

Before S. S. Kang, J.

GHANSHAYAM SHARMA,—Petitioner.

versus

STATE OF HARYANA,—Respondent.

Civil Writ Petition No. 1155 of 1987

September 11, 1987.

Punjab Civil Services Rules, Volume I, Part I—Rules 3.26(d), Volume II—Rules 5.32-I(c)—Government servant—Retention in service beyond specified age—Determination of suitability for such retention—Uncommunicated adverse entry—Value of such entry—Uncommunicated vigilance report—Relevancy of.

Held, that even the adverse reports occurring in the A.C.R. of a government servant, which have not been conveyed to him or against which a representation made by the government servant has not been decided, cannot be taken into account for the purpose of determining the suitability of a government servant for his retention in service on the attainment of a specified age. So, if the adverse reports which had not been conveyed to a government servant could not be taken into account, the vigilance enquiry report, coming from an outside agency which is not the assessment or valuation of petitioner's work, conduct and performance by his Reporting or Reviewing Authority and which have not been supplied to the petitioner could not form the basis of his premature retirement.

(Para 7)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to :—

- (a) issue a Writ, Order or Direction in the nature of Certiorari, quashing the impugned order, Annexure P/8;
- (b) issue any other appropriate Writ, Order or Direction which this Hon'ble Court may deem fit in the facts and circumstances of the case;
- (c) dispense with the filing of attested/certified copies of the Annexures;
- (d) dispense with the issuing of advance notices to the Respondent;
- (e) allow the writ petition by awarding the costs to the writ petitioner;

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It is further prayed that as the impugned order, Annexure P/8, is liable to be struck down, being contrary to the law settled by the Hon'ble Supreme Court of India as well as this Hon'ble Court, and those judgments were brought to the notice of the State Government in the Review Petition submitted by the petitioner, the Hon'ble Court be pleased to quash the impugned order, Annexure P/8, at the motion hearing itself.

J. S. Khehr, Advocate (Deepak Agnihotri, Advocate with him),
for the Petitioner.

Jagdev Sharma, D.A.G., (Haryana), for the Respondents.

JUDGMENT

Sukhdev Singh Kang, J.

(1) At issue in this writ petition under Articles 226/227 of the Constitution is the legality and validity of the order dated October 10, 1986 (copy Annexure P.8) passed by the Government in exercise of the powers conferred on it by Rule 5. 32-A (c) of the Punjab Civil Services Rules, Volume II, read with Rule 3.26(d) of the Punjab Civil Services Rules, Volume 1, Part 1 (hereinafter called 'the Rules'), whereby the petitioner has been compulsorily retired from service.

First the factual matrix in brief :

(2) After having served the State Health Department in various capacities for over 30 years the petitioner was working as a Director of Health Services in 1986 when the impugned order terminating his services prematurely were passed. At that time, he had attained the age of 56 years. Under the service rules applicable to the petitioner, he was eligible to be retained in service till the age of superannuation, i.e. 58 years.

(3) It is the petitioner's case that he had a blotless service career. During the last 10 years of his service, he had a very satisfactory record and he had been evaluated as a very good officer by his superiors. This assessment is reflected in the entries in the petitioner's service record ranging from the year 1975-76 upto 1984-85. To the best of the knowledge of the petitioner, all his reports were outstanding. On receipt of the impugned order, the petitioner filed a review application for reconsideration of the decision. When the petitioner did not receive any reply, he was constrained to file the present writ petition.

(4) The writ petition has been resisted by the respondent, *inter alia*, on the grounds that the writ petition was not competent. The termination of the petitioner's services in accordance with the provisions of rule 5.32-A(c) and 3.26(d), *ibid*, does not tantamount to dismissal or removal from service, and consequently, does not furnish any cause of action for filing the writ petition. On merits, it is averred that the whole of the service career of the petitioner was not 'Outstanding'; for quite some time, he had been evaluated just as an average officer. While passing the impugned order, public interest was kept in view. A number of complaints had been received casting aspersions upon the honesty and integrity of the petitioner. It was alleged in the complaints that the petitioner had accumulated wealth/property his means and had no explanation for their acquisition. The matter was got enquired through the State Vigilance Department and they submitted a report dated August 12, 1986, indicating that the petitioner had accumulated wealth/property beyond his means and was unable to account for the same. These findings of the Vigilance Department are deducible from Annexure R-2 appended with the written statement.

(5) It was conceded that the review application filed by the petitioner was considered and dismissed because there was no merit in the same.

(6) During the course of arguments, I had requested Shri Jagdev Sharma, learned Deputy Advocate-General, Haryana, to make available service record of the petitioner. The learned Deputy Advocate-General has very fairly placed all the material relating to the service record of the petitioner before the Court. At my asking, a summary of the Annual Confidential Reports (ACRs) of the petitioner for the last 10 years i.e., 1975-76 to 1984-85, has been prepared and a copy thereof has been placed on the record. This reveals that from 1975-76 upto 1984-85, the petitioner had three 'Outstanding' reports, six 'Very Good' reports and four 'Good' reports. So, according to the ACRs of the petitioner, his service record was very good. There is not even a single entry adjudging him to be average or below average officer. It is now well settled that for the purpose of determining the suitability of a public servant for his retention in service on his attainment of the specified age (i.e. 55 years in the present case) the entries in his service record for the past 10 years should be taken into account and not very old or stale entries spanning the whole of the service

career of a public servant. It is true that rules 5.32-A(c) and 3.26(d), *ibid*, are couched in a very broad language. The expression 'absolute right' has been imported therein. However, this power or discretion of the Government has to be exercised only in public interest. From time to time, the Government has issued instructions in order to furnish guidelines for the exercise of this discretionary power by the competent authorities. The latest instructions issued by the Government of Haryana prescribe that the Government servant should have at least 70 per cent of good or better reports if he wants to be retained in service after the attainment of the age of 55 years. These reports have to pertain to the past 10 years. In the present case, the petitioner qualifies to be retained in service even according to these latest instructions on which reliance has been placed by the respondent.

(7) The crucial point to be determined in this case is, what is the effect of the inquiry conducted against the petitioner by the State Vigilance Department and their conclusions about the excessive expenditure on construction of the house and the absence of any satisfactory explanation with regard thereto. It has been rightly contended by Mr. Khehar, learned counsel for the petitioner, that only the service record of a Government servant has to be taken into account while determining his suitability for retention in service beyond the age of 55 years. The report of the Vigilance Department does not form part of the service record. This has come from an outside agency. It is not the assessment or evaluation of the petitioner's work, conduct and performance by his reporting authority or the reviewing authority. This report, therefore, could not be taken into account while deciding the petitioner's case for premature retirement. This report could not be taken into account for another reason also. It has been conceded by Shri Sharma that there is nothing in the record to show that the petitioner had ever been associated with the preliminary inquiry conducted by the Vigilance Department. There is nothing to indicate that the report submitted by the Vigilance Department had been furnished to the petitioner or that his explanation with regard thereto had been called for. It is the settled position of law that even the adverse reports occurring in the A.C. Rs. of a Government servant, which have not been conveyed to him or against which a representation made by the Government servant has not been decided, cannot be taken into account for the purposes of determining the suitability of a Government servant for his retention in service on the attainment of a specified age. In

this connection reference may be made to the latest decision of the final Court in *Brij Mohan Singh Chopra v. State of Punjab*, (1) wherein their Lordships observed :

“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 premature 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.”

This dicta was also applied by a Division Bench of this Court in *Shri Faqir Singh, S.D.O. (Operation) Sub-Division, Haryana State Electricity Board, Burauli v. The Haryana State Electricity Board, Chandigarh*. (2) and it was held that the adverse reports which had not been conveyed to the delinquent official or the adverse reports against which representations had not been decided by the reviewing Authority could not be taken into account while deciding the question of premature retirement of the Government servant. So, if the adverse reports which had not been conveyed to a Government servant could not be taken into account, the enquiry report, which had not been supplied to the petitioner, could also not form the basis of his premature retirement. It is clearly mentioned in sub-para 16(1) of the written statement that “the petitioner was retired prematurely in public interest not because his 70 per cent record was not good but because the Vigilance Inquiry had cast serious aspersions on his integrity.”

(8) Consequently, the writ petition is allowed, the impugned order is set aside and the petitioner shall be deemed to have continued in service with all the consequential benefits admissible under the rules. No costs.

S. C. K.

(1) A.I.R. 1987 S.C. 948.

(2) C.W.P. 2343 of 1987 decided on 15th July, 1987.