

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

**CWP No. 13613 of 2015
Date of decision: 23.01.2018**

Radhey Sham

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

Mr. Padamkant Dwivedi, Advocate
for respondent Nos. 2 to 4.

RAJIV NARAIN RAINA, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 22.09.2014 (Annex. P-19).

The petitioner was compulsorily retired from service of the Haryana Power Generation Corporation Limited, Panchkula. The decision was largely derived from an incident of the year 2004 involving a charge of theft of material against him while working in the Plant. He remained in police custody in FIR No. 34 dated 25.02.2005 under Section 379/411 IPC registered at Police Station Madlauda, District Panipat. The ACR for the period of the criminal charge viz from 01.01.2004 to 26.01.2005 as is tabulated in the the order dated

24.07.2005 is reproduced below:

1.	Punctuality in attendance	Not punctual, integrity doubtful. Letter issued No. Ch. 57/PF dated 28.06.2004, Ch. 59/PF-52 dated 04.04.04.
2.	Habits	Bad habits.
13.	Is he thoroughly honest?	Caught in theft case in plant. Remained in police custody vide FIR No. 34 dated 25.02.2005.
14.	Whether his work was outstanding/very good/good/average/below average	Below average.

The order records that the defects brought to the notice of the petitioner are to enable him to show improvement in the future. In the column of punctuality in attendance, his integrity has been doubted while in the most specific column No. 13 in answer to it i.e. “Is he thoroughly honest” the reporting authority wrote “He is not honest”. There is a marked difference between doubting integrity and charging a person to be not honest. One is negative element while the other is positive. However, since integrity was doubted or he was dubbed to be not honest petitioner's fate depended on the outcome of the FIR which trial has resulted in acquittal of the petitioner by the judgment dated 26.03.2012 passed by the Judicial Magistrate Class-I, Panipat. No appeal was filed against the acquittal and the judgment is final.

Accordingly, the base of the ACR for the period 01.01.2004 to 26.01.2005 stands removed and that episode cannot be

used against the petitioner for compulsorily retiring him at a premature stage without just cause and legal justification. In any case, the petitioner was retained in service after the FIR and was even promoted/re-designated as Plant Attendant vide Annex. P-18 at Serial No.113 dated 24.02.2014 with his name mentioned in a common administrative order.

No other material has been disclosed in the written statement or at the time of hearing upon which the impugned action can be justified and which is adverse in the confidential rolls and the service record of the petitioner after January 2005 to justify the order of compulsory retirement. There is nothing against the petitioner except the incident of the theft charge for which his integrity was wrongly doubted as proven at the trial.

It may be that an order of compulsory retirement is not a punishment and that employer has an absolute right to compulsorily retire an employee but that absolute right has to be exercised reasonably and on relevant materials which would justify an order of pre-mature retirement, in this case at the age of 55 years.

There is no material to justify the orders which makes the decision arbitrary, illegal and perverse.

In view of the discussion, the petition is allowed and the impugned order dated 22.09.2014 is set aside with all consequential benefits flowing therefrom. The monetary benefits be calculated by the

respondents and paid to the petitioner within two months with interest at the rate of 6% per annum.

**(RAJIV NARAIN RAINA)
JUDGE**

23.01.2018

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Whether speaking/reasoned : Yes

Whether reportable : No