

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

CWP No.8402 of 1997

Date of decision: 28.7.2016

Surinder Kumar Gupta

... Petitioner

Versus

State of Haryana & ors.

... Respondents

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

Present: Mr. Shyam Kumar Sharma, Advocate, and
Mr. Rajat Sharma, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was prematurely retired on May 13, 1997 by the impugned order by invoking Rule 3.26(d) of the Punjab Civil Services (Premature Retirement) Rules, 1975, mostly on two grounds. Firstly, for the reason that a criminal case bearing FIR No. 90 dated June 8, 1994 was registered at Police Station Baldev Nagar, Ambala against the petitioner and a co-employee under the provisions of the Prevention of Corruption Act, 1988. In the trial, they were convicted for accepting bribe. The petitioner's appeal succeeded when this Court acquitted him of the charge by returning to two positive findings in his favour, one; that the complainant himself testified in the witness box that the petitioner did not deal with the notorious file at the relevant time as it had not reached him at the relevant time to home the charge of demanding illegal gratification. Secondly, the complainant positively stated in his cross-

examination that the petitioner had not demanded bribe from him. Thirdly, the petitioner had moved a representation against the then General Manager Lajveer Singh on March 28, 1994 along with the co-representative anticipating that Lajveer Singh is about to ruin their ACRs for the year 1993-94 as he harboured animosity towards the two. This Court held in appeal that there may be the possibility that the petitioner might have been falsely implicated in this case by Lajveer Singh, General Manager and the circumstance is probable. Lajveer Singh, General Manager was not examined during trial and in these circumstances; the petitioner and his co-accused (both the appellants in the criminal appeal) had been denied the valuable right to cross-examine Lajveer Singh on this material fact. In the end, the Court observed that the prosecution had failed to prove its case beyond the shadow of reasonable doubt. Accordingly, both the appeals were allowed on November 18, 2013 and the judgment and order of the trial Court dated May 31, 2003/ June 2, 2003 respectively were set aside. In this manner, the base of the order of pre-mature retirement stands removed on account of honourable acquittal by the High Court.

2. However, what still remains to be examined presently is the texture of the ACRs for the years 1993-94 and 1994-95, which was the other material on the basis of which the petitioner has been prematurely retired. In a case of premature retirement the Court on judicial review must first and foremost consider the total impact of the overall service record of the petitioning aggrieved person to see whether the impugned order is justified. The following remarks were recorded in the ACRs of

the petitioner by reporting authority Lajveer Singh, General Manager, which ACRs were conveyed to the petitioner vide memo dated July 1, 1996 i.e. after an inordinate period of three years. The remarks of the ACR read as follows:

“1. Reputation for honesty	No. of verbal complaints from suppliers workers & Union.
2. Whether the official/ Officer remains at head- quarter officer hours & holidays or not:-	No, in spite of directions.
3. Remarks	Made no improvement in working in spite of face to face instructions.
4. Overall Assessment	Average.”

3. The remarks against column “Reputation for Honesty” are based ex facie on a number of verbal complaints from 'suppliers workers' & union. It is however not recorded in express words that the integrity of the petitioner was found doubtful or that he is a corrupt official. If there were verbal complaints then they were not cited with accuracy or that the allegations were inquired into in prima facie fact finding process and the petitioner if deserved to be confronted with adverse material and afforded an opportunity of defending himself of verbal charges [there being nothing documented in writing] and thus the ultimate view of this Court formed in criminal appeal weighs in the mind that the charge was false there being nothing incriminating found in the conduct of the petitioner. This casts doubt on the running of the mind of Lajveer Singh towards the petitioner. After all, the petitioner and his co-accused colleague had

made a representation in writing on March 28, 1994 anticipating harm which may have been at the fag end of the period of assessment, but all the same, relates to past events in which protest representation they had expressed their reasonable apprehension that Lajveer Singh as their Reporting Officer may spoil their career by writing adverse ACRs.

4. Lajveer Singh is a respondent in this petition by name and has been served with summons but he has chosen not to appear or to file written statement. Lajveer Singh was neither a witness in the criminal trial nor is his version known to the Court in the present petition. In any case, the remarks recorded by him against the petitioner do not hold water anymore with the observations which have come in the judgment of acquittal by this Court in the appeal. In the absence of some tangible evidence or objective material, even after giving sufficient laxity that ACRs recorded are largely based on the subjective satisfaction of the Reporting Officer, the further question is whether the damaging remarks would inevitably result in premature retirement, even assuming that no trial had taken place.

5. In the matter of premature retirement it appears well settled that the entire service record has to be seen with greater emphasis on the ACRs for the last 10 years before action is taken. The petitioner may have been assessed as 'Average' in the year 1993-94 but that alone may not be justified for premature retirement. A perusal of the entire service record of the petitioner shows that in 30 years of service he had not earned any adverse remarks other than the two under consideration. If there were two adverse remarks in past service for the years 1985-86 and 1986-87,

they had been expunged by the Government itself without resort to litigation.

6. As far as the ACR for the year 1994-95 is concerned those cannot be legitimately looked into since the period of assessment is from April 1, 1994 to June 7, 1994 which is less than three months entailing loss of authority to enter remarks in the confidential roll of an employee. The basis of these ACRs recorded by Lajveer Singh that there were complaints against the petitioner made by the suppliers, workers and their union then those remarks pertain to the period involved in the FIR which occasioned the remarks and there is no gainsaying that it is so recorded in the ACR conveyed to the petitioner on July 1, 1996. Even here, the primary assessing authority did not display the courage to put into plain words that the integrity of the petitioner was dubious or doubtful. The other part offensive of the acted upon remarks stand washed off in the face of the honourable acquittal in appeal. The charge of demanding and taking illegal gratification has not been proven.

7. Ms. Shruti Jain Goyal argues in defence of the impugned order that an employee does not have a right to extension in service at the age of 55 and this remains in the realm of discretion with the Government. When discretion is exercised reasonably, then ordinarily the Court should not interfere.

8. This argument can be examined from two angles. One is whether the ACRs have been recorded by Reporting Officer and the entries are not challenged on the ground of bias or malafides, then normally the argument will hold true. However, the looming presence of

Lajveer Singh in this case [keeping silent] is reasonably sufficient to the mind of this Court to fairly conclude that there was something morally remiss in his conduct or in the inter-personal relations with the petitioner and therefore, it would not be safe to conclude that the two ACRs in question were based on pure subjective satisfaction assessed on objective material by an unbiased mind.

9. In any case, the petitioner was retired at the age of 56½ years i.e. 1½ years beyond the age of 55 and this also creates sufficient dent in the defence of the State for not acting promptly in a case where the administration dunked the petitioner as deadwood, inefficient or undesirable to continue in service till superannuation. That apart, there is still another facet to the case and which is the inordinate delay in conveying the adverse ACRs to the petitioner. Undoubtedly, uncommunicated ACRs can be used to order premature retirement but still in this case looking to the allegations against Lajveer Singh made by the petitioner and his co-accused, they should have been conveyed in time so that they had reasonable opportunity to represent against them and seek dispassionate review of the remarks. It is not disputed that the petitioner made a representation in time, but the same has not been decided so far. Accordingly, the cumulative effect of all these circumstances amply convinces this Court that the premature retirement order was not passed on rational grounds and was on the other hand mostly the work of perverse action taken without due reflection especially when the entire picture is seen and the events read in the face of the order of acquittal passed by this Court. Not everyone in

Government is prematurely retired because a criminal trial is pending. Pending trials may be cause enough to suspend an employee and try him departmentally in addition to criminal proceedings.

10. Confronted with this situation, it is difficult for this Court to uphold the impugned order of premature retirement as legally valid and it appears at this distance of time that this is a fit case for interference to undo a wrong done to the petitioner, of what may have looked the fair and proper thing to do in 1997 but on a sober revisit can no longer be seen as justice dispensed.

11. For the foregoing reasons, I find substantial merit in this petition and the same is allowed for the foregoing reason recorded above. As a result, the impugned order dated May 13, 1997 (Annex. P-8) is set aside with all consequential benefits. However, prayer for interest on the principal arrears of salary, which become due and payable by virtue of this order is declined. Pension be refixed and arrears of salary for the remaining period of service be calculated and paid within two months. If any other benefit accrues, both pecuniary and non-pecuniary, the same be also given to the petitioner as he would be deemed to have retired from service as though the impugned order was never passed.

(RAJIV NARAIN RAINA)
JUDGE

28.7.2016
monika

Whether speaking/reasoned

Yes / No

Whether Reportable:

Yes / No