

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 8920 of 2016 (O&M)
Date of Decision: 21.09.2022**

Gurnam Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. G.S. Brar, Advocate
for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

JAISHREE THAKUR, J.

1. The instant writ petition under Articles 226/227 of the Constitution of India has been filed seeking a writ in the nature of Certiorari quashing the impugned order dated 28.12.2015 (Annexure P/6) passed by respondent No.4, vide which the petitioner has been retired compulsorily from service on attaining the age of 55 years.

2. Brief facts leading to the filing of the instant petition are that the petitioner joined the service as a Constable on 6.8.1985 and promoted upto E/ASI and ultimately stood compulsorily retired on 31.12.2015. It is claimed that during his entire career of service, he had an unblemished service record and there had been no complaints whatsoever against him from any quarter. It was alleged that on the intervening night of 29/30.10.2010 he, along with other police officials, was on duty at Police Station Hansi, District Hisar, when a truck bearing registration No. RJ-19-G/1619 loaded with calves was going towards Delhi side and the petitioner

and other officials stopped the said truck, but thereafter allowed the driver to go towards his destination after taking a sum of ₹100/- as illegal gratification. Thus, the petitioner indulged in grave indiscipline by taking illegal gratification and bringing disrepute to the police department. DDR No. 48 dated 30.10.2000 was recorded in this regard. An inquiry was ordered and the petitioner was charge-sheeted, placed under suspension. It is submitted that during the inquiry, the driver—Alla Ditta stated that he did not give any illegal gratification to the petitioner and the Inquiry Officer held that there was no evidence against the petitioner regarding illegal gratification, but still the punishing authority vide order dated 2.9.2011 (Annexure P/1) ordered punishment of stoppage of five annual increments with permanent effect.

3. Against the order dated 2.9.2011, the appeal and the revision filed by the petitioner were rejected vide orders dated 16.12.2011 and 13.7.2012 (Annexures P/2 and P/3 respectively). After rejection of the appeal and the revision, the petitioner filed a civil suit, which was decreed by the trial court vide judgment and decree dated 28.7.2015 (Annexure P/4), which set aside the order of punishment and the appeal filed by the department was dismissed by the District Judge, Fatehabad on 4.2.2016. Despite the punishment of stoppage of five increments having been set aside by the trial court, respondent No. 4, in terms of provisions contained in Rule 5.32-A of the Civil Service Rules Volume II, Rule 3.26 (d) of the Civil Service Rule, Volume 1 and Rule 9.8 (1) of the Punjab Police Rules, applicable to the State of Haryana, served three months notice dated 12.8.2015 (Annexure P/5) on the petitioner stating that in the public

interest, he would be retired on attaining the age of 55 years on 31.12.2015. Against the notice dated 12.8.2015, the petitioner filed Civil Writ Petition No. 26801 of 2015, in which notice of motion was issued. However, during the pendency of the said writ petition, the respondents passed the impugned order dated 28.12.2015 (Annexure P/6) retiring the petitioner compulsorily w.e.f. 31.12.2015. Hence the instant writ petition.

4. Learned counsel for the petitioner would submit that while prematurely retiring the petitioner, the respondents have taken into consideration the punishment of stoppage of five annual increments with permanent effect. In fact, the said punishment already stood set aside by the civil court vide judgment and decree dated 28.7.2015 and therefore, the same could not have been taken into consideration. It is further submitted that the petitioner had unblemished service record and before the respondents can pass the order of compulsory retirement, they must have sufficient material on record, which is lacking in the present case. Therefore, the impugned order deserves to be set aside.

5. Per contra, learned counsel for the respondent—State would contend that there is no illegality or arbitrariness in the impugned order. It is submitted that while passing the impugned order, service record of the petitioner was taken into consideration. The ACR of the petitioner for the period 4.1.2010 to 26.12.2010 was graded as poor with adverse remarks of integrity as doubtful, unreliable, indiscipline, poor moral character etc. Since the service record of the petitioner was not satisfactory, therefore, he was prematurely retired in public interest. Therefore, no interference is called for in the instant writ petition.

6. I have heard learned counsel for the parties and have perused the paper book.

7. From the pleadings of the parties, a short question that falls for consideration is, whether the petitioner could have been prematurely retired at the age of 55, keeping in view his overall performance during his service career and the service record and whether premature retirement amounts to stigma?

8. On 12.8.2015, the Superintendent of Police, Fatehabad, after noticing the punishment of Censure in 2010 given to the petitioner for tendering evidence in favour of an accused under Section 161 of the Code of Criminal Procedure in FIR No. 257/2009 registered under Section 302 IPC at Police Station Ratia, the ACR of the petitioner for the period 1.4.2010 to 26.10.2010, where his integrity had been found to be doubtful, as well as ACR for the period 1.4.2011 to 3.11.2011, issued a three months notice upon the petitioner stating that his service record is not satisfactory enough to allow him to serve the department beyond the age of 55 years i.e. upto the age of 58 years and therefore, he shall retire from service under the State Government of Haryana in public interest on 31.12.2015 A.N. The said notice was served on the petitioner on 17.8.2015. The petitioner did not submit any reply to the said notice. Therefore, the respondents passed the impugned order dated 28.12.2015 prematurely retiring the petitioner from service. The concluding paragraph of the impugned order reads as under:-

“His service record is not satisfactory to allow him to serve the department beyond the age of 55 years i.e. upto the age of 58 years, so he was issued notice of three months vide this office

No. 28927 dated 12.8.2015 which was received by him on 17.8.2015 proposing therein that in pursuance of provisions contained in rule 5.32-A (c) of CSR volume II rule 3.26 (d) of CSR volume 1 and PPR 9.8 (1) as applicable in Haryana, he shall stand retired from service in public interest on 31.12.2015 A.N. after attaining the age of 55 years. He was delivered the notice on 17.8.2015 but he has not submitted the reply to the notice so far. As his service record is not satisfactory, hence he cannot be allowed to serve the department beyond the age of 55 years and is ordered to retire from service on retiring pension w.e.f. 31.12.2015 A.N”

As is apparent from the impugned order, the petitioner did not file any reply to the show cause notice dated 12.8.2015 (Annexure P/5) served upon him on 17.8.2015. Instead the petitioner filed Civil Writ Petition No. 26801 of 2015 against the said notice, but could not secure any interim order and ultimately stood retired prematurely on 31.12.2015.

9. The argument of the learned counsel for the petitioner that punishment of stoppage of five annual increments with permanent effect could not have been taken into consideration, while prematurely retiring the petitioner from service, particularly when the said punishment stood set aside by the civil court, is not sustainable, for, compulsory retirement is ordered considering various facets. Compulsory retirement order can be passed looking to the overall service record of a government employee, it can be passed in public interest with a view to improve efficiency of the administration and also to remove dead wood. The order of compulsory retirement is not a punishment nor does it attach any stigma on an employee. It is a subjective decision of the government in public interest arrived at

after considering entire service record of an employee. Compulsory retirement involves no civil consequences and, therefore, this Court cannot sit in as an appellate authority over the subjective satisfaction of the respondents.

10. The issue of compulsory retirement has been considered in a catena of judgments by the Hon'ble Supreme Court, particularly in **Baikunth Nath Das and others V. Chief District Medical Officer, Baripada, AIR 1992 SC 2019**, wherein it has been held that the order of compulsory retirement is not a punishment and it implies no stigma nor any suggestion of misbehaviour. The order of compulsory retirement is in public interest and is passed on the subjective satisfaction of the Government and the same is not liable to be quashed by this Court merely for the reason that the promotions were granted to the employee. The Supreme Court in **Baikuntha Nath Das (supra)** (in paras 12, 33, 34 and 36) held as under:-

“12. As far back as 1970, a Division Bench of this Court comprising J.C. Shah and K.S. Hegde, JJ. held in [Union of India v. J.N. Sinha](#) [(1970) 2 SCC 458 : (1971) 1 SCR 791] that an order of compulsory retirement made under F.R. 56(j) does not involve any civil consequences, that the employee retired thereunder does not lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant. It was pointed out that the said rule embodies one of the facets of the pleasure doctrine embodied in [Article 310](#) of the Constitution and that the rule holds the balance between the rights of the individual Government servant and the interest of the public. The rule is intended, it was explained, to enable the government to energise its machinery and to make it efficient

by compulsorily retiring those who in its opinion should not be there in public interest. It was also held that rules of natural justice are not attracted in such a case. If the appropriate authority forms the requisite opinion bona fide, it was held, its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision. It is significant to notice that this decision was rendered after the decisions of this Court in [State of Orissa v. Dr Binapani Devi](#) [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] and [A.K. Kraipak v. Union of India](#) [(1969) 2 SCC 262 : AIR 1970 SC 150] . Indeed, the said decisions were relied upon to contend that even in such a case the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action. The contention was not accepted as stated above. The principles enunciated in the decision have been accepted and followed in many a later decision. There has never been a dissent -- not until 1987.

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33. At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is adverse remarks -- not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(j) or a rule corresponding to it. The object and purposes for which this power is to be exercised are well stated in [J.N. Sinha](#) [(1970) 2 SCC 458 : (1971) 1 SCR 791] and other decisions referred supra.

34. The following principles emerge from the above discussion:

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of*

misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary -- in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter -- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.

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36. So far as the appeals before us are concerned, the High Court which has looked into the relevant record and confidential records has opined that the order of compulsory retirement was based not merely upon the said adverse remarks but other material as well. Secondly, it has also found that the material placed before them does not justify the conclusion that the said remarks were not recorded duly or properly. In the circumstances, it cannot be said that the order of compulsory retirement suffers from mala fides or that it is based on no evidence or that it is arbitrary”

From the record, it is apparent that the petitioner was not compulsorily retired from service merely on the basis of the punishment of stoppage of five annual increments awarded to him, but on the basis of other material as well i.e. based upon his entire service record, performance of the petitioner and his usefulness in the service.

11. It would also be worthwhile to note that the adverse remarks as relied upon by the authority in its notice dated 12.8.2015 have not been expunged and it is only the punishment that has been set aside by the civil court. It would also be relevant to note that the issue of expunging the adverse remarks for the period 1.4.2011 to 3.11.2011 was argued before the civil court and the prayer was declined vide judgment dated 28.7.2015. In the case of **Ram Dhari vs. State of Haryana and others 2019 (3) SCT 678**, 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 to be doubtful, is enough to order his compulsory retirement. Even otherwise, the 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, relevant portion of 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 remarks in ACR for the period 1.4.2010 to 26.10.2010 reflects that honesty of the petitioner has been found doubtful, and therefore the ratio of the judgments rendered in **Ram Dhari (Supra)** and the very instructions of the State of Haryana are fully applicable to the instant case.

12. In view of the foregoing discussion, this court finds no illegality or infirmity in the impugned order passed by the respondent No.4. Accordingly, the instant writ petition is hereby dismissed.

21.9.2022

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned :	Yes
Whether Reportable :	No