(18) For the reasons stated above, the first bunch of writ petitions comprising of C.W.P. Nos. 13907, 4201, 10715, 12547, 13366, 13793, 13908, 13966, 13977, 14214, 14301, 14302, 14303, 14304, 14803, 14835 of 1993, 84, 85 and 725 of 1994, is dismissed with costs quantified at Rs. 3,000 in each case and the second bunch of writ petitions comprising of C.W.P. Nos. 939, 1834 and 1835 of 1994 is dismissed but with no order as to costs as no notice was issued to the respondents.

J.S.T.

Before Hon'ble of A. L. Bahri, Ashok Bhan, & J. L. Gupta, JJ

DEVA NAND,—*Petitioner.*

versus

STATE OF HARANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 12267 of 1993.

October 25, 1994.

Constitution of India, 1950—Arts. 226/227—Punjab Civil Service Rules, Vol. I, as applicable to the State of Haryana—Rule 3.26 (a) & (d)—Compulsory retirement—Retention in service beyond 55 years—Overall assessment—Condition that more than 70 per cent of last 10 years confidential reports should be good for retention is not contrary to rule 3.26—Principle of—Government instructions making communication necessary of average reports—Instructions are intra vires of Rl. 3.26—When communication necessary, average record has to be treated as adverse—Compulsory retirement on the basis of average reports can be ordered in public interest.

Held, that after examining the entire service record if the competent authority comes to the conclusion that it would be in the public interest to retain the Government servant in service beyond 55 years on the basis of meritorious record or in other words good record the same cannot be held to be against the object or the principle embedded in the Rules. The second category of cases would be where the service record contains some adverse entry/ entries and on that account such persons are to be weeded out of the service being dead wood. That again cannot be held to be against the Rules. It is the third category of case where the service record is 'average' throughout which is neither good nor bad, that a question has been posed as to whether such a person should be retained in service or should be weeded out. That requires consideration.

(Para 14)

Held, that opinion expressed by the Courts with respect to 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.

(Para 16)

Held, that 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 *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 per cent 'good' reports is contrary to the spirit of Rule 3.26 cannot be held to be good law.

(Para 16)

Held, that 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 in exceptional circumstances that extention 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.

(Para 16)

Held, that the use of word "absolute right" is significant that no Government servant 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 per cent or above good record in the last ten years do not infringe Rule 3.26 (a) or (d).

(Para 16)

Held, that 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.

(Para 16)

Held, 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.

(Para 16)

Held, that the instructions dated August 18, 1983 leave no manner of doubt that 'average' reports with or without qualifying word or phrase were to be communicated to the officer or the official concerned who could make a representation against the same. The purpose of communicating such reports and the qualifying words or phrases which are used in recording annual confidential reports is that they would form part of the service record to be taken into consideration at different stages of the service-career such as making promotions, crossing efficient bar, retention in service or compulsory retirement. Thus ratio of the decision in *K. K. Vaid's* and *Suraj Mal Hooda's* cases loses relevance in view of the instructions aforesaid.

(Para 17)

Held, that the decision in *K. K. Vaid's* case does not lay down good law and the instructions, issued by the State on August 13, 1983, that the extension beyond the age of 55 years be granted to the officials/officers with the condition that more than 70 per cent of the last ten years confidential reports are good are not contrary to Rule 3.26 (a) or (d) of the Rules.

(Para 19)

Amar Singh, Tewatia, Advocate, *for the Petitioners.*

H. L. Sibal, Sr. Advocate with Reetu Kohli and Anoopinder Singh Grewal, *for the Respondents.*

JUDGMENT

A. L. Bahri, J.

(1) The Motion Bench referred this case to the Full Bench,—*vide* order dated March 7, 1994, as correctness of the view taken by the Division Bench in *K. K. Vaid* v. *State of Haryana* (1) was doubted.

Daya Nand was appointed as a Patwari on January 6, 1961 in the Department of Urban Estate under the Land Acquisition Officer, Karnal. In 1966 he was sent to the Revenue Department. In that

(1) 1990 (1) S.L.R. 1.

tenure no adverse entry was recorded in his service record which department he worked at different places. During his service was stated to be good throughout especially during the last ten years except that there were one or two 'average' reports. There was no entry regarding doubtful integrity or dishonesty of the petitioner ever recorded. On June 14, 1993 he crossed 55 years of age and was allowed to continue in service in view of the good record. It was a surprise to him when he received order Annexure P-1 dated July 13, 1993 pre-maturely retiring him from service in public interest. He submitted representation Annexure P-2. Having received no response he filed the present writ petition in September, 1993 challenging order Annexure P-1.

(2) On notice of motion the writ petition was contested by the respondents by filing written statement *inter alia* asserting that service record of the petitioner was not good. The record was full of complaints. In one of the complaints the petitioner had tendered apology in writing on April 8, 1993 whereby he assured that in future he would not do any mistake and malpractices. Copy of the same is Annexure R.1. His service record had been "average" and he had earned only four good reports (tactualy one good report) in the last ten years. All the adverse reports were duly conveyed to the petitioner. He was rightly retired from service in public interest keeping in view his service record. Reliance was placed on the decision of the Supreme Court in *Baikuntha Nath* v. *Chief Medical Officer* (2). Annexure R.2 was produced indicating overall grading as well as adverse remarks communicated to the petitioner from time to time in the past ten years i.e. from 1976-77 to 1989-90. For the year 1986-87, the overall grading was "good". For all other years the overall grading was "average". Such average reports were conveyed to the petitioner for the year 1983-84 to 1989-90 except for the year 1987-88 when "average" report was not conveyed. Even for the year 1986-87 when overall grading was "good", the remarks were communicated as 'over-clever Patwari.' For the year 1988-89 the adverse remarks communicated were "irregular in performing the Government duty". In 1989-90 "not fit for promotion and also not laborious."

(3) Rule 3.26 (a) and (d) of the Punjab Civil Service Rules Volume I, 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

(2) A.I.R. 1992 S.C. 1020.

on the afternoon of the last day of the month in which he attains the age of fiftyeight 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.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

"(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-years ; and

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

(b) If he is 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 month's pay and allowances in lieu of the notice period and will not be 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 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."

(4) Similar provision for retiring Government servants exists in Rule 56(j) of the Fundamental Rules which were considered by the Supreme Court in *Union of India* v. *J. N. Sinha and another* (3). In para 7 of the judgment it was observed that the aforesaid Rule did not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. While referring to the theory of 'President's pleasure' as enshrined in Article 311 of the Constitution it was observed that the same was subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied nor can they be elevated to the position of fundamental rights. In para 8 of the judgment while describing object of the rules it was observed that it was in the public interest to chop off the dead wood and that compulsory retirement as envisaged under the rules involves no civil consequences. It was observed as under :—

"Compulsory retirement inolves 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 Art. 310 of the Constitution. Various considerations may weight 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 right of the individual Government servant

(3) A.I.R. 1971 S.C. 40.

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."

(5) Rule 16(3) of the All India Services (Death-cum-Retirement) Rules, 1958 also deals with the subject of compulsory retirement of Government servants in public interest.

(6) In *Union of India etc.* v. *M. E. Reddy and another* (4), in para 9 of the judgment it was held that 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 was 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.

(7) It was reiterated that the order of compulsory retirement involves no stigma. The Rules of natural justice were excluded while applying the Rule. With respect to the object of achieving the public interest, it was observed as under :—

"The safety value of public interest in 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."

Commenting upon the object of the Rule in para 11, it was observed as under :—

"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

(4) A.I.R. 1980 S.C. 563.

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.

(8) It was also held that while examining the entire service record the confidential records could be taken into consideration even they were not communicated to the officer concerned. The over-all picture of the officer during the long years of service that he had put in is to be considered from the point of achieving higher standard of efficiency and dedication so as to be retained even after the officer had put in the requisite number of years of service. *J. N. Sinha's* case (supra) was relied upon.

(9) In *Baldev Raj Chadha* v. *Union of India and others* (5), the Supreme Court examined the case in the light of Fundamental Rule 56 (j). In this case in para 4 it was observed that the opinion of the appropriate authority is not subjective satisfaction but objective and *bona fide* and based on relevant material. The retirement of the civil servant is to be 'in public interest'. The right to retire was not absolute, though worded. It would be seen that the aforesaid ratio was subsequently modified by the Supreme Court in the later decision to which reference would be made. *In H. C. Gargi* v. *State of Haryana* (6), the ratio of the decision in *Col. J. N. Sinha,* referred to above, was followed. Although on the facts of the case it was found that there was no material to show that the order of retirement was in public interest, the case related to Rule 3.26 of the Punjab Civil Services Rules, Volume I Part I. The Commissioner who had passed the order had observed that there was entry of doubtful integrity. The same was not borne out by the two adverse entries which were stated to be 'average' and 'below average' which did not pertain to his integrity. On that basis it was observed that there was no material on the basis of which the State Government could have formed an opinion that it was in public interest to compulsorily retire the Government Officer at the age of 57 years. Though not specifically laid down in this judgment, it may be observed that opinion of the appointing authority based on 'average'

(5) A.I.R. 1981 S.C. 70.

(6) 1986 (3) S.L.R. 57.

and 'below average' entries for 2 years was not considered sufficient to compulsorily retire. Great emphasis has been laid during arguments by learned counsel for the petitioner that average entry/ entries in the service record are not to be treated as adverse. At this stage reference may also be made to the decision of the Supreme Court in *Brij Mohan Singh Chopra* v. *State of Punjab* (7), wherein it was held that the uncommunicated adverse entries cannot be taken into consideration while forming an opinion to retire an employee. Further-more if promotion followed adverse entries recorded earlier would lose significance. Relying upon the aforesaid decision in *Chopra's* case this Court in *Dr. Om Parkash Gupta* v. *The State of Haryana and others* (8), set aside the order of compulsory retirement. It may be observed that the entire record for about 10 years was good and that was only one 'average' entry which was 5 years old. Reliance in this case was also laid down on the decision in *Baldev Raj Chadha's* case (supra).

(10) *K. K. Vaid* v. *State of Haryana* (9), was decided by this Court relying upon the ratio of the aforesaid decisions referred to above. The instructions issued by the State on the subject of retention of Government Officers having more than 70 per cent good record were quashed. It was held that the 'average entry' could not be treated as an 'adverse entry' and the employee could not be pre-maturely retired on the basis of 'average' entry or on the basis of uncommunicated adverse remarks or if communicated but representation made against such remarks were still pending. In para 9 of the judgment, after referring to the case of Baldev Raj Chadha and the instructions on the subject issued by the Haryana State, it was observed as under :—

> "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. 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

(7) A.I.R. 1987 S.C. 948.
(8) 1989 (1) R.S.J. 296.
(9) 1990 (1) S.L.R. 1.

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 Governmental 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 then 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."

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 pre-mature 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."

Correctness of this decision has been doubted by the Division Bench of this Court that the matter has been referred to Full Bench observing as under :—

"After considering the matter it appears to us that even though the age of superannuation has been fixed at 58 years, yet a power has been reserved to retire an employee after he has attained the age of 55 years and that he would be allowed to continue in service beyond that age only if he has earned more than 70 per cent good reports. Otherwise, he is liable to be retired before attaining the age of 58 years. The instructions are thus supplemental to the rule and provide guidelines to the appointing authority."

(11) The reference has been made in view of the later decision of the Supreme Court in *Baikuntha Nath Das and another* v. *Chief District Medical Officer, Baripada and another* (10). After referring to the earlier decisions on the subject the following principles that emerged was summarised in para 32 of the judgment :—

"(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 have 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 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 a 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."

(10) A.I.R. 1992 S.C. 1020.

(12) The view taken by the Supreme Court in *J. N. Sinha's* case (supra) was held to be correct that the principles of natural justice were not attracted to a case of compulsory retirement. It was further held that the principle laid down in *M. E. Reddy's* case (supra) should be preferred over *Brij Mohan Singh Chopra's* case (supra) and *Baidyanath Mahapatra's case* on the question of taking into consideration uncommunicated adverse remarks.

(13) The aforesaid decision in *Baikuntha Nath Das's* case (supra) has been relied upon in *Post and Telegraphs Board and others* v. *C.S.N. Murthy* (11). In para 5 of the judgment it was observed on facts of that case that upto March 1970 the conduct of the officer was quite satisfactory. However, the standard of work declined in the last two years under review. It was, found that the Officer was not taking adequate interest in his work and was responsible for delays of various kinds. In such circumstances it was observed that the order of retirement was required to be passed in public interest and it was for the Government to decide primarily on this aspect. It was observed as under :—

> "The courts will not interfere with the exercise of this power, if arrived at *bona fide* and on the basis of material available on the records. No *mala fides* have been urged in the present case."

(14) Reference may be made to the decision of the Supreme Court in *The State of Sikkim and others* v. *Sonam Lama and others etc,* (12), it was not referred to in *Baikuntha Nath Das's* case but has been pressed into service by the learned counsel for the petitioner. Compulsory retirement was ordered on the ground that better talent was available. In para 5 of the judgment it was observed.

> "Apparently the above reasoning cannot be the basis for compulsorily retiring any official. The Report does not state that in the public interest the officers cannot be continued. The assessment of performance of the officers is only to the effect that there are better talented persons available in the department and the work performed by the officials could be better done by more qualified persons. This is wholly extraneous consideration for compulsorily retiring any official. 'The better talent' is a relative term. That does not mean that the incumbent in the office has become a dead wood."

(11) (1992) 2 S.C.C. 317.
(12) A.I.R. 1991 S.C. 534.

(14) In view of the ratio of the decision of the Supreme Court in *Kaikuntha Nath Das's* case which has been followed in *C.S.N. Murthy's* case (supra), the ratio of the decision in *Sonal Lama and Brij Mohan Singh Chopra's* cases stands departed. After examining the entire service record if the competent authority comes to the conclusion that it would be in the public interest to retain the Government servant in service beyond 55 years on the basis of meritorious record or in other words good record the same cannot be held to be against the object or the principle embedded in the Rules. The second category of cases would be where the service record contains some adverse entry/entries and on that account such persons are to be weeded out of the service being dead wood. That again cannot be held to be against the Rules. It is the third category of case where the service record is 'average' throughout which is neither good nor bad, that a question has been posed as to whether such a person should be retained in service or should be weeded out. That requires consideration. The word "average" has been defined in the Concise Oxford Dictionary New Seventh Edition as under :—

> "generally prevailing rate, of the ordinary standard or kind; middle estimate."

(15) The contention of learned counsel for petitioner is that average entry cannot be treated as adverse and on that basis compulsory retirement cannot be ordered and it will not be in public interest. Reliance has been placed on the decision of the Supreme Court in *R. P. Malhotra* v. *Chief Commissioner of Income-tax, Patiala and others* (13). Service record of Mr. Malhotra and examined and it was found that for the period 1980-81 in all the columns it was mentioned that he was good and there was nothing adverse to the knowledge of the Reporting Officer but he was described as a man of 'above average'. He could improve his performance. Overall grading was 'good'. For the year 1982-83 he was described as "an average officer". In 1983-84 in all the columns the remarks was 'good'. Regarding integrity there was nothing to the knowledge of the Reporting Officer from which adverse inference could be drawn but it was stated that he had not done any outstanding work and thus quality of assessment was "average". He had met all the targets as reported. The screening committee, after observing that in 1982-83 he was described as "average", reported that the officer had lost effectiveness and utility to the Government. However, the

(13) A.I.R. 1990 S.C. 2055.

Supreme Court observed that he had not lost utility in service and had not become a dead wood that in public interest he should be retired before the age of superannuation. The aforesaid decision can at the best be called a decision on its own facts. No Rule of Law has been laid down therein that if there had been 'average' reports earned, the Officer should have been retained in service or in other words he had not lost his utility. The other decision to be noticed is of this Court in *The State of Haryana* v. *Suraj Mal Hooda* (14). The service record of 11 years was considered. There were 5 good reports, five "average" reports and one "below average". Last 2 reports were "good". The Single Judge relying upon *K. K. Vaid's* case (supra), held that the petitioner could not be pre-maturely retire on the basis of his record for 10 years. An argument was addressed that in *K. K. Vaid's* case it was not laid down that "average" report is to be treated as "good" but only laid down that the "average" report is not to be treated as bad or adverse. The Bench observed as a matter of clarification that the Single Judge was not correctly observing that *K. K. Vaid's* case lays down that the "average" report is to be treated as "good". The said authority only laid down that the "average" report is not to be treated as bad or adverse for the purposes of pre-maturely retiring an officer. It may be observed that question of the instructions issued by the State Government on the subject was not raised and considered.

(16) When the entire service record of an officer is considered, especially the record of the last 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 to 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 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 *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 per cent "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 of 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 class 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 per cent 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 embeded 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 *Baikunth 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 the 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.

(17) Haryana Government issued instructions on the subject of conveying overall average reports. All these instructions were issued after the decision of *K. K. Vaid's* case. On August 16, 1983, instructions were issued that if the work is assessed and graded as "average" then the report along with its grading should be communicated, even if the report did not contain any adverse remarks. On April 30, 1987 instructions were issued that overall assessment of the work of an officer/official as "average" without any other qualifying word or phrase would be communicated. These instructions were to be applicable to the reports for the year 1986-87 and for the previous years. If such reports were not communicated the same to be conveyed for the previous years 1982 to 1986. On August 14, 1987 instructions were issued to entertain representations against communication of adverse remarks if filed within 45 days from the date of receipt of the letter communicating such remarks. The same could be entertained on the expiry of said period, if the authority was satisfied that there was sufficient cause for not submitting the representation in time. On June 6, 1989, further instructions were issued that representations against adverse remarks were also to be applicable to representations against "average" reports. Decision was to be applicable to annual confidential reports for the year 1988-89. The aforesaid instructions leave no manner of doubt that "average" reports with or without qualifying word or phrase were to be communicated to the officer or the official concerned who could make a representation against the same. The purpose of communicating such reports and the qualifying words or phrases which are used in recording annual confidential reports is that they would form part of the service record to be taken into consideration at different stages of the service-career such as making promotions, crossing efficiency bar, retention in service or compulsory retirement. Thus ratio of the decision in *K. K. Vaid's* and *Suraj Mal Hooda's* cases loses relevance in view of the instructions aforesaid.

(18) Coming to the facts of the present case it may be observed that Annexure R.2 produced along with the written statement about the annual confidential reports for the year 1976 to 1990 show that there was only one overall good report earned in the year 1986-87 and for that year also adverse remarks were communicated to the petitioner as "over clever Patwari". With respect to other years overall grading was "average". The adverse remarks were communicated for all the years except for the years 1976-77, 1977-78, 1981-82 and 1987-88. In the year 1978-79 the adverse remarks were "not fit for promotion". These remarks were not commmunicated. However, the same can be taken into consideration in view of the Supreme Court decision, already referred to above. For the years 1983-84, 1984-85 and 1985-86 adverse remarks were communicated. However, exact reports/entries conveyed are not mentioned. For the year 1988-89 adverse remarks were communicated as "irregular in the performance of Government duty" and in the year 1989-90 the adverse remarks communicated were "not fit for promotion and also not laborious". Annexure R.1 further shown that the petitioner himself had admitted his mistake and assured that he will not do so again or do any *mal practice* in future. He requested that punishment of termination from service be not awarded to him. This was an apology tendered in respect of charges levelled against him. Annexure R.1 is dated April 8, 1993. In view of the aforesaid, service record of last about ten years the order of compulsory retiring the petitioner cannot be termed as arbitrary. The element of dedication and dynamism is lacking absolutely in his case and the petitioner has outlived his utility. It was in public interest that he should have been compulsorily retired. There are no allegations of *mala fides*, personal or legal, raised in the writ petition. Legally the order cannot be assailed.

(19) Thus we conclude that the decision in K. K. Vaid's case does not lay down good law and the instructions, issued by the State on August 13, 1983, that the extension beyond the age of 55 years be granted to the officials/officers with the condition that more than 70 per cent of the last ten years confidential reports are good are not contrary to Rule 3.26 (a) or (d) of the Rules, as discussed above.

(20) For the reasons recorded above, this writ petition is dismissed with no order as to costs.

R.N.R.

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