

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO. 5602 OF 2015(O&M)

RESERVED ON: SEPTEMBER 28, 2016

DATE OF DECISION: OCTOBER 07, 2016

Abhay Singh son of Shri Ram KumarPetitioner

Versus

State of Haryana and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Sunil K.Nehra, Advocate for the petitioner.

Mr.Ravi Pratap Singh, Assistant Advocate General,
Haryana.

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TEJINDER SINGH DHINDSA, J.

C.M. No.11174 of 2016

Application allowed as prayed for. Documents at
Annexures P12, P13 and P14 are taken on record.

2. Application disposed of.

Main Petition

3. Petitioner, who was serving as Sub Inspector with
Haryana Police has impugned the action of the respondent-
Department in having compulsorily retired him from service upon
attaining the age of 55 years vide order dated 25.4.2015,
Annexure P11, passed by the Deputy Commissioner of Police,
Headquarters Faridabad. Petitioner also seeks the expunging of

the adverse remarks recorded in his ACR for the period 29.7.2013 to 3.11.2013 and wherein his integrity has been doubted.

4. Petitioner stands compulsorily retired vide impugned order dated 25.4.2015 at Annexure P11 in terms of invoking the provisions contained in Rule 5.32A(c) of the Punjab Civil Services Rules, Volume II and Rule 3.26 (d) of the Punjab Civil Services Rules, Vol.I, Part I as applicable to the State of Haryana read with Rule 9.18(c) of the Punjab Police Rules on the basis of his integrity having been doubted and so recorded in his ACR for the period 29.7.2013 to 3.11.2013.

5. Mr.Sunil Nehra, Advocate appearing for the petitioner has argued that the petitioner could have been compulsorily retired under Rule 9.18(2) of the Punjab Police Rules, 1934 as applicable to the State of Haryana only when there is prior approval of the State Government, but in the case in hand, no prior approval has been taken and as such, notice qua compulsory retirement as also the order of compulsory retirement cannot sustain.

6. In response, learned State counsel has argued that the order of compulsory retirement of the petitioner has been passed under Rule 9.18(c) of the Punjab Police Rules and which, in turn, does not mandate any prior approval from the State Government. However, on a specific query having been put, learned State counsel would concede that no approval was sought prior to passing of the impugned order of compulsory retirement.

7. Absolutely identical issue came to be raised by one ASI Krishan Singh who had also been compulsorily retired without

seeking prior approval of the State Government by way of filing Civil Writ Petition No.8138 of 2012 in this Court. Learned Single Judge vide judgment dated 15.1.2014, Annexure P12, allowed the petition and set aside the order of compulsory retirement taking a view that prior approval of the State Government was mandatory. State of Haryana preferred LPA No.725 of 2014 against the judgment and order dated 15.1.2014 passed in Krishan Singh's case. The Letters' Patent Bench while affirming the judgment of the learned Single Judge and while dismissing the State Appeal on 14.1.2015 held as follows:

“The submissions made on behalf of the appellant-State required to be considered only to be rejected. We have seen the provisions of Rule 9.18 (c) as also the Notes to Rule 9.18 of the Rules.

The relevant Notes are reproduced below:-

“Note:- Appointing authority retains an absolute right to retire any Government servant or after he has attained the age of 55 years without assigning any reason. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years.

(2) The Inspector General of Police may, with the precious approval of the State Government, compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service of Haryana State Police Service who has completed

twenty five years qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement.”

XXXX XXXX XXXX

“Note 2:- The officer shall be given an adequate opportunity of making any representation that he may desire to make against the proposed action and such representation shall be taken into consideration before his compulsory retirement is ordered. In all cases of compulsorily retirement of enrolled police officers, the Inspector General of Police shall effect such retirement only with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time”.

A perusal of the above Notes to Rule 9.18 of the Rules leave no manner of doubt in our minds that the order of compulsorily retirement can only be passed with previous approval of the State Government, in accordance with the instructions, if any, issued by the State Government on the subject from time to time. Neither any approval nor any instructions made by the Government in this regard were shown by the State to the learned Single judge nor any have been shown to us.

In view of the above, we have no reason in fact or in law to interfere with the well reasoned order of the learned Single Judge under appeal.

Resultantly, the present appeal stands dismissed."

8. Such view stands affirmed by the Hon'ble Supreme Court as even **Special Leave to Appeal (Civil) No.17945 of 2015** preferred by the State of Haryana against the judgment and order dated 14.1.2015 in LPA No.725 of 2014 has been dismissed on 12.7.2016.

9. In the considered view of this Court, the case of the present petitioner insofar as challenge to his order of compulsory retirement, is squarely covered in his favour in the light of judgment dated 15.1.2014 in **Civil Writ Petition No.8138 of 2015 (ASI Krishan Singh v. State of Haryana and others)** as even in the present case, prior approval from the State has, concededly, not been sought.

10. Resultantly, the prayer of the petitioner seeking quashing of the notice as also order of compulsory retirement from service is accepted. Impugned notice dated 22.4.2015 at Annexure P10 as also order of compulsory retirement dated 25.4.2015 at Annexure P11 are set aside. Petitioner is also held entitled to all the consequential benefits emanating on account of setting aside the order of compulsory retirement. Liberty, however, is granted to the respondent-Authorities to proceed further afresh in the matter but in accordance with law.

11. Insofar as the prayer and claim raised in the instant

petition for expunging of the adverse remarks is concerned, it may be apposite to take note that the following adverse remarks were recorded in the petitioner's ACR for the period 29.7.2013 to 3.11.2013 by the Reporting Officer:

Sr. No.	Column	Remarks
1	Honesty	Not beyond doubt
2	Defect if any, and whether the same have been brought to the notice of the concerned official with any communication	DE is pending against him regarding malpractices
3	General Remarks	Need to improve his dealings
4	Category of report	Average

12. The adverse remarks were conveyed vide forwarding letter dated 27.5.2014. A representation having been preferred by the petitioner, the same has been declined in terms of order dated 22.9.2014, Annexure P5, passed by the Commissioner of Police, Faridabad. The joint written statement filed on behalf of respondents No.1 to 4 to the instant petition would indicate the factual background as regards doubting the integrity of the petitioner for the period in question as also the departmental enquiry that was stated to be pending against him regarding certain mal-practices. In para 4 of the written statement, it has been stated that FIR No.142 dated 10.3.2013 under Sections 302/201 of the Indian Penal Code was registered at Police Station Saran, Police Commissionerate , Faridabad. During the course of investigation, an intelligence input was received that conversation on mobile Nos.9717735608 and 9717388922 be intercepted and

which may provide a valuable lead in the case. Upon proceeding further in the matter, it was found that the afore-noticed two Mobile Nos. were being used by one person by the name of Narender @ Matru. It was further alleged that Narender @ Matru had been in telephonic contact and conversation with the present petitioner on his Mobile No.9818845115. Narender @ Matru was found to be a listed Bad Character (A) in the record of the Police Station Kotwali. A number of criminal cases were stated to have been registered against him and he was a known Satta player in Faridabad. Such facts being indicative that the petitioner had behaved in a manner unbecoming of a Police Officer and had committed gravest act of mis-conduct by establishing relations with a Bad Character, departmental enquiry had been initiated against him. It is this very departmental enquiry that has been referred to in the ACR for the period 29.7.2013 to 3.11.2013 and upon which the remark of doubtful integrity has been founded.

13. Even though the representation submitted by the petitioner against the adverse remarks has been dismissed by the Commissioner of Police, Faridabad vide order dated 22.9.2014, Annexure P5, but certain developments that have taken thereafter would have a material bearing. In the departmental enquiry that was initiated against the petitioner, the Assistant Commissioner of Police, City Ballabgarh was appointed as Enquiry Officer and who returned findings vide enquiry report dated 29.11.2014 exonerating the petitioner and holding him to be innocent. Such enquiry report has thereafter been accepted and the departmental enquiry initiated against the petitioner has been

filed vide order dated 19.12.2014, Annexure P9, passed by the Deputy Commissioner of Police, Headquarters Faridabad. The contents of the order dated 19.12.2014, Annexure P9, are not disputed by the State.

14. Even though a second representation against adverse remarks is not maintainable but in the light of the peculiar circumstances taken note of hereinabove, liberty is granted to the petitioner to file another/second representation against the adverse remarks recorded for the period 29.7.2013 to 3.11.2013. In the eventuality of any such representation being preferred within a period of four weeks from today, the competent/appropriate authority would be obligated to consider the same and to take a final view thereupon on merits and in accordance with law.

15. Writ petition is allowed and disposed of in the aforesaid terms.

OCTOBER 07, 2016
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether speaking/reasoned? Yes/No
Whether referred to Reporter? Yes/No