

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.535 of 2013

Date of Decision:-24.05.2017.

Ompal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. N.K. Malhotra, Advocate for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

Petitioner has assailed the order of compulsory retirement dated 12.11.2012 (Annexure P-7) and also notice dated 9.11.2012 (Annexure P-6). Petitioner while working as a Head Constable, Superintendent of Police, Jhajjar proceeded to retire him compulsorily while invoking Rule 9.18 (1) (c) of the Punjab Police Rules, 1934 read with Rule 3.26 (d) of CSR Volume-I Part-I after expiry of the notice period on 9.11.2012 read with compulsory retirement order dated 12.11.2012.

2.) Learned counsel for the petitioner submitted that Superintendent of Police, Jhajjar while retiring petitioner has taken note of 3 spells of ACRs namely, 14.4.2000 to 31.3.2001, 26.12.2008 to 31.03.2009 and 01.04.2009 to 31.03.2010 with reference to writing of remarks relating to integrity. Whereas, policy relating to retiring an employee compulsorily,

competent authority is required to examine 10 years of past service record of an employee, whereas, in the petitioner's case prior to 10 years from 12.11.2012 would be 11.11.2002 to 12.11.2012, however, the concerned respondent relied on ACR for the period from 14.04.2000 to 31.03.2001. The same cannot be taken into consideration because it is prior to 10 years from 12.11.2012. Therefore, extraneous material has been taken into consideration. It was further submitted that the other period relating to 26.12.2008 to 31.03.2010 ACR was written and communicated in the month of July, 2011 vide Annexure P-1. In column No.1 relating to integrity, it has been written as "*Dishonest*". Column No.3 relates to General Remarks in which it is recorded that "*A Crl. Case FIR No.85 dated 19.3.2009 U/s 7/13/ PC Act PS City B.Garh pending*". Whereas, on 28.9.2011, petitioner was acquitted in the aforesaid FIR and further disciplinary proceedings initiated against the petitioner was filed on 2.1.2012. Thus, concerned Superintendent of Police, Jhajjar was aware of the petitioner's acquittal in the criminal case on 28.9.2011 and filing of a case in disciplinary proceedings on 2.1.2012. Therefore, any reliance on ACR dated 21.7.2011 for the period from 26.12.2008 to 31.3.2009 and 1.4.2009 to 31.3.2010 cannot be taken into consideration for the purpose of retiring the petitioner compulsorily. Thus, it was contended that there is a total non application of mind in issuing notice dated 9.11.2012 and also retiring the petitioner compulsorily on 12.11.2012.

3.) Per contra learned counsel for the respondents vehemently contended that petitioner's entire service record has been taken into consideration for the purpose of retiring him compulsorily. ACR and service record of the petitioner was not up to the mark. Hence, in order to

weed out from the disciplined force, order of compulsory retirement has been passed. It is the discretion of the competent authority to proceed for retiring an employee compulsorily with reference to service record. Therefore, no interference is called for in respect of Annexure P-6 notice dated 9.11.2012 and Annexure P-7 order dated 12.11.2012. It was further contended that petitioner had filed a civil suit against ACR for the period from 14.04.2000 to 31.03.2001 in which he had suffered an order. Therefore, no interference is called for.

4.) Heard learned counsel for the parties.

5.) The Superintendent of Police, Jhajjar while issuing notice on 9.11.2012 and while passing order of compulsory retirement has referred to chequered service record and ACR for 3 spells. It is relevant to extract the order dated 12.11.2012 which reads as under:-

“ORDER

Head Constable Om Pal Singh No.101/JJR of this district has not allowed serving the department beyond the age of 55 years due to his chequered service record and adverse remarks in his ACR for the period from 14.4.2000 to 31.3.2001 and 26.12.2008 to 31.3.2009 and 1.4.2009 to 31.3.2010 in connection with his integrity. He will be retired from service with effect from 31-1-13 office, Jhajjar will arrange to deposit the uniform kit, identity card and other Govt. property which have in his possession on his retirement. Accountant will take recovery of all dues which is outstanding against him. ASI/P will be prepared his pension case prior to proceed on superannuation.”

Undisputed fact is that when a competent authority decides to

weed out an employee, he is required to examine 10 years past service record. In the present case, petitioner record has been perused only to the extent of 3 spells i.e. 14.4.2000 to 31.3.2001, 26.12.2008 to 31.3.2009 and 01.04.2009 to 31.03.2010. Insofar as first spell i.e. 14.4.2000 to 31.03.2001, the said remark cannot be taken into consideration for the reason that it is prior 10 years period. Past 10 years period commences in the present case from 11.11.2002 to 12.11.2012. Insofar as other 2 spells are concerned, a common adverse remark report has been drawn on 21.7.2011 Annexure P-1 which reads as under:-

“Dated 21.7.2011

The following adverse remarks for the period from 26.12.2008 to 31.3.2009 and 1.4.2009 to 31.3.2010 have been recorded in your ACR.

1	<i>Integrity</i>	<i>Dishonest</i>
2	<i>Reliability</i>	<i>Un reliable</i>
3	<i>General Remarks</i>	<i>A Crl. Case FIR No.85 dated 19.3.2009 U/s 7/13/ PC Act PS City B.Garh pending.”</i>

In view of the recording of integrity “*Dishonest*” for the 2 spells read with general remarks on criminal case FIR No.85 dated 19.3.2009 for the offences under Section 7/13 of the Prevention of Corruption Act, 1988 registered at Police Station Bahadurgarh, it has been recorded against integrity as “*Dishonest*”. Such ACR cannot be taken into consideration for the purpose of retiring an employee compulsorily. In the present case for the reasons that petitioner has been acquitted in the criminal case on 28.9.2011 with reference to FIR No.85 dated 19.3.2009. Further the respondents have filed in disciplinary proceedings on 2.1.2012. In other words both in the criminal as well as disciplinary proceedings petitioner had

been acquitted and exonerated. Therefore, there is no point in taking those materials relating to ACRs for the 2 spells, namely, 26.12.2008 to 31.3.2009 and 1.4.2009 to 31.3.2010. Learned counsel for the respondents submitted that petitioner had suffered judicial order in respect of ACR for the period from 14.04.2000 to 31.03.2001 as already submitted that said ACR cannot be taken into consideration for the purpose of retiring petitioner compulsorily as it is prior to 10 years period. In view of the above facts and circumstances, Annexure P-6 dated 9.11.2012 and Annexure P-7 dated 12.11.2012 are set aside.

6.) Petition stands allowed. Reserving liberty to the respondents to pass a fresh order if it is warranted.

(P.B. BAJANTHRI)
JUDGE

May 24, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.