

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

Reserved on 21.03.2023

**CWP No.5455 of 2023(O&M)
Date of Decision: 24.03.2023**

EASI-Satish Kumar

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sunil K. Nehra, Advocate and
Mr. Suryaveer Surjewala, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the ACR dated 29.09.2015 for the period 06.06.2014 to 08.02.2015, notice of retirement dated 18.11.2022, order dated 16.01.2023, vide which the petitioner will stand retired

w.e.f. 27.03.2023 and order dated 03.03.2023 passed by the Commissioner of Police, Gurugram, rejecting the representation of the petitioner against the adverse remarks for the period 06.06.2014 to 08.02.2015. The petitioner has also prayed for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to allow the petitioner to continue in service till the age of superannuation.

[2]. Earlier CWP No.727 of 2023 was filed by the petitioner in the context of challenging the notice of retirement dated 18.11.2022. The said writ petition was disposed of vide order dated 17.02.2023 after noticing some incriminating facts and without going into further details of the case, thereby directing the Commissioner of Police, Gurugram to consider the representation of the petitioner against the adverse remarks recorded in the ACR for the period 06.06.2014 to 08.02.2015 on merits and on legal parameters and to take a final view on the representation of the petitioner afresh by 20.03.2023 and an intimation to that effect, be conveyed to the petitioner forthwith.

[3]. In compliance of the said direction issued vide order dated 17.02.2023 in CWP No.727 of 2023, the Commissioner of Police has now passed the order dated 03.03.2023, rejecting the representation of the petitioner.

[4]. The petitioner was appointed as Constable in the year 1990 and was promoted to the post of Exemptee Head

Constable and thereafter to the post of Exemptee Assistant Sub Inspector of Police. FIR No.31 was registered against the petitioner on 18.12.2014 under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, Police Station State Vigilance Bureau, Gurugram. After the trial, the petitioner was acquitted in the said case vide judgment of acquittal dated 14.12.2016.

[5]. On the basis of involvement of the petitioner in the aforesaid criminal case, the petitioner was punished with the punishment of dismissal from service by the Punishing Authority vide order dated 14.05.2016. The appeal filed by the petitioner was dismissed by the Appellate Authority on 21.03.2017 and 30.03.2017. Thereafter, the revision petition filed by the petitioner was accepted by the Director General of Police, Haryana and the petitioner was allowed to join his duties w.e.f. 23.04.2018. The said order was passed by the Director General of Police, Haryana after considering the revision petition, departmental enquiry and the orders passed by the authorities in hierarchy. It was noticed that the petitioner was acquitted by the criminal Court on 14.12.2016 in the aforesaid FIR No.31 dated 18.12.2014 under the P.C Act. It was observed that it would not be appropriate to punish the petitioner again for the same offence, therefore, the petitioner was allowed to join his duties with immediate effect vide order dated 23.04.2018, however the petitioner was not held entitled for pay allowances

and arrears for the period, he remained out of service due to dismissal on the principle of 'no work no pay'. Before passing the order dated 23.04.2018, Annual Confidential Reports of the petitioner for the period 06.06.2014 to 08.02.2015 and 19.06.2015 to 31.12.2015 were recorded to be adverse. The petitioner filed representations against the adverse entries recorded in the aforesaid ACRs. The adverse entries recorded for the period 19.06.2015 to 31.12.2015 were expunged by the Commissioner of Police, Gurugram and the same were upgraded as 'good' vide order dated 23.06.2020. The representation filed against the adverse remarks recorded in the ACR for the period 06.06.2014 to 08.02.2015 was rejected on the ground of delay only. A civil suit was filed by the petitioner, challenging the adverse remarks and after passing of the order dated 03.03.2023, the same stands withdrawn as the same was not directed against the order dated 03.03.2023.

[6]. Learned counsel for the petitioner submitted that ACR for the period 06.06.2014 to 08.02.2015 has a general remarks column of below average on the basis of departmental enquiry initiated and the petitioner having been arrested in FIR No.31 dated 18.12.2014 under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, Police Station State Vigilance Bureau, Gurugram. Learned counsel further submitted that the reporting officer made the general remarks and in view of order

dated 23.04.2018 passed by the Director General of Police, though the remarks have to be expunged as the petitioner has already been acquitted in the criminal case. The aforesaid ACR was very much in existence when the order dated 23.04.2018 was passed by the Director General of Police, wherein the Director General of Police had examined the entire material on record including the revision petition, record of the departmental enquiry and the orders passed by the authorities in hierarchy. The order of dismissal was set aside and the petitioner was allowed to join his duties with some rider that the petitioner would not be entitled for pay and allowances for the period during which, he remained out of service on the principle of 'no work no pay'.

[7]. On the strength of the aforesaid order dated 23.04.2018, learned counsel for the petitioner submitted that the rigour of adverse entries stands diluted. Even the reporting officer has not recorded any reasons for arriving at tentative decision of remarking the performance of the petitioner 'below average'. In the subsequent ACR for the period 19.06.2015 to 31.12.2015, the entries were made in the remarks column against all the columns of ACR as 'below average'. Those remarks have been expunged by the Commissioner of Police, Gurugram vide order dated 23.06.2020 and ACR was upgraded as 'good'.

[8]. With reference to the notice of retirement, learned counsel for the petitioner submitted that in **CWP No.8138 of 2012** titled **ASI Krishan Singh Vs. State of Haryana and others** decided on 15.01.2014, the Court has considered Rule 9.18 of Punjab Police Rules, which relates to retiring pension. Rule 9.18 (c) of the Punjab Police Rules, relates to official who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less than three months' notice.

[9]. Perusal of the aforesaid Rule and Note attached therewith would indicate that the appointing authority retains an absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reasons. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years. The Inspector General of Police may, with the previous approval of the State Government, compulsorily retire any police officer, other than an officer belonging to Indian Police Service or Haryana State Police Service, who has completed 25 years qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement. Note 2 attached to Rule 9.18(2) would show that the officer shall be given an adequate opportunity of making any representation that he may desire to

make against the proposed action and such representation shall be taken into consideration before his compulsorily retirement is ordered. In all cases of compulsorily retirement of enrolled police officers, the Inspector General of Police shall effect such retirement only with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time.

[10]. Learned counsel for the petitioner further submitted that under Rule 9.18(c) of the Punjab Police Rules, there is no power available to issue notice for retirement and the power is only available under Rule 9.18(2) and the said power has to be exercised only after obtaining prior approval from the State Government. The ratio laid down in **ASI Krishan Singh's case (supra)** has been upheld in **LPA No.725 of 2014** titled **The State of Haryana and others Vs. ASI Krishan Singh** vide order dated 14.01.2015. The State remained unsuccessful in **Special Leave to Appeal (C) No(s).17945 of 2015**, which was dismissed by the Hon'ble Apex Court vide order dated 12.07.2016.

[11]. Learned State counsel, however, opposed the prayer on the ground that under Rule 9.18(c) of the Punjab Police Rules, no approval is required from the State Government before compulsorily retiring any police officer. The requirement of approval is only under 9.18(2) when a police officer is to be

retired after completion of 25 years of qualifying service.

Learned State counsel referred to **Ram Dhari Vs. State of**

Haryana and others, 2019(3) SCR 678(DB) and **CWP No.1745**

of 2022 titled **Raj Bala Vs. State of Haryana and others**

decided on 24.03.2022, against which, LPA has already been

withdrawn vide order dated 04.05.2022. With reference to the

aforesaid precedents, learned State counsel submitted that Rule

9.18 of Punjab Police Rules would show that it is only in case of

compulsory retirement of an officer upon attaining the age of 25

years of qualifying service under Sub Rule (2), the previous

approval of the State Government is required and not in case,

where an officer is retired by the appointing authority on or after

he attains the age of 55 years, by giving him not less than three

months notice, as has been prescribed in Clause(c) of Sub Rule

(1) of Rule 9.18 of Punjab Police Rules. Note 2 appended to

Sub Rule (2) further makes it clear that it cannot be read in

conjunction with Sub Rule (1). The difference between the

applicability of two provisions i.e. ordering premature retirement

of an employee on attaining the age of 55 years in public

interest by invoking Rule 9.18(1)(c) and by compulsorily retiring

a person on completing 25 years of qualifying service, has to be

appreciated in the light of Division Bench judgment passed in

Ram Dhari's case (supra), where distinction has been made in

following paragraphs, which are reproduced hereasunder:-

“9. It is only in case of compulsory retirement under Sub Rule (2) the previous approval of the State Government is required. Different procedure envisaged in the contingency of retirement of a police official on attaining the age of 55 years or at any time thereafter and retirement of a police official on completion of 25 years of qualifying service admits no ambiguity.

10. Note appended to Sub Rule 1 makes it abundantly clear that for retiring a police official on or after he attains the age of 55 years, whosoever may be the Appointing Authority, has an absolute right of retiring him without assigning any reason. Any previous sanction from the Government is not stipulated in this contingency. However, if the police official is to be retired on completion of 25 years of service, then sub rule (2) comes into operation which empowers the Inspector General of Police to compulsory retire the police official only after seeking previous sanction of the State Government.

11. In the case in hand it is undisputed that the appellant-petitioner had attained the age of 55 years and the impugned three months notice dated 16.07.2015 for retirement was issued to him in exercise of the powers conferred by Rule 9.18(1)(C) of the Punjab Police Rules, Volume-1.

12. The irresistible conclusion in the facts and analysis of Rule 9.18 is that there was no requirement of any previous sanction from the Government and notice was validly issued and the impugned order 02.10.2015 retiring the appellant-petitioner from service is not visited with any illegality for want of any previous

sanction from the State Government. Thus the first argument advanced by learned counsel for the appellant does not merit any consideration.”

[12]. The difference between applicability of aforesaid two provisions has also been dealt by this Court in **CWP No.13021 of 2014** titled **Balwant Singh Vs. The State of Haryana and others** decided on 05.02.2018, wherein it has been held that the premature retirement of police officer upon attaining the age of 55 years is not required to be preceded by approval of State Government. The approval of the State Government is necessary only before ordering compulsory retirement of officer after completion of 25 years of qualifying service. The views expressed in **Balwant Singh's case (supra)** and **Ram Dhari's case (supra)** were further upheld by the Division Bench in **LPA No.1890 of 2018** decided on 22.01.2019. The similar view has been followed in **Raj Bala's case (supra)**.

[13]. The Division Bench of this Court in **Babu Ram Walia Vs. State of Haryana and others, 2007(1) SCT 288** has upheld the order retiring a police officer after attaining the age of 55 years by the competent authority by observing that the competent authority has an absolute right to consider the entire service record of the police officer in order to weed out the deadwood, inefficient and dishonest officer and compulsorily retire such officer in the public interest. The aforesaid judgment

passed by the Division Bench in **Babu Ram Walia's case (supra)** was not brought to the notice of the Court in **ASI Krishan Singh's case (supra)**. The main question for consideration is whether adverse remarks recorded in the Annual Confidential Report, where the honesty to be reported as doubtful, would create a stigma after the retirement of the police officer.

[14]. In **Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, AIR 1992 SC 1020**, the Hon'ble Apex Court has held that an order of compulsory retirement is not a punishment and it applies no stigma. Such orders are passed on the subjective satisfaction of the competent authority and even the principles of natural justice have no place in this context. The judicial scrutiny by the Court is limited only on the ground of *mala fide* or where such an order is based on no evidence or the order is arbitrary in the sense that no reasonable person would form such an opinion on the basis of material i.e. the order being totally perverse in nature.

[15]. The Hon'ble Apex Court again considered the aforesaid question in **National Aviation Company of India Ltd. Vs. S.M.K. Khan, 2009(2) SCT 442 AIR 2009** by observing that the order of compulsory retirement in pursuance of a rule which

enables the competent authority to prematurely retire an employee, on the formation of *bona fide* opinion that continuation of the employee in service will not benefit the Institution or will not be in public interest on the basis of review of the performance/service record of such employee, then the same is not open to challenge as it is neither a punishment nor the same is stigmatic in nature. Where the compulsory retirement is not by way of punishment for misconduct, but the same is an action taken in pursuance of a valid condition of service, enabling the employer to prepone the retirement, then the action need not be preceded by any enquiry and the principles of natural justice have no application. 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 he should be retired compulsorily. Such compulsory retirement is different and distinct from imposition of a punishment of compulsory retirement on a definite charge of misconduct. 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 dead wood or liability for the employer. Secondly, the record of service, which may include poor performance,

unsatisfactory service or incidentally any recent conduct when considered as a whole, leads the reviewing authority to the conclusion that the employee 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 will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct. Any order of compulsory retirement in terms of rule providing for such compulsory retirement is not open to interference unless shown to be *mala fide* or arbitrary or not based on any material on record. Reference can be made to **Baikuntha Nath Das case (supra), Allahabad Bank Officers Association Vs. Allahabad Bank, 1996 (4) SCC 504, I.K. Mishra Vs. Union of India, 1997 (6) SCC 228, State of Uttar Pradesh Vs. Lalsa Ram, 2001 (3) SCC 389 and M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 (6) SCC 224.**

[16]. The view expressed in **Balwant Singh's case (supra)** was expressed by the Division Bench in **Shamsher Singh Vs. State of Haryana and others, 2008 (2) SCT 616** and it was held that the premature retirement at the age of 55 years by the competent authority is not by way of a punishment and the same does not cast any stigma and has to be based on the

objective consideration of the entire service record of the employee with greater emphasis on the Annual Confidential Reports of later periods. The appointing authority has an absolute right to retire any police officer at the age of 55 years without assigning any reason, the reason of course being that there was an adverse entry in his ACR reflecting on the integrity of the officer.

[17]. The aforesaid judgment was not brought to the notice of the Bench at the time of consideration of **ASI Krishan Singh's case (supra)**. SLP in **ASI Krishan Singh's case (supra)** was dismissed at the preliminary stage.

[18]. The rejection of the representation of the petitioner in compliance of order dated 17.02.2023 passed in CWP No.727 of 2023 has been made on the premise that the comments of the reporting officer have been obtained, wherein the reporting officer categorically stated that the recording of ACR of an employee is the subjective satisfaction of the reporting officer. The remarks below average were rightly recorded in ACR as per Government instructions issued from time to time. The order further shows that the Commissioner of Police on perusal of the record, obtained the comments of reporting officer and also gave a personal hearing to the petitioner. The Commissioner of Police has also appreciated the order of acquittal of the petitioner in the criminal case on technical infirmities in the

investigation. The reporting officer has recorded the adverse remarks for the period in question and during that period, the FIR was registered against the petitioner and departmental proceedings were opened. The petitioner was found to be guilty in the departmental proceedings. The order does not refer to the order passed by the Director General of Police dated 23.04.2018, wherein it was specifically observed that the Director General of Police had examined the relevant record of the departmental enquiry and orders passed by the authorities in hierarchy and after perusing the entire record, Director General of Police had passed the order, setting aside the order of punishment and allowed the petitioner to join his duties immediately. The order dated 03.03.2023 to that extent is silent.

[19]. The issue as regards requirement of giving reasons by the reporting authority needs to be appreciated in the light of conflicting views of different Courts. The matter stands referred to Larger Bench in **CWP No.20171 of 2010** titled **Dharamvir Singh Vs. State of Haryana and others** pronounced on 05.10.2015.

[20]. After going to the reference order and other judgments i.e. **CWP No.15070 of 1993** titled **Des Raj Vs. State of Haryana and others** decided on 28.11.1994, **CWP No.11695 of 1993** titled **D.N. Dalal Vs. The State of Haryana etc.**

decided on 30.11.1994, **LPA No.362 of 2011** titled **Davinder Singh Vs. State of Haryana and others** decided on 11.05.2011 and **LPA No.94 of 2010** titled **The Punjab and Haryana High Court at Chandigarh through its Registrar (Rules) Vs. Dewan Chand and others** decided on 21.12.2013, I find that the judgments of the Hon'ble Apex Court in **Amrik Singh Vs. Union of India, 2002 AIR (Supreme Court) 2382** and **Union of India Vs. Lt. General Rajendra Singh Kadyan and another, 2000(3) SCT 1037 (SC)** were not brought to the kind notice of this Court, wherein it has been appreciated that it is subjective satisfaction of the reporting officer to make entry in the ACR and judicial review is not possible and scope of jurisdiction of the Court is very limited and the Court cannot go into the correctness of the adverse remarks, nor into the assessment made by the authorities. The issue is still pending before this Court and this Court can take note of all the precedents on the subject.

[21]. The *prima facie* view of the controversy can be appreciated in the light of latest judgment of the Division Bench of this Court in **Ram Dhari's case (supra)** and **Raj Bala's case (supra)**, wherein it has been prescribed that for retiring a police official at the age of 55 years, no prior sanction is required. It is only in case of compulsory retirement under Sub Rule 2, the

approval of the State Government is required. The different procedure has been envisaged in the contingency of retiring a police official on attaining the age of 55 years or on completion of 25 years of qualifying service and there is no ambiguity at all. [22]. In view of aforesaid facts and circumstances of the case, I find no ground to interfere in this writ petition. The present writ petition is accordingly dismissed.

24.03.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No