

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20501 of 2013

Date of Decision: 04.07.2016

Baldev Raj

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Jagbir Malik, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner was served a show cause notice of compulsory retirement on September 29, 2008. His reply to the show cause notice was considered by the competent authority and he has retired from service compulsorily vide order dated December 24, 2008. At the time of compulsory retirement, the petitioner was serving as an Assistant Sub Inspector of Police. There was a criminal case pending against the petitioner while in service in which he stood acquitted by the trial Court on August 10, 2009.

2. He was conveyed adverse remarks on June 07, 2004 for the period May 10, 2003 to October 01, 2003. His appeal for expunging the adverse remarks was rejected by the Inspector General of Police, Ambala

Range on January 25, 2006 in the capacity of competent authority.

3. But for the action taken he would normally have retired at the age of 58 years on October 13, 2016.

4. Aggrieved by communication of adverse remarks, the petitioner had earlier [before compulsory retirement] filed CWP No.3657 of 2006 before this Court challenging the adverse remarks in the ACR. However, the same was dismissed *in limine* on March 07, 2006. The Special Leave Petition carried to the Supreme Court was also dismissed. His integrity was commented in the ACR as doubtful. The Reporting Officer recorded that the petitioner was unreliable and had been warned many times orally to improve his work. His integrity was again doubted for the period April 01, 2006 to March 31, 2007. His moral character, image in the public and reliability was assessed as poor. In the defects column, it was recorded that he was caught red handed on February 01, 2007 while taking bribe of Rs.5000/-. The remarks in the confidential rolls were entered in view of registration of FIR No.3 under section 7/13 of Prevention of Corruption Act, 1988 registered at the Police Station State Vigilance Bureau, Ambala dated February 01, 2000. He faced trial but was acquitted by the trial Court at Kaithal vide judgment and order dated August 10, 2009. The adverse remarks for the period 2006-07 were conveyed to him vide letter dated June 22, 2007.

5. The petitioner faced a departmental inquiry on the criminal charge of taking bribe which had led to the award of punishment of stoppage of six annual increments with permanent effect in 2008. It was in these facts and circumstances that the notice of compulsory retirement was issued and served on the petitioner.

6. It is submitted that the show cause notice was issued for four reasons. Firstly, on account of adverse remarks recorded in ACR for four months from May 10, 2003 to October 01, 2003. Secondly, the adverse remarks from April 01, 2006 to March 31, 2007. Thirdly, penalty of stoppage of six annual increments with permanent effect awarded due to registration of FIR. Fourthly, by reason of registration of the FIR itself.

7. His appeal against the major penalty failed when it was dismissed on December 18, 2008.

8. Aggrieved by the order, the petitioner preferred revision before the DGP, Haryana. His revision succeeded when by order dated January 27, 2010 the penalty was set aside. The reason assigned was since the punishment was based on the grounds of registration of FIR, then with acquittal the domestic charge would not survive on the same cause of action. It is argued that of the four reasons assigned in the show cause notice three have been rendered infructuous. One remains and that is not sufficient to support the impugned order.

9. Feeling aggrieved by the impugned order of compulsory retirement the petitioner filed mercy petition before the Financial Commissioner-cum-Secretary, Home Department, Haryana. However, the mercy petition was rejected on March 04, 2011. The petitioner says that in declining the mercy petition due regard was not had to the factum of acquittal of the criminal charge and that the inquiry proceedings leading to major punishment were dropped since the criminal charge and the delinquency was one and the same.

10. Against these orders, the petitioner approached this Court in

CWP No.8455 of 2011 seeking quashing of the adverse remarks dated June 22, 2007 and the impugned order dated December 24, 2008 by which he was compulsorily retired from service. The third order impugned was dated March 04, 2011 dismissing the mercy petition. It was argued in this petition that the primary reason why the petitioner was compulsory retired from service, having become non-existent, the order of compulsory retirement can no longer sustain. The Court took cognizance of subsequent developments and directed DGP, Haryana to re-consider the order of compulsory retirement within four months from the date of receipt of order. The orders were passed on March 02, 2012. While passing the order, this Court did observe that the contention of the petitioner that the compulsory retirement order had become non-existent “appears to be somewhat correct in the light of the subsequent development which has taken place after the passing of the order dated 10.8.2009 and 27.10.2010”.

11. In the fresh order passed, the DGP, Haryana was of the view that the ACRs for four months i.e. from May 10, 2003 to October 01, 2003 still stand against the petitioner as such there is no reason to review the earlier order. The earlier order was maintained in the fresh order dated March 07, 2012. Against this decision, the petitioner avers that he submitted detailed representation to consider the claim for reinstatement in the light of supervening events but the same has not been decided till the date of filing of the present petition.

12. In challenge to the order of compulsory retirement, the petitioner asserts that before recording adverse entries it was the duty of the recording officer to satisfy all the requirements of Rules 13.17 and 14.48 of

the Punjab Police Rules, 1934 (“1934 Rules”) as applicable to Haryana. The 4th respondent-Superintendent of Police, Kaithal was required to send his recorded adverse ACRs through the District Magistrate as per Rule 13.17 but that provision was not complied with. As per Rule 14.48 of the 1934 Rules it was the duty of the 4th respondent to have issued warning or censure to the petitioner before recording adverse remarks in the columns of ACRs. The petitioner states that he was placed under suspension w.e.f. February 01, 2007 on registration of FIR but he was reinstated on September 09, 2007 without prejudice to the pending criminal case. Therefore, the reporting authority was bound legally to exclude the period of suspension which commenced from January 01, 2007 and continued to the period under report i.e. March 31, 2007 in view of executive instructions issued by the Haryana Government vide circular dated March 02, 1971. As per the explanatory note added to the circular a Government employee placed under suspension does not discharge any duty so while calculating the period of report, period under suspension shall have to be excluded by the reporting authority. The petitioner did not work during the period of suspension. It is then urged by the petitioner that while assessing the utility of an official under Rule 9.18 (2) of the 1934 Rules the entire record of the official is required to be seen. He asserts that apart from one adverse entry, that too of only four months, there is no other red entry in the 26 years service record of the petitioner during which period he has earned 57 commendation certificates two of which were first class awarded to the petitioner for outstanding performance of duty.

13. State Government accorded approval to compulsory retire the

petitioner vide memo dated December 03, 2008.

14. The petitioner places heavy reliance on the commendation certificates of first class bestowed on him and this alone would show that he is an efficient employee and has continued utility for the department. Case law in Tara Chand v. DG of Police, Haryana, 1992 (2) RSJ 652 is relied upon to assert that power under Rule 9.18 (2) has to be exercised in public interest. The authority charged with the duty of making a final order has to see whether or not an officer's value is clearly commensurate with the pay he draws. The intention behind Rule 9.18 (2) is not to punish a Government official. The note below the rule mandates that the right to retire compulsorily shall not be exercised when it is in the public interest to dispense with the further services of an officer and compulsory retirement can be based only on the ground such as inefficiency, dishonesty, corruption or infamous conduct. Thus, the rule is intended to be used against official whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency etc. The petitioner argues that the brief period of four months in 2003 has no significance for consideration in the entire year 2008. He was rewarded with various awards after 2003 which militate against the action taken and renders the compulsory retirement order illegal and liable to be set aside. Besides, this Court found the contention of the petitioner correct and ordered re-consideration of the earlier order dated December 24, 2008 in the light of subsequent developments i.e. acquittal from the criminal case and setting aside the order of stoppage of six increments by the revisional authority. The present impugned order has been passed in utter disregard of the observations of this Court and against

the spirit of the order dated March 02, 2012 passed by the learned single judge. It is his further submission that the respondent-authority has not considered the effect of adverse entries which lose their sting and do not survive after long lapse of time. It is yet another contention in assailing the compulsory retirement order that the petitioner had not completed the mandatory 55 years of service in the year 2008 when he was compulsorily retired and as such the impugned order is also against the rule which empowers compulsory retirement. Still further, the order is stigmatic and has been passed by way of punishment without holding an inquiry which renders it illegal, null and void even though in the order it was mentioned that the petitioner was compulsory retired in the public interest.

15. The respondent-State in defence of the action has put forth several preliminary submissions in support of the order of compulsory retirement citing Rule 9.18 (2) of the 1934 Rules to submit that the Director General of Police, Haryana is empowered to order compulsory retirement but the order can take effect only on approval of the State Government which permission has been accorded. A police official can be retired compulsorily who has completed 25 years of qualifying service without assigning any reason. The petitioner had put in 25 years of service in 2008 as he was enrolled as Constable on October 24, 1977 and, therefore, the contention of the petitioner that he could not be touched till he attained the age of 55 years is not tenable. The petitioner was given reasonable opportunity to submit a reply to the show cause notice which was duly considered by the competent authority and the petitioner retired formally in terms of the procedure prescribed in the rules.

16. The remarks, grading and doubting of integrity for the period May 10, 2003 to October 01, 2003 has left its imprint on the work of the petitioner during the period of assessment which remarks are final with the dismissal of the Special Leave Petition by the Supreme Court. Integrity doubtful for the period assessment in 2003 looms large and is more than sufficient reason to pass the impugned order. Besides, the ACRs for the period April 01, 2006 to March 31, 2007 was not recorded adverse only on the basis of registration of FIR or that due to acquittal in criminal case the very base of recording of ACR has disappeared. The comments in the ACR sheet have been recorded by the reporting officer on the basis of observation of work and conduct during the period of assessment. The State urges in paragraph 10 of the written statement that an accused may be acquitted even if sufficient evidence is not collected by the investigating agency or due to defect in investigation or due to many other reasons that accused may be acquitted but it is not correct to say that an acquittal, even if honourable, stands washed off from the face of record and of no consequence. So long as the order of compulsory retirement has been passed bona fide and on a subjective assessment of the reporting officer based on observation and objective material then the order is not to be set aside automatically by punching holes in the order, here and there. The State argues that it is possible that an outstanding performer in duty may not be honest while dealing with the public. It does not prove that the observations made by the reporting officer are incorrect or stigmatic. Even if the revisional authority had set aside the domestic punishment that does not remove the basis of the adverse remarks recorded for the two periods in consideration. The

petitioner has not alleged malafides against any authority in making the impugned order or passing a fresh one after the Court interdicted the first order of 2008. The fresh order would relate back to the first order and confer no right on the petitioner during the interregnum unless such right was granted by Court seized of the matter.

17. I have heard Mr. Jagbir Malik, learned counsel for the petitioner and Mr. Harish Rathee, learned Sr. DAG, Haryana for the respective parties and have perused the record. The only question to my mind which requires determination is whether ACRs for the short period May 10, 2003 to October 01, 2003 and April 01, 2006 to March 31, 2007 stand obliterated with acquittal of the criminal offence and exoneration in the departmental proceedings based on common grounds and incidents. In both the ACRs the petitioner's integrity has been assessed as doubtful. There is no gainsaying that the remarks for the four months in 2003 have become final with the dismissal of the Special Leave Petition. Those remarks assess the petitioner also to be unreliable. He had been warned many times orally to improve his work. His investigation skills were assessed as good but with the remark that his work shows malafides. These remarks were recorded five years before the order of compulsory retirement passed in 2008. In the column of general remarks for the same period it has been recorded that the official demanded money from accused during the investigation of the case of forgery while posted in Police Station Dhand.

18. The period between April 01, 2006 to March 31, 2007 was a full-fledged assessment made after watching the work and conduct of the petitioner. During this period, the FIR was registered on February 01, 2007

which led to arrest, suspension, reinstatement and trial. The remarks conveyed in the same year on June 22, 2007, assuming that column-5 is ignored, as it should be, in view of the acquittal then it cannot be said with any certainty that the period prior to the registration of FIR was period where his integrity was above board. His moral character was assessed as poor as also the image he had in the public and his reliability to the police force was reckoned poor. The general remarks were to the effect that his conduct was poor during the period. Even if the rest of the remarks hinging on punishment and pendency of trial are taken away the entire ACR cannot be said to have become meaningless and, therefore, the same can have no impact on the order of compulsory retirement. It may be true that in ordering compulsory retirement the entire service has to be taken into consideration but if integrity has been assessed not once but twice over as doubtful then the action of the Government cannot be faulted to retire the petitioner compulsorily in public interest and as a person who has ceased to have continued utility to the police force. In absence of malafides alleged against the reporting officer or anyone else in the corridors of power it would not be possible to criticize the order as *ab initio void* or *ex facie* contrary to rule.

19. I do not think that the action of the Director General of Police, Haryana approved by the State Government is by way of falling prey to any irrelevant consideration in the decision making process while passing the impugned orders in 2008 and then again in 2012 under Court directions. There is no palpable error in exercise of discretion or jurisdiction in visiting the petitioner with the impugned order of compulsory retirement from service. It cannot be held that the entire base of the ACRs for the year 2006-

07 stands removed with acquittal and setting aside of the punishment order in the domestic proceeding. Neither can it be said that the basis of integrity doubtful recorded twice over, one confirmed in litigation, the other even if open to debate, give a clean chit to the petitioner to press for reinstatement. This Court does not sit in appeal over the work of the State Government. The State Government was within its jurisdiction and discretion to compulsorily retire the petitioner invoking Rule 9.18 (2) read with Rule 3.26 of the Punjab Civil Service Rules as applicable to Haryana and the view formed by the competent authorities at the two stages are not open to interference. The nature of police service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility to the police department. Besides, the judgment of acquittal and the order passed in revision by the administrative authority there is sufficient indication in the two ACRs considered that those are adverse entries touching upon integrity open to be used for compulsory retirement. The law of compulsory retirement does not require tangible material for ordering compulsory retirement. When suspicion arises regarding integrity of police officer, and it is so recorded, it would be difficult for Court under Article 226 of our Constitution to interfere with such an exercise of authority vesting in the superior officers to act in public interest. The standard of proof applicable to recording of adverse entry is standard of normal vision based on observation depending on preponderance of probabilities. It is not necessary to collect documented evidence and so long as the material on which they are based exists on reputation which is not to be supported by a thesis recorded in writing. The finger must point at the

integrity of the police official and if the finger is clean and straight it is not necessary that there must accompany solid evidence which may not be forthcoming in such cases, but so long as the reporting authority has acted with fairness in his assessment over the period of four months or the entire year, as the case may be, his view formed is unassailable in writ jurisdiction. There may be active suspicion or a series of suspicious circumstances or even hearsay evidence indicating and touching upon the reputation of an employee but so long as the assessment is not for extraneous factors and is bona fide the work must be believed and trusted as a first hand view taken by the reporting officer on the spot over substantial period of time reviewing work of a subordinate. An employee with doubtful integrity cannot be considered to be efficient, see State of Gujarat v. Suryakant Chunnilal Shah, (1991) 1 SCC 529. Past good record is not determinative of continued efficiency and an employee who has outlived his utility to Government service and is not fit to be retained in service for any further period is a management perception. The petitioner is, therefore, incorrect in his submission that for four reasons three have become non-existent.

20. On the other hand, the fact is that two still survive and they are sufficient to uphold the impugned orders and with the result of the above discussion, I believe this petition deserves to be dismissed. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

04.07.2016
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