

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

CWP No. 6908 of 2000 (O&M)

Date of Decision: 28.11.2016

ASI Sant Ram

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Malik,Sr.Advocate with
Mr.Kuldeep Sheoran, Advocate for the petitioner

Ms.Shruti Jain Goyal, AAG, Haryana

RAJIV NARAIN RAINA, J.

1. The petitioner was serving as Assistant Sub Inspector of Police when he was issued a show-cause notice dated 2nd August, 1999 (Annex. P-1) under Rule 9.18 (2) of the Punjab Police Rules, 1934 as amended by the Haryana Government (Haryana 2nd Amendment Rules, 1973) (for short “the Rules”). By the said show-cause notice, it was proposed to compulsorily retire the petitioner from service. He submitted his reply (Annex. P-2) and the same was considered and the petitioner was compulsorily retired from service by order dated 9th May, 2000 (Annex. P-11). Against this order, the petitioner has approached this Court through this petition praying for directions to set aside the order and to reinstate him in service. But for the impugned order, the petitioner would have superannuated on 30th April, 2011. The representation against the order was considered and rejected. The material used against the petitioner to put him on pension has been recorded in the impugned order. Even if the remarks for the year 1982-83 assessing the petitioner as average type officer are ignored, being of remote past, but still the Annual

doubted his integrity. In the general assessment, the reporting authority remarked that he is a corrupt Assistant Sub Inspector. In the column of defects, if any, it was recorded that he was caught red handed for taking bribe.

2. In the written statement filed by the Inspector General of Police, Rohtak Range on behalf of the respondents in defense of the petition, instances of his past conduct are catalogued and it is stated therein the petitioner was punished and warned on several occasions for committing misconduct. A few instances are that he was awarded punishment of Warning for not taking proper action in FIR No.146 dated 23rd August, 1993 vide OB No.807/94. Similarly, he was punished with an award of Warning for not taking proper action in FIR No.200 dated 29th November, 1993 vide OB No.807/94. Two other warnings were issued vide OB Nos.823/94 and 823/94 relating to investigation in two different FIRs. He was awarded punishment of Censure for “zero performance” during the period 2nd November, 1997 to 15th November, 1997 in connection with weekly diaries vide OB No.143/98.

3. The case of the petitioner is that the adverse remarks recorded in the Annual Confidential Report for the period 24th August, 1993 to 31st March, 1994 and again from 13th May, 1995 to 19th December, 1995 are based on allegations which constituted a criminal charge framed against the petitioner. He was placed under suspension in FIR No.6 dated 4th March, 1994 registered at Police Station Vigilance Bureau, Gurgaon under Sections 7/13 and Section 49 of the Prevention of Corruption Act, 1988. The charge was that he had demanded illegal gratification of ₹ 8.00 lacs and had accepted money as part payment from the complainant. The complainant was stopped by the police while transporting sheep to Panchkula and the petitioner had threatened him with transporting stolen property and if the money was not paid, the

complaint, the case was registered against the petitioner. The decoy witness was Jagdish Prashad PW-6 at the time of passing tainted currency notes to the accused in a trap, but in the trial Yashwant Singh, DSP, PW-9 chose to depute a convenient witness in the person of Ude Singh, Inspector PW10, to act as a shadow witness. The main witness turned hostile. The trial failed vide judgment and order dated 27th March, 1998, as the learned Sessions Judge, Special Court, Rohtak found on the evidence that the prosecution story was not fully proved beyond all reasonable doubt and as such, by giving the accused the benefit of doubt, the petitioner was acquitted of the offences for which he was charged. The currency notes were confiscated to the State of Haryana.

4. Mr. Malik, learned Sr. Counsel appearing for the petitioner argues that the remarks to the effect that the petitioner was caught red handed for taking a bribe recorded in the ACR have been rendered meaningless, in view of the acquittal, and therefore, it could not be said that the petitioner was continued under suspension in the corruption case. If these remarks are expunged with the trial failing, then the impugned order of compulsory retirement is not sustainable in law. It cannot be said that the petitioner's retirement had been ordered in public interest. Other punishments of Warnings and Censure are too minor to order compulsory retirement. If the stigma of integrity doubtful is removed on account of failure of the police in the corruption case, then not only would the petitioner's honour be vindicated, but he would be entitled to consequential benefits as though the order was not passed. Mr. Malik, to support his contention relies on a Division Bench judgment in *Ranbir Singh vs. The State of Haryana and others* (CWP No.8403 of 2006 decided on 24th December, 2008) to advance that an adverse

interfered with by expunction as the foundation of the remarks stands obliterated. It is likely that the acquittal in the criminal case and the exoneration of charges in the departmental proceedings would have had a different bearing as relevant materials at the time the final decision had been taken. The change of circumstances not having been placed before the competent authority, then interference was called for with the adverse entry in the ACR on review with new and material coming into existence and the order of compulsory retirement passed during the pendency of the criminal case on the solitary basis of the criminal proceedings ought to have been taken into consideration by the department itself. The charges against *Ranbir Singh* (supra) were for offences under Sections 170/323/342/384/419/420/452/506 read with Section 120-B of the IPC. Having read the judgment, I find that it is distinguishable on the nature of the charge, character of the acquittal and the dependency of the adverse remarks of integrity doubtful resting solely on the pending criminal proceedings. This is not the case here. It would be difficult at this distance of time to separate the remarks regarding the petitioner as one caught accepting bribe and the general assessment of integrity doubtful during the period under watch; that the petitioner was a corrupt ASI. In all the columns in the ACR sheet, he was assessed as "Average" and his reliability was commented upon adversely against him indicating that he was not a reliable officer. If the entries in column 13 regarding defects are supposed to be not read again because of the criminal trial failing to bring home the guilt, even then the petitioner was assessed by the competent reporting authority to be a corrupt ASI with integrity doubtful with no faith capable of being placed on his reliability as a police officer because it is difficult to separate the remarks which cover general assessment for the period of review. It is not

automatically and as a matter of right. In a trial where the main prosecution witness turns hostile, and the case falls, a doubt remains on the integrity of the accused especially in the uniformed force. The Special Court, Rohtak did not give the petitioner a clean chit as suggested by Mr. Malik, but was constrained to acquit the petitioner by giving him the benefit of doubt. Benefit of doubt has not been used by the Special Court, Rohtak casually or in passing, when the judgment is read threadbare a different picture emerges where the investigators prosecuting their own kind failed in their duty by not remaining over-board in the trial when the testimonies of the prosecution witnesses were being recorded. In criminal law and for the public at large, the petitioner was innocent since he has been acquitted. But it does not follow that in service law, the benefit of doubt gets wiped out.

5. Mr.Malik, further relies on the Supreme Court judgment in *Joginder Singh vs. Union Territory of Chandigarh and others* (Civil Appeal No.2325 of 2009 decided on 11th November, 2014). The reliance on this ruling is not a result of correct reading of the judgment by the petitioner. The Supreme Court while relying on its earlier decision in *Deputy Inspector General of Police & Anr. v. S. Samuthiram*, (2013) 1 SCC 598, after noticing paragraph 24 of the judgment, observed as under:-

“Learned counsel has rightly placed reliance upon the decision of this Court in *Deputy Inspector General of Police & Anr. v. S. Samuthiram*, which relevant para is extracted as under:-

24.The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has

considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

17. Further, an acquittal of the appellant is an "honourable" acquittal in every sense and purpose. Therefore, the appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him."

6. The fine distinction in service law is in full view in the aforesaid judgment. The petitioner cannot draw any mileage from this judgment. Then Mr. Malik, would place reliance on a Single Bench decision of this Court in *Kirpal Singh vs. State of Punjab and others*, 1969 SLR 120. Learned Sr.

Counsel draws attention of this Court to paragraph 16 of the judgment which reads as under:-

“16.The second point argued by the learned counsel for the petitioner is that the warnings set out above should be quashed. The first warning conveyed to the petitioner on 30th November, 1964, related to his working for the period 1st April, 1964 to 30th September, 1964, and cannot be interfered with by this Court in exercise of its power under Article 226 of the Constitution. This Court cannot substitute its own opinion for that of the appropriate authority who has to judge the working of a public servant and write the confidential report. The warning contained in Annexure ‘B’ to the writ petition cannot, therefore, be quashed. However, the adverse remarks conveyed to the petitioner on 22nd April, 1965, (Annexure ‘C’ to the writ petition) cannot be allowed to stand. These remarks were based on the facts of the criminal case in which he was being tried for an offence under Sections 379/221, Indian Penal Code. He was acquitted in that case by the learned Sessions Judge and the State appeal against acquittal was dismissed by this Court. These remarks having been communicated to him during the pendency of the criminal case and while the petitioner was under suspension, cannot be allowed to stand after he has been acquitted by the learned Sessions Judge. His acquittal means that he was not found guilty of the charges levied against him and the allegations on which the charges were framed were found to be not correct. In view of his

acquittal, the respondents should have deleted these remarks from his character roll. I am, therefore, of the opinion that these remarks should be quashed.”

7. I fail to understand as to how this case helps the petitioner. That was a case of acquittal on a charge during the ACR assessment year when adverse remarks were recorded by the competent authority when corruption was imputed against Kirpal Singh. Following words were recorded in the column of General Remarks:-

“A corrupt officer who has mixed up with notorious pick-pockets like Ramesh of Delhi, in fact was instrumental in getting the pocket of Mangat Ram picked at Railway Station, Ambala Cantt., and thereafter getting his share of Rs.1500 from him. He was arrested in case FIR No.236, dated 13th October, 1964, which is still under investigation.”

8. There are no such pointed and specific or general remarks mentioned in the case of the petitioner of the criminal case. The general assessment in the present case is generic in nature and is hard to be put within the boundary of the criminal trial on a corruption charge under the Prevention of Corruption Act, 1988.

9. Besides, the petitioner has not challenged the order dated 28th July, 1997 rejecting the representation against adverse remarks recorded in the ACR for the period 24th August, 1993 to 31st March, 1994 in a court of law or even within reasonable time of the judgment of the Special Court, Rohtak pronounced on 27th March, 1998. The petitioner filed a mercy representation on 28th December, 1999 for expunging the remarks in both the ACRs. The representation did not lie since no second representation is maintainable

21st May, 1971. The earlier representation had been considered and rejected. It is the stand of the State that adverse remarks were not recorded solely on the basis of criminal case. With regard to the second representation and its non-maintainability, the State cites the judgment of the Division Bench of this Court in CWP No.571 of 1999 filed by one ASI Chand Mohammed which was decided on 18th January, 1999 holding that it would not lie.

10. On the other hand, Ms. Shruti Jain Goyal, learned counsel for the State has relied on a flurry of judgments in defence of State action in compulsorily retiring the petitioner from service. She submits that the nature of acquittal is of supreme importance so also the nature of the offence charged. She relies on *S. Samuthiram*, supra and a decision of the Supreme Court in *RBI vs. Bhopal Singh Panchal*, 1994 (1) SCC 541 relied upon by the Supreme Court while rendering judgment in *State of M.P. and others vs. Parvez Khan*, (2015) 2 SCC 591 (paragraphs 24 to 26). Borrowing the words of the Supreme Court in *Commissioner of Police, New Delhi and another vs. Mehar Singh*, (2013) 7 Supreme Court Cases 685, it is emphasized that it cannot be forgotten that quite often in a criminal case acquittal follows when witnesses turn hostile. Such acquittals are not acquittal on merits and an acquittal based on benefit of doubt would not stand on par with a clean acquittal on merits, after a full fledged trial where there is no indication of witnesses being won over.

11. Even in *R.P.Kapur v. Union of India*, AIR 1964 SC 787, the Supreme Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than 'honourable'. In *Bhopal Singh Panchal*, supra, the Supreme Court has reminded us that the expressions 'honourable acquittal', 'acquittal of blame'

Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “honourably acquitted”.

12. Learned counsel for the State also relies on a Division Bench decision of this Court in *Babu Ram Walia vs. State of Haryana and others*, 2007 (1) SCT 288 to contend that the competent authority has an absolute power to consider the entire service record to get rid of an inefficient and dishonest officer and compulsorily retire such officer in public interest as well as in the interest of the police force. Even the remarks recorded in the preceding year with integrity doubtful cannot be ignored merely because criminal case of corruption relating to the same was pending trial. Learned counsel for the State argues that an order of compulsory retirement is not a punishment. In support of her submission she relies on *Baikuntha Nath Das v. Chief District Medical Officer, Baripada*, 1992 (2) SCC 299, which is the all time classic statement of the law on the subject. It is well settled that if integrity of an employee is doubted even once then such an employee may have to be chopped off as a deadwood which is in larger public interest. She also relies on *State of Orissa and others vs. Devaraj Mishra*, (2010) 15 SCC 766 where also the Officer was facing criminal proceedings for taking bribe and was acquitted of the charges. The Supreme Court agreed with the State of Orissa that the Tribunal could not have interfered in the matter of recording of ACRs and dismissed the Original Application.

13. In similar strain, she places reliance on an exhaustive judgment rendered by the Division Bench of this Court (Hemant Gupta, J. speaking for the Bench) in *Gorakh Nath, District & Sessions Judge (Retd.) vs. State of Haryana and another*, 2014 (2) RSJ 221. The Division Bench relied on the judgment of the Supreme Court in *Rajendra Singh Verma (dead) through LRs*

holding that in the case of a Judicial Officer it is not necessary to limit the “material” only to written complaints or “tangible” evidence pointing fingers at the integrity of the judicial officer. Such evidence may not be forthcoming in many cases and therefore, a *bona fide* impression gathered by a Reporting Officer on the work and conduct of a junior is ordinarily unexceptionable unless touched by bias and ill-will. In a case of compulsory retirement, usefulness of the Officer is required to be examined to the institution he serves.

14. Learned counsel for the State then refers to two Single Benches in *Ompal vs. State of Haryana and others*, 2014 (1) RSJ 552 and *HC Rajender Singh vs. The State of Haryana and others*, 2014 (27) SCT 429. In *H.C.Rajender Singh*, supra, while relying on *Parvez Khan*, supra this Court held that adverse remarks recorded on account of pendency of a criminal case cannot be expunged after acquittal. The petitioner therein did not make any representation against the adverse remarks for expunction immediately after communication thereof and it is only after acquittal that representations were made. Those were rightly rejected on account of delay when the period prescribed in the instructions of the Chief Secretary dated 14th August, 1987 provided that representation against adverse remarks should be entertained, if filed within 45 days from the date of receipt of the letter communicating the adverse remarks to the Officer. State action in rejecting the representation on account of delay was upheld. There is merit in the submissions of the learned law officer based on proper reading of the case law relied upon by the State. On the other hand, Mr. Malik's support systems fail to yield an order in favour of his client.

15. Having considered the rival contentions of the parties and the

case kept in view, I have no doubt left in my mind that there is no merit in this petition and the same deserves to be dismissed. The petitioner's acquittal was not honourable. He was given the benefit of doubt. Adverse remarks recorded by the authorities in the ACRs is within their subjective satisfaction on overall assessment made during the period of reckoning. The authority could well consider the entire record of the petitioner to form a reasonable opinion as to whether it justifies retention in service of the petitioner beyond the age of 55 years. The power to retire an employee compulsorily is absolute in the authority and to his subjective satisfaction when taken on objective assessment that retention is not in public interest. This is not a case where the adverse entry of integrity being doubtful rested solely on the allegations in the criminal case. There was also failure to call in question the adverse ACRs within reasonable time. Those have attained finality. The subsequent result of the criminal trial leading to acquittal by giving the benefit of doubt where witnesses resiled can have no effect on them.

16. I, therefore, find no fundamental error or palpable flaw in the impugned order compulsorily retiring the petitioner from service at the age of 55 years which may warrant interference in writ jurisdiction.

17. Accordingly, this petition fails and is dismissed.

28.11.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes