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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-1186-2022(O&M)

Date of Decision: 11th of February, 2025

DR. SWARAN SINGH BAMAL

.....Appellant (s)

V/s.

STATE OF HARYANA AND ANOTHER

.....Respondent(s)

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. N.K. Malhotra, Advocate for the applicants-appellants.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The present appeal assails the order dated 19.05.2020 passed by the learned Single Bench, whereby Writ Petition i.e. CWP-18372-1995 has been dismissed.

2. Apart from the appeal being belated and suffering from laches and delay of 222 days, we also heard learned counsel for the appellant on merits.

3. Learned counsel for the appellant submits that an adverse remark of "doubtful integrity" was entered in the ACR of the appellant in the year 1978-1979 and the same has been taken into consideration for making him compulsorily retired. Although, after the adverse remark was entered, the appellant was allowed to be promoted and he also crossed the efficiency bar. He further submits that the sting of the concerned adverse remark had eroded and the same cannot be a reason for making him compulsorily retired. Therefore, he submits that the impugned order passed by the learned Single Bench deserves to be set aside.



4. We have considered the submissions of learned counsel for the appellant.

5. It is a settled law as held by the Constitution Bench of the Hon'ble Supreme Court in the case of R. L. Butail vs Union Of India & Ors ; 1970 (2) SCC 876 that overall service record of an individual is required to be considered to reach to an assessment whether the concerned employee has become a dead wood or not and that his continuance in service would be of no use to the Government and accordingly, the Government has been given an absolute right to retire such an individual. In the said case, the apex Court has held as under:-

“26. The appellant relied on Moti Ram Deka v. General Manager, N.E.F. Railways(1) where rules 148 (3) and 149 (3) of the Indian Railway Establishment Code were held to contravene Art. 311 (2), and therefore, invalid. That decision cannot apply to the present case as the rules therein question dealt with the right to terminate service on notice of a prescribed period. The Court there held that a rule cannot confer on the Railway administration power to terminate service while at the same time laying down the age of superannuation so as to be in contravention of the provisions of Art. 311(2). Similarly, in Gurdev Singh Sidhu v. Punjab, a rule conferring an absolute right to retire a Government servant after he had completed ten years of qualifying service, though providing that such power shall not be exercised except when it is in public interest, was struck down as contravening Art.311(2). The Court, however, held that there were two valid exceptions to the protection afforded by Art. 311 (2). These were (1) where a permanent public servant was asked to retire on the ground



that he had reached the age of superannuation which was reasonably fixed, and (2) that he was compulsorily retired under the rules which prescribed the normal age of superannuation and provided a reasonably long period of qualifying service after which alone compulsory retirement could be ordered. The first would not amount to dismissal or removal from service within [Art. 311\(2\)](#) and the second would be justified by the view taken by this Court in a long series of decisions. In [T. C. Shivacharana Singh v. Mysore](#), (3) Rule 285 of the Mysore Civil Services Rules, 1958, conferring power on Government to retire compulsorily a Government servant in public interest on his completing twenty-five years of qualifying service or attaining fifty years of age, though the age of normal superannuation under Rule 95 (a) was fixed at fifty-five years, was upheld on the ground that the rule laid down a reasonably long period of qualifying service. (See [Takhattrav Shivdatrai Mankad v. Gujarat](#), (4) particularly the observations at p. 123).”

6. Of course in [Union Of India Vs Col. J. N. Sinha And Anr](#) ; 1971 AIR (SC) 40 as well as in [Baikuntha Nath Das And Anr vs Chief Distt. Medical Officer, Baripada](#) ; 1992 (2) SCC 299, the apex Court has laid down that the entire record is required to be examined objectively.

7. We find that apart from the adverse remark, there was also a departmental enquiry initiated against the appellant wherein he has been punished. The further contention raised before the learned Single Judge of the said adverse remarks having not been communicated is also of no avail as it is a settled law that even an uncommunicated adverse remark can be



looked into for the purpose of considering the overall service record for the cases relating to compulsory retirement.

8. In view of the above facts and the law as settled by the Supreme Court, we find that that the impugned order passed by the learned Single Bench cannot be said to be erroneous. Accordingly, the present Appeal is dismissed both on account of delay and laches as well as on merits.

9. All pending applications in this case are disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[MEENAKSHI I. MEHTA]
JUDGE

February 11, 2025

Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>