

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6911 of 2017**

Chhannu Lal Uike S/o Shri Phirantaram Uike, Aged About 59 Years, R/o Kobia Colony, In Front Of New Collectorate, Bemetara, Post Bemetara, Tehsil And District Bemetara, 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, Bemetara, District Bemetara, 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****19.06.2019**

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 1992. In due course of time, the petitioner was promoted to the post of Head Constable in the year 1994. He was again promoted as An Assistant Sub-Inspector in the year 1999. On account of his exemplary performance and unblemished service the petitioner got a further promotion in the year 2007 as a Sub Inspector and again for the same reason he was promoted as Inspector in the year 2013. The petitioner had been working on the post of Inspector since then when abruptly the impugned order dated 18.08.2017 was passed by the respondents sending the petitioner on compulsory retirement.
3. The contention of the counsel for the petitioner is that from perusal of the Annual Confidential Record as also the service record of the petitioner it would reveal that the petitioner's services have been all along outstanding and that there was no adverse entry in any of the ACRs of the petitioner so far as his performance and integrity is concerned. It is further contention of the petitioner that the ACRs of the last 5 years also would show that the petitioner had received 'Good' grading for 4 years of the previous years and only in one year the petitioner had been given grading 'C' i.e. Average. Counsel for the petitioner referred to the documents enclosed along with the reply of the respondents showing that though the State Govt. has assessed grading of the petitioner for the year 2013 as 'B' i.e. Good, the

Reviewing Authority of the ACR for the year 2013 had given the petitioner grading of A+ i.e. Very Good which would show that the performance of the petitioner in the previous 5 years was not on the decline.

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 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 Bemetara under the administrative control of the Superintending of Police, District Bemetara, 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. Counsel for the petitioner further submits that the petitioner belongs to a scheduled tribe category and 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 of 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. For all these reasons, counsel for the petitioner prayed for setting aside of the impugned order.
6. State counsel, however, opposing the petition submits that the Committee had made an overall assessment of the ACRs of the petitioner as also the records of the petitioner and it was found that the petitioner had been inflicted with 35 punishments in his service career of which 21 had been inflicted in the previous 5 years. In addition, the petitioner had also been inflicted with two major penalties in the last 5 years which would show that the performance of the petitioner was not upto the mark and therefore the department took the decision of placing the petitioner under compulsory retirement.
7. Having heard the contentions put forth on either side and on perusal of the record, the admitted factual position as it stands would show that the

petitioner had got 4 promotions during the period 1992 to 2013 as has been enumerated in the preceding paragraph. The petitioner has received 97 rewards in his entire service career as against only 35 minor punishments which would further indicate that the performance of duty of the petitioner have been outstanding all along. So far as assessment of ACRs is concerned, what cannot be brushed aside is that the chart enclosed along with the reply of the State Govt. itself would show that the petitioner in the previous 5 years had got grading of four 'Goods' and one 'Average' that means the overall grading of the petitioner also would not under any circumstances go below 'Good'. At the same time, the document enclosed with the reply would also show that the grading of the year 2013 in fact was not 'Good' but was 'Very Good' as has been awarded by the Reviewing Authority.

8. Coming to the question of 2 major punishments which have been inflicted, counsel for the petitioner submits that there have been 2 punishment orders imposed on 16.01.2017 and 27.06.2017. The one which was issued on 16.01.2017 in fact was not a major punishment, rather it was a minor punishment of stoppage of one annual increment without cumulative effect for a period of one year. The second order dated 27.06.2017 again is an order of stoppage of one annual increment but with cumulative effect which would be a major punishment. The contention of the petitioner is that the said punishment dated 27.06.2017 is one which was issued just before the order of compulsory retirement was passed and the appeal against the said punishment is already pending consideration before the Appellate Authority. In case if the Appellate Authority quashes the order of punishment, the said ground could not have been sufficient enough to place the petitioner under

compulsory retirement.

9. What also cannot be lost sight is that the petitioner 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.
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 stoppage of one annual 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 lead to an inference to be drawn by the Department to hold that the honesty and integrity of the petitioner is doubtful. Thus, 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 dated 18.08.2017, therefore, in the opinion of this Court is not sustainable and the same deserves to be and is accordingly set aside/quashed.

18. 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 monetary benefits for the intervening period, but the benefits shall be given to the petitioner by giving him notional fixation.
19. The writ petition accordingly stands allowed. No order as to costs.

Sd/-
P. Sam Koshy
Judge