

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

**CWP No.26726 of 2016
Date of Decision: 01.03.2018**

Ram Chander

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sunil Kumar Nehra, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Amol Rattan Singh, J.

By this petition, the petitioner seeks a writ in the nature of certiorari, quashing the adverse remarks made against him in the Annual Confidential Report (ACR) for the period from 01.04.2007 to 31.03.2008 and in fact, seeks quashing of the ACR itself.

He further seeks quashing of the order dated 22.08.2008, vide which his representation against the adverse remarks has been rejected and still further, the order dated 05.03.2009 (Annexure P-4), vide which he has been ordered to be compulsorily retired at the age of 55 years under the provisions of Rule 9.18 of the Punjab Police Rules 1934 (as applicable to the State of Haryana).

2. As per the petition, the petitioner joined service as a Constable and eventually rose up to the rank of a Sub-Inspector.

It has been contended in the writ petition that the petitioner has more than 70% good entries in his record and therefore he could not have

been retired from service simply on the basis of a single ACR.

3. It has been further stated in the writ petition that the State Government has issued instructions with regard to compulsory retirement of employees on September 03, 1968, by which it has been stipulated that the previous Government instructions dated May 19/21, 1964, would stand modified and only employees with 'Good' or better records should be retained in service beyond the age of 55 years, with those having average records not being so retained (as was stipulated in the instructions of 1964).

Further, on supersession of the aforesaid instructions also, subsequent instructions dated February 17, 2009, have also been annexed by the petitioner, wherein it is stated that even in the case of retention of those Group-C employees, in whose case integrity has been recorded as doubtful, the appointing authority of such Class-III employees would take a decision at their own level, whether to retain them or not, in service beyond the age of 55 years. As per the said instructions, in fact that position was clarified vide earlier instructions dated 11.04.2005, which were not being followed by the departments concerned.

4. It has further been contended in the petition that the ACRs of the petitioner for the previous 10 years had not been supplied to him, compelling him to file CWP no.27068 of 2013, also seeking therein quashing of the order of retirement; with however, that writ petition being dismissed by this Court on 27.03.2014, with liberty to file a fresh one on the same cause of action, (the reason for the dismissal being that the petitioner had not been able to obtain the ACR for the year 2007-08).

Consequently, the present writ petition has been filed, annexing therewith, as Annexure P-8, ACRs for the period from 1998-99 to 13.11.2007,

in all of which, it is contended, that the petitioner has been graded as 'good' or 'very good', except for one ACR, where he is shown to be average, but his integrity not doubted in any of them.

5. The next contention raised in the writ petition is that the only authority competent to retire a Sub-Inspector of police compulsorily, is the Inspector General of Police, and therefore, the impugned order of retirement, Annexure P-4, having been passed by the Superintendent of Police, it is without jurisdiction and consequently is to be quashed.

In support of the aforesaid contention, Rule 9.18 of the Punjab Police Rules 1934, as applicable to the State of Haryana (hereinafter referred to as the Police Rules), has been reproduced in the petition, though not the full text thereof. Hence, the complete Rule 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 the 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.”

6. According to the petitioner, the aforesaid rule stipulates that only the Inspector General of Police has the authority to retire a police officer compulsorily and that too only with the prior approval of the State Government, both of which conditions were not fulfilled in the case of the impugned order/notice dated 05.03.2009.

7. In further support of the aforesaid contention, a judgment of this Court in ASI Krishan Singh v. State of Haryana and others (CWP no.8138 of 2012, (decided on 15.01.2014), has been annexed with the petition, wherein it was so held, with that judgment having been affirmed by a Division Bench of this Court in LPA no. 725 of 2014 (filed by the State of Haryana) and further affirmed by an order of the Supreme Court, by which SLP (Civil) no.17945 of 2015, also filed by the State, was dismissed on 12.07.2016. The copies of the judgments/orders in that case have also been annexed with the petition.

The petitioner has further relied upon another judgment in Abhay Singh v. State of Haryana and others (CWP no.5602 of 2015, decided on 07.10.2016), in which essentially the judgment in *ASI Krishan*

Singhs' case was followed by a co-ordinate Bench.

8. On the aforesaid contentions, it has been prayed that the writ petition deserves to be allowed and the impugned orders quashed, with an additional argument raised that the appellate and revisional authorities are bound to give reasons in support of their conclusion, which has not been done in the case of rejection of the petitioners' representation against his ACR, by the reviewing authority.

A judgment of the Supreme Court in **Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan** (2010) 9 SCC 496, has been cited by the petitioner in that context.

9. In reply to the writ petition, a written statement has been filed on behalf of the respondent-State, by the Superintendent of Police, Railways, in which preliminary objections have been taken to the effect that as per the aforesaid Rule 9.18 of the Police Rules, as also Rule 3.26 (d) of the Punjab Civil Services Rules Vol. I Part-I and Rule 5.32 (A) (c) of the Punjab Civil Services Rules Vol. II (all as applicable to the State of Haryana), the appointing authority retains an absolute right to retire any official at the age of 55 years.

It has further been stated that the retirement of the petitioner is in the interest of public administration also, in view of the fact that the petitioner has many bad entries in his service record.

10. In that context, the remarks recorded in the character roll of the petitioner on 25.06.1979, by the Assistant Inspector General, Government Railway Police, have been referred to, to the effect that the petitioner while on deputation to the U.T., Chandigarh, took active part in the police agitation and therefore should be kept 'in close watch' as he is a "potential danger to police

discipline”.

Thereafter, he was issued a warning to be more careful in the future by the SP, Railways, vide a communication dated 09.10.1985, and vide an order dated 10.12.1991, one future annual increment of the petitioner was stopped with permanent effect.

Again, for negligence and indiscipline, a punishment of censure was awarded to him by the SP, Railways on 05.03.2004, with him having been censured yet again by the same officer, for misbehaviour, that punishment having been imposed on 02.04.2008, followed by yet another censure issued again by the SP, Railways on 30.06.2008, on account of the petitioner not having sent a parcel to the Forensic Science Laboratory on time.

11. On the issue of the order of retirement not having been issued by a competent authority, the written statement states that, in fact, it is the Superintendent of Police who is the appointing authority of a Sub-Inspector as per Rule 12.1 of the Police Rules, with the same authority authorised to dismiss an officer of that rank from service, as per Rule 16.1.

Hence, the contention is that the order of retirement having been issued by the Superintendent of Police, Railways, as the appointing authority, that officer is very much competent to do so.

12. Yet further, it has been stated that the adverse report against the petitioner for the periods from 01.04.2007 to 31.03.2008, on the basis of his work, ability, honesty, character etc., were not on account of an arbitrary or biased mind, because the same officer had also recorded good remarks in favour of the petitioner for the periods from 24.04.2006 to 31.03.2007 and 01.04.2008 to 14.03.2009.

It has further been stated that the representation against the

adverse remarks having been rejected by the IGP, Railways and Technical Services, there was no occasion for the petitioner to approach this Court and in any case, the petition is also belated, he having approached this Court in 2016, against remarks that are more than 8 years old.

13. Lastly, in the preliminary objections, it has been stated that as per the instructions of the Government dated 17.02.2009 (annexed by the petitioner himself as a part of Annexure P-5), in case of Group-C employees, it would be the appointing authority who would be required to take a decision at its own level, as to whether a particular employee is to be retained in Government service beyond the age of 55 years or not.

14. On merits, the factual position with regard to the petitioners' entry into service as a Constable and his retirement at the age of 55 years is not denied, though his chequered service career history has been repeated, as was given in the preliminary objections, further contending that considering the chequered service record of the petitioner, he was correctly retired upon attaining the age of 55 years.

It has been stated that Rule 9.18 of the Police Rules and Rule 5.32 (A) (c) of the Civil Services Rules Vol. II, are to be read alongwith Rule 3.26 (d) of the Civil Services Rules Vol. I Part-I, by which the appointing authority has an absolute right to retire any Government employee (at the age of 55 years), by giving him a notice of not less than 3 months in writing, which notice it is stated was duly given to the petitioner.

15. Mr. Sunil Kumar Nehra, learned counsel appearing for the petitioner, has in arguments reiterated the issues raised in the writ petition, to submit that the petitioner firstly having been prematurely retired by invoking Rule 9.18 (2) of the Police Rules, he has to be treated to have been

compulsorily retired, and as such, he could not have been so retired by the Superintendent of Police, or even the Inspector General of Police, with the latter officer also not competent to do so without seeking prior approval for that action from the Government.

Mr. Nehra also referred to the judgments of this Court in *ASI Krishan Singh* and *Abhay Singhs'* cases (supra), to submit that the petition deserves to be allowed.

He further submitted that the petitioner having more than 70% good ACRs in the last ten years, the impugned order of retirement is wholly unsustainable.

16. In reply, Mr. Hitesh Pandit, learned Additional Advocate General, also reiterated what is stated in the written statement, and further relied upon Division Bench judgments of this Court in **Babu Ram Walia v. State of Haryana and others** 2007 (1) SCT 288 and **Shamsher Singh v. State of Haryana and others** 2008 (2) SCT 616.

17. Having considered the arguments of both learned counsel, as also having seen the pleadings of both sides, the first issue which needs to be considered is as to whether the impugned order of retirement has been passed by a competent authority or not, in terms of Rule 9.18 of the Police Rules.

This Court (this Bench) has already held in **Balwant Singh v. The State of Haryana and others** (CWP no.13021 of 2014, decided on 05.02.2018), that to retire a police official at the age of 55 years or beyond, before he attains the age of 'compulsory superannuation' (58 years), the appointing authority has the complete right to do so in terms of Rule 9.18 (1) (c), whereas if such official is to be retired compulsorily after 25 years of service (or before attaining the age of 55 years), that can only be done in terms of

sub-rule (2) of Rule 9.18, by the Inspector General of Police, and that too only with the prior approval of the State Government.

18. In *SI Balwant Singhs'* case, the judgments of a co-ordinate Bench of this Court, as also of the Division Bench, in *Krishan Singhs'* supra, were duly considered, alongwith two judgments of other Division Benches, in *Babu Ram Walia* and *Shamsher Singh* (both supra), to hold as above.

The effect of dismissal of the SLP filed against the judgment of the Division Bench in *ASI Krishan Kumars'* case, was also duly considered, holding that mere dismissal of an SLP without discussion of the matter on merits, would not be a binding precedent as regards the issue in question, as other than simple dismissal of the SLP, no reasoning was given on any of the issues involved in that case, with such dismissal therefore being only of the petition seeking leave to appeal. The ratio of the judgment of the Supreme Court in **Kunhayammed v. State of Kerala** 2000 (6) SCC 370, was referred to by this Court, on that aspect.

19. Briefly, in the context of the present case also, a perusal of Rule 9.18 of the Police Rules, as reproduced in paragraph 5 hereinabove, shows that it can be divided into two distinct parts; (i) postulating the conditions of retiring an official upon attaining the age of 55 years and above (before the age of 58 years which is the age of compulsory superannuation from service as per Rule 3.26 (a) of the Punjab Civil Services Rules (Vol.I Part-I); and (ii) postulating the conditions of retiring a police official after he has completed 25 years of service (before he attains the age of 55 years).

A retiring pension is to be given to the official in both circumstances as per Rule 9.18, with the crucial difference being that as per the note immediately below the proviso to Rule 1, the appointing authority

retains an absolute right to retire any Government servant on or after he attains the age of 55 years, but no such right available to the appointing authority if the employee is to be retired before that age, which authority is vested only in the Inspector General of Police, and that too only with the prior approval of the State Government.

As already held in *Balwant Singhs'* case, the reason for the differentiation created between the two situations, is very obvious, inasmuch as, by retiring any police official compulsorily after 25 years of service, a period of 8 to 15 years of service would stand curtailed before the compulsorily age of superannuation; and therefore, a more stringent condition has been laid down in the rule, for retiring such an official, by firstly seeking approval of the Government for such compulsory retirement, and secondly, with such retirement only to be ordered by the Inspector General of Police and no officer of a lesser rank. [It needs to be noticed that at the time when the rules were promulgated, and for about half a century thereafter, the Inspector General of Police was the Head of the police force, before Directors General of Police started heading the police force in each State].

Conversely, if a police official is retired at the age of 55 years or any time before he attains the age of 58 years, at best a service period of 3 years or less would be curtailed, and therefore, assessment of the employee for far lesser curtailment of service, has been left to the discretion of the appointing authority itself, in the Rule.

In fact, even the instructions of the Government referred to earlier, do not in any way also help the petitioner, because even in the said instructions dated February 17, 2009, it has been stated that the appointing

authority would take a decision at its own level to retain a Government servant beyond the age of 55 years.

It still needs to be stated here that if any part of any Government instructions are contrary to statutory rules, such instructions are to be ignored, with what is postulated in the rules to prevail over the instructions, as was first held in **State of Haryana v. Shamsheer Jang Bahadur AIR 1972 SC 1546**, reiterated many times thereafter. However, in the present case, that dictum does not apply, the instructions in fact being in consonance with both, the Police Rules, as also the Civil Services Rules.

20. The Division Bench in *Babu Ram Walias'* case had duly considered Rule 9.18 in detail, alongwith Rules 3.26 (d) of Vol.I Part-I and Rule 5.32-A, Vol.II, of the Civil Services Rules, to also come to the conclusion that at the age of 55 years (of the police officer concerned), the appointing authority is competent to order her/his retirement.

It was held as follows:-

“According to Rule 3.26(d) an Appointing Authority has been clothed with absolute power to retire a Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu thereof if such an employee is in Class-I or Class-II service or post if he has attained the age of 55 years, provided that if he has entered the Government service when he was more than 35 years of age. The petitioner has attained the age of 55 years on 29.4.2006, his date of birth being 30.4.1951. He has entered the service on 17.3.1972 when he was about 21 years of age. Therefore, the petitioner answers the requirement of the Rule that he could have been retired at the age of 55 years if he had entered the service after attaining the age of 35 years. Such an employee could also be retired at the age of 50 years if he has entered the service before attaining the age of 35 years. Rule 5.32(c) regulate retiring

pension, which is to be granted to such an employee. Rule 5.32-B, which has been placed on record by the petitioner as Annexure P-10, only prescribes the procedure to be adopted when a Government employee after completing twenty years' qualifying service gives a notice of not less than three months in writing to the appointing authority to retire him from service. The aforementioned Rule 5.32-B, therefore, has no bearing in the facts of the present case and the same is not attracted at all. Rule 9.18 of the Punjab Police Rules, 1934, Volume-1 (as application to Haryana) deals with retiring pension to an officer. Sub-rule (c) of Rule 9.18 prescribes that a retiring pension is granted to an officer who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less than months' notice. Sub-rule (d) of Rule 9.18 further prescribes that a retiring pension is also granted to an officer 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. Note below Rule 9.18 empowers the appointing authority absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason.”

Similarly, in *Shamsher Singhs'* case (supra), another Division Bench also held to the same effect, that for retiring a police official at the age of 55 years, the appointing authority retained an absolute right to do so.

21. Both the aforesaid judgments (in *Babu Ram Walia* and *Shamsher Singhs'* cases), were passed by two different Division Benches, prior to the judgment of a co-ordinate Bench (learned single Judge) in *Krishan Kumars'* case, as also of the Division Bench, upholding that judgment.

However, the earlier judgments in *Babu Ram Walia* and *Shamsher Singhs'* cases not having been brought to the notice of either the learned single Judge or the Division Bench, a contrary view came to be taken

in *Krishan Kumars'* case, which, with all due respect, has to be held to be *per incuriam* in terms of the well settled law on that aspect in many a judgment, of which only **Siddharam Satlingappa Mhetre v. State of Maharashtra** 2011 (1) SCC 694, may be cited here, as already cited by this Court in *Balwant Singh's* case.

In *Mhetres'* case, it was held as follows:-

“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 Manikamma* 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.”

22. Having considered the above, in *Balwant Singhs'* case this Court had observed as follows, which would need to be reiterated in the present context also:-

“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.”

23. As regards the effect of the dismissal of the SLP in *Krishan Kumars'* case, the following paragraphs from *Kunhayammeds'* case (supra) may be cited, as already cited in *Balwant Singhs'* case:-

“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)

24. Thus as simple dismissal of a petition seeking leave to appeal (SLP), does not amount to the Supreme Court laying down the law on any issue, and therefore the *ratio decidendi* being contained in the judgment of the High Court against which the SLP has been dismissed, what is to be seen is the effect of the judgment in *Krishan Kumars'* case on Division Benches and Single Benches of this Court.

If *Babu Ram Walias'* and *Shamsher Singhs'* cases had not been decided prior to *Krishan Kumars'* case, then the ratio of judgment in *Krishan Kumars'* case, holding that even at the age of 55 years, a police official cannot be retired from service except by the Inspector General of Police with the prior approval of the Government, would be a ratio binding on this Bench. However, as already seen hereinabove, the judgments in *Walias'* and *Shamsher Singhs'* cases not having been brought to the notice of the single Judge or the Division Bench in *Krishan Kumars'* case, therefore even after simple dismissal of the SLP of the State, the judgment of the Division Bench (in *Krishan Kumar*), would not be a binding ratio on the issue in question, whereas what has been held in *Babu Ram Walias'* case would constitute the 'binding ratio'. Of course, *in personem*, naturally dismissal of the SLP would result in the judgment of the Division Bench and the single Judge remaining to be binding on the parties to that specific *lis*.

25. Thus, after considering the above aspects, what also needs to be considered is, (though no specific argument has been raised in that regard, but the issue in fact having been raised in the written statement), whether or not the appointing authority of the petitioner was the Superintendent of Police, Railways, the petitioner being a Sub-Inspector. As already noticed, Rules 12.1 and 16.1 of the Police Rules have been reproduced in the written statement filed by the respondents (to state to that effect); in the first of which (Rule 12.1), it is clearly stipulated, in the chart depicted in the rule itself, that the authority to whom the power of appointment is delegated, in the case of Sergeants, Sub-Inspectors and Assistant Sub-Inspectors, is the Superintendent of Police. (Actually even the chart reproduced in the written statement is from the rule applicable to Punjab and not Haryana, but that would make no

difference, because even in Haryana, the Rule stipulates to the same effect, simply substituting the words “Commandants of Punjab Armed Police -----,” with the words “Superintendent of Police, Railways.”)

Thus, the petitioner being a Sub-Inspector of Police, as per the said rule, very obviously his appointing authority was the Superintendent of Police (Railways).

Further, it is also stipulated in the chart which is contained in Rule 16.1, that even for the purpose of dismissal of a Sub-Inspector of Police, or for reducing an official of that rank to a lower rank, the Superintendent of Police is the authority competent to do so.

Undoubtedly, Rule 13.10 of the Police Rules stipulate that a list of all Assistant Sub Inspectors, who have been approved by the Deputy Inspector General of Police to be fit for trial in independent charge of a police station, or for specialist posts on the establishment of Sub-Inspectors, shall be maintained by the Range Deputy Inspector General, and that vacancies of long duration may be filled in by the promotion of any eligible person in the range, at the discretion of the DIG; however, in the opinion of this Court, that does not alter the fact that the appointing authority of a Sub-Inspector remains a Superintendent of Police in terms of Rules 12.1 and 16.1.

Since the DIG (now an Inspector General) is the officer-in-charge of a range consisting of many districts, with a Superintendent of Police being the officer-in-charge of a district, naturally, filling up of posts of Sub-Inspectors in different districts from amongst eligible Sub-Inspectors across different districts, can only be done by the DIG. Thus that would be the rationale behind maintaining a list of Sub-Inspectors (List-E) in the DIGs' office in terms of Rule 13.10, even though the appointing and punishing

authority is the Superintendent of Police.

The obvious result then is that for a Sub-Inspector to be appointed on promotion from the rank of an Assistant Sub-Inspector, it would have to be with the approval of the DIG, to the extent that such Assistant Sub-Inspector is fit for promotion to the rank of Sub-Inspector, but with the appointment letter still having to be issued by the Superintendent of Police concerned. Similarly, for the purpose of dismissal and reduction in rank of a Sub-Inspector, in terms of Rule 16.1 it is the Superintendent of Police who has been empowered to do so. (The DIG being the punishing authority for a person in the rank of an Inspector, as per the chart contained in Rule 16.1. Similarly, the appointing authority of an Inspector has also been shown to be a DIG of Police, or the Assistant Inspector General, Government Railway Police (the latter post now being non-existent, and replaced by a Superintendent of Police (Railways), who falls under the supervision of a DIG/IG/ADGP, (Railways)).

26. The result of the aforesaid discussion therefore is that as regards the actual appointment of, and punishment to be awarded to, a Sub-Inspector of Police, it is the Superintendent of Police, that is the competent authority in terms of Rules 12.1 and 16.1 respectively, with the DIG being the authority without whose approval promotion to the rank of a Sub-Inspector cannot be made from the rank of an ASI.

27. Consequently, it having been held as above, that no prior approval of the Government is required for retiring a police official at the age of 55 years and that any appointing authority, even lesser in rank than the IGP, can so retire her/him at that age and above, with such appointing authority being the Superintendent of Police in the case of a Sub-Inspector,

what is to be now seen is whether, in the context of the present case, the impugned order is sustainable or not.

28. What is first noticeable is that, very strangely, the Superintendent of Police, Railways, has passed the order by invoking “PPR 9.18 (2) – I” with no clause “I” existing in the aforesaid sub-rule. Possibly what the officer intended was, to refer to note (i) below Rule 9.18 (2) of the Police Rules (Punjab Police Rules or PPR), in which case undoubtedly it would only be the Inspector General of Police who could have passed the order and that too only with the prior approval of the State Government, as already held hereinabove.

However, also very obviously, the officer has erroneously cited the aforesaid provision as above (PPR 9.18 (2) – I), because that provision is only applicable when a police official is to be retired after completing 25 years of qualifying service and not upon him attaining 55 years, which is the stage at which the petitioner has been retired, as has been stated twice in the short impugned order itself.

The fact that sub-rule (2) has been erroneously invoked by the officer, is also very clear from the fact that alongwith Rule 9.18 of the Police Rules, the impugned order also invokes Rule 3.26 (d) (Vol. I Part I) of the Punjab Civil Services Rules (as applicable to the State of Haryana), as also Rule “5.32 (c)” of the said Civil Services rules, Vol.II. As a matter of fact, even the said rule has been wrongly quoted, as Rule 5.32 stood deleted from the statute w.e.f. 26.06.1983. In fact, it is Rule 5.32-A (c) which is obviously the rule which is applicable.

Both the aforesaid rules are reproduced hereinunder:-

“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 do service of the notice and the date of its expiry shall be excluded.”

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“5.32-A The rule for the grant of retiring pension is as follows:-”

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(c) A retiring pension is also granted to a Government employee other than a class IV Government employee-

(1) Who is retired by the appointing authority by giving him a

notice of not less than three months in writing.

(i) If he is in Class I or 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 services, a retiring pension shall be granted if he is required to retire at the age of fifty-eight years irrespective of age at the time of entry into Government service subject to ten year qualifying service;]

[(2) who, if from category (1) (i) above retires on or after attaining the age of fifty years, or if from category (1) (ii) above retires on/or after attaining the age of fifty-five years or if from category of judicial service retires on or after attaining the age of fifty-eight years, by giving a notice of not less than three months, in writing, of his intention to retire, to the appointing authority:

Provided that where the notice is given before attaining the age of fifty years. Fifty-five years in the case of Civil Services and fifty-eight years in the case of judicial services, as the case may be, it shall be given effect to from a date not earlier than the date on which the age of fifty/fifty-five years. In the case of Civil Services and fifty-eight years in the case of judicial services, as the case may be, is attained.

Note.- Appointing authority retains an absolute right to retire any Government employee referred to above on or after he has attained the age of fifty-years or fifty-five in the case of Civil Services, of fifty-eight years in the case of Judicial services, as the case may be, without assigning any reason. A corresponding right is also available to such a Government employee to retire on or after he has attained the age of fifty years, Fifty-five years, as the case may be.]”

29. Hence, I am of the affirm opinion that Rule 9.18 (2) has been wholly erroneously referred to by the Superintendent of Police in the impugned order, whereas actually he obviously meant to refer to Rule 9.18 (1) (c) of the Police Rules, to retire the petitioner at the age of 55 years.

30. Having said that, the question then is that even presuming that simply one of the 3 rules cited in the order of retirement has been erroneously cited and therefore such error cannot come to the rescue of the petitioner, especially as the Civil Services Rules cited in the order are correctly so cited, (except for the letter 'A' not mentioned after Rule 5.32); yet, two things need to be further seen.

Firstly, the order is stigmatic to the extent that the first two lines of the order itself, read as follows:-

“SI Ram Chander, 23/GRP has completed the age of 55 years, due to his chequered record. Therefore, he is not permitted to continue in service beyond the age of 55 years.”

Thus, once the adverse record of the petitioner has been referred to in the aforesaid order, the order amounts to casting a stigma on the petitioner, whereas actually at best what could actually have been stated was that the upon completing the age of 55 years, his services would no longer be required to be continued, in public interest. (In terms of the statutory rules referred to hereinabove, i.e. Rule 9.18 (1)(c) of the Police Rules, and the two rules cited from the Civil Services Rules).

31. Secondly, Rules 3.26 (d) and 5.32-A (c)(2) of the Civil Services Rules, as also Rule 9.18 (1) (c) of the Police Rules, stipulate that a notice of at least three months prior to actual retirement must be given to the official/officer, or three months' pay in lieu thereof must be given to him.

In the present case, the impugned order, Annexure P-4, has been passed on 05.03.2009, holding therein that the petitioner would retire, on attaining the age of 55 years, w.e.f. 14.03.2009, i.e. within 9 days of the passing of the order. No part of the order states that he would be paid three months' salary in lieu of the three month statutory notice period.

32. Hence, in view of both the reasons given hereinabove, i.e. that the impugned order (Annexure P-4) is stigmatic, as also because the order does not give sufficient notice, or pay in lieu of notice, to the petitioner, it is liable to be quashed and is so hereby quashed.

33. Yet, in view of what has been stated in the written statement filed by the respondents, showing the chequered service record of the petitioner, starting from the year 1979 onwards, the contention of the petitioner that simply because he has 70% good reports in the past ten years, he could not have been prematurely retired, is held to be a contention that has to be rejected.

In this context, 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 cited, wherein it was held 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.”

Though in that case, it was the Government which had retired the employee, on forming an opinion that it was not in public interest to continue him in service, it already having been held hereinabove, (as was held by the Division Benches in *Walias'* and *Shamsher Singhs'* cases), that it is the right of the appointing authority to retire a police official at the age of 55 years, the opinion to be formed, as to whether it would be in public interest to retain the official beyond the age of 55 years or not, would naturally be that of the appointing authority in the present case.

Thus, if that authority comes to a conclusion that the service record of the petitioner did not justify his further continuation in service beyond the age of 55 years, he (the appointing authority) has a right to pass an

order of retirement in terms of Rule 9.18 (1) (c) of the Police Rules and Rule 3.26 (c) of the Civil Services Rules, but without casting any stigma on the petitioner, by giving him three months' pay in lieu of notice, as already noticed above.

(Naturally, the petitioner at this stage cannot be issued a notice of retirement prior to his attaining the age of 55 years. In any case, the impugned order, Annexure P-4, was bad for non-issuance of the statutory notice or pay in lieu of three months' notice, as already seen hereinabove).

34. It is further to be seen that a perusal of the copies of the ACRs that have been annexed as Annexures R-4 and R-5 with the written statement, from the periods 01.04.2007 to 31.03.2008 and 01.04.2008 to 31.03.2009 respectively, shows that as regards the column on honesty, in both the ACRs the petitioner has been described to be honest, but in the columns with regard to moral courage, reputation for fair dealing with the public, communal impartiality and gender sensitivity, adverse remarks have been recorded, with him otherwise shown to be efficient in preventive and detective ability, reliability and attitude towards subordinates etc.

In the ACR for the period 2007-08, it has also been recorded that he needs to improve his behaviour.

Eventually, the overall assessment in both the aforesaid ACRs is shown to be average, with the said ACRs recorded by the same officer.

In the written statement, it has been stated that as a matter of fact, the same officer had also recorded good remarks in the ACRs of the petitioner, (obviously referring to such remarks in various other columns of the two ACRs, other than a previous ACR).

35. Hence, even having quashed the impugned order of retirement

(Annexure P-4), in my opinion, liberty needs to be given to the appointing authority to pass a fresh order if it considers it expedient to do so, in view of the petitioners' record, to deem that the petitioner should have been retired at the age of 55 years, as was done earlier, as it was in the public interest to do so.

Obviously, the petitioner now having crossed even the age of 58 years, 9 years after the impugned order was passed when he was about to reach the age of 55 years, a fresh order of retirement would in any case have to be passed, *ex-post facto*, deeming that he be treated to have been retired at a particular age (whether 55 years or 58 years).

Therefore, to repeat, if the appointing authority, on the basis of the petitioners' record, again comes to the conclusion that the petitioner should have actually been retired at the age of 55 years, then she/he would be at liberty to pass a fresh order, without casting any stigma on the petitioner and further, giving him three months' pay, as per the last pay drawn by the petitioner at the age of 55 years, alongwith interest thereupon @ 6% per annum.

36. Coming last to the challenge by the petitioner to the adverse Annual Confidential Report (ACR) for the period 01.04.2007 to 31.03.2008, and the rejection of his representation against the adverse remarks contained in that ACR, vide the order of the Inspector General of Police, Railways and Technical Services.

As already seen, he was communicated the adverse ACR for the period from 01.04.2007 to 31.03.2008, wherein it has been stated that his reputation for fair dealing is not good, and that he had misbehaved with the public and was therefore censured in the year 2008; and further, that his

behaviour required improvement and that he was also not gender sensitive while dealing with issues relating to women. His overall 'rating' has also been described as average.

In the opinion of this Court, the working of any employee is best seen by his supervisory officer, who accordingly is to assess the employees' performance and make his/her remarks in the relevant columns in the Annual Confidential Report. Naturally, no other authority, including the Court, can substitute that opinion, the working of the employee over a particular period of time, having been seen only by the supervisory/assessing officer.

At best, such assessment would be reviewable by the reviewing authority, who either by obtaining information from whatever source he/she wishes to obtain it, or as per his/her assessment, would decide to either overrule or modify the reporting/assessing officers' assessment of the employee, or would uphold it as he/she deems fit.

Of course, if any bias is existent in the mind of the reporting/assessing officer, or the reviewing authority, it is for the employee to point out in judicial proceedings, reasons for such bias, giving opportunity to the reporting/reviewing officer concerned, to reply to any such allegations of bias.

In the present case, nothing has been shown to this Court that either the assessing officer (the Superintendent of Police), or the reviewing authority (the Inspector General of Police, Railways and Technical Services), was biased towards the petitioner.

In fact, it is again to be specifically noticed that in the reply filed on behalf of the respondents, it has been stated that the same reporting/assessing officer (the Superintendent of Police) had recorded

favourable remarks for the petitioner in the ACRs for the periods 24.04.2006 to 31.03.2007 and 01.04.2008 to 14.03.2009, i.e. the periods immediately before and after the adverse ACR for the period 01.04.2007 to 31.03.2008.

Hence, in the opinion of this Court, no such bias has been shown by the petitioner due to which the adverse remarks in the ACR for that period need to be quashed/expunged.

No doubt, the reviewing authority has not given any detailed reasons for rejecting the representation of the petitioner, but in my opinion, no such reasons need to be given for simply rejecting the representation, if the reviewing authority was in agreement with the opinion of the reporting/assessing officer, and reasons would only be need to be given if adverse remarks were to be recorded by the reviewing authority, contrary to any good/non adverse remarks made by the reporting officer.

Consequently, that contention made on behalf of the petitioner is rejected, and the ACR for the period 01.04.2007 to 31.03.2008 is sustained as it is, as is the impugned order Annexure P-3, rejecting the petitioners' representation against such remarks.

37. It needs to be again stated here that the decision of the appointing authority to retire the petitioner at the age of 55 years, was obviously not based on a single ACR in any case, though that naturally would have also weighed with the authority, alongwith the adverse remarks made in earlier periods, as also the punishments earlier imposed upon the petitioner during the course of his career.

Without doubt, earlier adverse remarks, as also punishments, tend to lose their sting if an employee is promoted after such remarks/punishments. Nevertheless, as held in *Baikuntha Nath Dass'* case (supra), and further

reiterated in **Badrinath v. Government of Tamil Nadu** (2000) 8 SCC 395, the consideration for retiring an employee prematurely/compulsorily at the time, can be on the basis of adverse remarks passed against him at any stage, especially if they reflect on his integrity.

In the present case, adverse remarks again having been made in the ACR for the year immediately prior to when the petitioner was proposed to be retired at the age of 55 years, though not with regard to his integrity but his public dealings, in my opinion, the appointing authority was very much justified in invoking jurisdiction under the relevant provisions under the Punjab Police Rules and Punjab Civil Services Rules to so retire him, though the order itself was bad, being stigmatic and did not give the statutory period of notice to him, nor pay in lieu thereof.

38. In view of what has been held above, the present petition is allowed only to the extent that the impugned order of retirement (Annexure P-4) stands quashed with liberty to the appointing authority to pass a fresh order of retirement. If the said authority comes to the conclusion that on the basis of the petitioners' record, he was not required to be retained in service beyond the age of 55 years, he would pass an order accordingly, without casting any stigma on the petitioner, further granting him three months' pay in lieu of notice of retirement, alongwith interest @ 6% per annum, running from the date that the petitioner attained the age of 55 years, till the date of actual payment of the amount.

If, of course, the said authority decides that the petitioner did not deserve to be retired at the age of 55 years and should have been allowed to continue in service till the age of 58 years, she/he would accordingly passed an appropriate order.

No order as to costs.

March 01, 2018
dinesh

(AMOL RATTAN SINGH)
JUDGE

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|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |