

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.54 OF 2018**

Sushil Kumar Banchhor S/o Late Shri Top Singh Banchhor, Aged About 54 Years R/o Kalimai Ward, Pandariya Road, Mungeli Police Station City Kotwali Tahsil and District Mungeli, Chhattisgarh.

...Petitioner(s)

Versus

1. State of Chhattisgarh Through its Secretary General Administration Department Mahanadi Mantralaya Police Station and Post - Rakhi , New Raipur District Raipur Chhattisgarh.
2. State of Chhattisgarh Through its Secretary Department of Home / Police, Mahanadi, Mantralaya Police Station and Post - Rakhi New Raipur District Raipur Chhattisgarh.
3. Director General of Police (DGP)/Chairman, Scrutiny Committee , Police Headquarters PHQ Sector - 19 , Block No. 3, Near Mahanadi, Mantralaya Police Station and Post - Rakhi New Raipur District Raipur Chhattisgarh.
4. Inspector General of Police (IGP) Office of Inspector General of Police (IGP) Behind Nagar Nigam Office, Bilaspur District Bilaspur Chhattisgarh.
5. Deputy Inspector General of Police, (DIGP) Administration, Police Headquarters PHQ Sector - 19 Block No. 3 Near Mahanadi Mantralaya Police Station and Post Rakhi New Raipur District Raipur Chhattisgarh.
6. Superintendent of Police (S P) Office of Superintendent of Police (SP) Mungeli District Mugeli Chhattisgarh.
7. Tarsila Toppo Inspector, Female Cell, Office of Superintendent of Police Surajpur District Surajpur Chhattisgarh.
8. Narendra Mishra Inspector, Office of Anti Corruption Bureau (A C B) Raipur District Raipur Chhattisgarh.
9. Dadulal Mishra , Inspector, Office of Superintendent of Police (S P) Raigarh District Raigarh Chhattisgarh.
10. Gaiyatri Sharma , Sub Inspector , Office of Superintendent of Police (SP) Janjgir Champa District Janjgir Champa Chhattisgarh.
11. Dilip Sisodiya , Inspector, Police Station - Jamul Tahsil and District Durg Chhattisgarh.
12. Anaram Sahu Assistant Sub - Inspector, Police Station - Basantpur , Tahsil and District Rajnandgaon, Chhattisgarh.
13. Rajat Sharma Deputy Commandant, 7th Battalion, Chhattisgarh Armed Force (C A F) Bhilai District Durg Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Abhishek Pandey, Advocate.
For Respondent-State	:	Shri Saleem Kazi, Deputy A.G.
For Respondent No.9	:	Shri Ashutosh Trivedi, Advocate.
For Respondent No.15	:	Ms. Anjali Singh Chouhan, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****13.05.2019**

1. Challenge in this petition is to the impugned order dated 18.08.2017 whereby the petitioner has been sent on compulsorily retirement. No specific reasons have been assigned and the impugned order speaks of only invoking the provisions of Rule 56(2) of the Fundamental Rules and Sub-rule (1)(B) of Rule 42 of Chhattisgarh Civil Services (Pension) Rules, 1976.
2. The contention of the petitioner is that, the petitioner was initially appointed as Constable way back in the year 1987 and in due course of time he has received two promotions, one on the post of Head Constable in the year 1998 and other in the year 2009 on the post of Assistant Sub Inspector. According to the petitioner, the fact that the petitioner has got two promotions timely shows that the petitioner's service record was not bad at all and he had all the merits required for being promoted.
3. Assailing the order, the first ground that the petitioner has raised is that the impugned order has been passed by an authority below the rank of appointing authority. The petitioner referring to Annexure P/5, the impugned order, submits that the same has been issued by the Deputy Inspector General of Police whereas, under the Chhattisgarh Police Executive (Non Gazetted) Service Rules, 2006, the appointing authority of the petitioner who was working on the post of Assistant Sub Inspector would be the Inspector General of Police, and therefore, the impugned order is bad in law on this ground.

4. The second contention of the petitioner is that, there is no adverse entry whatsoever reflected in the ACRs of the previous years so far as the petitioner is concerned. He further contended that even if the last 7-8 years are taken into consideration, most of the gradings that the petitioner has received is that of "A" which means "Very Good" and in none of these years the grading has gone below Good. Therefore, placement of the petitioner under compulsory retirement is without any substantial basis, nor is it based on any cogent sufficient material available with the respondents.
5. The petitioner assailing the impugned order of compulsory retirement submits that first of all the constitution of the Committee itself is faulty for the reason that as per the circular dated 25.04.2017 there ought to have been a three tier level Committee constituted for scrutinizing the different Police Personnel/officers posted in the State of Chhattisgarh. According to the petitioner, since the petitioner was posted in district Durg under the administrative control of the Superintending of Police, District Durg, the authorities concerned ought to have constituted a Committee at the district level. However, the impugned order of compulsory retirement has been passed at the recommendations made by a Committee constituted at headquarter level. Further contention of the counsel for the petitioner is that the Committee so constituted at headquarter level also was not a properly constituted Committee for the reason that the Committee consisted of a member who was not a permanent officer of the State Govt./State Cadre in as much as one of the members in the Committee namely Shri D. K. Mathur, the Dy.

Secretary, Home Department, was not a Govt. employee on the date when the Committee was constituted. His status in the Govt. was that of a contractual appointee i.e. a person who is from the outside cadre and therefore, inclusion of Shri Mathur vitiates the constitution of Committee itself. According to the petitioner, for the purpose of cadre review, it is always expected that the members of the Committee constituted for the cadre review should always be an officer of same department or at least from the State Cadre. Since Shri D. K. Mathur was a contractual appointee, it cannot be said that he belongs to the State Cadre or for that matter a regular officer of the State Govt.

6. Likewise, it was the further contention of the petitioner that the finding of the committee is also totally in contravention to the circular of the State itself dated 25.04.2017 which was issued for the specific purpose of scrutinizing the service records of a government employees who have put in 20 years of service and also have crossed 50 years of age for the purpose of compulsory retirement. Referring to the said circular, the petitioner contended that apart from the committee constituted in this regard by the respondents being bad and not properly constituted, the authorities have not properly taken into consideration the parameters which were envisaged in the circular dated 25.04.2017 while considering the employee/officer for compulsory retirement.
7. Referring to the said circular, the petitioner further submits that the first parameters is to judge the honesty and integrity of the employee/officer and in the instant case none of the ACRs in the

entire service career of the petitioner would show that honesty and integrity of the petitioner was doubted at all. On the contrary, the entries in the ACRs show that the integrity of the petitioner was "Beyond any Doubt". The second requirement is that, the health condition of the employee also should be sufficiently good enabling him to discharge his duties well. In the case of the petitioner, it is not the stand of the State that the petitioner has been placed under compulsory retirement on the health ground. The third ground or parameters laid down by the said circular is the overall assessment of the ACRs of the employee/ officer. In the instant case, so far as third parameter is concerned, there has been no adverse entry whatsoever in any of the ACRs of the petitioner with which it could be said that the performance of his duties has been on the decline or was not up to the mark. The fourth ground or parameters laid down is that on the overall assessment of the ACRs the grading should not go below "B" i.e. "Good". Referring to the ACRs of the petitioner, it reflects that most of the gradings given is either "Very Good" or "Good". Only for the period ending March, 2010, the grading of the petitioner was shown as "C" which means "Average". Even though in the same ACR against the grading of "C", the reporting officer has clearly mentioned "सामान्यतः अच्छा" which means "Ordinarily Good" which again would make it clear that there was nothing adverse against the petitioner. Thus, the impugned order of placing the petitioner under compulsory retirement is bad in law and thus prayed to be set aside/quashed.

8. The State counsel, on the contrary opposing the petition submits that the committee while taking into consideration the service record of the petitioner found that the petitioner has been facing two major inquiries and therefore considering his character which is reflected from the allegations made in the charges levelled against the petitioner, he was found to be unsuitable for government employment. Therefore, taking into consideration the larger public interest, the decision has been taken by the State Govt.. According to him, as is reflected from the Annexures attached to the reply of the State which shows the details of the service record of the petitioner based upon which the decision of compulsory retirement was taken that there was certain serious allegations against him. Thus, the impugned order does not warrant any interference.
9. So far as the competency of the officer who has issued the order is concerned, according to the State counsel, since the decision has been taken at the Headquarter level, merely because the impugned order has been issued by the Deputy Inspector General of Police (Administration) by itself would not vitiate the proceedings.
10. Likewise, so far as the committee being not properly constituted, the contention of the State counsel is that admittedly one of the members Shri DK Mathur was working with the department as contractual employee, but since he was discharging the duties of Under Secretary, it cannot be said that he was not competent to be part of the committee and as such only because Shri DK Mathur was a contractual employee/officer would not in any manner prejudice the proceedings drawn.

- 11.** In response to the contention of the State counsel, the counsel for the petitioner submits that so far as the Departmental Enquiry initiated against the petitioner is concerned, one of the departmental enquiry have been closed exonerating the petitioner from the allegations. So far as other enquiry is concerned, the petitioner has been inflicted with punishment of reduction to the minimum pay scale on the post of Assistant Sub Inspector for a period of two years which itself would show that the nature of offence, the material collected during enquiry were not strong enough with which the petitioner could have been inflicted with more graver punishment. Therefore, the said punishment could not have been the basis for placing the petitioner under compulsory retirement.
- 12.** Moreover, the petitioner had a right to prefer an appeal against the said order and before the petitioner could prefer an appeal, the department has issued the impugned order. Thus, the said punishment can never be a basis for placing the petitioner under compulsory retirement.
- 13.** Having heard the contentions put forth on either side and on perusal of records, if we take into consideration the career graph of the petitioner, it would reveal that the petitioner was appointed in the year, 1987. He received first promotion on the post of Head Constable in 1998 and second promotion to the post of Assistant Sub Inspector in the year, 2009. The petitioner along with the petition has submitted his ACRs from the year, 2010 till the year the petitioner was placed on compulsory retirement. In all these ACRs, except for the year, 2010 when there is grading of "C" with specific

endorsement by the officer concerned of the grading of the petitioner to be “Ordinarily Good”, all other ACRs have been “Very Good” or “Good”. More so, in the column dealing with integrity and honesty in the ACR, there is an entry of “Beyond Doubt” or “Very Good” and “Good”.

14. Further, from the service record it also reveals that in the entire service career the petitioner has received around 146 rewards as compared to 39 minor punishments and one major penalty which too was inflicted just 7 days prior to petitioner being placed under compulsory retirement, as such, the said order was still appealable.
15. So far as law relating to the compulsory retirement is concerned, it is by now a very well settled position of law that for considering an employee/officer so far as his suitability for government employment after having put in 20 years of service and having crossed the age of 50 years, the department is supposed to take into consideration the entire service records of the concerned employee/officer. A person cannot be held unsuitable for government employment only on account of one stray incident or punishment which has been inflicted upon the said employee/officer.
16. Moreover, if we look around, we find that there are many employees and officers in the department who have been inflicted with many penalties, but yet are in service and they have not been placed under compulsory retirement. Therefore, merely because an employee has been subjected to Departmental Enquiry or has been inflicted with one major penalty by itself cannot be a ground for putting a person under compulsory retirement. What we must

understand is that, it is not a punishment which the department is imposing, rather what the department has to assess is whether the petitioner could have been declared as a deadwood.

17. So far as law in respect of compulsory retirement is concerned, the Supreme Court as early as in 1998(7)SCC 310 in case of M.S. Bindra Vs. Union of India & Ors. in paragraph 13 held as under :

“13. While viewing this case from the next angle for judicial scrutiny i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

18. The Supreme Court in the case of National Aviation Company of India Limited Vs. S. M. K. Khan reported in 2009 (5) SCC 732, in paragraphs-13 to 16 has held as under:-

“13. An order of compulsory retirement in pursuance of a rule/regulation which enables the competent authority to prematurely retire an employee, on the formation of a bona fide opinion that continuation of the employee in service will not benefit the institution or be in the interest of the institution (or will not be in public interest where the employee is a government servant), on review of the

performance/service record of the employee, on the employee attaining the specified age or completing the specified period of service, is valid and not open to challenge. It is neither a punishment nor considered to be stigmatic. Where the compulsory retirement, is not by way of punishment for a misconduct, but is an action taken in pursuance of a valid condition of service enabling the employer to prepone the retirement, the action need not be preceded by any enquiry and the principles of natural justice have no application.

14. The unsatisfactory service of the employee which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and that he should be retired compulsorily. Such 'compulsory retirement' is different and distinct from imposition of a punishment of compulsory retirement (or dismissal/removal) on a specific charge of misconduct, where the misconduct is the basis for the punishment. The difference is on account of two factors : Firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a deadwood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct (which if separately considered may constitute a misconduct subject to punishment) when considered as a whole, leads the Reviewing Authority to the conclusion that the employee in question is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement under the relevant rule, in the letter of compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct.

15. Any order of compulsory retirement in terms of the rule/regulation providing for such compulsory retirement is not open to interference unless shown to be malafide or arbitrary or not based on any background material at all relating unsatisfactory service justifying the premature retirement.

16. When an order of compulsory retirement purports to be one under the rule/regulation providing for such premature retirement, the proper approach of the court would be to consider whether the order is sustainable with reference to the requirements of the relevant rule, rather than examining whether the order could also be construed as a punishment for misconduct -- vide *Baikuntha Nath Das v. Chief District Medical Officer*

[1992 (2) SCC 299], Allahabad Bank Officers' Association v. Allahabad Bank [1996 (4) SCC 504], "I.K.Mishra v. Union of India [1997 (6) SCC 228], State of Uttar Pradesh v. Lalsa Ram [2001 (3) SCC 389] and M. L. Binjolkar vs. State of Madhya Pradesh [2005 (6) SCC 224]."

19. The law so far as the compulsory retirement is concerned, it cannot be disputed that for passing an order of compulsory retirement, there has to be a subjective satisfaction of the competent authority and the competent authority should take a decision on the basis of cogent material available on record. So far as the scope of interference is concerned, unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that the formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the Court cannot as a matter of routine interfere with an order of compulsory retirement.

20. The Supreme Court in case of Madhya Pradesh State Cooperative Dairy Federation & Anr. Vs. Rajnesh Kumar Jamindar & Ors. 2009(15)SCC 221, referring to all the previous decisions on the issue in paragraph 35 has summarized or laid down the situations under which the order of compulsory retirement could be interfered with, held as under :

“35. The law relating to compulsory retirement in public interest is no long res integra. The provisions had been made principally for weeding out dead wood. An order of compulsory retirement being not penal in nature can be subjected to judicial review inter alia :

- i. when it is based on no material;
- ii. when it is arbitrary ;
- iii. when it is without application of mind; and
- iv. when there is no evidence in support of the case.”

38. In *Pritam Singh v. Union of India & Ors.* [(2005) 9 SCC 748], this Court held:

13. In our opinion, the High Court has committed an error in not interfering with the punishment of compulsory retirement even though the appellant submitted that the misconduct alleged against him was not at all an offence or even a serious mistake. The act of misconduct alleged against him was that he supplied a list of absentee details to one of the employees, who was fighting a case before the Tribunal against the Railways. This list contained the ticket numbers of the workers of a shop, who were absent on that date. This was neither a confidential document nor a privileged document. It contained details to which the employee concerned had a right of information. The appellant being a Superintendent Grade II and in charge of the information acted bona fide in good faith while supplying the information. In our opinion, this kind of an act was neither a misconduct nor a serious mistake. When the charges were found proved against the appellant, the appellant admitted that he had supplied the absentee details.”

21. On going through the aforesaid observations of the Supreme Court, it clearly gives the broad parameters and guidelines which ought to have been complied with by the department before placing an employee/officer on compulsory retirement.

22. Likewise, the Supreme Court again in the case of *Nand Kumar Verma Vs. State of Jharkhand and others* reported in 2012 (3) SCC 580 in paragraph-34 has given a broad outline as to the entries which would be relevant for the purpose of formation of an opinion before placing an employee/officer for compulsory retirement. For ready reference paragraph-34 of the said judgment is reproduced hereinunder:

“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the concerned authority but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In

the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACR's. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACR's which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs."

23. Recently again in case of Rajasthan State Road Transport Corporation and Ors. Vs. Babu Lal Jangir, 2013 (10) SCC 551 the Supreme Court held in paragraphs 23 & 24 as under:

"23. The principle of law which is clarified and stands crystallized after the judgment in Pyare Mohan Lal v. State of Jharkhand and Ors.; 2010 (10) SCC 693 is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this 'washed off theory' will have no application when case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration an earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.

24. Having taken note of the correct principles which need to be applied, we can safely conclude that the order of the High Court based solely on the judgment in the case of Brij Mohan Singh Chopra was not correct. The High Court could not have set aside the order merely on the ground that service record pertaining to

the period 1978-90 being old and stale could not be taken into consideration at all. As per the law laid down in the aforesaid judgments, it is clear that entire service record is relevant for deciding as to whether the government servant needs to be eased out prematurely. Of course, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively. What is to be examined is the "overall performance" on the basis of "entire service record" to come to the conclusion as to whether the concerned employee has become a deadwood and it is public interest to retire him compulsorily. The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the Authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the Court to interfere in the exercise of its limited power of judicial review."

- 24.** Based on the aforesaid legal principles and the ratio laid down by the Supreme Court in the catena of judgments what culls out broadly is that while passing an order of compulsory retirement, there has to be an overall assessment of the entire service record of the petitioner/employee which should be taken note of by the Department. Merely because the employee has been inflicted with one major penalty cannot by itself be an inference for the Department to hold that the honesty and integrity of the petitioner is doubtful. Moreover, the misconduct alleged against the petitioner is not one which is said to have been committed in the course of discharge of duty as a police personnel. Coupled with the fact that there are 146 rewards in favour of the petitioner as compared to 39 minor penalties would prima facie show that the assessment made by the department cannot be said to be proper, legal and justified

and the same also cannot be said that there was subjective satisfaction of the authorities before formation of an opinion for placing the petitioner under compulsory retirement.

- 25.** Since this court is convinced on the merits of the case that there was no sufficient material strong enough to place the petitioner under compulsory retirement, the other issues which the petitioner has raised so far as the competency of the committee as well as the officer who has issued the order of compulsory retirement is concerned, it is being left open to be considered in an appropriate case.
- 26.** The impugned order dated 18.08.2017 therefore being not sustainable deserves to be and is accordingly set aside/quashed. Consequently, it is ordered that the petitioner shall be reinstated in service and he would also be entitled for all consequential benefits. However, so far as monetary part is concerned, the petitioner would not be entitled for any monetary benefits for the intervening period, but the benefits shall be given to the petitioner by giving him notional fixation.
- 27.** The writ petition accordingly stands allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge