. According to him, the order is liable to be struck down on this ground. It is not necessary to go into that matter in depth as it is concluded by a decision of the Full Bench of this Court in *Karnail Singh v. The State of Punjab and Ors.* 1975 (1) S.L.R. 105. In that case, it was held that a superior authority to that by which a Government servant was appointed could award major punishment to him and even pass an order of his dismissal or removal from service. The relevant observations of the learned Bench are as follows:

The relevant part of Article 310(1) of the Constitution states that except as expressly provided by the Constitution, every person who holds any civil post under a State holds office during the pleasure of the Governor of the State. As the opening words of the first clause of Article 310 denote, the provisions contained therein are subject to the other provisions of the Constitution. These other provisions are contained in Articles 309 and 311. The pleasure of the Governor is, therefore, subject to the constitutional safeguards provided in Article 311 and has to be exercised in accordance with such Acts of the appropriate Legislature referred to in the proviso to that Article by the Governor, which may regulate the recruitment and conditions of service of persons appointed to the relevant public service. It may be noticed that even under Article 311(1) the passing of an order of dismissal, removal or reversion by only an authority subordinate to that by which the official was appointed is prohibited, and that there is no bar to such major punishment being inflicted by an authority superior to that by which the Government servant was appointed ..... It is, therefore, clear that in the absence of any compelling reasons, there would be nothing abhorrent in an authority superior to the appointing one to give notice of retirement when such an authority is permitted to pass even an order of dismissal or removal from service.

Similar observations were also made by a Division Bench of this High Court in *The State of Haryana and Anr. v. Baldev Krishan Sharma and Ors.* 1970 P.L.R. 635.

9. The abovesaid ratio will also apply in the case of compulsory retirement. We, therefore, do not find any substance in the second contention of the learned Counsel as well.

10. For the aforesaid reasons, we dismiss this appeal with no order as to costs.

S.S. Sandhawalia, C.J.

I agree.