

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6889 of 2017**

Smt. V. Prabha Rao W/o Shri V. K. Rao, Aged About 55 Years, R/o Street No. 18, Block 2D, Sector VI, Bhilai Nagar, Bhilai, Post Civic Centre, District Durg Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Home, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
3. Director General Of Police, Police Head Quarter, Sector 19, Block No. III , New Raipur, District Raipur, Chhattisgarh
4. Additional Director General Of Police (Administration), Police Head Quarter, Sector 19, Block No. III, New Raipur, District Raipur Chhattisgarh
5. Inspector General Of Police, Durg Range, Durg, District Durg Chhattisgarh
6. Superintendent Of Police, Durg, District Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Harsh Wardhan, Advocate.
For State	:	Mr. Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.05.2019**

1. The challenge in the present writ petition is to the order dated 18.08.2017 Annexure P-2 passed by the Additional DGP (Adm.). Vide the said impugned order, the authority concerned has placed the petitioner under compulsory retirement.
2. The facts of the case are that the petitioner was initially appointed as a Constable under the respondents way back in the year 1982. In due course of time, she received promotions and reached to the stage of Inspector on which post the petitioner stood promoted on 17.02.2013. While working on the said post, the petitioner was inflicted with the order of compulsory retirement on 18.08.2017 which is under challenge in the present writ petition.
3. The contention of the counsel for the petitioner is that on the overall assessment of the petitioner it would reveal that the petitioner's career has been all along outstanding. According to the petitioner, there is no adverse entry in any of the ACRs of the petitioner in the previous years much less there has been no adverse entry in the past 5 years of ACR. At the same time, the petitioner has received 126 rewards during her entire service career. In the year 1999 she was declared the best Platoon Commander. Likewise, the petitioner was declared the best lady police officer for the year 2002 & 2004. In addition, the petitioner was also nominated for the Presidential Police Medal for the year 2011. All these, according to the petitioner, would show the efficiency and competency of the petitioner.
4. 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 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.

5. Further contention of the counsel for the petitioner is that, in the last 5 years of the ACR, there are three entries of "Good", one "Very good" and one "Average" i.e. grading of three "B", one "A" and one "C". In addition, there are 10 rewards during the said 5 years period. Based on the said grading,

the contention of the petitioner is that on an average assessment of the previous 5 years of grading would reveal that the average grading of the petitioner would not go below "Good" and therefore the decision of the State Govt. in placing the petitioner under compulsory retirement is not sustainable and contrary to their own parameters laid down in the circular dated 25.04.2017. He submits that the State Govt. has malafidely rejected the claim of the petitioner while reviewing the case of the petitioner by the High Powered Committee constituted in as much as there are 11 police officers who were placed under compulsory retirement in whose cases the order of compulsory retirement has been recalled and in many of those cases, there were charges and allegations much graver than what is alleged against the petitioner. Thus, the act on the part of the respondents is discriminatory in nature. It is the further contention of the counsel for the petitioner that the State Govt. also as a policy decision issued a circular on 12.06.2008 which lays down that the persons belonging to SC & ST category should not be inflicted with a major punishment or subjected to disciplinary action for their misconduct at the first instance. As per the circular, for the first misconduct, they should be let off by giving warning or censure and only in case of repeat misconduct, the department should take disciplinary action against them. Moreover, according to the petitioner, the circular dated 12.06.2008 also envisages a clause which says that a lenient approach should always be taken towards employees/officers belonging to SC & ST category. According to the petitioner, the primary reason assigned for placing the petitioner under compulsory retirement is that the honesty and integrity of the petitioner was found to be doubtful. However, according to the petitioner, nowhere there is an adverse entry in his entire ACR,

neither is there any entry in the ACRs of the petitioner whereby the honesty and integrity of the petitioner has been reflected to be doubted at any point of time. Thus, the finding of the respondents doubting the honesty and integrity of the petitioner is baseless. For all these reasons, counsel for the petitioner prayed for setting aside of the impugned order.

6. State counsel, opposing the petition submits that it is a case where the petitioner was inflicted with a major penalty of reduction of pay by one increment with cumulative effect. According to the State counsel, the allegation levelled against the petitioner by which the aforesaid punishment was inflicted was very grave and the allegation was that the petitioner is said to have extracted money from some persons on the pretext of providing them employment with railway establishment. State counsel further submits that apart from the aforesaid one major penalty, there have been 36 minor punishments which were inflicted in the entire service career of the petitioner. In addition, the gradation provided in the ACRs of the previous years of the petitioner shows that the overall performance of the petitioner was on the decline and therefore the decision of the State Govt. to put the petitioner under compulsory retirement is proper, legal and justified and does not warrant any interference by this Court at this juncture. It was lastly contended by the State counsel that the case of the petitioner was subjected to review by the High Powered Committee which also had thoroughly scrutinized the entire service record of the petitioner and thereafter still found that the order of compulsory retirement imposed upon the petitioner was proper, legal and justified.
7. Having heard the contentions put forth on either side and on perusal of the record what is undisputed at this juncture is that the petitioner was initially

appointed as a Constable way back in the year 1982. The petitioner has been getting periodical promotions stage by stage at the proper time without there being any denial at any stage to establish that there was nothing adverse against the petitioner in her service career till she was promoted to the post of Inspector in the year 2013. This itself would establish that there was nothing against the petitioner adverse at any point of time as in between she got promotion from Constable to Head Constable, from Head Constable to Assistant Sub Inspector, from Assistant Sub Inspector to Sub Inspector and finally got promotion to the post of Inspector in the year 2013. Moreover, from the pleadings that has been brought on record it clearly reflects that in her entire service career the petitioner has received 126 rewards as against 36 minor punishments and one major punishment. Moreover, the petitioner was awarded the best Platoon Commander for the year 1999. In addition, the petitioner was awarded the best lady police officer twice in the year 2002 & 2004. Lately in the year 2011 the petitioner was also nominated for the post of Presidential Police medal. All these would show that the petitioner's career has been outstanding all along.

8. Coming to the punishment which has been inflicted upon the petitioner it would reveal that the only major punishment which is said to have been inflicted is reduction of pay by one annual increment with cumulative effect. The fact that, for the misconduct alleged the department has found that the punishment which commensurates the gravity of the offence is reduction of one annual increment with cumulative effect is sufficient to draw an inference that the alleged misconduct was not so grave a misconduct or the charges levelled or the evidence collected were not so glaring for which the

petitioner could have been inflicted with any other major punishment than reduction of one annual increment with cumulative effect.

9. What also cannot be lost sight is that the petitioner in addition of being a lady officer belongs to scheduled caste category and the State Govt. itself vide a policy decision dated 12.06.2008 has ordered for taking a lenient approach so far as the case of the employees/officers belonging to SC & ST category is concerned. The document enclosed with the reply of the respondents would show the gradings in the last 5 years ACRs of the petitioner. From the last 5 years of ACR it would reveal that there are gradings of three "Good", one "Very Good" and one "Average i.e. there were three "B", one "A" and one "C" in the last 5 years. The overall assessment would bring the grading of the petitioner to be "Good" i.e. "B". The parameter as per the circular dated 25.04.2017 envisages that the overall assessment of the grading should not go below "Good" which in the instant case has not gone below "Good".

10. 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".

11.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].”

12. 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.

13. 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.

14. 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.

- 15.** 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. ”

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

17. Based on the aforesaid legal principles and the ratio laid down by the Supreme Court in the catena of judgments what calls out broadly is that while passing an order of compulsory retirement, there has to be overall assessment of the entire service record of the petitioner/employee which should be taken note of by the Department. One stray incident and one act of misconduct for which also the major punishment imposed is one that of reduction of pay by one increment with cumulative effect cannot be a deciding factor for placing an employee/officer under compulsory retirement. 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 her duty as a police personnel. Coupled with the fact that there are 146 rewards in favour of the petitioner, in addition to the fact that she has been on a couple of occasions declared as the best lady police officer and she has been nominated for the Presidential Police Medal and she has also been declared as the best Platoon Commander in the past. All these credentials in her favour when compared with the demerits i.e. one major penalty and 36 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. The impugned order therefore in the opinion of this Court is not sustainable and the same deserves to be and is accordingly set

aside/quashed.

- 18.** 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 she would also be entitled for all consequential benefits. However, so far as monetary part is concerned, the petitioner would not be entitled for monetary benefits for the intervening period, but the benefits shall be given to the petitioner by giving her notional fixation.
- 19.** The writ petition accordingly stands allowed. No order as to costs.

**Sd/-
P. Sam Koshy
Judge**