

2024:PHC:107713



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

CWP-4576-1999(O & M)

Date of decision:20.08.2024

Balraj Kohli (deceased) through LRs.

..... petitioner

VS

The Union of India & others

..... respondents

CORAM : HON'BLE MR. JUSTICE ALOK JAIN

Present :- Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Brijesh Khosla, Advocate and
Ms.Shreya Kaushik, Advocate
for the petitioner

Mr.Pankaj Gupta, Senior Panel Counsel for UOI with
Mr.Vaibhav Gupta, Advocate
for respondents No.1,2 and 5.

ALOK JAIN, J. :

1. Prayer in the present petition is for issuance of a writ in the nature of Certiorari or any other direction for quashing of the order dated 12.03.1999 (Annexure P-26), whereby the petitioner had been prematurely retired from service and for grant of other consequential benefits.

2. Brief facts of the case are that the petitioner was appointed as Deputy Superintendent in Central Reserve Police Force (hereinafter referred to as 'CRPF'), which post was re-designated as Assistant Commandant in the year 1972 and was confirmed in service as such w.e.f. 17.08.1987, vide order dated 31.08.1987 (Annexure P-2). Subsequently, the petitioner was promoted as Deputy Commandant vide order dated 07.09.1988 (Annexure P-4), despite having four adverse reports against him. In the year 1988, the petitioner was

given a posting at Jammu and Kashmir. However, a charge sheet was issued to the petitioner on 10.07.1990, and the allegation was that during the period of leave in September 1989, the petitioner stayed at 'F' coy, 40 Bn, HQR, Khadi Bhandar Building Jalandhar and committed misconduct on 08.09.1989, by dismantling the brick wall in the premises of F/40 Bn CRPF and tried to take away the bricks with the help of 5 civilians and on being requested not to dismantle and take away the bricks by Head Constable Sukh Ram and LNK Anup Singh of F/40 Bn. CRPF, the petitioner inflicted grievous injuries to HC Sukh Ram and LNK Anup Singh apart from hurling abuses on Commandant Sh.C.S.Brar, Assistant Commandant (Ops) Sh.Sikander and Sh.Neel Kantt, Dy.SP of 40 Bn.who had come to pacify the situation. It was alleged that the petitioner acted in a manner unbecoming of a Government Servant.

3. The petitioner duly replied to all those allegations and ultimately when the inquiry report was submitted to the Union Public Service Commission (hereinafter referred to as 'UPSC'), the same was thoroughly considered and it is important to record here the findings returned by the UPSC, vide letter dated 06.07.1998 (Annexure P-6) which read as under:

“From the foregoing, the following facts can be briefly inferred;

- 1. Our paramilitary forces, when they are not provided or improvised certain amenities by the system which manages them, they tend to improvise on their own as in the instant case at least 12,550 bricks were collected either through personal contacts or may be through some other tactics.*
- 2. It appears that when paramilitary forces indulge in such practices or malpractices, it is in the knowledge not only of the jawan but their supervisory hierarchy also at various levels.*
- 3. It also appears that since the bricks had been collected at the instance of C.O. he might have assumed that he had a right to*

take away these bricks, although C.O.has not taken such a plea and under the circumstances, he could not have.

For goods reasons, the bricks in question could not be treated as the property belonging to the C.O.”

4. The Commission went ahead to observe that it was difficult to believe that an officer of a disciplined force for no valid reason, in the presence of a crowd comprising of coy personnel and outsiders, used filthy language at the alleged place of occurrence. More so, the Commission also returned a finding that the documents placed on record to build up a case against the petitioner were tampered with, constructed and forged later on. Ultimately the UPSC in the concluding part of the order recorded as under:

“On the basis of careful reading of the relevant documents, the Commission find that several documents were forged and tampered with in order to make out a fool proof criminal case against the accused so that a case to the effect that C.O.was illegally taking away the Government property, could be made against him. It appears that when it was realized that the records which have been manipulated to show bricks as the property of the company might get exposed in the criminal proceedings, a decision was taken on 12th of September 1989 to take departmental action and to get the FIR closed.

The Commission further observe that while inquiry officer has taken a view that he was not concerned as to why the documents were tampered with or were forged, and Disciplinary Authority has also totally overlooked this aspect of the case, the Commission while giving its advice cannot ignore this fact. These documents must have been tampered and forged in the most careful manner under the guidance and supervision of all senior officers including the Commandant. It seriously reflects against the conduct of supervisory level officers and to that extent the allegations orally substantiated by his superiors and their

subordinates get washed out. Even if the alleged incident had taken place, this can never be a ground for the supervisory officers to tamper/forge/fabricate documents to frame any one in the position of C.O.

In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice would be met in this case if the C.O.Sh.Balraj Kohli be exonerated of the charges levelled against him. They advise accordingly.

A copy of the orders passed by the Ministry in this case may be endorsed for the Commission's perusal and records."

5. In the interregnum, the petitioner was issued another charge sheet on 09.06.1995 (Annexure P-9) and without holding any inquiry a penalty order dated 10.02.1997 was passed vide which the petitioner was burdened with a penalty of reduction of pay by one stage for a period of three years. The petitioner approached the Jammu and Kashmir High Court in SWP 897 of 1997 whereby the order of penalty dated 10.02.1997 was stayed till further orders, vide order dated 12.06.1997. Since the juniors of the petitioner were promoted, the petitioner again approached the Jammu and Kashmir High Court by filing CWP 898 of 1997 and vide order dated 12.06.1997, the respondents were directed to consider the case of the petitioner for next promotion (2nd in Command) in accordance with law. During that period, it came out that the remarks in the petitioner's ACR for the year 1993-94 were recorded as "average capability and shows casual attitude towards work" and the same was objected to by the petitioner by submitting a representation at the appropriate time on 12.08.1995 but the outcome of the representation was never communicated. Thereafter, the same was rejected without assigning any reason on 24.11.1995

and on repeated requests of the petitioner, to give reasons for the rejection of his

representation, the respondents, later on, provided with an order whereby his representation was rejected on 26.03.1996 on the grounds which are pertinent and are reproduced as under:

“No instructions exist on the subject to provide relevant material by the appellate authority to the officers whose representation against the adverse remarks has been considered. However, Shri Kohli may be asked to refer to the following communications which were addressed to him by Addl.DIG, GC, CRPF, Pinjore and DIG Chandigarh:

- i) Letter No.L.VIII-9/94-95-prov.dated 11.08.94 of DIG, Chandigarh regarding purchase of pressure cooker-Advisory memo.*
- ii) Letter No.P.VIII-5/93-GC(P)-Estt.II.dated 20.08.94 of Addl.DIG,GCO, Pinjore regarding DE against Ct.Charan Dass.*
- iii) Letter No. I.X-7/92-BC.III, dated 18.10.94 of DIG, CRPF, Chandigarh regarding DE against Ct.Charan Dass and CT/DVR. Gian Chand.*
- iv) DO No. R.VIII-43/93-94-BC.II dated 09.11.94 of Addl.DIG,GC Pinjore, regarding DE against Ct.Charan Dass and CT/DVR. Gian Chand.*
- v) DO No. I.X-7/92-BC.III dated 26.11.94 of DIG, Chandigarh regarding DE against Ct.Charan Dass and CT/DVR. Gian Chand.”*

6. The petitioner being disgruntled with the decision of the higher authorities, made a representation to the Secretary, Ministry of Home Affairs, Government of India, detailing out the entire sequence of events, however the Ministry of Home Affairs rejected the representation.

7. Amidst all this, the vigilance certificate and the integrity certificates were issued and nothing adverse was recorded therein against the petitioner. In

fact, the administrative review qua the petitioner submitted by the DIG, CRPF, Jalandhar, recommended the retention of the petitioner till superannuation as per Annexure P-25. Despite the above recommendations, the respondent-authorities, ignoring the same rather passed the impugned order dated 12.03.1999 (Annexure P-26), by exercising powers conferred under Clause (j) of Rule 56 of the Fundamental Rules read with Rule 43(c) of the CRPF Rules, retired the petitioner compulsorily. It is further submitted by learned senior counsel for the petitioner that the competent authority vide order dated 20.10.1999 (Annexure P-29), exonerated the petitioner of all the charges levelled against him in the first charge sheet issued on 10.07.1990, wherein it is clearly recorded that the charges levelled against the petitioner have not been proved conclusively. The relevant extract of the above order is reproduced as under:

“The President has considered the report of the Inquiry Officer and other relevant records of the case and also consulted the UPSC. After the said consideration the President has come to the conclusion that the charges levelled against Sh.Balraj Kohli, Dy.Comdt.(now retired) has not been conclusively proved.

In the light of above and having regard to all other relevant aspects, the President considers that the ends of justice would be met in this case if the charged officer Sh.Balraj Kohli, be exonerated of the charges levelled against him. The President hereby orders accordingly.”

Hence the present petition has been filed seeking quashing of the impugned order dated 12.03.1999 (Annexure P-26).

8. Learned counsel appearing on behalf of the respondents filed a written statement, reiterating that the impugned order dated 12.03.1999 is valid and legal. Learned counsel for the respondents submits that the Departmental Screening Committee came to a conclusion only after assessing the entire

service record of the petitioner, as the same was not satisfactory and considering that his loyalty was found to be doubtful, the impugned order was rightly passed. He further submits that despite the punishments imposed upon the petitioner, the same did not have any remedial effect on his conduct and performance and his further retention in service was not in public interest. It was not only the petitioner who was recommended but two other officers were also recommended for premature retirement under the provisions of Fundamental Rules 56(j) read with Rule 43(c) of the CRPF Rules. He further submits that the Administrative Review Committee also agreed with the findings of the Screening Committee and recommended for premature retirement of the petitioner, which was also approved by the competent authority and thereafter the petitioner was prematurely retired from service.

9. Learned senior counsel for the petitioner in addition to the factual matrix demonstrating the violation of law and the rules has summarized his arguments by submitting that there is a blatant abuse of the provisions of Rule 56 (j) of the Fundamental Rules read with Rule 43 (c) of the CRPF Rules, as the Rule 56(j) unambiguously states that a person who has not attained the age of 50 years shall not be compulsorily retired. He further submits that the only reason for the inimical attitude of the seniors was that the petitioner contested the charge sheet issued against him and the inquiry report which held him guilty was rejected by the UPSC and the officials who entangled the petitioner were reprimanded. He further submits that the authorities were just bent upon to ruin the career of the petitioner and thus passed the illegal order of compulsorily retiring the petitioner. The petitioner being an official of a disciplined force, was determined to seek justice, approached this Court way back in the year 1999 and despite the promotion to which the petitioner was duly entitled, was not granted.

During this legal battle since the past 25 years, the petitioner has expired but his legal representatives (hereinafter referred to as “family members”) followed up the matter till date to ensure that the case reaches its logical conclusion. To conclude, learned counsel for the petitioner prays for quashing of the order dated 12.03.1999, and submits that all consequential benefits viz. restoration of service of the petitioner, his entire pay till the date he would have superannuated, his promotion from the date his juniors were promoted and the re-fixation of pay and subsequent pensionary benefits be released till 2019 i.e. till the time the petitioner was alive and thereafter the difference of family pension be also released to the petitioner’s family. Learned Senior counsel for the petitioner submits that the entire exercise against the petitioner clearly demonstrates blatant abuse of power, arbitrariness and the unscrupulous attitude of the authorities.

10. Per contra, learned counsel for the respondents has vehemently opposed the petition and has submitted that the authorities did not exercise the powers under Rule 56 (j) but only under Rule 43(c) and further submits that as per rule 43(c) any member of the force who has attained the age of 50 years or ***put in 25 years of qualifying service***, could be compulsorily retired and since the petitioner had completed 25 years of qualifying service, therefore was rightly retired compulsorily. He further submits that since the ACR of the petitioner was having adverse remarks and the petitioner was issued advisory on an earlier occasion and was also reprimanded, therefore his entire service record had to be considered, in which his loyalty to the service was found doubtful. He further submits that the Departmental Screening Committee opined that petitioner’s performance was not satisfactory and the punishments awarded in the course of service showed that the petitioner was a liability on the

organization and hence his retention was against the public interest. He further submits that there is no illegality in the said order and the petitioner is not entitled to any relief whatsoever as he did not work for even a single day, therefore, the consequential benefits prayed for cannot be paid and prays for dismissal of the petition.

11. Heard learned counsel for the parties at length. The following questions of law are for determination before this Court:

1. Whether the major penalty of prematurely retiring the petitioner was imposed by invoking the provisions of Rule 56(j) of the Fundamental Rules read with Rule 43 (c) of the CRPF Rules or not?
2. If the answer to question no.1 is in positive, then as to whether the provisions of Rule 56(j) read with Rule 43 (c) of the CRPF Rules have been complied with?
3. Whether the respondents were justified in ordering the premature retirement of the petitioner by ignoring the recommendations of the review committee for retention in service and only on the basis of the report of the Screening Committee could have imposed the major penalty or were bound to consider all other factors also?
4. Whether the petitioner is entitled to the relief prayed for or not?

12. The above mentioned issues are being dealt with collectively and therefore, it would be necessary to reproduce Rules 56 (j) of the Fundamental Rules and Rule 43 (c) of the CRPF Rules which read as under:

Rule 56(j):

Notwithstanding anything contained in this Rule, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant after he has attained the age of fifty-five years by giving him notice of not less than three months in writing or three months' pay and allowance in lieu of such notice;

- (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;*
- (ii) In any other case after he has attained the age of 55 years;*

Rule 43 (c) of CRPF Rules***Superannuation:***

(c) Notwithstanding anything contained in this rule—

- (i) the appointing authority shall, if it is of opinion that it is in the public interest to do so, have absolute right to retire any member of the Force who has attained the age of 50 years or put in 25 years of qualifying service, by giving him notice of not less than three months in writing or three months pay and allowance in lieu of such notice,*
- (ii) any member of the force, may, by giving notice of not less than three months in writing to the appointing authority, retire from service after he has attained the age of 50 years or put in 25 years of qualifying service.*

13. At this stage, it is imperative to reproduce the impugned order dated 12.03.1999, which is as under:

“Whereas the President is of the opinion that it is in the public interest to do so.

Now, therefore, in exercise of the powers conferred by Clause (j) of Rule 56 of the Fundamental Rules read with Rule 43 (c) of CRPF Rules, 1955, the President hereby retires Shri Balraj Kohli, Deputy Commandant, CRPF (IRLA No.1051) with immediate effect, he having already completed 25 years service on 15.10.97. The President also directs that Shri Balraj Kohli, Deputy Commandant shall be paid a sum equivalent to the amount of his pay and allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement.

A Bank Draft No.DCS-0000Z-359655 dated 17.03.1999 for Rs.31902/-(Rupees Thirty one thousand Nine Hundred two only) only on account of three months pay and allowances is enclosed herewith.”

14. A perusal of the above rules, read along with the impugned order dated 12.03.1999 and the documents relied upon by the petitioner clearly demonstrates that the respondent authorities took the decision by invoking Rule 56(j) of the Fundamental Rules. The reason for the same is that the respondent authorities while imposing any major penalty have acted in accordance with the Fundamental Rules and therefore, it does not entitle them to renege from that stand. Rule 43(c) which relates to superannuation of employees who have attained the age of 50 years or have put 25 years in service has also been invoked by the respondents.

15. The conjoint reading of both the above rules demonstrates that the Fundamental Rules clearly hold that a Government Servant can be retired after he/she has attained the age of 55 years. However, in case of group ‘A’ or group ‘B’ service, where the government servant had entered the service before

attaining the age of 35 years, in that situation, he can be retired only after attaining the age of 50 years, whereas Rule 43 (c) of the CRPF Rules starts with the heading of “Superannuation” and the first requirement therein also records that the appointing authority has absolute right to retire any member of the force who has attained the age of 50 years or has put in 25 years of qualifying service. The petitioner fell under the category of Group “B” post. After a combined reading of both the rules would have the effect that a government servant can be compulsorily retired only after he has attained the age of 50 years. Therefore, the order of compulsorily retiring has been passed by wrongly interpreting Rule 56(j).

16. Dealing with the argument raised by the respondents that the entire service record of the petitioner was considered, this argument is not plausible as the letter dated 24.11.1997, whereby the Directorate General, CRPF, New Delhi, while considering the case of four employees recorded as under:

“I have been directed to inform you that on careful examination of the proceedings of ADM.Review Committee, ADM Review Representation Committee as well as service record and confidential card of all above personnel, it is observed that ADM Review Committee had violated the basic concept of resorting to the action of pre mature retirement. The Government of India Instructions as incorporated in Appendix 10 of Swamy is compilation of CCS (Pension) Rules, 1972, clearly stipulates that:

“No employee should ordinarily be retired on the grounds of ineffectiveness, if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 years period, and his service in the higher post has been found satisfactory”.

In view of above, the competent authority has accepted the representations of the above four individuals.

It has also been noticed that the proceedings of Adm. Review Committee as well as the notice given by the respective commandants ordering pre mature retirement are also defective. In accordance with 11(4) of Appendix 10 of Swamy's compilation, in every case, where it is proposed to retire a government servant, the proceedings should contain clause that the review committee has formed its opinion to retire the government servant in public interest. This clause is missing in the above proceedings as well as notice served on individuals."

17. It is an admitted fact that the petitioner had adverse remarks in his ACRs for the years 1974-75, 1977-78, 1979-80 and 1981-82 but thereafter the petitioner crossed the efficiency bar in 1985 and later in 1988, which demonstrates that the adverse remarks in the earlier ACRs lost their significance.

18. As regards the charge sheet issued against the petitioner in the year 1990, the proceedings qua the same went on for 08 long years, which culminated when the UPSC disagreed with the inquiry report of the authorities and exonerated the petitioner from all the charges.

19. The respondents failed to demonstrate as to whether the order passed by UPSC was complied with or not in its true spirit and if any action was taken against the private respondents for alleged forging of the documents on the record.

20. The agony of the petitioner did not come to an end and during all these years his juniors were promoted which led to the filing of the writ petition by the petitioner at the High Court of Jammu and Kashmir which also directed the respondents to consider the petitioner for promotion in the year 1997.

However, since at that time, the inquiry report had been sent to UPSC, the same

was not granted. The authorities had to consider the record of only the past 5 years qua the petitioner before recommending and coming to a conclusion of imposing the penalty of premature retirement on the petitioner and the same could only have been done after the petitioner attained the age of 50 years.

21. Admittedly the petitioner had not attained the age of 50 years on the date when the impugned order was passed. The date of birth of the petitioner as per the record available with respondents is 10.01.1950 and hence, the age as on 12.03.1999 was less than 50 years. The stand of the respondents is that as per Rule 43(c), there was no age bar and since the petitioner had completed 25 years of qualifying service, therefore, the penalty could have been imposed is also not tenable as the impugned order itself reads that the same has been passed by exercising powers and relying upon Rule 56(j) of the Fundamental Rules read with Rule 43(c) of the CRPF Rules. The provisions of Rule 56(j) of the Fundamental Rules and 43 (c) of the CRPF Rules, had to be harmoniously interpreted and could have been passed only if a person had completed at least 25 years in service and had attained the age of 50 years and that too by considering the ACRs and other service record of that person for the preceding 5 years only. The impugned order also does not disclose the reason as to how the services of the petitioner were against the “public interest”. The impugned order is only a conclusion and not a speaking/reasoned order. The UPSC in its recommendation also exonerated the petitioner from all the charges and had further recommended action against the private respondents for allegedly forging certain documents, therefore, it can be safely concluded that the order dated 12.03.1999 is unsustainable.

22. Considering all the above, the issue qua the legality of imposition of the major penalty of prematurely retiring the petitioner must be answered in

favour of the petitioner and the order dated 12.03.1999 having passed in total violation and non compliance of the requisite of the Rule 56 (j) read with Rule 43(c) of the CRPF Rules, is hereby declared arbitrary and illegal and hence quashed.

23. The present matter has been pending since the past 25 years. The petitioner was not only prematurely and compulsorily retired by virtue of the impugned order but the same continued to be a stigma for the petitioner as well as his family. Rule 56 (j) of the Fundamental Rules was abundantly clear with regard to the minimum age and consideration of preceding 5 years service record but no official was diligent enough to read and interpret the same and illegally passed the impugned order only because of the reason that there was no fear of accountability on the officials working in the department. It is a high time that the Courts should take a strict view against the officials who pass such disproportionate and arbitrary orders which demonstrates nothing but mala fide on their part by abusing the powers for setting their personal scores. The order dated 12.03.1999 was prejudiced, unreasonable and smells mala fide as the officer purposefully did not read the condition that Rule 56 (j) of the Fundamental Rules would come into play only after the officer had attained the age of 50 years but the same was conveniently or purposefully ignored to be detrimental to the rights of the petitioner.

24. This Court feels that since the petitioner has expired, it cannot restore the status quo ante in its entirety much less the loss of his honour and integrity, therefore, it is imperative to state that the honour of the petitioner is restored and he shall be considered to have been honorably retired from service without the stigma of the imposition of a major penalty. The petitioner shall be considered to have retired as if no such penalty was imposed on him and is

entitled to all consequential benefits, which naturally flow therefrom which *inter-alia* shall include the following:

1. The petitioner shall be deemed to be in service till the date of his superannuation and shall be given promotion on/from the respective dates, when the other officers on the same rank were promoted.
 2. The petitioner shall be paid the salary including all the allowances to which he was entitled till the date of his superannuation. This includes the re-fixation of pay from time to time.
 3. The petitioner's pension and his family pension after his demise and the other retiral benefits shall be re-fixed as a consequence to the above-mentioned directions and the surplus amount shall be paid to the petitioner's family.
 4. It is made clear that no condition of depositing the retiral benefits paid to the petitioner in the year 1999 shall be imposed by the department. The retiral benefits paid to the petitioner in the year 1999 on his premature retirement and the subsequent pension amount paid to him till the date of his demise shall be adjusted with the amount which the petitioner's family is entitled by virtue of this order.
 5. All the amounts which the petitioner is found to be entitled to be paid within three months from the date of passing of this order along with simple interest @ 12 % per annum. It is made clear that in case any amounts are to be deposited by the petitioner towards his contribution read with direction No.4. hereinabove, will be calculated by imposing simple interest @ 6% per annum.
 6. All other consequential benefits viz.the petitioner would have been entitled to, in case not covered in the aforesaid directions.
25. In light of what has been held hereinabove, the Authorities have to pay huge amount of money to the petitioner's family with interest, only for the reason that the officer who imposed the punishment did not bother to read the rule or law and it is apparent that the same was colourable exercise of power.

The said amount are to be paid out of the taxpayers' money of this country and

therefore, it is recommended to recover the entire amount to be paid to the petitioner from the officer who passed the impugned order dated 12.03.1999, either without even seeing the wording of Rule 56 (j) or with a mala fide intention to ruin the career of the petitioner. I deem it appropriate to pass an order that even if the concerned person has expired, the recovery be effected from his Estate. Though, this might cause dis-comfort for the family of the officer but when they have enjoyed all those comforts at the cost of life of the petitioner, they will have to go through the ordeal too, for inheriting the officer's Estate (if so), but in case the said officer is alive, the said exercise be done after issuing notice to the concerned and granting them opportunity of hearing as the case may be. It is made clear that the process of recovery to be initiated against the officer, who has imposed the punishment, will not be an impediment or a pre-requisite for grant and release of the relief to the family of the petitioner.

26. With the above said directions, the order dated 12.03.1999 (Annexure P-26) is hereby quashed and the petition stands allowed.

(ALOK JAIN)
JUDGE

20.08.2024

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Whether speaking/reasoned : Yes

Whether Reportable : Yes