

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

CWP No.22193 of 2018 (O&M)
DATE OF DECISION : 4th SEPTEMBER, 2018

Krishan Kumar Bansal

.... Petitioner

Versus

The Punjab and Haryana High Court & another

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

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Present : Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Vikas Kuthiala, Advocate for the petitioner.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the notification dated 20.04.2018 (Annexure P-42), issued by Government of Punjab, Department of Home Affairs and justice by which the petitioner was retired prematurely, upon completion of service of twenty years, the present petition has been filed by the petitioner against the said notification and also the various actions taken by the High Court for recommending the premature retirement of the petitioner in the present petition.

FACTS:

2. The petitioner was appointed as Additional District and Sessions Judge (Fast Track), Gurdaspur on 14.11.2012 by way of promotion in the judiciary. He served for about 22 years in the judiciary. For the 2014-15 the Administrative Judge of Gurdaspur Sessions Division recorded adverse inspection remarks against him. After almost two years stating about the quality of work as 'poor' and in column number 7 integrity 'doubtful' and over all grading was given as 'C'

(below average). The said remark is not based on actual and correct facts nor legally sustainable. There was no complaint received against the petitioner from any quarter about his work and conduct during the said period i.e. from 01.04.2014 to 31.03.2015. The petitioner filed a detailed representation (Annexure P-2) against the said adverse remark. However the same was rejected by the Full Court. The rejection order does not reveal any reason which is illegal. His representation for review also stood rejected by another order dated 07.02.2018. The petitioner had decided six cases under the NDPS Act acting as Special Court under the NDPS Act. But in five cases out of six due to sheer inadvertence and pressure of work he ordered sentence ranging from 6 to 7 years i.e. less than the mandatory sentence of ten years plus fine of ₹1,00,000/- provided by law. The petitioner having realized about it, invoked the provision of Section 362 IPC and thereafter awarded the proper sentence which was under challenge and therefore there could be no cause for complaint against him. Similarly in CRA-S-5154-SB of 2016 a Single Judge of this Court had asked his explanation and accordingly he tendered explanation about the inadvertence which was accepted and therefore there was no cause for the High Court to take any adverse action against him. The ACRs from the years 1996-97 i.e. his entry in the service in the judiciary till the year 2011-12 were all 'B+' and 'A' and it was only for the year 2014-15, the entry was 'C' below average. For the year 2015-16 the Administrative Judge of Sessions Division Gurdaspur was satisfied with the explanation of the petitioner as stated above and in addition it was remarked that there was a mere irregularity

in the sentencing but there was nothing wrong about the integrity of the petitioner. Thus the Administrative Judge for the said year did not have any doubt about the integrity of the petitioner and that is why the grading was done by him as 'B' satisfactory. There are thus two contradictory remarks and no action against the petitioner could have been taken.

3. The petitioner was served with a chargesheet, but no regular departmental enquiry was held against him. But then without taking any decision on the said chargesheet and the domestic enquiry, the employer found out a novel method of retiring the petitioner at the age of 55 years by way of compulsory retirement. The Punjab Civil Services (Premature Retirement) Rules 1975 (in short, Rules of 1975) (Annexure P-40) cannot be applied to the petitioner who was appointed as subordinate judge in Punjab Civil Service Judicial Branch State of Punjab as the same would be in violation of Article 234 of the Constitution of India. The retirement of the petitioner in question is in fact based on the chargesheet dated 29.05.2013 (Annexure P-24) served on him, for the alleged misconduct. Therefore by lifting the veil, it will be seen that the petitioner was in fact removed from the service by way of punishment without holding the enquiry. The petitioner, therefore, prayed for allowing the petition.

ARGUMENTS:

4. In support of the writ petition Mr. Rajiv Atma Ram, the learned Senior Advocate for the petitioner made the following submissions:

5. The service record of the petitioner from the year 1996 onwards but for the adverse remarks for the year 2015-16 has been good

and there was no reason or scope for holding that the integrity of the petitioner was doubtful. The performance of the petitioner in the judicial work has also been excellent. The remark for earlier year i.e. 13-14 by the Administrative Judge is good and the issue namely award of less sentence than the mandatory award of sentence was set at rest by the said Administrative Judge by holding the same to be as irregularity and therefore there was no occasion for the next administrative judge for the year 2015-16 to record “integrity doubtful” and the “poor quality” etc. In any case the petitioner was entitled to the benefit of the view taken by the earlier Administrative Judge that it was mere an irregularity which was cured at later point of time.

6. The decision of the Full Court to reject the representation against the adverse remarks is consequently illegal and incorrect apart from being sans reasons.

7. The petitioner was served with the chargesheet dated 29.05.2013. Some enquiry had been started against him in which he had appeared and tendered his explanation. But without completing the enquiry and without taking the departmental enquiry to logical end, a novel method of retiring the petitioner compulsorily was found out and the impugned action was taken against the petitioner of retiring him compulsorily from service. This would be clear by lifting the veil. Therefore, the impugned order is vitiated as the same was actually made for punishing the petitioner for misconducts alleged in the chargesheet without even completing the departmental enquiry.

8. The employer ought to have accepted the explanation tendered by the petitioner about the irregularity or bona fide mistake or inadvertence.

9. The Rules of 1975 cannot be applied to the case of the petitioner as they have not been framed under Article 234 of the Constitution of India nor with the prior consultation with the Punjab Public Service Commission and therefore, the order in question will have to be set aside.

CONSIDERATION:

10. We have heard learned Senior Advocate for the petitioner at length. We have perused the entire record and the proceedings filed along with the petition. In our view the present case is based on the clear admission made by the petitioner in his reply/representation as well as the unchallenged inspection reports along with the details of respective cases. His defence that it was through inadvertence or that it was irregularity or that same was bona fide and there was no mala fide intention or extraneous consideration which could be interfered, must be held to be misleading and misconceived apart from the fact that he being a responsible member of superior judiciary, it was never expected of him to perform in a manner he had performed.

11. The issue was that in the inspections, the High Court found that there was serious anomaly found in 46 cases that was detected, namely that in deciding 29 cases the name of the 'salt' was not mentioned anywhere in the judgment and in 24 cases there was no mention about the 'quantity' of the contraband (commercial/non-

commercial) and in 6 cases the sentence awarded was below the mandatory sentence provided by the NDPS Act. Accordingly, he was asked to furnish the explanation vide letter dated 27.01.2016. He furnished his explanation and it would be proper to quote the relevant portions from his explanation:

“In reference to letter No.1479/C dated 27.01.2016 on the subject cited above, at the outset, it is submitted that anomaly in 46 cases, pointed out by the Hon’ble High Court in the judgments delivered by the undersigned, in this regard, it is submitted that due to sheer inadvertence on the part of undersigned, the undersigned could not mention the name of salt as well as to whether the quantity was commercial or non commercial. However, the sentences were awarded inconsonance with the provisions of section under which the convicts were convicted.

So far as discrepancies pointed out in regard to awarding inadequate sentence, it is submitted that since the mistake in passing inadequate sentence was due to slip of mind, oversight and sheer inadvertence on the part of the undersigned and as soon as the said mistake came to the knowledge of the undersigned, the undersigned immediately issued notices to all the concerned

and after calling the record and hearing the parties, has passed fresh orders in regard to the sentence, keeping in view the provisions of section under which the convicts have been convicted. In the light of the subsequent development, the error crept in passing the inadequate sentence has been corrected (copies of the orders enclosed for kind perusal) and in future the undersigned undertakes that such type of error will not be occurred and the undersigned will remain more vigilant while dealing with the cases like the cases under which the explanation of the undersigned has been called for.

It is humbly submitted that in order to clear the backlog of the cases, the bonafide mistake was committed by the undersigned while working as AD&SJ (Fast Track) and prior to presiding the court as AD&DJ (Fast Track), the undersigned has not dealt with the cases under NDPS Act.

xxx.... xxx.... xxx....

The lapse on the part of the undersigned while delivering the judgments as pointed out by Hon'ble High Court, was neither malafide nor intentional and the mistakes were recur due to slip of mind, oversightedness and sheer inadvertence.”

12. In the light of the explanation given by him, it would be appropriate to look at the list of the cases at Annexure P-1. The first aspect about non-mention of the salt in the judgment in 29 cases is admitted by him. The second aspect regarding non-mention of quantity (commercial/non-commercial) in 24 cases also admitted. In fact, according to us in relation to the cases under NDPS Act mentioning of two aspects must be said to be the heart and soul of any judgment in the cases under NDPS Act. One can understand a lapse through inadvertence by mistake or so called bona fide mistake in one or two cases but one cannot believe that in a short span of one or two years it would happen in multiple number of cases. After all a Court of Special Judge under NDPS Act is a Court of very high responsibility and to say that in the aforesaid 53 cases the mistake occurred through inadvertence would be wholly misleading and rather deliberate attempt to divert the attention by a lame excuse. Insofar as six cases regarding award of less sentence awarded under the NDPS Act, the explanation tendered by the petitioner is nothing but a hoax and completely misleading, which is clear from the following salient features:

- (i) In the case at serial No.46 of Annexure P-1 i.e. State versus Panchhi Ram vide judgment dated 05.04.2014 he convicted the accused and sentenced him to undergo 10 years rigorous imprisonment plus fine of ₹1,00,000/-, so also in the case at serial No.44 decided on 26.04.2014. But on 03.06.2014 at serial No.42 in the case of State versus Deepak Singh, though the petitioner held the accused guilty under Section 22 of the NDPS Act, he

awarded sentence of 7 years and fine of ₹50,000/- rather than minimum sentence of 10 years rigorous imprisonment plus fine of ₹1,00,000/-. It means that he was aware about the minimum sentence on 05.04.2014 & 26.04.2014 but on 03.06.2014 i.e. after two months, he claims that he was unaware about the said provision of law.

(ii) On 18.09.2014 he delivered a judgment in the case of State versus Bua Dass at serial No.33, convicting the accused under Section 22 of the NDPS Act and awarded sentence of rigorous imprisonment of 10 years and fine of ₹1,00,000/- but thereafter on 01.10.2014 as serial No.31 in the case of State versus Gurpreet Singh, though he held that the quantity was commercial and recorded conviction under Section 21 of the NDPS Act, he awarded sentence of 6 years rigorous imprisonment and fine of ₹50,000/-. That means that within a period of 13 days he forgot to award the minimum sentence provided by law. On the same day i.e. on 01.10.2014 in the case of State versus Ranjit Singh, at serial No.28, having held the accused guilty under Section 22 of the NDPS Act he awarded sentence of 7 years rigorous imprisonment and fine of ₹50,000/-. Thereafter on 09.10.2014 in the case of State versus Davinder Singh at serial No.26, he convicted the accused under Section 21 of the NDPS Act holding the quantity to be commercial quantity but sentenced him to undergo rigorous imprisonment for 7 years and fine of ₹75,000/-. He had again

forgotten the sentence awarded by him on 18.09.2014 in earlier case.

(iii) Vide serial No.17 and 19 by judgment dated 01.11.2014 and 27.10.2014 respectively for possessing commercial quantity he convicted the accused persons therein for rigorous imprisonment for 10 years and fine of ₹1,00,000/- but on 11.12.2014 i.e. after about a month vide serial No.13 he ordered sentence under Section 22 of the NDPS Act having commercial quantity to the extent of 7 years and fine of ₹50,000/-. In other words, through so called inadvertence he forgot to award the sentence which he had awarded just a month before.

13. The above salient features clearly demonstrate that it was wholly improper to retain the petitioner, the dead wood in superior judicial service that too when he was acting as a Special Court under the NDPS Act. It is, therefore, clear to us in the light of the above admitted factual scenario that the High Court was fully justified in making the recommendations for premature retirement.

14. The submissions regarding the contradictory reports of the Administrative Judges for the year 2015-16, in the light of the above discussion assumes no significance and must be rejected, which we do.

15. Insofar as the argument regarding non-applicability of the rules of 1975, is concerned, we think the argument is merely academic and we do reject the same. The challenge on the ground that the rules have not been framed under Article 234 of the Constitution of India or with prior consultation, is misconceived and must be rejected.

16. To sum up, we are fully convinced that the impugned order retiring the petitioner compulsorily, is fully justified and consequent orders. We find no merit in the present petition. In the result, we make the following order:

ORDER

- (i) The CWP No.22193 of 2018 is dismissed summarily.

(A. B. CHAUDHARI)
JUDGE

4th SEPTEMBER, 2018
'raj'

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*