

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-2068-2020 (O&M)
Date of decision: 30.01.2020

EHC Rajpal

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Rajender Singh Malik, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana.

GIRISH AGNIHOTRI, J. (Oral)

1. The present writ petition has been filed by the petitioner-EHC Rajpal *inter alia* with the prayer to quash the impugned notice-cum- order dated 30.10.2019 (Annexure P-13). In the said order dated 30.10.2019, the Superintendent of Police has ordered that upon notice of three months retirement, as required under Rule 9.18(1)(c) of PPR of CSR Vol-I Part-I (Learned State counsel submits that the words CSR appears to be a typographical mistake and accordingly the same be ignored) the petitioner shall stand retired. Be that as it may, the order says that he will be treated as retired w.e.f. 01.02.2020. On 27.01.2020, this Court had passed the following order:-

“Notice of motion.

*On the asking of the Court, Ms. Safia Gupta,
Assistant Advocate General, Haryana, accepts notice on
behalf of the State-respondents.*

Learned counsel for the petitioner relies on the order passed qua one HC Ramesh Chand, who was named along with the petitioner in the complaint, by SHO to the Superintendent of Police. He submits that for the alleged allegations pertaining to the period from 17.11.2016 to 31.03.2017, his integrity was doubted in the ACR for the above period. He further submits that disciplinary proceedings had been initiated and ultimately after approaching all the authorities, the DGP has simply given warning to the petitioner.

Let the reply/status report be filed on or before the next date of hearing.

Adjourned to 29.01.2020.”

2. Today, on resumed hearing of the case, a short reply dated 28.01.2020, has been filed on behalf of the respondents No.1 to 4.

3. The submission of learned counsel for the petitioner is that a perusal of the impugned order dated 30.10.2019 shows that it was so ordered that his services are no more required after the age of 55 years on the basis of service record (ACR for the period from 17.11.2016 to 31.03.2017), wherein, **“integrity-dishonest and discipline-indisciplined”** has been recorded. The said ACR has also been placed on record by the petitioner as Annexure P-12 dated 11.09.2017.

4. The positive case of learned counsel for the petitioner is that in fact, there is a direct connection with the remarks so recorded in the memo dated 11.09.2017 for the aforementioned period of the ACR and that of chargesheet dated 20.09.2016 (Annexure P-4), wherein the petitioner has been found to be innocent and later, only awarded with punishment of

warning to be careful in future. He rather submits that warning is not one of the punishment under the rules. In this regard, to support the above submission, he submits that as is evident from memo dated 20.09.2016 (Annexure P-4), the petitioner was charge-sheeted for some alleged incident dated 16/17.08.2016, wherein the petitioner was only driving the vehicle along with his senior namely Mr. Ramesh Kumar -Sub Inspector. He then submits that vide Annexure P-5, an enquiry report was submitted. This enquiry was conducted by the Superintendent of Police and in the report dated 02.11.2018, it was found as under:-

..... "Neither any complaint in written has been received in this regard nor any number of the truck is available from whom the money has been received nor any proof is available regarding the weightment of truck from which weighbridge the truck is allegedly weighed. Therefore, I accept that ESI Ramesh Chander 425/Sonipat and EHC Rajpal 1050/Sonipat are innocent with regard to the charges leveled against them."

Learned counsel for the petitioner further submits that in spite of above, after recording disagreement note, the punishment authority however imposed the punishment of stoppage of five future increments qua the petitioner, whereas imposed a punishment of reversion qua Sub Inspector-Ramesh Kumar from the post of Sub Inspector to Head Constable.

5. As regards the case of the petitioner, learned counsel for the petitioner submits that since this punishment as aforementioned was recorded on 14.01.2017, it appears that the then Reporting Authority based on this punishment, recorded adverse comments in the ACR for the period from 17.11.2016 to 31.03.2017. As is further evident from the fact that the

memo in this regard was issued on 11.09.2017 (Annexure P-12). The specific case as submitted by learned counsel for the petitioner is that there has been specific significant developments. To support this, he submits that after the punishment order dated 14.01.2017, imposing punishment to stoppage of five increments with permanent effect qua the petitioner, both, the petitioner as well as Sub Inspector Ramesh Kumar filed appeals. These appeals were accepted by IGP, Rohtak Range vide order dated 17.05.2017. In the case of the petitioner, punishment was reduced to stoppage of two annual increments with permanent effect whereas in the case of SI Rank, it was reduced from reversion to stoppage of five annual increments with permanent effect. The said order is on record as Annexure P-9.

Learned counsel further submits that still further, both, the petitioner as well as SI Ramesh Kumar filed representations, in which, the Director General of Police vide order dated 04.05.2018, in the case of the petitioner and vide order dated 29.11.2018 in the case of SI Ramesh Kumar, reduced the punishment further to only warning in the case of the petitioner whereas, punishment of censure in the case of SI Ramesh Kumar. Learned counsel then submits that secondly in view of the fact that the Enquiry Officer had found him not guilty and thereafter, the Director General of Police having passed the order only ordering warning against the petitioner, it was a fit case for consequential upgradation of the ACR for the period from 17.11.2016 to 31.03.2017. Learned counsel thirdly submits that on **28.05.2019 in CWP-1290-2018**, this Court had stayed the operation of compulsory retirement order/notice qua SI Ramesh Kumar. The said order

is reproduced hereunder:-

“Vide impugned notice dated 22.04.2017 (Annexure P-11), petitioner has been compulsorily retired from service.

Learned State counsel has not produced last 10 ACRs of the petitioner. However, learned counsel for the petitioner has got information regarding those ACRs under the Right to Information Act, 2005. A perusal of the same shows that from 2004 onwards, there is no adverse ACR with respect to the honesty of petitioner. Learned counsel for the petitioner has also informed that vide order dated 29.11.2018, the Director General of Police, Haryana has reduced the punishment of stoppage of three increments to that of 'Censure'.

Admitted.

In the meantime, operation of the impugned order/notice dated 22.04.2017 (Annexure P-11) shall remain stayed.”

6. Learned counsel appearing for the State based on the pleadings in the written statement submits that firstly a single doubtful integrity in the service record is sufficient to compulsory retire the employee. She further submits that though the Director General of Police has taken a lenient view but it does not amount to exoneration of the petitioner. Learned State counsel then submits by making reference to Para-11 of the written statement that in fact against the said adverse remarks, the petitioner had submitted an appeal/representation which was rejected on 19.04.2019. She further submits that further the representation was submitted in 2017 itself to the Director General of Police, which has been rejected on 19.04.2019.

7. This Court is of the considered view that as far as submission of

the representation/appeal against the adverse remarks is concerned and its decision, in view of the subsequent significant developments as noticed above, would lose its significance. It is important to note that learned State counsel has shown the order dated 22.02.2019, passed by the Inspector General of Police, Rohtak, wherein the representation submitted by the petitioner was summarily rejected being time barred. This Court is of the view that the Competent Authority ought to have looked into the subsequent significant developments, especially the orders passed by the IGP on 17.05.2017 and also the order dated 04.05.2018, passed by the Director General of Police, because the necessity and ground to seek quashing of the ACR/upgrading of the ACR, would arise obviously on the decision by the DGP to substitute the punishment to stoppage of two increments in the case of the petitioner by warning.

Therefore, this Court is of the considered view that the matter needs to be re-considered by the Competent Authority i.e. Superintendent of Police who has passed the impugned order/notice dated 30.10.2019, whereby, on expiry of three months the petitioner has been ordered to be treated as retired from 01.02.2020. This Court also deems it appropriate to direct respondent No.2 to examine this fact and depute a concerned officer to examine all the three issues namely, (i) whether to upgrade the adverse remarks in the confidential report for the period from 17.11.2016 to 31.03.2017; (ii) secondly, to examine as to whether in view of the punishment of stoppage of two future increments with permanent effect be substituted by warning vide order dated 04.05.2018 (Annexure P-11) would

have bearing on the decision by the Competent Authority to retain the petitioner in service or to retire in pursuance to the order dated 30.10.2019; (iii) thirdly, the Competent Authority may also consider the factum of similarity and the role of the petitioner being a Head Constable and Driver of the vehicle in which his senior SI Ramesh Kumar was along with him on the date of alleged incident and yet since, the said SI had also been given punishment of censure vide order dated 29.11.2018 and the application of order passed by this Court dated 28.05.2019, staying the impugned compulsory retirement order. All these issues be examined forthwith by the Competent Authority as expeditiously as possible. Further considering the fact that in the notice it has been mentioned that he would retire w.e.f. 01.02.2020, this Court deems it appropriate to direct that till the decision so taken by the Competent Authority, *status quo* regarding his services as on today, be maintained till the expiry of four working days from the date of any adverse order afresh, if any, passed by the Competent Authority.

Accordingly, the present writ petition is disposed of.

(GIRISH AGNIHOTRI)
JUDGE

30.01.2020

anju rani

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No