

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 13.12.2018****CWP No.16 of 2012**

Ved Parkash Gupta

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Prashar, Advocate, for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

The case has a chequered history. The petitioner was a Typist working in the office of the Deputy Commissioner, Gurgaon. He was charge-sheeted for major conduct. The disciplinary proceedings were initiated against him. The enquiry kept pending and on 27.05.2002, the petitioner's services were placed under suspension. The petitioner was involved in two cases i.e. CBI Case No.18 dated 07.06.2005 RC No.11(S)/2001/SIU-1/CBI, New Delhi dated 25.07.2001 under Section 120 read with Section 420, 466, 467, 468, 471 IPC; Section 30 of the Arms Act, 1959 and Section 13(2) read with Section 13(1)(d) and 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1988 as well as CBI Case No.47 of 2004/2011 dated 29.10.2004 RC No.4(S)/2002/SIU-1/CBI New Delhi dated 22.02.2002 under Section 120-B read with Section 420, 465, 467, 468, 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The trials before the Special Judge,

CBI, Haryana, Panchkula led to the acquittal of the petitioner by judgment and order dated 20.02.2015 and 07.06.2013 respectively.

Four years earlier, the petitioner was retired on his attaining the age of 55 years vide order dated 30.04.2010 passed by the Collector, Gurgaon. Ex facie, the order does not use the word 'compulsory retirement' nor has it statedly been passed in public interest or is there reference to Rule 3.26(d) of the Punjab Civil Services Rules as applicable to Haryana. The order was passed without notice or hearing.

Be that as it may, the order can be traced to statutory provisions and to compulsory retirement, as it has that effect. The petitioner appealed against the order, but failed before the Commissioner, Gurgaon by order dated 24.05.2011. Against these orders, the petitioner filed this petition in 2012. However, during the pendency of the petition, judgment and order dated 20.02.2015 passed by the Special Judge, CBI, Panchkula and order dated 03.10.2016 had come into existence, which led the petitioner to amend his petition.

Another important milestone was that the Deputy Commissioner, Gurgaon after acquittal by Special Judge, CBI, Haryana, Panchkula, picked up the dormant disciplinary proceedings pending against the petitioner under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and disposed of the same vide order dated 03.10.2016 concluding as follows:

“The District Revenue Officer, Gurgaon being the Inquiry Officer was unable to complete the investigation in view of the original record in custody of the CBI and Inquiry Officer in his report Sr.No.265 dated 12.09.2016 has proposed that now there is no significance to carry out the investigation under Rule 7 because the above employee has

been retired on 30.04.2010 and learned Sh. Nazar Singh, Special Judge, CBI, Panchkula in his order dated 07.06.2013 and learned Sh. Rakesh Kumar Yadav, Additional District & Sessions Judge -cum- Special Judge (CBI), Haryana, Panchkula vide his order dated 20.02.2015 has acquitted all the employees/officers. Therefore, there is no allegation of recovery of any kind on this employee.

CBI has acquitted the employee in CAsE No.RC No.11(S)/2001/SIU-1/CBI/New Delhi dated 25.07.2001 or RC No.04(S)/22002/SIU-1/CBI/New Delhi dated 22.02.2002. There is no significance in continuing the proceedings under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 in view of the acquittal order passed by the learned Courts. Even then the charge-sheet under Rule 7 against the employee is required to be disposed of.

Therefore, I, T.L.Satya Parkash, IAS, Inquiry Officer, after considering and perusing the inquiry report of the Inquiry Officer and the facts, reached to the conclusion that after converting the Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 in Rule 8 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987, I passed the order for dropping the charge-sheet and consider the suspension period dated 27.05.2002 to 30.04.2010 as duty period and to complete the all pendency within 10 days.”

As a result of this, the charge-sheet has been dropped, as the man stands acquitted, which makes a severe dent in the order of retirement dated 30.04.2010 and would tend to remove its base. I may have foreclosed the case and set aside the order dated 30.04.2010 in view of the subsequent events and considered directing the petitioner’s reinstatement with all consequential benefits as though the order was never passed and the petitioner by fiction stood retired on reaching the age of superannuation at 58 years. However, I depart from adopting that course in view of the written statement filed by the State and on reading, inter alia, the contents of

paragraphs 5 & 7, I believe that the better course would be to remand the case to the disciplinary-cum-punishing authority for passing a fresh order in accordance with law keeping the total picture of past and subsequent events in mind.

Accordingly, the instant petition is disposed of with a direction to the Deputy Commissioner/Collector, Gurugram to pass a fresh order keeping in view, inter alia, the order dated 03.10.2016. It is expected that the authority in remand would pass a reasoned order clearly speaking on each of the subject matters contained in the written statement filed in this Court and the conclusions reached on those points be articulated and whether they have anything to do with compulsorily retiring the petitioner at the age of 55. In case, the result of the fresh order is in favour of the petitioner, then he may be granted all the consequential benefits as would become available to him as a matter of right. For this, the petitioner will be effectively heard to remove doubts, if any. The entire exercise be completed within a period of three months from the date of receiving of certified copy of this order.

Accordingly, the present petition stand disposed of in the above terms.

13.12.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>