

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4166 of 2014

Date of Decision: 10.01.2018

Bhagwan Dass

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: None for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. No one appears for the petitioner, nor a pass over is sought. Heard Ms. Shruti Jain Goyal, AAG, Haryana.

2. This petition has been filed challenging an order dated December 13, 2013 compulsorily retiring the petitioner from service by giving three months' notice. Brief service milestones in the case of the petitioner are as follows:-

3. Appointed as a Daftri in 1981. He was promoted as Clerk in May 1992. FIR No.202 dated October 28, 2003 under Sections 406/420/294-A IPC and Section 4 of the Prize Chits and Money Circulation Scheme Banning Act, 1978 was registered against him in Police Station Madhuban. His services were placed under suspension on October 28, 2005. He was reinstated to service on May 09, 2007. The criminal trial ended in acquittal in the Court of the Judicial Magistrate, 1st Class Karnal on March 01, 2011.

The charge in the criminal case was that the petitioner ran a committee with some colleagues as its members. If the trial ended in acquittal the woes of the petitioner did not. Three weeks after the acquittal persons junior to him were promoted as Assistants. He made a request for promotion but the department responded by slapping a charge-sheet on him on the same set of allegations which were levelled against him in the FIR. A regular departmental inquiry was initiated on June 06, 2011. The order dated June 06, 2011 clearly outlined the misconduct relating to involvement in the criminal case under Sections 406, 420, 294-A IPC and Section 4 of the Prize Chits and Money Circulation Scheme Banning Act, 1978 registered at PS Madhuban (Karnal) read with Appendix "C" of Rule 14 of Haryana Police Clerical (State Service Class-III) Rules, 1977 which is indiscipline and grave misconduct. The Inquiry Officer submitted a report dated April 01, 2013 finding the petitioner guilty. He was called upon to file a reply to the report. The petitioner filed reply on December 04, 2013. On December 13, 2013 the petitioner was served three months' notice of compulsory retirement without passing final orders on the inquiry report and the objections filed thereto.

4. Aggrieved by the order of compulsory retirement the petitioner has approached this Court. The order of the Director General of Police, Haryana dated December 13, 2013 is at Annex P-8 retiring the petitioner at the age of 55 years by invoking Rule 5.32-A of the Punjab Civil Services Rules, Volume-II and Rule 3.26 (d) of the Punjab Civil Services Rules Volume-I, Part-I as applicable to the State of Haryana. The order records that it has been passed in public interest.

5. On notice, the Police Department has filed a reply. The story in the criminal case is repeated in the written statement. The allegations in the departmental inquiry were that he borrowed money in three cases from his colleagues in the Police Department and has not returned the money to the lenders. The instances quoted are of October 05, 2003, August 01, 2003 and March 2003 in sums of ₹1 lakh, ₹1.52 lakh and ₹60,000/-. It has been revealed in the written statement that when the inquiry report was considered a show cause notice was issued proposing stoppage of four annual increments with permanent effect. After considering the reply to the show cause notice, a lenient view was taken and the punishment of stoppage of two annual increments with permanent effect was awarded by the Director General of Police vide order dated July 21, 2008. It is submitted that the petitioner was acquitted in the criminal case only on the ground that complainant did not support the prosecution and the prosecution failed to prove the guilt of the petitioner.

6. According to Government instructions on the subject of compulsory or premature retirement, only those Government employees are allowed cross the age bar of 55 years who have earned 70% good and above ACRs during the last 10 years and whose integrity has not been doubted during the period. It is stated that ACRs of the petitioners from 2003 to 2012 have been taken into consideration.

7. The original service file and the confidential rolls have been produced by Ms. Goyal from where alone the order can be justified by the Police department. The period of suspension is from October 28, 2005 to May 09, 2007. The overall grading for the period April 01, 2003 to March

31, 2004 is assessed as 'Good'. From April 01, 2004 to November 10, 2004 was graded 'Average'. From December 08, 2004 to March 31, 2005 was given 'Good' grading. From April 01, 2005 to October 28, 2005 the grading is 'Good' despite the fact that he was under suspension. He earned 'Average' from August 27, 2007 to February 02, 2008. Then again he earned 'Average' for April 01, 2008 to December 28, 2008 and February 21, 2009 to March 31, 2009. From June 15, 2009 to February 02, 2014 he is assessed as 'Good' with remarks that he is fit for promotion. Accordingly, the petitioner earned 'Good' ACRs for five years (2009-2014) of the period under consideration. Before 2009 the grading was 3 'Good' and 3 'Average' ACRs. The complete profile from enlistment as Constable from July 4, 1981 to February 02, 1993 there are 5 'Good', 6 'Very Good' and 2 'Outstanding' on the file. The file from 1993 to 2002 has not been produced and it may be assumed there is nothing adverse. Moreover, there is no red entry of integrity doubtful in his service record.

8. Having carefully perused the service file page after page this Court is left distinctly with the impression that the order of compulsory retirement is not justified. In the criminal trial he was acquitted and in the inquiry no final decision was taken on the petitioner's innocence or guilt after hearing him and considering his case. The power to compulsorily retire an employee may be absolute in the authority but like all powers it has to be exercised reasonably and with due care and caution. The order of compulsory retirement when read in the context of the annual confidential rolls and the service record leaves no manner of doubt that the order impugned is arbitrary, perverse and unconstitutional and appears a result of

over-reaction. I have no doubt in my mind after having perused the record and having heard Ms. Goyal that the impugned order is not legally sustainable and is liable to be set aside. No other material is shown in support of the order. The petitioner qualifies the bench mark of retention in service beyond 55 years.

9. The writ is allowed with all consequential benefits. The impugned order of compulsory retirement dated December 13, 2013 is quashed as illegal, arbitrary and of a kind passed without due application of mind. The petitioner will be deemed to have been in service from the date of the impugned order till he would have reached the age of retirement on superannuation. The petitioner shall be treated as in service till the age he would normally have retired. The arrears of pay and allowances be paid to the petitioner within two months from the date of receipt of certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

10.01.2018
manju

Whether speaking/reasoned	Yes
Whether reportable	No