

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

Date of Reserve: 21.03.2023

Date of Decision: 23.03.2023

1. CWP No.28499 of 2022 (O&M)

ASI Randhir SinghPetitioner

Vs

State of Haryana and othersRespondents

2. CWP No.296 of 2023 (O&M)

ASI Randhir SinghPetitioner

Vs

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. R.K. Malik, Senior Advocate with
Mr. Digvijay Singh, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CWP No.28499 of 2022 and CWP No.296 of 2023 are being decided. Since both the petitions involve similar question of law and fact, therefore, for brevity common facts are being noticed.

[2]. The petitioner was appointed as Constable on 01.10.1989. He was promoted to the post of Head Constable in the year 1996 and was further promoted by way of selection on

the post of ASI in the year 2015. On 02.05.2022, the petitioner was conveyed the adverse remarks recorded in the Annual Confidential Report (for short 'the ACR') for the period from 01.04.2021 to 15.02.2022. The petitioner filed detailed representation against the adverse remarks on 17.05.2022. The representation was rejected on 05.07.2022. The petitioner filed representation to the Director General of Police and the same was held to be not maintainable being the second representation.

[3]. Learned Senior counsel for the petitioner submitted that there was no adverse entry in the service record of the petitioner from the year 1993 to 31.03.2021 except the adverse remarks recorded in the ACR for the period from 01.04.2021 to 15.02.2022. The aforesaid remarks were recorded by the respondent No.5 due to some personal *mala fide* and the same are liable to be expunged. While recording the aforesaid adverse entry in the ACR, the respondent No.5 has relied upon two pending departmental enquiries and one order dated 16.08.2021 vide which three future increments of the petitioner were stopped with permanent effect. The said punishment imposed upon the petitioner vide order dated 16.08.2021 was set aside vide order dated 30.09.2021, therefore, the aforesaid punishment cannot be relied. The respondent No.5 also relied

upon pending enquiries which were not decided. In one of the pending departmental enquiry, the petitioner was exonerated vide order dated 12.10.2022. While recording the adverse remarks in the ACR for the period from 01.04.2021 to 15.02.2022, the Reporting Officer has relied upon two pending departmental enquiries and one punishment dated 16.08.2021.

[4]. Learned Senior counsel further submitted that the departmental enquiries were not related to the period from 01.04.2021 to 15.02.2022. One of the departmental enquiry was related to the period from the years 2013 to 2017 and in second departmental enquiry, the petitioner had already been exonerated vide order dated 12.10.2022 passed by the Superintendent of Police, Kaithal. In another enquiry which was also not pertaining to the period from 01.04.2021 to 15.02.2022, an order was passed on 29.09.2022 thereby stopping one increment by the competent authority. In the appeal filed against the stoppage of one increment with permanent effect, the Inspector General of Police vide order dated 30.11.2022 converted the same into stoppage of one increment with temporary effect. Therefore, recording of adverse remarks on the basis of allegations are punitive in nature. Evidently, the report can be downgraded on the basis of punishment pertaining to the period in which misconduct has been

committed.

[5]. Learned Senior counsel further submitted that recording of adverse remarks on the basis of alleged misconduct not relating to the period from 01.04.201 to 15.02.2022 is wholly illegal. While recording the confidential report, the reporting officer cannot rely upon pendency of departmental enquiry rather pendency of departmental enquiry does not mean that the employee is guilty of any charge, therefore, the adverse entry on the face of it is illegal and is liable to be expunged.

[6]. Learned Senior counsel further submitted that as of now the punishment has already been set aside by the appellate authority in the first departmental enquiry. In the second departmental enquiry, the petitioner has been exonerated and in the third departmental enquiry, only minor punishment of stoppage of one increment that too with temporary effect has been passed, therefore, the adverse remarks conveyed to the petitioner are not based on any material and the same has been made solely on the basis of adverse report. The petitioner has been issued a show cause notice dated 23.12.2022 proposing to retire the petitioner compulsorily on attaining the age of 55 years. The petitioner is proposed to be retired w.e.f. 25.03.2022 in view of Rule

9.18(l)(c) of Punjab Police Rules.

[7]. Learned Senior counsel further submitted that the order of compulsory retirement is stigmatic as the compulsory retirement is sought to be inflicted on the basis of integrity of the petitioner being doubtful. Learned Senior counsel for the petitioner relied upon **R.K. Panjetha vs. Haryana Vidyut Prasaran Nigam Ltd., 2002(10) SCC 590** and **S.B. Panihar vs. Haryana Vidyut Prasaran Nigam Limited, 2002(2) SLR 490.**

[8]. Lastly, learned Senior counsel submitted that the reporting officer was required to give reasons while recording adverse remarks. Since there is no material available before the reporting officer and no reasons have been given, therefore, consequent action based on adverse entry is not legally sustainable. With reference to the instructions dated 22.10.2001 issued by the Chief Secretary, Government of Haryana, learned Senior counsel submitted that the punishment must relate to the period for which the adverse remarks has been made in the ACR.

[9]. From the pleadings and submissions made by the parties, following two issues arise for consideration by this Court:-

(i) Whether the reporting officer of the adverse

ACR is bound to record reasons while making adverse entry in the ACR?

(ii) Whether a person can be compulsorily retired in terms of Section 9.18(I)(c) of the Punjab Police Rules in public interest without assigning any reasons?

[10]. The rejection of representation of the petitioner has been made on the ground that the adverse entry has been made on the basis of subjective satisfaction of the reporting officer and his subjective satisfaction has been endorsed by the authority in hierarchy. The issue as regards the requirement of giving reasons by the reporting officer needs to be appreciated in view of judgments of the Hon'ble Apex Court in **Amrik Singh vs. Union of India, 2002 AIR (Supreme Court) 2382** and **Union of India and others vs. Lt. General Rajendra Singh Kadyan and others, 2000(3) SCT 1037 SC**, wherein it was held that it is the subjective satisfaction of the reporting officer to make entry in the ACR and no judicial review is possible and the scope of jurisdiction of the Court is very limited and the Court cannot go into correctness of the adverse remarks nor into the assessment made by the reporting officer.

[11]. Though the issue in question has been referred to the Larger Bench by the Single Bench of this Court in view of

conflicting judgments by the different Courts. The case(s) of **Amrik Singh** and **Union of India and others vs. Lt. General Rajendra Singh Kadyan and others**, (supra) were not brought to the notice of the Court at the time of making reference to the Larger Bench. Secondly in view of Division Bench Judgment of this Court in **Ram Dhari vs. State of Haryana and another, 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, it is only in case of compulsory retirement under Sub-Rule (2), the previous approval of the State Government is required. Different procedures 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 police official on completion of 25 years of qualifying service admits no ambiguity. The 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 by 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 officer 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 police official only after seeking previous

sanction of the State Government.

[12]. It is undisputed that the petitioner will attain the age of 55 years on 24.03.2023 and three months notice for retirement has also been issued to him in exercise of powers conferred under Rule 9.18(I)(C) of Punjab Police Rules, Volume I, therefore, there is no requirement of any previous sanction from the Government. The difference between the applicability of the 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 premature compulsory retirement of police officer at the age of 55 years is not required to be preceded by approval of the State Government. The approval of the State Government is necessary only before ordering compulsory retirement of such official on completion of 25 years of qualifying service. The view expressed in **Balwant Singh's** case (supra) has also been upheld by the Division Bench of this Court in Letters Patent Appeal and in view of observations on both material issues, the issue as regards the adverse entry being punitive does not arise as the reporting officer has made his subjective satisfaction on the basis of day to day appreciation of work and conduct of the delinquent and in such a situation the subjective satisfaction of the reporting officer while making entry

in the ACR cannot be subjected to judicial review and the interference of the Court is very limited and the Court cannot go into the correctness of adverse remarks nor into the assessment made by the reporting officer. The ratio(s) of judgments as cited by learned Senior counsel for the petitioner cannot be appreciated in view of consideration on the aforesaid two points.

[13]. 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.

[14]. 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. The aforesaid precedents were not brought to the knowledge of the Court during the proceedings of the case titled '**ASI Krishan Singh vs.State of Haryana & Others**' decided on 15.01.2014 which was upheld in the LPA and the SLP was also dismissed at preliminary stage.

[15]. For the reasons recorded hereinabove, I find no justification to interfere in both the writ petitions and the same

are accordingly dismissed.

[16]. All pending civil misc. application(s) are also disposed of.

March 23, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No