

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 9384 of 2022 (O&M)

Reserved on 25.7.2022

Date of Pronouncement: August 5, 2022

ASI Naresh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr. Suresh Kumar Redhu, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari to quash the Disagreement Note No.2882/PA dated 26.04.2016 (Annexure P/3), Show Cause Notice No.2883/PA dated 26.04.2016 (Annexure P/4), being contrary to law as laid down in the case titled as ***Punjab National Bank vs. Kunj Bihari Misra, 1998 (3) SCT 833*** and subsequent orders whereby the appeal filed against the order of punishment was rejected and action of the respondents in not taking any decision regarding adverse remarks entered into the ACR for the year 2015-16 of the petitioner. The petitioner would also challenge the impugned retirement notice dated 07.02.2022 being contrary to Rule 9.18 (1)(c), as no previous sanction has been taken from the State Government as well as order dated 21.02.2022 whereby the petitioner has been ordered to retire on 08.05.2022.

2. In brief, the facts are that the petitioner herein was recruited as a Constable on 20.03.1998 and was serving in the rank of officiating Assistant Sub Inspector. It is contended that the petitioner was falsely implicated in regular departmental inquiry by the then Superintendent of Police, Rewari and the Inquiry Officer exonerated the petitioner vide order dated 09.04.2016. The SP, Rewari disagreed with the Inquiry Officer and issued a Disagreement Note vide No.2882/PA dated 26.04.2016 and also issued show cause notice No.2883/PA dated 26.04.2016, proposing punishment in reduction of rank. The petitioner submitted a detailed reply in response to the disagreement note and the show cause notice, however, the punishing authority awarded punishment of stoppage of four annual increments with permanent effect and also downgraded the ACR of the petitioner for the year 2015-16. A statutory appeal was filed against the said order as well as a challenge was made to the down grading of the ACR for the period 2015-2016, but the same was rejected by an order dated 30.06.2016. A detailed revision petition was filed and the punishment was reduced to that of Censure by order dated 7.9.2016 as passed by the Director General of Police Haryana. No orders were passed either by the Appellate Authority or the Director General of Police regarding expunging the adverse entry. Thereafter, the Deputy Commissioner of Police (DCP) served a notice of retirement upon the petitioner dated 07.02.2022 proposing to retire him from service pursuant to clause 9.18 (1)(c) of the Punjab Police Rules as applicable to the State of Haryana on the ground of entry of adverse remarks of doubtful integrity and honesty in the ACR for the year 2015-16.

3. Dr. Suresh Kumar Redhu, learned counsel appearing on behalf

of the petitioner would contend that the action of the respondents proposing to retire him on the ground of adverse remarks entered in his ACR for the year 2015-16 is not sustainable, considering the fact that the ACR was downgraded only on account of punishment imposed upon him of stoppage of four annual increments. It is submitted that once the punishment has been modified to that of Censure, his ACR to be amended itself. It is also submitted that the instructions as issued by the State of Haryana have not been adhered to wherein, it is specifically stated that the ACR for the past 10 years were to be looked into before retiring a person. It is also argued that the show cause notice and the disagreement note issued to the petitioner were violative of the principles as laid down in the case of **Kunj Bihari Misra (supra)** as the said notice was issued with a predetermined decision without giving an opportunity to the petitioner to defend himself. Learned counsel for the petitioner would also submit that other than the adverse remarks entered in the ACR for the year 2015-16, all his ACRs are 'Good' or 'Very Good', which should have been taken into account before retiring the petitioner at the age of 55. Learned counsel for the petitioner would also rely upon judgment rendered in the case of *EHC Rajpal vs. State of Haryana and others, 2021 (2) PLR 386* wherein, the notice proposing to retire the petitioner from service was set aside taking into account that the DGP had let off the petitioner with mere warning. Learned counsel for the petitioner would also rely upon judgment rendered in *EASI Rajesh Kumar vs. State of Haryana and others, CWP No.2637 of 2022 decided on 06.05.2022*.

4. On the other hand, Ms Upasana Dhawan, AAG learned counsel

appearing on behalf of the respondent—State would argue that the petitioner had been awarded an adverse entry of doubtful integrity and honesty in the ACR for the year 2015-16 and one such adverse entry is enough to retire a person of disciplined force. In support of her arguments, she would rely upon judgment rendered by this Court in **Ram Dhari vs. State of Haryana and others, 2019 (3) SCT 678**.

5. I have heard learned counsel for the parties and have also perused the pleadings of the case and case laws cited.

6. It is not in dispute that the petitioner has been retired under Rule 9.18 (1) (c) of the Punjab Police Rules, as applicable to the State of Haryana on the ground of having a doubtful entry in his ACR for the year 2015-16.

7. The contention of the petitioner that the disagreement note and the show cause notice are in violation of the principles as laid down in the case of **Kunj Bihari Misra (supra)** is devoid of any merit since, the petitioner challenged the punishment so awarded by the punishing authority and accepted the reduction of punishment, which was reduced to that of Censure. If the petitioner had been aggrieved by the said orders passed as far back as 2016, he could have challenged the same. But for the best reasons known to him, he kept silent thereafter. At this juncture, the petitioner cannot be permitted to rake up the issue regarding non-compliance of the judgment rendered in **Kunj Bihari Misra (supra)**.

8. The second argument that has been raised by the learned counsel for the petitioner is that once the punishment has been reduced to Censure, there should have been automatic modification of the adverse

remarks entered in the ACR. This argument would not be sustainable as once again the petitioner had not challenged the orders passed by the DGP, who reduced the punishment, but did not set aside the adverse entry made in the ACR for the year 2015-16. It is deemed that the petitioner had accepted the said verdict and chose to challenge the same only when the retirement notice was issued to him.

9. In the instant case, DCP, Headquarters issued three months' notice of retirement to the petitioner as per Clause 9.18 (1) (c) of the Punjab Police Rules, as applicable to the State of Haryana, on the ground of adverse remarks of doubtful integrity and honesty entered in his ACR for the year 2015-16. These adverse remarks as entered in the ACR of the petitioner, were challenged but were never set aside by any authority. The appeal filed challenging the adverse entry was dismissed and in the revision petition filed by the petitioner before the Director General of Police, the Director General of Police had only reduced the punishment of the petitioner from stoppage of four annual increments to that of censure. In the case of **Ram Dhari (supra)**, it has been clearly held by the Division Bench of this Court that, even one adverse entry in the ACR showing the integrity of an employee being doubtful, is enough to order his compulsory retirement. Even otherwise, a Revised Policy/Guidelines regarding Premature Retirement on attaining the age of 50/55 years or on completion of 25 years qualifying service has been issued by Haryana Government vide notification no. 32/06/2018-4GS1, which reads as under:-

“III. Parameters for premature retirement or continuing in service:

(d) A Government employee whose integrity has been doubted during last ten years of service will be retired prematurely, however, the doubtful integrity during the period of service before last 10 years will be ignored. ”

A perusal of the adverse ACR for the year 2015-2016 reflects the remarks recorded as doubtful integrity and honesty and therefore the ratio of the judgment rendered in **Ram Dhari's case (Supra)** and the very instructions of the State of Haryana itself are fully applicable to the instant case. The case laws relied upon by learned counsel for the petitioner are distinguishable and not applicable to the facts and circumstances of the present case.

10. In view of the foregoing discussion, this court finds no illegality or infirmity in the impugned orders passed by the respondents. Accordingly, the instant writ petition is hereby dismissed.

August 5, 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No