

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

**CWP No. 21742 of 2015
Date of decision : 25.04.2016**

Banke Lal

....Petitioner

versus

Punjab & Haryana High Court, Chandigarh & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Kumar, Advocate
for the petitioner.

Ms. Deepali Puri, Advocate
for respondent No. 1

Mr. I.P.S. Doabia, Advocate
for respondent No. 2

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

RITU BAHRI , J.

Petitioner by way of present writ petition, has challenged order 30.4.2015/02.05.2015 whereby he has been compulsorily retired from service w.e.f 30.06.2015 on completion of 25 years of service, in terms of Rule 33 A (4) (iii) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 (for short 'Rules 1973')

Brief facts of the case, which can be culled out from the pleadings, reads as under:-

Petitioner joined the services of the establishment of this Court as Chowkidar on 05.05.1990 and was designated as Peon on 11.07.1990 and subsequently promoted to the post of Usher on 14.01.2014. One F.I.R No. 326 dated 15.09.2007 under Sections 406/420 IPC was registered against the petitioner and his wife with the allegations that they played fraud by performing a committee and for grabbing huge amount of committee members who were depositing their amount per month with them and the petitioner was placed under suspension w.e.f 23.09.2007 i.e the day on which he was arrested by the police. However, petitioner was acquitted by the Chief Judicial Magistrate, SAS Nagar, Mohali, vide judgment dated 11.12.2013 and his wife, who was convicted by the same judgment, was also acquitted later on, by the learned Additional Sessions Judge, vide judgment dated 05.06.2015.

Subsequently the petitioner was compulsory retired from the service by Hon'ble the Acting Chief Justice, vide order dated 30.04.2015/02.05.2015 by relying upon the punishments imposed upon the petitioner from time to time and reference was made to Rule 33(4) of Rules 1973 read with Article 229 of the Constitution of India. The punishments which were awarded to the petitioner before he was compulsory retired were minor and reads as under:-

(i) *Stoppage of one increment without cumulative effect, vide order dated*

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15.7.1993;

- (ii) 'Censure' vide order dated 15.02.1994;
- (iii) Warned to be careful in future vide order dated 24.05.2004;
- (iv) Stoppage of one increment without cumulative effect, vide order dated 22.08.2009;
- (v) 'Censure' vide order dated 05.07.2011;
- (vi) 'Censure' vide order dated 05.07.2011;
- (vii) Stoppage of two increments without cumulative effect, vide order dated 18.07.2011;.”

Petitioner filed representation dated 15.05.2015 (P-2) against the order of compulsory retirement, but the same was rejected, vide order dated 28.05.2015 (P-3). Thereafter, he submitted mercy petition dated 15.06.2015 (P-4), which was also rejected, vide order dated 11.09.2015 (P-5). Hence the present writ petition.

Learned counsel for the petitioner contends that the order dated 30.04.2015/02.05.2015 is against the provisions of Rule 33-A (4) (iii) of Rules 1973, as all the last 10 years ACR's of the petitioner are good/very good and thus he cannot be compulsory retired from service. The last 10 Annual Confidential Reports of the petitioner, which was given to him under R.T.I Act, reads as under:

2005	B+ Good
2006	B+ Good
2007	B+ Good
2008	B+ Good
2009	B+ Good
2010	B+ Good
2011	B+ Good
2012	B+ Good
2013	B+ Good
2014	Not received

Learned counsel for the petitioner further argued that once the petitioner was promoted on 14.01.2014 by taking into consideration the earlier minor punishments awarded to him, thereafter, the same cannot be made the basis again for compulsory retiring him from service. The petitioner cannot be punished twice for the same offence.

Learned counsel for the petitioner further argued that while passing the impugned order and while rejecting the representation and mercy petition against the impugned order, the authorities have not taken into consideration the fact that the petitioner and his wife stood acquitted in the F.I.R registered against them.

To give force to its contention, reliance has been placed upon a case titled as ***Brahm Dutt Sharma vs. Punjab and Haryana High Court Chandigarh and another, passed in CWP No. 11154 of 2003, decided on 29.09.2005*** wherein also the petitioner joined as Daftri in the year 1978 but was compulsory retired from service on 02.04.2003. This Court allowed the writ petition by taking in to consideration the ACR's of the petitioner right from 1978 which were B+Good and Satisfactory. This court held that except two reports of satisfactory, the petitioner had a consistently B+ good record and thus petitioner cannot be dubbed as a piece of dead wood which ought to be chucked out.

Ms. Deepali Puri, learned counsel appearing for the High

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Court, on the other hand, has argued that the entire service record of the petitioner was not good. He was awarded many punishments. He was also placed under suspension as he remained under detention for more than 48 hours in a case registered against him and his wife, under Sections 406/420 IPC at Police Station, Mohali on account of running illegal business of monthly committees. Subsequently, he was charge sheeted and was ultimately inflicted with the punishment of stoppage of two increments without cumulative effect, though he was acquitted on 11.12.2013.

Learned counsel for the respondent appearing for the High Court further submitted that as per Rule 33-A 4(iii) of Rules, 1973, the case of the petitioner for retention in service after putting in qualifying service of 25 years was considered by the Committee in its meeting held on 28.04.2015 (R-1) wherein the entire service record of the petitioner was evaluated and the Administration decided not to retain the petitioner in service. The recommendations were duly approved by Hon'ble the Acting Chief Justice on 30.04.2015 and in this regard, office order dated 30.04.2015 was issued.

Learned counsel appearing for the High Court while relying upon Rule 33-A 4(iii) of Rules, 1973 submits that though out of preceding ten years of service, a minimum of seven grading of B+ (Average or Satisfactory) or above would be necessary for retention of

an employee beyond the age of 50 years to 55 years or after putting in 25 years of qualifying service, but the rules also stipulates that ***suitability for retention in service at the time of each review is to be determined in the light of the entire service record of an employee***, which was not up to the mark in the case of the petitioner and accordingly, his services were dispensed with, keeping in view his entire service record.

I have heard learned counsel for the parties at length and have gone through the records of the case.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***State of Gujarat v. Umedbhai M. Patel, 2001(2) SCT 339*** wherein following principles have been laid down for compulsorily retiring an employee, which reads as under:-

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable. (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

In the instant case, the petitioner was given proficiency step up on completion of 16 years of service, vide order dated 11.12.2013 and thereafter, petitioner was promoted to the post of Usher on 14.01.2014 which clearly shows that the earlier punishments awarded to the petitioner were taken in to consideration by the authorities, as the proficiency step up and promotion were given to the petitioner after the imposition of punishment of stoppage of two increments without cumulative effect in connection with F.I.R No. 326 dated 15.09.2007 under Sections 406/420 IPC, vide order dated 18.07.2011. The above said punishment was given to the petitioner after considering the regular departmental enquiry report dated 01.03.2011 as well as representation dated 04.04.2011 given by the petitioner.

This fact is not being disputed by learned counsel appearing for the High Court.

Thus the Punishing Authority chose not to inflict major

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penalty upon the petitioner and thereafter, the petitioner and his wife both were acquitted in F.I.R No. 326 dated 15.09.2007 under Sections 406/420 IPC and there is no adverse entry in the ACR's of the petitioner. Petitioner was further promoted to the post of Usher. The last 10 ACR's of the petitioner are B+ Good as mentioned above. Even for the promotion, an employee has to have 70% good record, which the petitioner had in his credit and therefore, he was promoted to the post of Usher on 14.01.2014.

Reference at this stage can be made to Rule 33 (4) (iii) of Rules 1973, which reads as under:-

“Rule 33(4) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973, for the employees beyond the age of 50 years:-

i) The case of every employee shall be reviewed for the purpose of rule 33(4) of the Rules ibid three months before each of the following occasions namely ;

a) when he is due to complete 25 years' qualifying service if it is earlier than his completion of 50 years of age or when he is to attain the age of 50 years, as the case may be ;

b) when he is to attain the age of 55 years.

ii) All those employees who complete 25 years qualifying service or attain 50 years of age be conveyed the grading 'B' (Average/satisfactory) or below earned by them in any year.

iii) The suitability for retention in service at the time of each review may be determined in the light of the entire service record with

particular reference to such record pertaining to preceding ten years of service and, where necessary a report about the work and conduct of the employee concerned may be obtained from the Hon'ble Judge or the Officer concerned.

- a) Out of preceding ten years of service, a minimum seven grading of 'B' (Average/Satisfactory) or above would be necessary for retention of an employee beyond the age of 50 years to 55 years or after putting in 25 years qualify service.
- b) Out of preceding five years of service, a minimum three grading of 'B' (Average/Satisfactory) and two gradings of 'B' + (Good) or better would be necessary for retention in service beyond the age of 55 years and upto 58 years.”

The above said Rule came up for consideration before this Court in ***Brahm Dutt's case (supra)*** wherein this Court has held that once the last 04 ACR's of the petitioner were consistently good, two minor penalties of the nature described above could not justify an order of retirement. The writ petition was allowed and order of compulsory retirement was set aside.

Reference at this stage can further be made to a Division Bench judgment of this Court in a case of ***Dr. Om Parkash Gupta vs. State of Haryana and another, 1988(6) SLR 370*** whereby this Court set aside the order of compulsory retirement and in para 9 and 10 held as under:-

9. The case of an employee for further retention in service is considered at the age of 50 years. The objection of such consideration is to weed out the inefficient, corrupt, dishonest or to chop off the dead wood from Government service. Admittedly, the Government has absolute powers and there is no criteria or guidelines prescribed except 'public interest'. The object is to retain in service honest and efficient employees. The competent authority has the power to retire its employee prematurely on his attaining the age of 50 years or completion of 25 years service. The order of compulsory retirement is to be passed with abundant caution as the employee who is to be adversely affected by such order becomes ineligible for any Government service at that stage and he is unable to start his life afresh. Generally, his family remains unsettled at that juncture. The record is to be screened with great caution. Even a minor lapse can adversely affect the service career of an employee. The record is to be screened objectively. In a case of an employee who has successfully completed probationary period; allowed usual increments and allowed to cross Efficiency Bars at various stages and even given promotion, a single or isolated old adverse entry recorded at the threshold of his career should not be given under weight. What will be justified is that adverse entry prior to promotion, crossing of Efficiency Bar etc. should not be taken into consideration while forming opinion to retire an employee pre-maturely because of the reason that adverse entries lose their significance after promotion of an employee for this purpose. There is always scope for improvement. The consideration is to be given to the record of last five years. This view of ours finds support from **Brij Mohan Singh Chopra v. State of Punjab, AIR 1987 Supreme Court 948**. In the case in hand the petitioner had only one adverse entry against him, i.e. for the year 1963-64 but subsequent to that he was allowed to cross Efficiency Bar on three occasions; was promoted from H.C.M.S.II) to H.C.M.S.M. Much water has flown since an adverse entry was made in his service record. We find no justification in the stand taken by the respondent-State of Haryana in retiring the petitioner pre-maturely, in the circumstances of the case, on the basis of an isolated and old adverse entry recorded about two decades back.

10. It is well settled that an official or officer is not entitled to cross the Efficiency Bar as of right. His performance and service record have to be evaluated. If he is found suitable and fit, only then he is allowed to cross the Efficiency Bar. If the performance of the petitioner in the recent past had been poor he would not have been confirmed and allowed to cross the Efficiency Bar. These very vital factors relevant to the decision have not been taken into account and obsolete materials which are not so relevant to the decision at the relevant stage have been allowed to influence the mind."

Thus, the overall record of the petitioner in the present case

is good, as he had been promoted to the post of Usher on 14.01.2014

and was acquitted in F.I.R No. 326 dated 15.09.2007 under Sections 406/420 IPC, vide judgment dated 11.12.2013. However, the Punishing Authority while passing the impugned order and while rejecting the representation and mercy petition of the petitioner had taken in to consideration only the minor punishments awarded to the petitioner, as borne out from meeting note held on 28.04.2015 (R-1), which was against the proposition of law, as before passing the impugned order, overall record of the petitioner was to be seen before passing an order of compulsory retirement.

For the reasons stated above, order 30.4.2015/02.05.2015 is hereby set aside and respondent No. 1 is directed to reinstate the petitioner forthwith with all consequential benefits.

In view of the aforesaid observation, the present writ petition is allowed.

25.04.2016

G Arora

(RITU BAHRI)
JUDGE