

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19636-2023 (O&M)
Date of Decision:- 22.9.2023

Rajpal SharmaPetitioner
Versus
State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Lalit Goyal, Advocate for the petitioner.
Mr. Inderpreet Singh Kang, AAG Punjab.

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GURVINDER SINGH GILL, J.

1. The petitioner had been appointed as a Constable in Sports Category in Punjab Police on 13.12.1991 and was promoted as Ad-hoc rank ASI on 26.11.2011. However, vide impugned order dated 21.8.2023 (Annexure P-4), the petitioner as well as 13 other police officials have been ordered to be retired pre-maturely by an order passed by the Commissioner of Police, Amritsar. By way of filing this petition, the petitioner seeks issuance of a writ of certiorari for quashing of said dated 21.8.2023 (Annexure P-4) qua the petitioner.
2. Learned counsel for the petitioner submitted that he had always been performing his duties to the satisfaction of his superiors and had also been honoured with a First Grade Appreciation Letter by the Deputy Commander of Police, Amritsar City on 26.2.2013 (Annexure P-2). It has further been submitted that recently when the petitioner was required to go abroad to meet

his son, he was granted permission by the respondent-department by clearly mentioning that no departmental enquiry or criminal case is pending against him, as is stated in order dated 15.8.2023 (Annexure P-3). The learned counsel submitted that under these circumstances, there was no occasion to have forcibly retired the petitioner who had put in more than 31 years of service and that too without issuing any show cause notice to the petitioner. It has further been submitted that dismissal of petitioner at this stage would surely cause a stigma on him and that he could be retained in service while assigning any lesser important assignment, in case for any reason the respondents nursed some doubts about efficiency of petitioner.

3. The learned State counsel, upon whom an advance copy of petition had already been served, submitted that as per provisions of Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (as amended in 2014), the case of each of the officers/officials is to be reviewed upon completion of qualifying service of 15, 20, 25, 30 and 35 years for the purpose of considering as to whether they should be retained further in service or not and that since the petitioner was not found fit to be retained further in service, therefore, he has been ordered to be retired. The learned State counsel, pursuant to a direction issued on the last date of hearing, has furnished a copy of letter dated 11.9.2023, accompanied by some documents indicating the record of the petitioner, addressed by the Commissioner of Police, Amritsar to the Advocate General, Punjab which is taken on record.
4. Before proceeding further, it is apposite to refer to provisions of Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 (as amended in 2014), which is extracted herein-under:

3. **Premature Retirement. -**

- (1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes fifteen years or twenty years or twenty five years or thirty years or thirty five years, as the case may be, of qualifying service on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months :

Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

- (2) Any Government employee may, after giving at least three months' previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

- (3) (a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

- (4) The employee, who has elected to retire under sub-rule (2) or sub-rule(3) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specific approval of the appropriate authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

Note 1 -An employee may make a request, in writing, to the appropriate authority to accept notice of less than three months giving reasons therefor and such a request for the curtailment of the period of notice shall be considered on merit and if the appropriate authority is satisfied that such curtailment will not cause any administrative inconvenience it may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice period of three months.

Note 2 - If an employee retires under sub-rule (2) or (3) above while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered as provided in rule 8.119 (d) of the Punjab Civil Services Rules, Volume I, Part I.

Note 3 - In computing the notice period of three months referred to in rule 3, the date of service of the notice and the date of its expiry shall be excluded."

5. A perusal of Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (as amended in 2014 & 2016), reveals that the State

Government, undisputedly, is vested with an absolute right to retire an employee upon his completion of qualifying service of 15, 20, 25, 30 and 35 years, if it is found that it would not be in 'public interest' to further retain such employee in service. Needless to mention such opinion has to be based on performance and record of employee concerned particularly during the last few years. Stale record can not be made a basis for reaching at such an opinion.

6. It is the words 'public interest', which hold the key to understand the purpose of incorporation of this provision and also to examine the propriety of its application in a given case.
7. Hon'ble Apex Court in case of Union of India v. Col. J.N. Sinha and another, 1970 (2) SCC 458, while interpreting similar provisions held that the objective of premature retirement of a Government servant was to weed out the inefficient, corrupt, dishonest employees from Government service. Hon'ble the Apex Court in State of Gujarat and another v. Surya Kant Chunni Lal Shah, 1999 (1) SCC 529, dwelled on the words 'public interest' as under:

"11. What is 'public interest' was explained in the classic decision of this Court in **Union of India v. Col. J.N. Sinha and another, 1970 (2) SCC 458**. It was pointed out that the object of premature retirement of a Govt. servant was to weed out the inefficient, corrupt, dishonest employees from the Govt. service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead-wood, are to be dispensed with. The Court observed:

"Compulsory retirement involves no civil consequences. The aforementioned rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with, the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular

post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of the public. 'While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.....

"It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment.

In our opinion the high Court erred in thinking that the compulsory retirement involves civil consequences."

8. A similar view was taken in Gian Singh Mann v. High Court of Punjab and Haryana and another, 1980 (4) SCC 266, wherein it was pointed out that the expression 'public interest' in the context of premature retirement has a well settled meaning and that the same refers to cases where the interests of public administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency competency and utility called for by the Government service to which he belongs. Similar is the ratio of judgment reported as H.C. Gargi v. State of Haryana, 1986 (4) SCC 158.
9. In Union of India v. M.E. Reddy and another, 1980 (2) SCC 15, Hon'ble Supreme Court, while observing that the object of compulsory retirement

was to maintain a high standard of efficiency, also clarified that the same was not stigmatic. The relevant extract reads as under:

“9. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfills the conditions of Rule 16 (3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, the general impression which is carried by most of the employees that compulsory retirement under these conditions involves some sort of stigma must be completely removed because Rule 16 (3) does nothing of the sort.”

10. It was further held in M.E.Reddy's case(supra) that the safety valve of ‘public interest was the most powerful and the strongest safeguard to ensure that such provisions are not misused. A three Judge Bench of Hon’ble Supreme Court in Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another, 1992(2) SCC 299, laid down the following five principles :

- (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 un-communicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

11. Hon'ble Apex Court in Baikuntha Nath Das's case (supra), further went on to hold that interference by Courts in decisions taken by State with regard to pre-mature retirement is permissible but only in case the order passed is mala fide or is based on no evidence or found to be perverse.

12. Another three Judge Bench of Hon'ble Apex Court in Posts & Telegraphs Board and others v. C.S.N. Murthy, 1992 (2) SCC 317, while reiterating the ratio of Baikuntha Nath's case(supra), also defined the scope of interference in such orders of pre-mature retirement of an employee, while observing as under:

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record."

(emphasis supplied)

13. Similar view has been taken by Hon'ble the Apex Court in Union of India v. Ajoy Kumar Patnaik, 1995 (4) SCT 692 (SC) as well as in Chandra Saikia v. State of Assam (2003) 4 SCC 50.
14. Coming back to facts of the present case, the learned State counsel, pursuant to a direction issued on the last date of hearing, has furnished a copy of letter dated 11.9.2023, accompanied by some documents indicating the record of the petitioner, addressed by the Commissioner of Police, Amritsar to the Advocate General, Punjab. The relevant contents from the same are extracted herein-under:

“Bad Entries”

1	Awarded punishment of one year (1) approved service forfeited on temporary basis, entailing effect on his increment, vide order No. 428-33/Steno dated 16.02.2011, on the allegations that he was posted as MHC PS Jandiala Guru. He was transferred from there, but he did not gave his charge/papers to the next MHC.
2	Awarded Punishment of Censure, vide order No. 888-93/PA dated 18.02.2014, on the allegations that he was relieved on 18.07.2012 from District Tarn Taran to District Amritsar Rural, but not reported in District Amritsar Rural and remained absent from 18.07.2012 to 09.08.2012.
3	Awarded Punishment of Censure, vide order No. 3970-73/PA dated 25.08.2014, on the allegations that he was posted at Traffic Staff, but he did not fixed high security number plate on his own car as per rules.
4	Awarded Punishment of Censure, vide order No. 4797-4801/PA dated 16.10.2014, on the allegations that he remained absent from duty from 07.07.2014 to 27.07.2014.
5	Awarded Punishment of Censure, vide order No. 47735-37/A-6 dated 28.11.2014, on the allegations that while he was under suspension, he appeared before the Commissioner of Police, without uniform i.e. wearing Jean and T-Shirt.
6	Awarded punishment of Two (2) years approved service forfeited on permanent basis, entailing effect on his increments vide order No. 1041- 46/PA dated 25.03.2015, on the allegations that while he was posted in Traffic Staff Zone No. 3 Amritsar, his actual rank is HC/PP, but he wear uniform of ASI rank which is illegal and misbehaved with general public.

7	Awarded punishment of Censure. vide order No. 30142-44/A-2 dated 14.07.2016, on the allegations that while he was posted as LR/ASI at PP Butter of PS Mehta, he was informed/directed to attend Crime Meeting of DSP on 09.07.2016 at 10-00 AM, but he did not attend meeting.
8	Awarded punishment of one (1) year approved service forfeited on temporary basis, entailing effect on his increment, vide order No. 3207-12/PA dated 29.11.2019, on the allegations that while he was posted as Ic PP Nawa Pind, he caught two person (1) Tarsem Singh (2) Ranjit Singh alongwith Heroin, but he did not take any legal action against them and released them and handed over to Baldev Singh Sarpanch.
9	Awarded punishment of one (1) year approved service forfeited on temporary basis, entailing effect on increment, vide order No. 3213-18/PA dated 29.11.2019, on the allegations that while he was posted as I/c PP Nawan Pind and was detailed to produced record of CRM No. 23152-M-2015 on 26.09.2016 in the Hon'ble Punjab & Haryana High Court, Chg. This case was adjourned to 23.11.2016, but he did not inform about next date of hearing in the Police Station.
10	Awarded punishment of one (1) year approved service forfeited on temporary basis, entailing effect on increment, vide order No. 3219-21/PA dated 29.11.2019, on the allegations that while he was posted in Commissionerate of Police, ASR- City, a complaint bearing No. 2297/PC/COP dated 15.07.15 submitted by Shri Surjit Chand S/o Niranjana Dass, r/o Mohini Park, after its enquiry a case FIR No. 37 dated 16.03.2016 U/s 419/420/465/402/471 IPC PS Cantonment, Amritsar was registered against him, due to this he was also placed under suspension.
11	Awarded punishment one (1) year approved service forfeited on temporary basis entailing effect on increment, vide order No. 3226-30/PA dated 29.11.2019, on the allegations that while he was detailed at Naka Kamalpur duty, he remained absent from duty for 12 days and 35 minutes.
12	Awarded punishment of one (1) year approved service forfeited on temporary basis, entailing effect on his increment, vide order No. 3231-35/PA dated 29.11.2019, on the allegations that while he was posted at PS Jandiala, the record of case FIR No. 51/2015 U/s 324/336/148/149 IPC, 25 Arms Act, PS Jandiala, regarding bail, was to be produced in the court on 15.10.2016 and 20.10.2016, but he did not produce before the court.
13	Awarded punishment of Censure vide order No. 743-46/Steno dated 10.06.2021, on the allegations that he did not got recorded evidence of case FIR No. 24 dated 30.03.2016 U/s 379-B/394 IPS, PS Mehta, regarding weapon 02 Dator and 01 knife, in the court on 11.02.2019.

14	Awarded punishment of Censure, vide order No. 719-22/Steno dated 10.06.2021, on the allegations that he recovered naseela powder from the accused of case FIR 93 dated 27.05.2015 U/s 22/61/85 NDPS Act, PS Kanbo, but during investigation he did not comply the instruction 50 of NDPS Act.
15	Awarded punishment of Censure, vide order No. 739-42/Steno, on the allegations that he registered a case FIR No. 60 dated 28.09.2017 U/s 379 IPC, 25 Telegraph Act, 1985, PS Matewal and investigated, but on his transfer from PS Matewal, he did not hand over this Police file to the next Incharge.
16	Awarded punishment of Censure, vide order No. 732-38/Steno dated 10.06.2021, on the allegations that while he was posted as I/c PP Udoke, PS Matewal, a police file of case FIR No. 37 dated 17.05.2017 for investigation, but on his transfer from PP Udoke, he did not hand over this police file to the next Incharge.
17	Awarded punishment of Censure, vide order No. 727-30/Steno dated 10.06.2021, on the allegations that, a police file of case FIR No. 61 dated 22.03.2019 U/s 61/1/14 Excise Act PS Lopoke was marked to him for investigation, but he did not do any efforts to arrest the accused for the period from 28.3.19 to 20.2.2020 = 11 months.
18	Awarded punishment of Censure, vide order No. 747-50/Steno dated 10.6.2021, on the allegations that while he was posted at Anti Narcotic Cell, Amritsar Rural, he arrested a accused Gorav Singh in case FIR No. 90 dated 27.5.15 U/s 22/61/85 NDPS Act, PS Kamboj and recovered Naseela Powder and investigated the case, but the court acquitted the accused, because he (I/O) was local rank officer.
19	Awarded punishment of Censure, vide order No. 723-26/Steno dated 10.6.2021, on the allegations that while he was posted at Anti Narcotic Cell, Amritsar Rural, he arrested a accused Murat Singh in case FIR No. 146 dated 07.09.2019 U/s 22/61/85 NDPS Act, PS Kamboj and recovered Naseela Powder and investigated the case, but the court acquittcd the accused, because he (I/O) was of local rank officer.
20	Awarded punishment of Censure vide order No. 731-34/Steno dated 10.06.2021, on the allegations that a bail application of case FIR No. 123 dated 30.5.2020 U/s 420/120-B IPC PS Lopoke, accused Amandeep Dogra, was fixed for hearing in the Court of Shri Harjit, ASI, Amritsar, but he did not produced the relevant record of the case before the court.
21	Awarded punishment of Censure, vide order No. 751-55/Steno dated 10.6.21, on the allegations that, he was detailed for Incharge Naka duty second line of defense, border Kamalpur, night shift, but on checking he found absent from duty on 20.03.2018.

22	Awarded punishment of Censure, vide order No. 29931-34/Steno dated 10.08.21, on the allegations that he caught a person Kaka resident of village Padde, Batala and recovered drug from him, but later on he released him after taking money from him.
23	Awarded punishment of Censure, vide order No. 29935-38/Steno dated 10.08.21, on the allegations that while he was posted at Police Lines, Batala, he found absent on 08.04.2021 from evening roll call.
24	Awarded punishment of two (2) years approved service forfeited on permanent basis, entailing effect of increments, vide order No. 2736-42/PA dated 01.06.2023, on the allegations that from duty for the period from 18.11.2021 to 29.12.2021 = 41 days, 15 hours and 10 minutes.
25	Awarded punishment of One (1) year approved service forfeited on permanent basis, entailing effect on increment, vide order No. 2743-49/PA dated 01.06.2023, on the allegations that he remained absent from duty for the period from 26.07.2021 to 14.09.2021 = 50 days, 08 hours and 10 minutes.
26	Awarded punishment of two (2) years approved service forfeited on permanent basis, entailing effect on his increments, vide order No. 4148-54/PA dated 08.06.2023, on the allegations that he was transferred from district Batala to Amritsar City, on clearance certificate he made forged signatures of different officials of branches and got relieve/departure.

As per above Bad record/Entries

Service Forfeited on Permanent basis vide different orders.	Seven (7) years.
Service Forfeited on temporary basis vide different orders.	Six (6) years.
Censure vide different orders.	16 (Sixteen) times.
Absent which has been treated as non duty without pay on different times.	190 days.

15. The aforesaid instances of punishments on various occasions would indicate that the past conduct of the petitioner certainly cannot be said to be up to the mark. There are instances of absence on several occasions. He was involved in a criminal case as well. He was also found to have forged official record. There are instances of petitioner not having taken action against offenders

despite having come to know about the offence having committed and even having accepted money for extending undue favours. The said instances can not even be said to be stale instances and majority of them are with respect to period after he was granted ad-hoc promotion as ASI. Hon'ble the Apex Court in case of Rajasthan State TPT Corporation and another v. Bajrang Lal, 2014 (2) SCT (620), while following judgment rendered in Municipal Committee, Bahadurgarh v. Krishna Bihari and others, 1996 (2) SCT 508, held that in cases involving corruption, there cannot be any punishment other than dismissal from service. It has also been held that any sympathy shown in such cases is totally uncalled for and would be contrary to public interest. By considering the service record of petitioner, as reproduced above, it cannot be said that his service record was clean. Needless to mention, the petitioner being a member of the police force was required to maintain the highest standards with regard to his conduct and discipline whereas his past record shows that he has disregarded the said basic requirements as regards conduct which are expected of a police official. Retaining such a person in disciplined force would certainly be not in public interest. As such, no fault can be found in the decision of the respondent - Commissioner of Police, Amritsar in ordering retirement of the petitioner in terms of provisions of Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975. This Court does not find any ground to interfere with the impugned order and the same is hereby upheld.

16. The petition is found to be sans merit and is hereby dismissed.

22.9.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned : Yes.
Whether Reportable : Yes.