

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 1701 of 2014
Date of decision : May 19, 2015

SI Jagdish Chander

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. N. Lohan, Advocate
for the petitioner.

Mr. Hitesh Pandit, Additional Advocate
General, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present writ petition is to the order dated 12.6.2013 (Annexure P-9) vide which the petitioner has been compulsorily retired, in essence has not been retained beyond the age of 55 years.

Mr. R. N. Lohan, learned counsel appearing on behalf of the petitioner submits that the petitioner was recruited as Constable on 9.6.1974 and hence was promoted to the rank of Sub Inspector and at the time when the impugned order was passed he was working as Executive Clerk-English Branch, in the office of the Superintendent of Police, Jind and his record had been good/very good through out and there was no adverse entry in the service

record. The petitioner had also crossed the efficiency bar w.e.f. 1.5.2008 vide order 4.11.2008 (Annexure P-2).

The then Inspector General of Police, Hissar Range, Hissar-respondent No.3 recommended that the petitioner should not be retained in service beyond the age of 55 years and contemplated to initiate an action under rule 9.18 (i) of Punjab Police Rules.

The impugned order dated 25.11.2009 (Annexure P-7) was challenged by filing CWP No.20120 of 2009 and the notice dated 16.9.2009 as well as order of compulsorily retirement dated 17.12.2009 were quashed by this Court vide order dated 12.3.2013 and the competent authority was granted an opportunity to examine the record of the petitioner and take decision afresh.

It is submitted that respondent No.4 did not consider the submissions made by the petitioner and vide impugned order dated 12.6.2013 again compulsorily retired the petitioner as he has not been found fit to be retained in service beyond the age of 55 years. It has been submitted that rule 9.18 (i) has not been complied in its letter and spirit, as much as respondent No.4 had not considered the entire record of the petitioner and wrongly granted punishment of Censure as well as stoppage of increments with temporary effect, much less the ACRs for the last 10 years shows 70% of the same are good/very good.

In order to lend support to his argument he has drawn the attention of this Court to page 19 to 23 of the paper book by extracting the ACRs of the petitioner for the period w.e.f. 1.4.1999

to 31.7.2009 that except one Censure and punishment of stoppage of increments with temporary effect, nothing adverse has been found against the petitioner and prays that action of the respondent be declared illegal and unconstitutional and contrary to the Punjab Police Rules, much less being against the principles of natural justice as respondent No.4 has passed an order at the asking of the respondent No.3.

He has further submitted that as per instructions dated 21.10.1999 issued by the Government of Haryana, it has been decided that the cases of minor penalty cannot be put in the officers committee meeting for retention of employee beyond the age of 50/55 years and only cases pending under rule 7 of Major penalty are to be discussed in the meeting.

Mr. Hitesh Pandit, Additional Advocate General, Haryana states that the order of compulsorily retirement is not stigmatic and the punishment granted is within the domain of the officers.

It is submitted that vide impugned order the ACRs pertaining to the period w.e.f 17.4.2007 to 3.8.2007, 3.8.2007 to 31.3.2008, 1.4.2009 to 31.7.2009, it has been mentioned that petitioner had not been prompt in disposal of the work and has less capacity to work with colleague, much less is not punctual and regular, therefore, keeping in view the aforementioned facts the petitioner had been compulsorily retired. He further submitted that the petitioner was awarded punishment of 'Censure' by the Superintendent of Police, Bhiwani for not sending message of meet

to control room well in time as well as for not producing full information relating to promotion list 'F' case and has also been awarded punishment of 'Censure' by Superintendent of Police, Jind for making over writing and not making entry regarding adverse remarks for the period from 1.4.2005 to 31.3.2006 in the compulsory retirement case of HC Ram Karan and further he has been awarded punishment of stoppage of two future annual increments with temporary effect for keeping promotion papers of HC Raj Singh pending. He, therefore prays that the writ petition is liable to be dismissed.

Mr. R. N. Lohan, learned counsel for the petitioner in rebuttal submitted that there is no finding by the authority that the petitioner is dead-wood and in support of his contention relied upon the judgments in **Ram Kishan Vs. State of Haryana 1994 (3) SCT 609, State of Gujarat Vs. Suryakant Chunilal Shah 1999 (1) SCT 208, Sukhdeo Vs. The Commissioner Amravati Division, Amravati 1996 (3) SCT 613, Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada 1992 (2) SCT 92.**

I have heard learned counsel for the parties, appraised the impugned orders and paper book.

The moot proposition of law posed before this Court as to whether the impugned order is justifiable, much less sustainable in law or not. In the absence of any finding that the petitioner is a dead-wood and the impugned order apparently is not sustainable. To answer the aforementioned question it would be apt to extract the ACRs as culled out in paragraph 12 of the paper book

in the writ petition as under:-

<i>S.No.</i>	<i>Period</i>	<i>Grading</i>	<i>Remarks</i>
1.	1.4.99 to 10.10.99	B	A Good Clerk
	11.10.99 to 31.3.2000	B	Good
2.	13.4.2000 to 27.12.2000	B	A Good employee
	27.12.2000 to 31.3.2001	B	A good employee
3.	1.4.2001 to 28.9.2001	B	A good police official
	8.10.2001 to 8.2.2002	V. Good	-
	9.2.2002 to 31.3.2002	-	Period less than 90 days
4.	1.4.2002 to 16.6.2002	-	Period less than 90 days
	17.6.2002 to 31.3.2003	Good	Discharges his duty diligently.
5.	1.4.2003 to 31.3.2004	Good	A Good Assistant Sub Inspector
6.	1.4.2004 to 6.12.2004	Good	Does his work properly
	13.12.2004 to 18.3.2005	Good	His work remained good during this period
	18.3.2005 to 31.3.2005	-	Period less than 90 days
7.	1.4.2005 to 4.8.2005	Good	His work remained good during the period under report.
	4.8.2005 to 31.3.2006	Good	The work remained good during this period
8.	26.4.2006 to 8.12.2006	Good	The work remained good during the period under report.
	8.12.2006 to 31.3.2007	Good	Good Assistant Sub Inspector
9.	1.4.2007 to 16.4.2007	-	Period less than 90 days
	17.4.2007 to 3.8.2007	Good	Promptness in disposal of work: less capacity to work with colleague; less defect if any: Censure was awarded

<i>S.No.</i>	<i>Period</i>	<i>Grading</i>	<i>Remarks</i>
	03.8.2007 to 31.3.2008	Average	Promptness in disposal of work: He is habitual of keeping pending the papers. Defects if any: he is habitual of keeping pending dak for which he has been awarded punishment of Censure.
10.	1.4.2008 to 10.10.2008	Good	-
	25.12.2008 to 1.3.2009 9.3.2009 to 31.3.2009	-	Period less than 90 days
11.	1.4.2009 to 31.7.2009	Average	Promptness in disposal of work: Poor. capacity to work with colleague;Average Punctuality and regularity; frequent absentee. Defects if any; frequent absentee. (The said adverse remarks were not conveyed to the petitioner).

On perusal of the ACRs extracted from 1.4.1999 it is evident that 70% of the ACRs of the petitioner are good/very good and above. Though, it is the discretion of the authorities to decide as to whether a person is to be retained into service beyond 55 years or not. The said decision is amenable to judicial review. In the instant case, it is an admitted fact which has come on record that the petitioner has not been communicated the adverse remarks during the last 10 years except one 'Censure' and stoppage of two

increments with temporary effect nor the petitioner had been punished for delinquency during the entire service career.

The aforementioned record shows that 70% of the ACRs of the petitioner are good and there is no whisper in the impugned order that the petitioner has become a dead-wood, therefore is inefficient in performing his duties.

It is settled law that each and every observation does not constitute an adverse remark. There is no suggestion recorded that the compulsory retirement of the petitioner is in public interest and as per rule 9.8(i) which is intended to be used against the official whose efficiency has been impaired, but against, whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient i.e. when an officer's value is clearly incommensurate with the pay which he draws but not to such a degree as to warrant his retirement on a compassionate allowance.

As per the instructions *ibid* promulgated by the Government, the case pertaining to minor punishment was not placed before the officers, as the petitioner had not been imposed major penalty, which would have entailed into compulsorily retirement.

The prompt method of discerning the efficiency is looked through ACRs from the date of insertion of the duty till the decision of compulsorily retirement in order to find whether employee is a dead-wood and the compulsorily retirement is in public interest. However, the impugned order does not reflect such compliance of principles of natural justice. Therefore, the order is not sustainable in

law.

In view of what has been observed above, the writ petition is allowed. The impugned order dated 12.6.2013 is quashed.

The petitioner shall be treated to be in service and entitled to all the monetary benefits.

(AMIT RAWAL)
JUDGE

May 19 , 2015
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