

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24331 of 2012 (O&M)
Date of decision : February 23, 2017

Mohan Lal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.S. Dinarpur, Advocate for
Mr. Subhash Godara, Advocate for the petitioner.
Mr. Naveen Sheoran, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J. (ORAL)

In the present petition, the petitioner has sought a writ of certiorari for quashing the show cause notice dated 09.06.2010 (Annexure P-3) and the order dated 18.11.2010 (Annexure P-4), whereby the petitioner has been compulsorily retired from service and also for setting aside the order dated 26.10.2010 (Anenxure P-10) passed by respondent No.3-the Commissioner of Police, Gurgaon, vide which his representation against the adverse remarks has been rejected. He also seeks direction that he should be allowed to continue in service.

The petitioner joined the service in Haryana Police as Constable on 29.06.1975 in Gurgaon District. He was promoted as Head Constable on 29.09.1991 and was further promoted as Assistant Sub Inspector on 09.04.2003 and was confirmed against the said post on 31.08.2005. Thereafter, he was promoted as Sub Inspector on 01.10.2008.

During the entire service of 35 years, he earned 70% or above good reports. He earned 101 commendation certificate in his character rolls as per the record. The last commendation certificate was earned in the year 2009 with cash reward. The date of birth of the petitioner is 15.04.1955.

According to the petitioner, he had registered one FIR No.117, dated 02.07.2009, under Sections 392 and 397 IPC read with Section 25 of the Arms Act, 1959, at Police Station DLF, Phase-I, Gurgaon against Malwinder Singh @ Muli and Charan Singh @ Charni on the complaint of one Ravi Tehda when he was posted as S.H.O. at Police Station DLF Phase-I, Gurgaon. On 17.08.2009, said Malwinder Singh @ Muli made a complaint to the Chief Minister, Haryana that FIR No.90, dated 24.05.2009 under Sections 323, 506 read with Section 34 IPC was registered against him along with three other boys of village, namely, Bittu, Bhupinder and Amarpal and the petitioner being the S.H.O., did not show the arrest of Malwinder Singh @ Muli but gave him beatings in the police station. It was further alleged that said Malwinder Singh @ Muli has been falsely implicated in FIR No.117, dated 02.07.2009.

It is stated that one SI Karan Singh, CIA Staff, in order to help said Malwinder Singh @ Muli arrested three persons in FIR No.147, dated 14.08.2009 under Sections 398, 401 IPC and under Section 25 of the Arms Act, 1959 registered at Police Station DLF Phase-I, Gurgaon. Petitioner had gone on medical leave on 27.08.2009 and SI Vijender Singh was given the charge of P.S. DLF Phase-I, Gurgaon by DCP East Gurgaon. Thereafter, Malwinder Singh @ Muli and his co-accused got discharged and challan was presented against said three persons, who were later on acquitted by the

trial court in case FIR No.117, dated 02.07.2009 on the ground that they have not been identified by the complainant. The petitioner joined the service back in October 2009 and came to know about the proceedings of the said FIR. The petitioner claims that three other persons were sentenced in the said FIR No.117, dated 02.07.2009.

It is further stated that thereafter a show cause notice dated 09.06.2010 (Annexure P-3) was issued to him under Rule 3.26 (d) of Punjab Civil Services Rules, Vol-I, Part-I and Rule 9.18(I)(c) of the Punjab Police Rules as applicable to the State of Haryana that his services are not required beyond the age of 55 years in public interest.

Thereafter, the order endorsed on 18.11.2010 (Annexure P-4) was passed, whereby the petitioner was retired at the age of 55 years. Petitioner claims that as per Instructions of the Government, only those employees are allowed to continue in service beyond the age of 55 years, who have earned 70% or above good reports and whose integrity is not doubted for the last 10 years. However, the case of those, who on the basis of service record are fit to be retained in service beyond the age of 55 years but the integrity is reported to be doubtful, are to be decided by the Head of the Department in view of the Instructions dated 11.04.2005 (Annexure P-2).

The petitioner claims that his ACR for the period from 19.06.2009 to 26.11.2009 was wrongly recorded adverse. His 'Honesty' was recorded 'doubtful', Moral Character was recorded as 'Adverse'. It was on the basis of said investigation in case FIR No.117, dated 02.07.2009. His representation against the said adverse ACR was wrongly rejected.

In the written statement, the State has taken the plea that the petitioner has been retired from service w.e.f. 18.11.2010 after completion of three months' notice served upon him after he attained the age of 55 years. It is stated that he was awarded the following punishment:

i) Awarded punishment of Censure for non compliance of orders of Senior Officer in connection with Formal Inspection Ist and IInd Quarter, 2008 of P.S. Pataudi vide Order No. 25591-95/A-II dated 22.08.2009.

ii) Awarded punishment of Censure for not carrying out any checking of PCRs and Riders during this tenure of two months while posted as SHO P.S. DLF, Gurgaon vide this office order No.25831-38/PA dated 26.08.2009.

iii) Awarded punishment of Warning for non compliance of orders of Senior Officers in connection with Formal Inspections for not doing entry in Registers and computer while he was posted in P.S. DLF Phase-I, Gurgaon vide this office order No. 26282-85 dated 01.09.2009.

iv) Awarded punishment of stoppage of two Future Annual Increment with permanent effect vide DCP/Headquarters, Gurgaon order No.371-74/Steno dated 26.05.2010 in Departmental Enquiry for remaining absent from duty while he was posted as SHO P.S. DLF Phase-I, Gurgaon, he remained away from his duty for a total period of 34 days from 27.08.2009 to 30.09.2009 without any information to his senior officers and thus, exhibited gross indiscipline and negligence in duty. The copy of the order is attached as annexure R-I, for the kind perusal of this Hon'ble Court.

v) Awarded punishment of impose a cut of 5% for one

year in his pension with immediate effect vide DCP/Headquarters, Gurgaon order No.265-268/Steno dated 29.07.2011 in departmental enquiry for allegations against him while posted as SHO Police Stations, DLF Phase-I, Gurgaon and investigated case FIR No.117, dated 02.08.2009 under Section 392 IPC and 25/54/59 Arms Act PS DLF Phase-I, Gurgaon, he arrested two innocent persons viz Malvinder @ Muli s/o Ram Pat, Gujjar r/o Gwaal Pahari and Charan Singh @ Charani s/o Likhi Ram, Gujjar, H.No.213, Fatehpur Dera, Mehrauli, which amounted to absolute misuse of official powers and lack of professional aptitude. The attached copy of the order as annexure R-II, for the kind perusal of this Hon'ble Court.”

It was observed that under Rule 3.26(d) of Punjab Civil Services Rules, Vol-I, Part-I (as applicable in Haryana), the competent authority has absolute right to retire a person compulsorily keeping in view the misconduct of the petitioner. It was stated that the petitioner had earned an adverse ACR recording integrity 'doubtful' during the period from 19.06.2009 to 26.11.2009. He was having adverse ACRs for the period from 07.04.2008 to 31.08.2008 and 01.05.2008 to 30.09.2008, thus, he has automatically outlived his utility as a police officer. It was observed that the impugned order of compulsory retirement was correctly passed under Rule 3.26(d) of Punjab Civil Services Rule, Vol.-I, Part-I and Rule 9.18(1)(C) of Punjab Police Rules as applicable to the State of Haryana.

In the replication, the petitioner has stated that his adverse ACR for the period from 07.04.2008 to 31.08.2008 and from 01.05.2008 to 30.09.2008 were not approved by the then Commissioner of Police and

these were expunged and he was given remarks of 'Very Good Police Officer'. No notice of such adverse remarks for the period from 07.04.2008 to 31.08.2008 and 01.05.2008 to 30.09.2008 was served upon the petitioner.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, the petitioner was given adverse remarks in the ACR for the period 19.06.2009 to 26.11.2009 (i.e. for about 5 months), wherein his 'Honesty' was recorded as 'Doubtful' and 'Moral Character' as 'Adverse'. The other remarks were 'Average' with the remarks that the complaints are received. The reference is made to the punishment awarded in one departmental inquiry with two increments stopped and three inquiries are pending. All those punishments are for the acts during the period of said five months. It is to be seen that the ACR is not for the whole of the year. The ACR for whole of the year is to be considered, not of few months. After considering the ACR for whole of the year, the competent authority is to decide as to what over all remarks are to be given.

Since, the ACRs for the period April, May and after November 2009 are not available, therefore, it is not known as to what over all remarks for the year 2009-2010 were recorded/approved.

Learned counsel for the petitioner has assailed the impugned order dated 18.11.2010 (Annexure P-4) on the short ground that the order is not passed in accordance with the rules.

Learned counsel for the petitioner while referring to the good record of the petitioner has stated that as per Instructions of the Government dated 11.04.2005 referred in the order dated 14.03.2006 (Annexure P-2),

only those employees are allowed to continue in service beyond the age of 55 years, who earn more than 70% or above good reports and whose integrity is not doubted for the last 10 years. However, cases of those, who on the basis of their service record are fit to be retained in service beyond the age of 55 years but his integrity is reported to be doubtful, are to be decided by the Head of the Department.

The show cause notice dated 09.06.2010 (Annexure P-3) was issued by the Commissioner of Police, Gurgaon and order dated 18.11.2010 (Annexure P-4) was passed by the Commissioner of Police, Gurgaon. It was neither stated in the order nor in the written statement that this order was passed with the prior approval of the Government.

Learned counsel for the respondent heavily relied upon the Instructions of the Government dated 11.04.2005 referred in order dated 14.03.2006 (Annexure P-2) to reiterate that the Head of the department is to decide about such cases. The retirement order has been passed under Rule 9.18(I)(c) of the Punjab Police Rules as applicable to the State of Haryana. The said Rule is reproduced as under:

9.18. Retiring pension - (1) *Notwithstanding anything contained in these rules, a retiring pension is granted to an officer –*

(a) who is permitted to retire from service after completing qualifying service of twenty-five years or such lesser period as may, for any class of officers, be prescribed; or

(b) who is compulsorily retired under sub-rule (2) after completing twenty-five years' qualifying service; or

(c) who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less

than three months' notice; or

(d) who retires on or after attaining the age of 55 years by giving not less than three months' notice of his intention to retire to the appointing authority.

Provided that where the notice is given before the age of fifty-five years so attained, it shall be given effect to from a date not earlier than the date on which the age of fifty-five years is attained.

Note:- Appointing authority retains an absolute right to retire any Government servant on 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 previous 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.

Note 1. - *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 on grounds such as inefficiency, dishonesty, corruption or infamous conduct. Thus the rule is intended for use -*

(i) against an officer whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient i.e., when an officer's value is clearly incommensurate with the pay which he draws but not to such a degree as to warrant his retirement on a compassionate allowance. It is not the intention to use the provisions of this rule as a

financial weapon, that is to say, the provision should be used only in the case of an officer who is considered unfit for retention on personal as opposed to financial grounds;

(ii) in cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved.

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 Compulsory retirement of enrolled police officers, the Inspector-General of Police shall effect such retirement 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.*

Note 3. - *The officer, whose duty it would be to fill the post if vacant, shall record his orders on the application to retire, which, if in vernacular, should be accompanied by a translation in English. If the officer who applies for pension, is permitted to retire, the application shall be forwarded with the pension papers.*

The said Rule indicates that the order of retirement can be passed by the Inspector General with the prior approval of the Government. Now, the question would arise as to whether on the basis of Instructions referred by the respondents, the order of compulsorily retirement can be upheld and whether the prior approval of the Government is required?

The matter is examined by the Division Bench of this Court in LPA No.725 of 2014 in CWP No.8138 of 2012, titled as ***“The State of Haryana and others v ASI Krishan Singh”***, decided on 14.01.2015,

wherein the Division Bench has observed as under:

“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.”

Therefore, the order of the Single Bench quashing the impugned notice of retirement was upheld.

In view of the authority pronounced by the Division Bench of this Court, it is held that the prior approval of the Government is required for the compulsory retirement of the petitioner from service under Rule 9.18 of the Punjab Police Rules. The administrative instructions referred to by the respondents in the written statement cannot over ride the express rules.

It appears that primarily the petitioner was retired from service on the basis of registration of FIR No.117, dated 02.07.2009 and recording of adverse remarks regarding five months of the year and punishments awarded for the acts during said period of five months. Therefore, the matter required approval from the Government, which was to examine the entire service record of the petitioner to find out whether the rules regarding retirement at the age of 55 years are attracted in the present case or not?

As such, the present petition is allowed. The impugned show cause notice dated 09.06.2010 (Annexure P-3) followed by the order of compulsorily retirement dated 18.11.2010 (Annexure P-4) are hereby quashed. So far as the order dated 26.10.2010 (Annexure P-10) is concerned, the respondents are to consider the ACR for the whole year and then decide about the final remarks to be recorded or retained. The Government is directed to take a final decision in this regard taking into consideration the ACR for the entire year under report i.e. 2009-2010. Since the date of birth of the petitioner is 15.04.1955 and he has already crossed the age of superannuation, therefore, the petitioner is deemed to have retired on attaining age of superannuation with continuity of service and all consequential benefits. The Department shall pass necessary orders regarding releasing notional/consequential benefits/retiral benefits treating him to have retired at the age of superannuation within three months from the date of receipt of certified copy of judgment.

February 23, 2017

sarita

**(KULDIP SINGH)
JUDGE**

Whether speaking / reasoned Yes

Whether Reportable: Yes