

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7033 of 2018

Date of Decision: 21.03.2018

Sh. Rajesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. S.K. Daaria, Advocate,  
for the petitioner.

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**RAJIV NARAIN RAINA, J.**

1. The petitioner was acquitted by giving him the benefit of doubt by the learned Additional Sessions Judge, Gurgaon vide judgment and order dated October 27, 2014. The charge against the petitioner and some others was under Sections 7 & 13 (1) (d) of the Prevention of Corruption Act, 1988 ("1988 Act"). The case related to a string operation carried out by a journalist from India News recorded on Video CD showing footage of some police officials while on duty at Bajghera barricade were taking illegal gratification from truckers and other vehicles passing from Gurgaon to Delhi. The footage was recorded in the intervening night of 7/8/10.2012 prepared from 12.00 O'clock to 4.00 AM. The petitioner among other policemen was on duty at the said barricade on the highway. This CD led to the registration of FIR No.212 dated October 10, 2012 under the 1988 Act. The petitioner was criminally tried for corruption. He also remained under suspension.

2. Following the judgment of acquittal, the petitioner was reinstated in service by order dated March 31, 2015. Deepak Sharma, Press Reporter of India News T.V. Channel, Gurgaon PW-6 had turned hostile during the trial, at the time of recording of prosecution evidence. This witness stated that he had not made the video clip of police officials on the Gurgaon-Delhi Road and the accused present in the Court were not known to him. While acquitting the petitioner etc. the trial Court initiated action against Deepak Sharma under Section 344 Cr.P.C. for willfully giving false evidence and in polluting the administration of justice. This was in terms of the judgment of the Supreme Court in Mahila Vinod Kumari v. State of M.P., AIR 2008 SC 2695.

3. Besides the criminal trial, the petitioner was proceeded against departmentally. He was associated with the inquiry which was completed on September 05, 2014 with a report submitted to the authorities. Misconduct was proven. A show cause notice of dismissal was issued to the petitioner and by order dated June 08, 2015 he was dismissed from service.

4. Aggrieved by the dismissal order, the petitioner approached the department by filing an appeal. The appeal was turned down by the Commissioner of Police, Gurgaon. The order was passed after hearing the petitioner. The Commissioner of Police played back the video clip which to him clearly showed the official accepting illegal gratification from truck drivers etc. The Commissioner of Police, Gurgaon dismissed the appeal by accepting the findings of the Inquiry Officer the work of which was assigned to the Welfare Inspector, Gurgaon.

5. Still feeling aggrieved, the petitioner moved a revision petition

to the State Government which was partly accepted. The order of dismissal was converted to punishment of stoppage of five annual increments with permanent effect. The principle of 'no work no pay' was applied when the petitioner was taken back in service. He filed a mercy appeal to the Home Secretary which is stated to be pending.

6. In the meanwhile, the petitioner's case for extension of service beyond 55 years came up for consideration which has resulted upon consideration of the authorities in issuing a notice dated March 08, 2018 that the case of extension beyond 55 years has been considered and rejected on the ground that the petitioner has been departmentally punished for having been involved in criminal case which clearly shows doubtful integrity. The decision is taken in exercise of powers under Rule 144 (iii) of the Haryana Civil Services (General) Rules, 2016 read with Rule 9.18 (1) (c) of the Punjab Police Rules, 1934 ("1934 Rules") as applicable to the State of Haryana.

7. The Deputy Commissioner of Police, Headquarters, Gurugram has ordered that the petitioner would stand retired from service on the expiry of three months from the date of receipt of the notice. The department has found no utility to keep the petitioner in service beyond the age of 55 years in public interest. Rule 9.18 of the 1934 Rules provides that the appointing authority has absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason.

8. As far as the decision in case *State of Haryana and others v. ASI Krishan Singh* is concerned which is heavily relied upon by the petitioner placed as an annexure to the petition being a decision of the

Division Bench of this Court dated January 14, 2015 in LPA No.725 of 2014 I find that the case is distinguishable on facts as there is no factual averment in the present petition that the decision to prematurely retire the petitioner at the age of 55 has been taken without previous approval of the State Government. Mere mention of case law is not enough to be consistent with relief claimed on pleadings. There is a presumption that decisions of the Government are taken in the normal course of business and as per rules, instructions and the law. It is well settled that an order of compulsory retirement is not a punishment and no stigma attaches to such notice for retirement. So long as the order has been passed in public interest within the subjective satisfaction of the police authorities on objective criteria and material then interference may be unwarranted as the authorities are the best judges of who to retain and who not in the uniformed police force. The highest standards of rectitude are required to be maintained in the police department with the force above suspicion. No mala fides or bias has been alleged against the officer/s who took the decision not to grant extension in service beyond 55 years. There is neither stigma nor pinch of punishment involved in the impugned order. The petitioner would get his pension and other benefits of which he has not been deprived. The impugned decision cannot be read as illegal, arbitrary and unreasonable or dishonest. The purpose of premature retirement is to cleanse the face of the force and to weed out the corrupt and the indolent and for achieving this end, serious and grave suspicion is not out of place in order to maintain the character of the force and instill faith in the public.

9. In these facts and circumstances, I would not interfere with the

impugned order dated March 08, 2018 in exercise of extraordinary, equitable and discretionary jurisdiction provided by Art 226 of the Constitution and would thus dismiss the petition.

21.03.2018  
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(RAJIV NARAIN RAINA)  
JUDGE

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| Whether speaking/reasoned | Yes |
| Whether reportable        | No  |