

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

CWP No.13021 of 2014

Date of Decision: 05.02.2018

Balwant Singh

...Petitioner

Vs.

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. V.K. Jindal, Senior Advocate, with
Mr. Amardeep Sheoran, Advocate,
for the petitioner.

Mr. R.K.Doan, AAG, Haryana.

Amol Rattan Singh, J.

By this petition, the petitioner, who is a Sub-Inspector in the Haryana Police, firstly seeks quashing of the adverse remarks conveyed about him to the Deputy Commissioner of Police, Panchkula, by the Commissioner of Police, Ambala-Panchkula, vide a communication dated 25.11.2013 (annexed as Annexure P-1 with the petition).

The adverse remarks cover the period from 07.05.2012 to 12.02.2013, with the representation made by him against such adverse remarks also having been rejected, vide a communication between the same officers, dated 24.03.2014 (Annexure P-3).

Thus, he seeks the quashing of that communication also, and further, quashing of the notice issued to him on 02.04.2014 (Annexure P4), informing him that in terms of Rule 3.26 (d) of the Punjab Civil Services

Rules Vol.-I Part-I, read with Rule 9.18 of the Punjab Police Rules, 1934 (both Rules as applicable to the State of Haryana), upon having attained the age of 55 years on 27.12.2013, he would stand retired from service on 30.06.2014, i.e. 3 months after the issuance of the notice.

2. The facts, as given in the petition, are that the petitioner joined service as a Constable on 17.04.1978, having thereafter been promoted as a Head Constable on 15.08.1989 and then as an Assistant Sub-Inspector on 03.02.2002. He was promoted as a Sub-Inspector on 10.06.2010.

It is further contended that other than the adverse remarks in the aforesaid ACRs for the period from 07.05.2012 to 12.02.2013, he had an excellent service record, with all entries being either 'Good' or 'Very Good' or 'Outstanding'.

A chart has been drawn up in the petition showing the period from 23.05.2005 to 12.02.2013, during which ten ACRs were written on the petitioners' working, in five of which he has been graded as 'Good', in one as 'Very Good' and in the three immediately preceding the adverse ACR, as 'Outstanding'.

However, in the impugned ACR, he has been graded as average, with his integrity expressed to be doubtful.

3. In his petition, he has further stated that the adverse ACR was based on an incident wherein an allegation was made against him that he was hand-in-glove with the liquor mafia and had forcibly detained a person while he was incharge of a police post, with consequently a departmental enquiry initiated against him, which found mention in column no.17 of the ACR form.

4. Pursuant to the disciplinary proceeding initiated, he was awarded a punishment of stoppage of three annual increments with permanent effect,

vide an order dated 30.09.2013, against which he filed an appeal before the Commissioner of Police, Ambala-Panchkula (respondent no.3). Vide an order dated 09.01.2014 (Annexure P-2), the punishment of stoppage of three annual increments with permanent effect was set aside, with the petitioner having been simply warned “for future”.

5. The contention of the petitioner therefore is that the sting of the punishment having actually been removed, with only a warning issued to him, the ACR in question therefore is not sustainable any longer, because while modifying the order of the punishing authority, the Commissioner has also recorded as follows in the order Annexure P-2:-

“I have gone through the appeal departmental enquiry file and other relevant record in this matter. I have also heard the appellant on 2.1.2014 in my office. His contention that he was not present in the police post when this incident took place, it has been reported by the Enquiry Officer in the case of ACP Virender Kumar, proving his absence from the scene. A DDR of his having been away on investigation is also in place. Hence, punishment of stoppage of three annual increments with permanent effect is set aside. The appellant is though warned for future.”

Despite the aforesaid recording, as already noticed, his representation against the adverse remarks in the ACR was rejected, according to the petitioner on “technical grounds”, with the order of rejection, Annexure P-3, observing as follows:-

“I have heard the representationist in my office on 20.03.2014 and also perused the relevant record/comments furnished by the reporting officer. During the period under report, a regular departmental enquiry was ordered by the DCP/Panchkula against the representationist for misusing of official power and abetment

with wine vendor. The enquiry officer conducted the departmental enquiry as per laid down rules and procedures and submitted his finding to the punishing authority i.e. DCP/Panchkula holding the representationist guilty of the charges. Being agreed from (*sic*) the finding of the enquiry officer, the DCP/Panchkula awarded the punishment of stoppage of three annual future increments with permanent effect vide order dated 8.11.2013 to the representationist and his co-defaulter. Lateron, the then CP/Ambala-Panchkula set aside the above punishment vide order dated 9.1.2014 and warned him for future. As per reporting officer, overall performance of the representationist was not also found satisfactory and accordingly rated as "Adverse". The adverse remarks were conveyed to the representationist on 25.11.2013.

During personal hearing representationist made many pleas for expunction of adverse remarks in question. No Government instructions/rules/regulations have been found to be violated and representationist does not get any benefit from this plea. The reporting officer has recorded her remarks as after assessing his work during the reporting period and these remarks have also been accepted by the reviewing authority.

Hence, I don't consider any reason to interfere with the same. Representation of SI Balwant Singh no.33/A is hereby rejected being devoid of merit. ACR entries shall stand as it is. The representationist may be informed accordingly."

6. It has next been stated in the petition that vide a communication dated 27.03.2014 (Annexure P-5), the Commissioner of Police again wrote to the Deputy Commissioner of Police that the petitioners' case for extension in service beyond the age of 55 years has been considered and that he had not been found fit to be continued in service, with the Letter P-4 therefore issued.

7. Consequently, this petition has been filed. Notice having been

issued, a reply has been filed thereto by the Deputy Commissioner of Police, Panchkula, on behalf of the respondents, in which it is stated that the remarks recorded against the petitioner were so recorded on 23.10.2013, looking at his work and conduct and overall assessment of work, which was not found satisfactory by the reporting officer, that officer also having found that the petitioner had a “tendency of indulging in malpractice and misusing his power were given”.

In fact, that is the essence of the stand in the written statement, with the factual position as regards other things depicted in the writ petition, not disputed.

It has further been stated that the Commissioner of Police is empowered to compulsorily retire any person after he attains the age of 55 years, if such person is not found fit for further service, and that no reason need be assigned for the same.

(Though it has not been stated so in the written statement, however, the note below Rule 9.18 (1) (d) of the Punjab Police Rules 1934, states to that effect).

8. Before this Court, Mr. V.K.Jindal, learned senior counsel appearing for the petitioner, other than giving the facts as already noticed hereinabove, reiterated that once the basis of the adverse remarks had been removed, with the punishment of stoppage of three annual increments having been reduced to a simple warning, and that too with the appellate authority having noticed that as a matter of fact the petitioner was out of station on the date in question, he being on investigation in another case, neither the remarks in the adverse ACR, nor the notice given to the petitioner stating that he would retire three months thereafter, are sustainable.

9. Mr. Jindal next submitted that actually even a notice of compulsory retirement at the age of 55 years cannot be issued by the appointing authority in the police department, without the previous sanction of the Government, as is stipulated in Rule 9.18 (2) of the Punjab Police Rules, 1934, as applicable to the State of Haryana (hereinafter referred to as the Police Rules).

In support of his contention, he relied upon a judgment of a co-ordinate Bench of this Court in **ASI Krishan Singh v. State of Haryana and others** (CWP no.8138 of 2012, decided on 15.01.2014). He further submitted that even the appeal filed against that judgment by the respondent-State was dismissed by the Division Bench, as was the SLP filed before the Supreme Court.

On the same issue, he also relied upon other judgments, including two by Division Benches of this Court in **ASI Harinder Singh v. State of Haryana and others** 1995 (4) SCT 760 and **Ranbir Singh v. State of Haryana and others** 2009 (1) SCT 625.

Hence, learned senior counsel submitted that the writ petition deserves to be allowed on the aforesaid grounds.

10. In response to the aforesaid arguments, Mr. R. K. Doon, learned Assistant Advocate General, Haryana, submitted that, as a matter of fact, Rule 9.18 of the aforesaid rules itself distinguishes between retirement of any Government official at the age of 55 years, and compulsory retirement on completion of 25 years' qualifying service, the first being postulated in sub-rule 1 (c) and the second in sub-rule 2.

He submitted that after a police official has completed 25 years' qualifying service, in such a situation if he is proposed to be compulsorily

retired by the Inspector General of Police, the officer can only do so after obtaining previous approval of the State Government.

However, as regards ordering the retirement of a police official upon attaining the age of 55 years, by giving him a notice of at least 3 months, the appointing authority has been given such absolute right by clause (c) of sub-rule 1 of Rule 9.18, read with the note below that sub-rule.

He further submitted that a similar provision is contained in Rule 3.26 (d) of the Punjab Civil Services Rules, Vol.-1 Part-1, as applicable to the State of Haryana.

11. Learned State counsel therefore submitted that the impugned notice does not call for any interference in view of the statutory provisions, especially as two Division Benches of this Court have held that, for retiring a police official after he attains the age of 55 years, approval of the Government is not required.

He cited judgments in the cases of Babu Ram Walia v. State of Haryana and others 2007 (1) SCT 288 and Bhagwan Dass v. State of Haryana 2001 (3) SCT 291.

He also cited a judgment of a co-ordinate Bench to that effect, in Om Parkash v. State of Haryana and others 2012 (1) SCT 770.

12. Having considered the aforesaid arguments, as it is undisputed that no sanction of the State Government was obtained prior to issuing notice/order of retirement, Annexure P-4, I would first consider the issue of whether previous approval of the State Government is required or not, for the appointing authority to retire a police officer after he has attained 55 years of age, in terms of Rule 9.18 of the Police Rules.

The said provision is reproduced hereinunder:-

“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 for 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 ten years' qualifying service;
- (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 is retired 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 or 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 except when it is in the public interest to dispense with the further services of an officer, on grounds such as of 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 provisions should be used in only 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.”

Similarly, the relevant part of Rule 3.26 of the Punjab Civil Services Rules, (Vol.1 Part I), as applicable to the State of Haryana, is also

reproduced as follows:-

“3.26 (a) Except as otherwise provided in other clauses of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He must not be retained in service after the age of retirement, except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing.

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(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee other than Class IV Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notices:-

(i) If he is in Class I and Class II Service or post and had entered Government service, before attaining the age of thirty-five years, after he has attained the age of fifty years; and

(ii)(a) If he is in class III Service or post, or

(b) If he is in Class I or Class II Service or post and entered Government service after attaining the age of thirty-five years;

after he has attained the age of fifty-five years.

[Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty-five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age.]

[Provided that in the case of member of the Judicial Service, he shall have the option to retire at the age of fifty-eight years, which should be exercised by him in writing before he attains the age of fifty-seven years. A member who does not exercise such option before he attains the age of fifty seven years, would be deemed to have opted for continuing in service till the

superannuation age of sixty years with the liability to compulsory retirement at the age of fifty-eight years;

The Government employee would stand retired immediately on payment of three months pay and allowance in lieu of the notice period and will not be in service thereafter.

(e) A Government employee, other than a class IV Government employee, may by giving a notice of not less than three months in writing to the appointing authority, retire from service-

(i) if he is in Class I or II service or post and had entered Government service before attaining the age of thirty five years after he has attained the age of fifty years; and

(ii)(a) if he is in class III service or post; or

(b) if he is in class I or Class II service or post and entered Government service after attaining the age of thirty five years;
after he has attained the age of fifty-five years;

Provided further that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this clause.

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Note 3. Clause (a), (b) and (c)(i) of this rule apply to all Government employees to whom these rules as a whole apply, whether they be holding temporary or permanent posts substantively or in an officiating capacity. When a Government employee holding a permanent post substantively is officiating in another post, this rule should be applied according to the character of the post in which he is officiating and not according to the character of the permanent post held substantively by him.

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Note 7. In computing the notice period of three months referred to in clauses (d) and (e) the date of service of the notice and the date of its expiry shall be excluded.”

13. From aforegiven reproduction of Rule 9.18 of the Police Rules, four things would emerge in the opinion of this Court:-

- (i) a police officer may voluntarily seek retirement upon completion of 25 years of service and so retire if his appointing authority permits him to do so, in terms of clause (a) of sub-rule 1;
- (ii) or he may be compulsorily retired after completing 25 years of service, with the approval of the Government, in terms of sub-rule 2;
- (iii) he may voluntarily seek to be retired on or after attaining 55 years of age, provided he gives three months notice to his appointing authority, in terms of clause (d) of sub-rule 1; and
- (iv) he may also be retired by the appointing authority at any time on or after he attains the age of 55 years of age, provided he is given notice of three months of such retirement, in terms of clause (c) of sub-rule 1.

It is important to notice specifically that the note below the proviso to sub-rule 1 (falling immediately below clause (d) of that sub-rule), specifically postulates that the 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 similar right has also been provided to any Government servant, to himself take retirement on or after attaining the age of 55 years, with no reasons to be given by him for the same, and with no permission needed, to so retire.

This is in opposition to either seeking voluntary retirement after completing 25 years of service, as also for being compulsorily retired after 25 years of service, with approval required in both cases.

In all such cases, however, he would be entitled to a retiring pension.

14. Hence, as per Rule 9.18 of the Police Rules, essentially as regards action to be taken by the competent authority, the said authority may retire an officer after he completes 25 years of qualifying service, or when he attains 55 years of age.

Yet, a difference has been carved out in the rule itself as to the conditions for retiring an officer after he completes 25 years of service, as against when he attains 55 years of age or at any time thereafter.

If he is to be retired on completing 25 years of service, sub-rule 2 empowers only the Inspector General of Police to so compulsorily retire the officer and that too by only seeking previous sanction of the Government.

On the other hand, for retiring a police officer on or after he has attained 55 years of age, whosoever the appointing authority may be, has an absolute right of retiring him/her, with no sanction from the Government stipulated in the rule.

15. Naturally, even though the note below the proviso to sub-rule 1 postulates that the appointing authority is empowered to retire a police officer at the age of 55 years or later, without assigning any reason, yet, as per the 'constitutional scheme', he cannot be retired arbitrarily but for some cogent reasons, (even though the order of retirement cannot be stigmatic).

Yet, in the opinion of this Court, the rule nowhere stipulates that upon deciding to issue notice of retirement, informing a police officer that he would stand retired upon attaining the age of 55 years (or after 3 months from receipt of the date of notice after the age of 55 years), previous sanction of the Government is required.

This is in stark opposition to a situation where the officer is to be compulsorily retired on completing only 25 years of service. In that case, to repeat, the Inspector General of Police himself, must seeking prior approval of the Government to retire a police officer upon his completing of 25 years in service.

The notes below sub-rule 2 further stipulate the conditions/grounds on which he can be so retired.

16. The reason for stipulating different conditions for compulsorily retiring a police officer after 25 years of service, as opposed to at the age of 55 years and above, are only too obvious. Naturally, if a person has entered service at the age of 20 to 25 years, he/she would complete 25 years of service between the age of 45 and 50 years and thus would otherwise have 8 to 13 years of service left until the age of 'normal superannuation' (at the age of 58 years). However, retiring a person at the age of 55 years and above would only mean of curtailment of service by a maximum of 3 years. Hence, in respect of an action for a longer curtailment of service, very stringent provisions have been laid down, whereas for a lesser curtailment of service (of 3 years or less), it has been left to the appointing authority alone to assess the officer concerned and to determine whether it would be in public interest or not to retain him/her in public service for another three years.

Therefore, the different yardsticks applied in the two situations, are wholly logical in the opinion of this Court.

In any case, the rule itself not being under challenge, and it postulating two different stages of retirement, applying a different criterion for both, the argument of Mr. Jindal, learned senior counsel, to the effect that even before issuing notice to a police officer, the appointing authority must

seek previous sanction of the Government, is a misconceived argument.

17. No doubt, in *ASI Krishan Singhs'* case, a co-ordinate Bench has held that sub-rule 1 of Rule 9.18 deals with the eligibility of an officer to a retiring pension, whereas sub-rule 2 deals with compulsorily retiring an employee by the Inspector General of Police, "where the appointing authority is the Inspector General of Police".

It was further held that even the exercise of such a power by an appointing authority upon an employee attaining the age of 55 years, has the effect of compulsorily retiring the employee, and therefore previous sanction of the Government would be required.

In that particular case also, as no previous approval of the State Government had been taken, the order of premature retirement at the age of 55 years, was quashed.

18. With the utmost respect, I would have to disagree with the opinion expressed in that judgment, inasmuch as, the difference between retirement of a police officer at the age of 55 years, and retiring him/her compulsorily after only service of 25 years rendered, are two wholly different situations postulated in Rule 9.18, as already discussed.

At the cost of repetition, the note below Rule 9.18 (1) specifically postulates that to retire any Government servant on or after he has attained the age of 55 years, the appointing authority retains an absolute right to do so, without assigning any reason, which right is also available to the Government servant, to take voluntary retirement without assigning any reason or seeking any sanction, upon him/her attaining 55 years of age.

This is in opposition to seeking voluntary retirement after 25 years of service, as per clause (a) of sub-rule 1, where even for such voluntary

retirement, permission of the competent authority is required to be taken by the officer/official, which permission may be denied as is implied in clause (a) of sub-rule 1 of Rule 9.18, and such refusal is specifically provided for in the proviso to clause (e) of Rule 3.26 of the Civil Service Rules.

Thus, the two stages at which retirement can be sought/imposed are wholly different, with wholly different conditions laid down at each of the two stages, i.e. after 25 years of service, and upon attaining 55 years of age.

In a nutshell, as per rule 9.18 of the Police Rules, upon retirement after 25 years of service, approval is required by both, the Government servant if he is seeking voluntary retirement, as also by the Inspector General of Police (from the Government), if he seeks to compulsorily retire a police officer; whereas at the age of 55 years, neither does the appointing authority require any approval of Government, nor does a police officer require approval of the appointing authority if he wishes to take voluntary retirement at that age.

19. Rule 3.26 of the Punjab Civil Services Rule (Vol.I, Part I), as now applicable to the State of Haryana, actually postulates that other than in the case of a Class IV Government employee, Government has an absolute right to retire any other employee by either giving him notice of not less than 3 months (or giving him 3 months' pay and allowances in lieu of such notice). However, in the case of Class I, Class II or Class III Government servants, such retirement cannot be imposed before the age of 50 years if such Government servant entered service before the age of 35 years, and in the case of such Government servant who entered service after 35 years of age, he can be so retired only after he attains the age of 55 years.

The essential difference between that rule and Rule 9.18 of the

Police Rules, is that in the case of Rule 3.26 (d) the Civil Services Rules, the appointing authority has the right to retire a Government employee at the age of 50 or 55 years (as the case may be), whereas in the Police Rules, if the officer is to be retired upon completing 25 years of service, that can only be done after approval of the Government, and that too only by the Inspector General of Police and by no appointing authority in a lower rank, though at the age of 55 years, any appointing authority can do so, with no approval or sanction required.

In the Civil Services Rules, however, there is also a provision that upon a Government servant who is required by the Government to retire after completing 25 years qualifying service but before he has attained the age of 55 years, he/she would be entitled to a retiring pension.

The said provision is postulated in Rule 5.32-A(b) of the Punjab Civil Services Rules, Vol.II (as applicable to the State of Haryana).

The note below that provision again provides that the Government has an absolute right to retire any Government employee after he/she has completed 25 years of service qualifying for pension.

20. Having seen the rules, as hereinabove, normally this Court would be bound to refer the matter to a larger Bench, it having opined differently on the issue, from the opinion expressed by a co-ordinate Bench, but for the fact that a Division Bench of this Court in *Babu Ram Walias'* case (supra), upon considering Rule 9.18 of the Police Rules, as also Rules 3.26 and 5.32 (A) and 5.32 (B) of the Punjab Civil Services Rules (all as applicable to the State of Haryana), has also held that the right of the appointing authority to retire a police officer upon him attaining the age of 55 years, was an absolute right available with such appointing authority.

In that case also a remark of doubtful integrity was entered in a single ACR of the petitioner.

21. Again, in **Shamsher Singh v. State of Haryana and others** 2008 (2) SCT 616, yet another Division Bench, after discussing Rule 9.18 of the Police Rules, held that premature retirement at the age of 55 years, by the appointing authority, is not by way of a punishment and does not cast any stigma and has to be based on the objective consideration of the entire service record of the employee, with greater emphasis on the Annual Confidential Reports of later periods.

In that case too, it was the appointing authority itself (Superintendent of Police, Ambala), that had issued a notice of retirement to the petitioner in that case, upon him having attained 55 years of age, due to an adverse entry in his ACR. The Division Bench, thus, upheld the retirement notice holding as above, that the appointing authority has an absolute right to retire any police officer at the age of 55 years without assigning any reason, the reason of course being that there was an adverse entry in his ACR reflecting on the integrity of the officer.

21-A. Obviously, the aforesaid judgments were not brought to the notice of the co-ordinate Bench that was considering *ASI Krishan Singhs'* case, nor to the notice of another co-ordinate bench that relied upon *Krishan Singhs'* case in a judgment passed on 07.10.2016, in CWP no.5602 of 2015.

22. It needs, however, to be stated here that the judgment in *Krishan Singhs'* case was appealed against by the respondent State of Haryana by way of LPA no.725 of 2014, which appeal was dismissed by a Division Bench on 14.01.2015. A perusal of that judgment shows that the Division Bench has actually held that the order of premature retirement having been passed

without previous approval of the Government, it was unsustainable and therefore, the learned single Judge had not erred in quashing the notice issued for retirement of the writ petitioner. Consequently, the appeal of the State was dismissed.

Thereafter, SLP (C) no.17945 of 2015, filed by the State was also dismissed, but by making no observation on the merits of the case.

The implication of both the orders shall be discussed further in this judgment.

23. Coming to the other judgments cited by learned Senior Advocate for the petitioner, in *ASI Harinder Singhs'* case (supra), the petitioner was being retired compulsorily upon completing 25 years of service and not upon having attained 55 years of age. Thus, the facts of that case are wholly different from this one and even though in that case, the order of compulsory retirement was quashed, it was on the specific facts therein, wherein no opportunity to submit any representation had been given to the petitioner.

In the present case, other than the fact that his representation against adverse remarks has been specifically rejected, in any case it is not a situation where he has been retired on completing just 25 years of service, but upon attaining the age of 55 years, which is wholly a different stage at which he can be retired, as already discussed.

Again, in *Ranbir Singhs'* case (supra) relied upon by the senior counsel, the Division Bench was seized of a situation where the petitioner before it had been compulsorily retired on grounds of doubtful integrity, but with no discussion in the judgment that it was at the stage when he had attained 55 years of age. In fact, the reference through out the judgment is to retirement upon completion of 25 years of service and therefore, the two

situations being wholly different, the said judgment cannot come to the rescue of the petitioner in the present case, in the face of the two Division Bench judgments specifically cited hereinabove, in *Babu Ram Walia* and *Shamsher Singhs'* cases, as also for the reasoning already given hereinabove, showing the difference between the two stages of consideration for retirement.

24. Coming to the effect of the Division Bench judgment in *Krishan Singhs'* case and the dismissal of the Special Leave Petition of the State against that judgment; again the judgments of two Division Benches in *Babu Ram Walias'* and *Shamsher Singhs'* cases (supra), not having been brought to the notice of the Division Bench also, that was considering the LPA in *Krishan Singhs'* case, in my opinion, what has been held in that judgment would not be binding on this Bench, and in fact it would be the ratio of the judgments in the previous two cases, discussing the entire law on the subject (specifically in *Walias'* case), that would prevail.

25. In **Siddharam Satlingappa Mhetre v. State of Maharashtra** 2011 (1) SCC 694, it has been held that the law of precedents requires that a judgment rendered after discussion of a particular provision, and earlier judgments on the subject, is binding on a Bench of lesser strength but a contrary judgment rendered thereafter, without the previous judgment being noticed, would not be binding on a Bench of lower strength.

The following paragraphs from *Siddharam Satlingappas'* case, need to be cited in this context:-

“128. Now we deem it imperative to examine the issue of *per incuriam* raised by the learned counsel for the parties. In *Young v. Bristol Aeroplane Co. Ltd.* the House of Lords observed that “Incuria” literally means “carelessness”. In practice *per incuriam* appears to mean *per ignoratium*. English courts have developed

this principle in relaxation of the rule of stare decisis. The “quotable in law” is avoided and ignored if it is rendered *in ignoratium* of a statute or other binding authority. The same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

In *Halsbury’s Laws of England* (4th Edn.) Vol. 26: *Judgment and Orders: Judicial Decisions as Authorities* (pp. 297-98, Para 578) per incuriam has been elucidated as under:

A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow (*Young v. Bristol Aeroplane Co. Ltd.*²⁹, KB at p. 729 : All ER at p. 300). In *Huddersfield Police Authority v. Watson*³⁰, or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.

129. Lord Goddard, C.J. in *Huddersfield Police Authority v. Watson* observed that where a case or statute had not been brought to the court’s attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered per incuriam.

130. This Court in *Govt. of A.P. v. B. Satyanarayana Rao* observed as under: (SCC p. 264, para 8)

“8. ... The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue.”

131. In a Constitution Bench judgment of this Court in *Union of India v. Raghubir Singh*, Pathak, C.J. observed as under:

“9. The doctrine of binding precedent has the merit of

promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court.”

132. In *Thota Sesharathamma v. Thota Manikyamma* a two-Judge Bench of this Court held that the three-Judge Bench decision in *Karmi v. Amru* was per incuriam and observed as under: (*Thota case*³³, SCC p. 320, para 10)

“10. ... It is a short judgment without adverting to any provisions of Section 14(1) or 14(2) of the Act. The judgment neither makes any mention of any argument raised in this regard nor is there any mention of the earlier decision in *Badri Prasad v. Kanso Devi*. The decision in *Karmi* cannot be considered as an authority on the ambit and scope of Sections 14(1) and (2) of the Act.”

137. In *Subhash Chandra v. Delhi Subordinate Services Selection Board* this Court again reiterated the settled legal position that Benches of lesser strength are bound by the judgments of the Constitution Bench and any Bench of smaller strength taking contrary view is per incuriam. The Court in SCC para 110 observed as under: (SCC pp. 503-04)

“110. Should we consider *S. Pushpa v. Sivachanmugavelu* to be an obiter following the said decision is the question which arises herein. We think we should. The decisions referred to hereinbefore clearly suggest that we are bound by a Constitution Bench decision. We have referred to two Constitution Bench decisions, namely, *Marri Chandra Shekhar Rao v. Seth G.S. Medical College*⁴⁶ and *E.V. Chinnaiah v. State of A.P.*⁴⁷ *Marri Chandra Shekhar Rao*⁴⁶ had been followed by this Court in a large number of

decisions including the three-Judge Bench decisions. *S. Pushpa*⁴⁵, therefore, could not have ignored either *Marri Chandra Shekhar Rao*⁴⁶ or other decisions following the same only on the basis of an administrative circular issued or otherwise and more so when the constitutional scheme as contained in clause (1) of Articles 341 and 342 of the Constitution of India putting the State and Union Territory in the same bracket. Following *Official Liquidator v. Dayanand*⁴², therefore, we are of the opinion that the dicta in *S. Pushpa*⁴⁵ is an obiter and does not lay down any binding ratio.”

138. The analysis of English and Indian law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a coequal strength is also binding on a Bench of Judges of coequal strength. In the instant case, judgments mentioned in paras 124 and 125 are by two or three Judges of this Court. These judgments have clearly ignored the Constitution Bench judgment of this Court in *Sibbia case* which has comprehensively dealt with all the facets of anticipatory bail enumerated under Section 438 Cr.P.C. Consequently, the judgments mentioned in paras 124 and 125 of this judgment are per incuriam.

139. In case there is no judgment of a Constitution Bench or larger Bench of binding nature and if the Court doubts the correctness of the judgments by two or three Judges, then the proper course would be to request the Hon’ble the Chief Justice to refer the matter to a larger Bench of appropriate strength.

140. In the instant case there is a direct judgment of the Constitution Bench of this Court in *Sibbia case* dealing with exactly the same issue regarding the ambit, scope and object of the concept of anticipatory bail enumerated under Section 438 Cr. P.C. The controversy is no longer res integra. We are clearly bound to follow the said judgment of

the Constitution Bench. The judicial discipline obliges us to follow the said judgment in letter and spirit.”

No doubt, what has been held hereinabove, in the last part of the judgment, is with reference to the judgment of a Constitution Bench not having been referred to in subsequent judgments, whereas in *Krishan Singhs'* case and in CWP no.5602 of 2015, what was not brought to the knowledge of three different Benches, including a Division Bench, were judgments of two earlier Division Benches in *Walias'* and *Shamsher Singhs'* cases. However, that would not make a difference as regards what constitutes a binding precedent on this Bench, in view of what has been observed earlier in *Mhetres'* judgment in paragraphs 128 and 129, to the effect that ignorance of a previous decision even of a “Court of co-ordinate jurisdiction”, would render the subsequent judgment *per incuriam*.

26. I would, in fact, be at pains to say here that no Court or Judge can be expected to know every judgment rendered earlier and therefore a subsequent judgment may consequently be rendered *per ignoratium*, which, naturally and obviously, would apply to this Bench also. However, the law of precedents being that a subsequent judgment on a particular issue having been rendered without discussing or distinguishing a previous judgment on the same issue, where the issue has been dealt with in detail, such subsequent judgment would have to be considered to be a judgment rendered *per incuriam*, and therefore only the previous judgment would be a binding precedent and not the subsequent one.

Hence, the judgments in *Walias'* and *Shamsher Singhs'* cases having been rendered prior to the judgment of the Division Bench in *ASI*

Krishan Singhs' case, with neither of the two judgments brought to the notice of either the co-ordinate Bench or the Division Bench, and therefore not discussed in the later judgments, it would not be the subsequent judgments but the previous ones in *Walias'* and *Shamsher Singhs'* cases, that would constitute the *ratio decidendi* on the interpretation of Rule 9.18 of the Police Rules.

27. Coming then to whether dismissal of the SLP filed by the State in *Krishan Singhs'* case would amount to overruling the judgments of the Division Benches of this Court in *Walias'* and *Shamsher Singhs'* cases or not.

In this context, the judgment of the Supreme Court in **Kunhayammed v. State of Kerala** 2000 (6) SCC 370 needs to be cited, wherein it was held that as regards a Special Leave Petition being dismissed, it would not amount to being a binding precedent or *ratio decidendi* laid down by the Supreme Court, unless of course, even while disposing of the petition seeking special leave to appeal (SLP), specific observations on merit were made by the Apex Court.

In the present case, while dismissing SLP (C) no.17945 of 2015, a single line order was passed by their Lordships, to the effect that the Special Leave Petition stands dismissed. Hence, the judgment in *Krishan Singhs'* case though having attained finality up to the Supreme Court and therefore being binding qua the parties therein, *in personem*, would not amount to overruling the ratio of the judgments of this Court in *Walias'* and *Shamsher Singhs'* cases, which in fact constitute the *ratio decidendi* on the issue, binding upon Benches of lesser strength of this Court.

In this context, the following paragraphs from *Kunhayammeds'* case can be cited:-

“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the *lis* before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

13. The appellate jurisdiction exercised by the Supreme Court is conferred by Article 132 to 136 of the Constitution. Articles 132, 133 and 134 provide when an appeal thereunder would lie and when not. Article 136 of the constitution is a special jurisdiction conferred on the Supreme Court which is sweeping in its nature. It is a residuary power in the sense that it confers an appellate jurisdiction on the Supreme Court subject to the special leave being granted in such matters as may not be covered by the preceding articles. It is an overriding provision conferring a special jurisdiction providing for invoking of the appellate jurisdiction of Supreme Court not fettered by the sweep of preceding articles. Article 136 opens with a non-obstante clause and conveys a message that even in the field covered by the preceding articles, jurisdiction conferred by Article 136 is available to be exercised in an appropriate case. It is an untrammelled reservoir of power incapable of being confined to definitional bounds; the discretion conferred on the Supreme Court being subjected to only one limitation, that is, the wisdom

and good sense or sense of justice of the Judges. No right of appeal is conferred upon any party; only a discretion is vested in the Supreme Court to interfere by granting leave to an applicant to enter in its appellate jurisdiction not open otherwise and as of right.

14. The exercise of jurisdiction conferred on this Court by Article 136 of the Constitution consists of two steps: (i) granting special leave to appeal; and (ii) hearing the appeal. This distinction is clearly demonstrated by the provisions of Order 16 of the Supreme Court Rules framed in exercise of the power conferred by Article 145 of the Constitution.”

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44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed again while exercising its appellate jurisdiction and not while exercising the discretionary

jurisdiction disposing of petition for special leave to appeal. The doctrine or merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be or reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of rule 1 of Order 47 CPC.”

(All emphasis above, applied in the present judgment only)

Hence, in view of what has been held in *Kunhayammeds'* case, though that was in the context of maintainability of a Review Application before the High Court after dismissal of a Special Leave Petition against the High Courts' judgment, yet the ratio of the judgment is that simple dismissal of a Special Leave Petition, does not constitute law laid down by the Supreme Court.

Therefore, the eventual effect of the decision in *Krishan Singhs'* case is that as the SLP of the State has also been dismissed by the Supreme Court, as regards the parties *in personem*, the judgments of this Court (by the coordinate Bench and the Division Bench) are binding; however, *in rem*, those judgments having been delivered without distinguishing the law laid down in *Walias'* and *Shamsher Singhs'* cases prior thereto, it would be the previous judgments (*Walia and Shamsher Singh*), that would continue to hold the field as per the ratio of *Mehtrés'* judgment (*supra*), laying down therein what constitutes a binding precedent and what does not.

28. Consequently, the argument that premature retirement of a police officer/official at the age of 55 years, must be preceded by approval from the Government, in terms of Rule 9.18 of the Police Rules is rejected; with such approval held to be necessary only before ordering compulsory retirement of such officer/official at the stage that he/she completes 25 years of service, with that order in any case having to be passed by only by the Inspector General of Police (after such approval of the Government).

29. Coming then to the merits of whether in the facts of the present case the petitioner was correctly retired at the age of 55 years, in the light of his service record.

As already noticed, prior to the adverse entry in his ACR for the

period from 07.05.2012 to 12.02.2013, he was always graded as 'good/very good/outstanding', in different years.

However, in the ACR in question (a copy of which has been annexed as Annexure P-1), he has been graded as average overall, with his moral character shown to be not good, his reputation for fair dealing with the public shown to be unfair and his loyalty shown to be 'not reliable' and further, in all other columns pertaining to various aspects of his duty/reputation/personality, he also shown to be average.

Mr. Jindal, learned senior counsel had further submitted that the entire ACR is based only on the fact that a departmental enquiry was initiated against him for misusing of official power, the allegation against him being that he had abetted a wine vendor, as recorded in the ACR, with learned counsel having further submitted that he was actually alleged to have been hand-in-glove with a liquor mafia and had forcibly detained a person while he was incharge of a police post.

Learned senior counsel had submitted that the punishment imposed upon the petitioner after he was found guilty of the charges framed against him in the departmental enquiry, was stoppage of three increments with permanent effect, which punishment imposed by the Deputy Commissioner of Police, was set aside by the Commissioner in appeal and therefore, the basis of the ACR itself stood nullified; and in fact, he contended that the appeal against the adverse remarks should have also been accepted on that basis.

30. Having considered the aforesaid argument, it needs to be seen that in the order Annexure P-2 (the operative part of which has been reproduced in paragraph 5 hereinabove), while noticing the contention of the

petitioner that he was not present at the police post when the incident in question is stated to have taken place, it was also earlier noticed by the Commissioner that one ACP Varinder Singh had accepted during his cross-examination that the petitioner (appellant before the Commissioner) was out of station at that time, in connection with some other investigation.

On the basis of the aforesaid finding recorded by the Commissioner, the punishment of stoppage of three annual increments imposed by the Deputy Commissioner of Police was set aside, with the petitioner being warned for the future.

Hence, it is very clear that though the appellate authority found that the petitioner was perhaps imposed an excessive punishment, he not being present at the spot at the time that the occurrence in question took place, he was not fully exonerated with a lurking doubt possibly remaining in the mind of the appellate authority of the petitioners' involvement with the liquor mafia, and therefore he still having been given a warning.

31. That being so and the appellate authority while considering expunction of the adverse remarks recorded in the ACR by the Deputy Commissioner of Police, still having retained those remarks and rejecting the representation, very obviously the assessing and reviewing authority were not at all convinced of the petitioner not being involved in some activities unbecoming of a police officer.

That can be seen from the remarks recorded by the Commissioner in his communication to the Deputy Commissioner of Police, Annexure P-3, noticing the fact that even though the punishment imposed upon him had been set aside, with only a warning to be issued for the future, however, his overall working had still been found to be average, with adverse remarks on him

indulging in malpractices as also in dealing with the public. Hence, the representation against such adverse remarks was rejected by the appellate authority.

32. Seeing the aforesaid facts, that both, the authority supervising the day to day working of the petitioner, i.e. the Deputy Commissioner of Police, as also the appellate authority, i.e. the Commissioner of Police, found the petitioners' performance in that particular year to be unworthy of a good grading, with very castigating remarks made in the ACR, on him indulging in malpractices and in dealing with the public, and of misuse of official powers, I see no reason as to why this Court should interfere with such recording. Naturally, the officers seeing the day to day working of an employee are in the best position to adjudge the work, capability and behaviour of such employee, rather than the Court. If of course, it had been shown that there were any reasons for any officer exercising malafides against the petitioner, and because of that he had entered adverse remarks against him, that would have been a different matter. No specific malafides having been shown, and even in the disciplinary proceedings against the petitioner he not having been fully exonerated, with a warning issued by the appellate authority, and that authority subsequently having rejected the representation against the adverse ACR, I see absolutely no reason to either quash the order rejecting the representation, or to direct expunction of the adverse remarks.

33. Coming therefore to whether the petitioner being prematurely retired after attaining the age of 55 years is justified on the basis of a single adverse ACR, the judgment of the Supreme Court in **Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another** (1992) 2 SCC 299, needs to be referred to. It was held by the Supreme Court

as follows:-

- “(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
- (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

34. A subsequent judgment (of the Supreme Court), in **Badrinath v.**

Government of Tamil Nadu (2008) 8 SCC 305, can also be cited, wherein, while holding that the entire service record of an employee can be looked at to take a decision to compulsorily retire him, though remarks of an older period would tend to lose their sting when compared with more recent remarks, especially if the employee has been promoted after such adverse remarks, however, even therein it was held that the aforesaid principle would be subject to the rider that if the remarks relate to dishonesty or lack of integrity, they can be considered to 'not have lost their strength fully' so as to be ignored altogether. (Reference paragraph 58(5), SCC citation).

It may also be noticed that a Division Bench of this Court, in Davinder Singh v. State of Haryana and others 2011 (4) SLR 210, also upheld an order of compulsorily retirement on the ground that a remark of doubtful integrity in the ACR would allow the appointing authority to retire a police officer, though in that case the petitioner had been retired under Rule 9.18 (2) of the Police Rules and not Rule 9.18 (1) (c) upon attaining 55 years of age.

Another judgment of a Division Bench in State of Haryana v. Lalit Kumar Gupta 1993 (4) SLR 702 and one of the Supreme Court in State of U.P. v. Yamuna Shanker Mishra (1997) 4 SCC 7 were also relied upon in *Davinder Singhs'* case to hold that an entry of doubtful integrity in the Annual Confidential Report of a Government employee, justified his retirement by the appointing authority. Again of course, in that case there was no discussion on such retirement at the age of 55 years, as was specifically the issue in *Babu Ram Walias'* case (supra).

In the context of premature retirement on the ground of an entry of doubtful integrity also, the judgment of the Division Bench judgment in

Babu Ram Walias' case can again be cited, wherein after citing the judgments of the Supreme Court in Union of India v. Ajoy Kumar Patnaik (1995) 6 SCC 442 and Jugal Chandra Saikia v. State of Assam (2003) 4 SCC 59, it was held that in the face of an entry of integrity being doubtful, it would be in larger public interest to retire such a person prematurely.

35. Hence, in the aforesaid background, with the petitioner having an entry of doubtful integrity in the ACR in question, which is for a period ending only one year and 2 months prior to the date of issuance of the notice of retirement, I would see no reason to hold that even a single remark of doubtful integrity, accompanied by remarks of bad dealing with the public and misuse of official power, would not warrant premature retirement at the age of 55 years, for a police officer/official.

It needs to be noticed here, that the impugned order, Annexure P-4, casts no stigma on the petitioner, it simply stating that upon him having attained the age of 55 years, his service was no longer required, in public interest.

36. Therefore, keeping in view all that has been discussed hereinabove, I see no reason to interfere with either the impugned notice Annexure P-4, or with the adverse remarks entered in the ACR of the petitioner, Annexure P-1, or the rejection of his representation against such adverse remarks.

Consequently, this petition is dismissed, but with no order as to costs.

February 5, 2018
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No