

CWP-2766-2025 &
connected cases.

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2025:PHHC:020772



121+283 (4)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2766-2025
Date of Decision:13.02.2025

NARESH KUMAR Petitioner

Versus

STATE OF HARYANA AND OTHERS Respondents

Sr. No.	Case Number	Titled
2	CWP-3670-2025	SURINDER SINGH V/S STATE OF HARYANA AND OTHERS
3	CWP-34741-2024	ASHOK KUMAR V/S STATE OF HARYANA AND OTHERS
4	CWP-2327-2025	ESI BALJEET SINGH V/S STATE OF HARYANA AND ORS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sunil Kumar Nehra, Advocate with
Mr. Viren Nehra, Advocate,
Mr. Rahil Mahajan, Advocate
Mr. Arjun Dosanj, Advocate and
Mr. Akash Gahlawat, Advocate
for the petitioner in CWP-2766-2025.

Mr. Ankur Lal, Advocate with
Ms. Kavita, Advocate
for the petitioner in CWP-3670-2025 &
CWP-34741-2024.

Mr. R.S. Malik, Advocate with
Mr. Himanshu Singh, Advocate and
Mr. Upjit Singh Brar, Advocate
for the petitioner in CWP-2327-2025.

Ms. Rajni Gupta, Addl. AG, Haryana with
Mr. Amandeep Joshi, DAG, Haryana and
Ms. Dimple Jain, DAG, Haryana.



JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-2766-2025, CWP-3670-2025, CWP-34741-2024 and CWP-2327-2025 are disposed of since issues involved in the above captioned petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-2766-2025.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 18.12.2024 (Annexure P-17) whereby respondent has ordered to compulsorily retire him after the expiry of three months notice period.

3. The petitioner joined Haryana Police as Constable on 03.10.1989. He from time to time was promoted to higher ranks. He was promoted as Sub-Inspector w.e.f. 13.08.2018, however, was granted deemed date of promotion w.e.f. 02.02.2013. He came to be implicated in FIR No.001 dated 10.02.2021, under Section 7 of Prevention of Corruption Act, 1988 (for short, '**1988 Act**'). The respondent, on account of registration of aforesaid FIR, initiated departmental proceedings against him. He preferred ***Civil Writ Petition No.8486 of 2021*** titled as '***Naresh Kumar Vs. State of Haryana and others***' before this Court assailing departmental proceedings. This Court vide order dated 20.04.2021 stayed departmental proceedings.

The respondent recorded adverse remarks in his ACR for the period from April' 2020 to March' 2021. Adverse remarks were also recorded in his ACR for the period from April' 2021 to October' 2021.

He preferred representation against adverse remarks. The Additional



Director General of Police (for short 'ADGP'), Rohtak Range, Rohtak vide order dated 19.12.2022 (Annexure P-13) rejected his representation against adverse remarks. He came to be implicated in another FIR No.012 dated 16.05.2022, under Section 7 of 1988 Act. The department initiated another inquiry against him. He preferred *Civil Writ Petition No.19966 of 2022* titled as '*Naresh Kumar Vs. State of Haryana and others*' before this Court assailing departmental proceedings. This Court vide order dated 05.09.2022 permitted the department to continue with inquiry without recording evidence of common witnesses.

The respondent recorded adverse remarks in his third ACR for the period from 21.04.2022 to 28.07.2022. He preferred representation against adverse remarks in the ACR. He preferred *Civil Writ Petition No. 224 of 2025* titled as '*Naresh Kumar Vs. State of Haryana and others*' before this Court which was disposed of vide order dated 15.01.2025 with a direction to DGP to decide his representation. The matter relating to adverse remarks is pending before DGP and by impugned notice-cum-order, Superintendent of Police, Karnal has ordered to compulsorily retire him from service on the expiry of three months notice period.

4. Learned counsel for the petitioner(s) submits that petitioner at the time of passing impugned order was holding rank of Sub-Inspector. He was promoted as Sub-Inspector by order dated 19.03.2021 passed by ADGP, Rohtak Range, Rohtak. He was promoted from retrospective date. As he was promoted by ADGP, Rohtak Range, Rohtak, his Appointing Authority became ADGP whereas impugned order has been passed by Superintendent of Police. Order under Rule 9.18(1)(c) of



Punjab Police Rules, 1934 (as made applicable to State of Haryana) (for short '**PPR**') can be passed by Appointing Authority. In the case of petitioner, Superintendent of Police is not Appointing Authority, thus, impugned order is bad in the eye of law.

The impugned order has been passed in exercise of power conferred by Rule 9.18(1)(c) of PPR. The said Rule provides for circumstances where pension is admissible. The said Rule does not provide for compulsory or premature retirement. There is no substantive provision like Rule 144 of Haryana Civil Services (General) Rules, 2016 (for short, '**2016 Rules**') empowering the Appointing Authority to order compulsory retirement of any official. In the absence of substantive provision bestowing power on Appointing Authority to compulsorily retire any official, the impugned order could not be passed.

In the impugned order, the respondent has invoked instructions dated 05.02.2019 issued by State Government. As per those instructions, the respondent was bound to seek prior approval of the Administrative Department as well as Haryana Public Service Commission or Haryana Staff Selection Commission, as the case may be. The respondent has not complied with instructions dated 05.02.2019, thus, impugned order is bad in the eye of law.

The respondent has invoked Rule 9.18(1)(c) of PPR whereas power to compulsorily retire can be exercised under Rule 9.18(2) of PPR. As per Sub-Rule (2) of Rule 9.18, the power of compulsory retirement vests in Inspector-General of Police who can pass order of compulsory retirement after obtaining prior approval of State Government. From the conjoint reading of instructions dated 05.02.2019 and Rule 9.18(2) of



PPR, it is evident that order of compulsory retirement cannot be passed without approval of the State Government.

In support of their contentions, they rely upon judgment of this Court in *CWP No.8472 of 1995* titled as '*Ram Lal Vs. State of Haryana*', *CWP No.18188 of 1997* titled as '*Hira Lal Vs. State of Haryana*', *CWP No.8138 of 2012* titled as '*ASI Krishan Singh Vs. State of Haryana and others*', *LPA No.725 of 2014* titled as '*State of Hayana and others Vs. ASI Krishan Singh*' & *CWP No.5602 of 2015* titled as '*Abhay Singh son of shri Ram Kumar Vs. State of Haryana and others*'.

5. *Per contra*, Ms. Rajni Gupta, Addl. AG, Haryana submits that it is not a case of compulsory retirement on completion of 25 years qualifying service whereas it is case of retirement by Appointing Authority on or after attaining the age of 55 years. There is fundamental difference between power vested by Rule 9.18(1)(c) of PPR read with its Note and power vested by Rule 9.18(2). Both Rules are independent. Rule 9.18(2) is *pari materia* with Rule 144 of 2016 Rules. In case of retirement under Rule 9.18(1)(c) of PPR, the pre-requisite is that officer must have attained the age of 55 years. It is not necessary that he must have completed 25 years qualifying service. There is no need to serve notice of personal hearing. There is need to serve three months notice only.

The petitioner at the time of passing impugned order was holding charge of Sub-Inspector. As per Rule 12.1 of PPR, the Appointing Authority of Sub-Inspector is Superintendent of Police. Rule 16.1 of PPR prescribes Punishing Authority. As per said Rule also,



Superintendent of Police is Punishing Authority of Sub-Inspector. From the conjoint reading of Rule 12.1 and Rule 16.1, it is evident that Superintendent of Police is Appointing Authority of Sub-Inspector, thus, impugned order has rightly been passed by Superintendent of Police. The petitioner is wrongly relying upon instructions dated 05.02.2019. These instructions are applicable to Government Officials other than Police Officials because Police Officials are governed by PPR. The 2016 Rules may be invoked where PPR is silent. If the question is specifically adverted to by PPR, there is no question to rely upon 2016 Rules.

In support of her contentions, she relies upon judgment of this Court in *CWP No.22367 of 2015* titled as '*Ram Dhari Vs. State of Haryana and others*', *CWP No.13021 of 2014* titled as '*Balwant Singh Vs. State of Haryana and others*', *CWP No.26726 of 2016* titled as '*Ram Chander Vs. State of Haryana and others*', *CWP No.6191 of 2004* titled as '*ASI Sajjan Singh No.215 GRP Vs. State of Haryana and others*' & *CWP No.4066 of 2024* titled as '*Jai Singh Vs. State of Haryana and others*'.

6. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

7. From the arguments of both sides, the following questions arise for the consideration of this Court:

- (i) Whether an officer can be retired invoking Rule 9.18(1)(c) of PPR?
- (ii) Whether order of compulsory retirement can only be passed under Rule 9.18(2) of PPR?
- (iii) Whether Superintendent of Police is Appointing



Authority of Sub-Inspector?

(iv) Whether Appointing Authority while passing order under Rule 9.18(1)(c) is required to comply with instructions dated 05.02.2019 issued by State Government?

(v) Whether impugned order is stigmatic?

8. Q. No.(i): Whether an officer can be retired invoking Rule 9.18(1)(c) of PPR?

8.1 The petitioners are claiming that Rule 9.18(1)(c) is not a substantive provision dealing with compulsory retirement. The said Rule is dealing with pension, thus, respondent cannot invoke said Rule for retiring an officer on attaining the age of 55 years. From the reading of marginal note of Rule 9.18, it appears that said Rule is meant for pension. This is part of Chapter 9 titled 'Pensions'. Apparently, Rule 9.18 is with respect to entitlement to pension. Clauses (a) to (d) of Rule 9.18(1) prescribe circumstances wherein a retiring person shall be entitled to pension. There may be a situation where an employee may not be entitled to pension e.g. if he is dismissed from service. The Rule prescribes that pension is available only in four contemplated situations. For the ready reference, Rule 9.18 is reproduced as below:

“9.18. Retiring pension - (1) Notwithstanding anything contained in these rules, a retiring pension is granted to an officer-

(a) who is permitted to retire from service after completing qualifying service for twenty-five years or such lesser period as may, for any class of officers, be prescribed; or

(b) who is compulsorily retired under sub-rule (2) after completing twenty five years' qualifying service;



(c) 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; or

(d) who retires on or after attaining the age of 55 years by giving not less than three months' notice of his intention to retire to the appointing authority:

Provided that where the notice is given before the age of fifty-five years so attained, it shall be given effect to from a date not earlier than the date on which the age of fifty-five years is attained.

Note.- 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 reason. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years.

(2) 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 the Indian Police Service or Haryana State Police Service who has completed twenty-five 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. -** (i) The right to retire compulsorily shall not be exercised except when it is in the public interest to dispense with the further services of an officer, on grounds such as of inefficiency, dishonesty, corruption or infamous conduct. Thus the rule is intended for use -*

(i) against an officer whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient, i.e., when an officer's value is clearly incommensurate with the pay which he draws but not



to such a degree as to warrant his retirement on a compassionate allowance. It is not the intention to use the provisions of this rule as a financial weapon, that is to say, the provisions should be used in only the case of an officer who is considered unfit for retention on personal as opposed to financial grounds;

(ii) in cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved.

Note 2. - *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 compulsory retirement is ordered. In all cases of compulsory retirement of enrolled police officers, the Inspector-General of Police shall effect such retirement 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.*

Note 3. *The officer whose duty it would be to fill the post if vacant, shall record his orders on the application to retire, which, if in vernacular, should be accompanied by a translation in English. If the officer who applies for pension is permitted to retire, the application shall be forwarded with the pension papers.”*

[Emphasis Supplied]

8.2 At the first blush, the argument of petitioner seems to be attractive and convincing, however, it fails on close scrutiny of entire Rule 9.18. It seems to be a case of placing of Note & proviso at wrong place i.e. below Sub-Rule (1) and Sub-Rule (2) of Rule 9.18. Had there not been Sub-Rule (2), there could be substance in the argument of petitioner, however, Sub-Rule (2) of Rule 9.18 makes it clear that an officer may be prematurely retired under Rule 9.18. It is a settled



proposition of law that an explanation or clarificatory note cannot expand scope of main provision, however, entire provision needs to be examined in the light of intent and purport as well as scheme of the statute. As soon as proviso and Note annexed to Rule 9.18(1) are examined in the light of Sub-Rule (2), it becomes evident that though proviso and Note seem to be wrongly placed under Rule 9.18(1), yet, power of Appointing Authority to compulsorily retire an officer on attaining the age of 55 years cannot be denied. The Appointing Authority is quite competent to exercise power to retire an officer on attaining the age of 55 years. If it is held that there is no substantive power to retire an officer on attaining the age of 55 years, Sub-Rule (2) of Rule 9.18 would also become meaningless. Sub-Rule (2) of Rule 9.18 also seems to be wrongly placed. There should be separate Rule adverting to question of retirement on attaining the age of 55 years and retirement of an officer who has completed 25 years qualifying service. The State Government has framed 2016 Rules. Rules 144 & 145 of 2016 Rules advert to compulsory retirement. For the ready reference, relevant extracts of Rules 144 & 145 of 2016 Rules are extracted as below:

“144. Premature retirement after attaining the prescribed age or qualifying service.— The appointing authority shall, in public interest, have the absolute right to retire prematurely a Government employee of any Group, other than of Group D, on account of inefficiency after attaining the prescribed age irrespective of his length of service or after completion of twenty years’ qualifying service irrespective of his age, by giving him a notice of not less than three months in writing or pay and allowances in lieu of notice period. The minimum age prescribed for the purpose,



except in case of twenty years' qualifying service, is—

(i) 50 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post before attaining the age of thirty five years;

(ii) 55 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post after attaining the age of thirty five years; and

(iii) 55 years for Government employees working on Group C posts:

Provided that in the case of Judicial Officer, the case for retention in service beyond the age of fifty-eight years shall be considered by the competent authority before he attains such age, irrespective of his date of entry into Government service.

145. Three months' notice or pay and allowances in lieu of notice period on premature retirement.— A Government employee shall stand retired immediately on expiry of three months' notice or from the date of payment of three months' pay and allowances in lieu of the notice period and shall not be in service thereafter, therefore, he shall not be entitled to any increment or counting of any period subsequent to the date of such retirement for the purpose of pension etc. He shall be entitled to pension, if admissible under the rules, from the next date of such retirement and the pension shall not be deferred till the expiry of the period of three months for which he is paid pay and allowances.”

8.3 From the perusal of Rules 144 & 145 of 2016 Rules, it is quite evident that there are separate Rules governing premature retirement. The legislature while framing Rule 9.18 which is part of Chapter 'Pensions' has inadvertently inserted power to prematurely retire officers. Nevertheless, it cannot be held that there is no power to



compulsorily retire an officer.

In view of Sub-Rule (2) of Rule 9.18, this Court is of the considered opinion that proviso and Note forming part of Rule 9.18(1) empower Appointing Authority to retire an officer on attaining the age of 55 years.

9. Q. No.(ii): Whether order of compulsory retirement can only be passed under Rule 9.18(2) of PPR?

9.1 The petitioners are claiming that order of compulsory retirement can be passed only under Rule 9.18(2) of PPR. They are relying upon judgment of this Court in *ASI Krishan Singh (supra)*. In this case, the Court has held that power should be exercised under Rule 9.18(2) and with the concurrence of the State Government. The relevant extracts of the judgment read as:

“A perusal of the above would show that the sub-Rule 1 primarily deals with the eligibility of a person for grant of retiring pension and the procedure which is to be followed for retiring an official. The notice is, accordingly, required to be given to the concerned employee. Sub-Rule 2 is the action which is to be taken by the competent authority where the appointing authority is the Inspector General of Police and the employee is sought to be retired compulsorily of the police force.

The appointing authority of the petitioner, admittedly, is Inspector General of Police. It is also not in dispute that the petitioner has completed 32 years of service with the respondents. It is true that the powers have been exercised by the respondents for continuing him in the service beyond the age of 55 years but the effect of the order is that of compulsorily retiring the petitioner. Since the approval of the State Government prior to compulsorily retiring the



petitioner has not been obtained by the Inspector General of Police, the impugned notice dated 29.02.2012 (Annexure P-4) cannot sustain and is, hereby, quashed.”

9.2 In **LPA No.725 of 2014** filed by the State against order dated 14.01.2015 passed in **ASI Krishan Singh** (supra), the Division Bench has held:

“A perusal of the above Notes to Rule 9.18 of the Rules leave no manner of doubt in our minds that the order of compulsorily retirement can only be passed with previous approval of the of the State Government, in accordance with the instructions, if any, issued by the State Government on the subject from time to time. Neither any approval nor any instructions made by the Government in this regard were shown by the State to the learned Single judge nor any have been shown to us.

In view of the above, we have no reason in fact or in law to interfere with the well reasoned order of the learned Single Judge under appeal.”

9.3 There is fundamental difference between power vested under Sub-Rule(2) and Sub-Rule(1) of Rule 9.18 of PPR. In Sub-Rule (1), there are four clauses which are dealing with different circumstances. Clause (b) provides for compulsory retirement after completing 25 years qualifying service whereas Clause (c) provides for retirement on attaining the age of 55 years. The substantive provision with respect to Clause (b) has been made by way of Sub-Rule (2) whereas with respect to Clause (c), the substantive provision has been made by way of proviso and Note to Rule 9.18(1). The petitioners have not been ordered to retire on completing 25 years qualifying service whereas they have been ordered



to retire on attaining the age of 55 years. In case an officer is ordered to retire on attaining the age of 55 years, the power has to be exercised by Appointing Authority and only requirement is three months notice whereas in case of compulsory retirement under Sub-Rule (2), the power has to be exercised by Inspector-General of Police and that too with the previous approval of the State Government. The Notes annexed to Sub-Rule (2) further provide that opportunity of hearing shall be granted to the person proposed to be retired. In case of retirement under Sub-Rule (2), there are multiple checks and balances which have to be met with by Competent Authority before passing order of compulsory retirement. The Appointing Authority is not empowered to exercise power of premature retirement under Rule 9.18(1)(c) whereas it is empowered in terms of proviso read with Note annexed to Rule 9.18(1). The respondent has exercised power in terms of Rule 9.18(1)(c) and order has been passed by Superintendent of Police. The petitioners are ordered to retire on attaining the age of 55 years, thus, there is no question of invoking Rule 9.18(2) of PPR. A Division Bench of this Court in ***Ram Dhari Vs. State of Haryana and others, LPA No. 1890 of 2018*** has expressed similar view. The Division Bench has held:

“Likewise a police official can also seek retirement after attaining the age of 55 years by giving notice of three months of his intention to retire. The note appended to the Rule 1 makes it abundantly clear that the Appointing Authority has an absolute right to retire any police official on or after he attains the age of 55 years without assigning any reason. The corresponding right is available to the police official to seek retirement on or after he attains the age of 55 years. Thus Rule 9.18 of the Rules itself carves out



a distinction between retirement of a police officer at the age of 55 years and compulsory retirement on completion of 25 years of qualifying service, the first being postulated in Sub Rule 1(C) and second in Sub Rule 2.

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.”

9.4 There is another aspect of the matter. Power under Rule 9.18(2) can be exercised if the officer has completed 25 years qualifying service. Qualifying service of 25 years may be completed in between 45 to 50 years of age. The normal age of retirement is 58 years. If a person is retired at the age of 45 years on account of completion of 25 years qualifying service, he would lose 13 years service whereas, if an officer is made to retire at the age of 55 years, there is maximum loss of 3 years service. As in case of retirement on completion of 25 years qualifying service, there are possibilities of loss of long period of service, the power has been vested in Inspector-General of Police and there are further stringent terms and conditions which the Inspector-General of Police has to comply with. In case of compulsory retirement at the age of 55 years, there is loss of 3 years service, thus, power has been vested in Superintendent of Police. He is bestowed with this power and only requirement is three months notice. Superintendent of Police being in-charge of the District carries complete and better information of his officers. He knows their strength and weakness.

10. Q. No. (iii): Whether Superintendent of Police is Appointing Authority of Sub-Inspector?

10.1 The petitioners are claiming that Superintendent of Police is not the Appointing Authority of Sub-Inspector. Their contention is based upon Rule 13.9 of PPR. They are claiming that order of promotion from the post of ASI to SI can be and was passed by an authority higher than Superintendent of Police. Once the promotional order is passed by higher



authority than Superintendent of Police, the higher authority becomes Appointing Authority and order under Rule 9.18 can be passed by authority which passed order of promotion.

In support of their contention, they are relying upon judgments of this Court in ***Ram Lal (supra)*** and ***Hira Lal (supra)***. Both the judgments are reiterating opinion expressed by learned Single Judge in ***Karnail Singh Sub Inspector of Police, Karnal v. The State of Haryana through the Commissioner and Secretary Home, Government of Haryana at Chandigarh, 1989 (2) SLR 345 (Pb. & Hry.)***. A Coordinate Bench of this Court in ***Karnail Singh (supra)*** has held that if order of promotion is passed by an officer higher in rank than Superintendent of Police, the Superintendent of Police no longer remains Appointing Authority. The relevant extracts of the judgment in ***Hira Lal (supra)*** are reproduced as below:

*“While construing these provisions in ***Karnail Singh Sub Inspector of Police, Karnal v. The State of Haryana through the Commissioner and Secretary Home, Government of Haryana at Chandigarh, 1989 (2) SLR 345 (Pb. & Hry.)***, this is what the Court had to say in paragraph 4 of the report:*

“On the question of competency of the Superintendent of Police to pass the impugned order, the stand of the respondents does not seem to be correct. The stand of the respondents is that appointing authority of Assistant Sub Inspectors and Sub Inspectors is Superintendent of Police as provided under Rule 12.1 of Chapter XII of the Punjab Police Rules as applicable in Haryana, Superintendent of Police is also the punishing authority of Sub-Inspectors and Assistant Sub Inspectors as provided under Rule 16.1 of Chapter XVI of the Police Rules. Thus the Superintendent of



Police was competent to pass the impugned order retiring the petitioner from service on giving three months' notice. After careful consideration I find that this contention cannot be accepted in the present case as the petitioner was promoted to the post of Assistant Sub Inspector as well as Sub Inspector by the Deputy Inspector General of Police. No doubt the Superintendent of Police is the appointing authority of Assistant Sub Inspectors and Sub Inspectors as provided under Rule 12.1 however, this rule provides the authorities competent to make appointments. There is a separate chapter dealing with the promotions i.e. Chapter XIII in the Police Rules. Rule 13.3(2) empowers the Deputy Inspector General of Police to make promotions to the rank of Inspectors. It also provides for substantive promotions to the rank of Sub Inspectors and Assistant Sub Inspectors to be made by Superintendent of Police in the case of District Police. Rule 13.4(2) provides for officiating promotions to the rank of Sub Inspector, Assistant Sub Inspector and Head Constables to be made by Superintendent of Police in the District and if the Deputy Inspector General of Police finds the flow of promotion unevenly distributed amongst districts, he can make suitable transfers. The relevant rules concerning the case in hand are Rules 13.9 and 13.10. This gives power to the Deputy Inspector General of Police for making officiating or substantive promotion to the rank of Assistant Sub Inspector. Sub-rule (2) of Rule 13.9 further provides for making substantive promotion of Assistant Sub Inspectors by the Deputy Inspector General of Police in accordance with sub-rule (2) of Rule 13.10 further provides for officiating promotions of short duration to be ordinarily made within the District concerned vide sub-rule 13.4(2), but vacancies of long duration are to be filled by the promotion of any eligible man in the range at the discretion of the Deputy Inspector General.”



10.2 The respondent is claiming that Superintendent of Police is Appointing Authority of ASI and SI, thus, he is competent to pass order of compulsory retirement.

10.3 For the appreciation of argument of both sides, it would be apt to notice Rules 12.1, 13.3, 13.9 and 16.1 of PPR which are reproduced as below:

“12.1 Authorities empowered to make appointments.- (1)
Assistant Superintendents of Police are appointed by the Secretary of State for India, either in England or in India according to the rules framed by him from time to time.

Deputy Superintendents of Police are appointed by the Provincial Government according to rules contained in Appendix 12.1.

The following table summarises the directions given by the Provincial Government under clause(b) of sub-section (1) of Section 241 of the Government of India Act, 1935, in regard to the authorities competent to make appointments to the non-gazetted ranks.

1	2	3
Class of Government servants	Authority to whom the power of appointment is delegated	The extent of the delegation
Inspectors	Deputy Inspectors-General of police, Assistant Inspector-General, Government Railway Police, Assistant Inspector General, Provincial Additional Police, (designated as Commandant, Provisional Additional Police), and the Assistant Inspector General of Police (Traffic)	Full powers subject to rules governing the conditions of service as defined in Police Rules
Sergeants, Sub-Inspectors and Assistant	Superintendents of Police and Superintendent of Police, Railways	



<i>Sub Inspectors</i>		
<i>Head Constable and Constables</i>	<i>Superintendents of Police, Commandants of Punjab Armed Police and Deputy Superintendent, (Administrative), Government Railway Police, Assistant Superintendent, Government Railway Police, Deputy Superintendents-in-charge of Railway Police Sub divisions senior Assistant Superintendent of Police, Lahore & Officers incharge, Recruits training Centres, Deputy Superintendent of Police Lahaul and Spiti District, Assistant Superintendent of Police, Lahaul and Spiti District, District magistrate, Lahaul and Spiti.</i>	

(2) All direct appointments to non-gazetted ranks above that of constables and all first appointments of civilian clerks shall be made by the appointing authority on the recommendations of Haryana Staff Selection Commission.

(2a) The appointment of constables shall be made by the appointing authority on the recommendations of the Selection Board(s) constituted by the Director General of Police for this purpose.

13.3. Power to make promotions among gazetted and enrolled police officers.-

(1) The power to make promotions among gazetted officers and from non-gazetted to gazetted rank vests in the Local Government with the concurrence of His Excellency the Governor.

(2) Deputy Inspector-General and the Assistant Inspector-General, Government Railway police, shall make promotions to the rank of Inspector. The Inspector-General, who maintains promotion list “F”,-vide Police Rule 13.15,



of Sub-Inspector and Sergeants, will notify the Deputy Inspector-General of a Range or the Assistant Inspector-General, Government Railway Police, when a substantive vacancy in the rank of Inspector is to be filled by an officer under his control.

Substantive promotions to the rank of Sub-Inspector and Assistant Sub-Inspector shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police. Deputy Inspector-General of Ranges, who maintain promotion lists 'D' and 'E' for these two ranks in the case of District Police, will notify the Superintendent of Police of a district when a vacancy in either rank is to be filled by an officer in his district.

Promotions to the rank of head constable shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police.

(3) The seniority of inspectors, sergeants, sub-inspectors and Assistant Sub-Inspectors is shown in the list printed annually under the orders of the Inspector-General. Seniority of head constables in districts will be recorded in form 10.88 (1).

13.9. List D. Promotion to Assistant Sub-Inspectors.- *(1) A list shall be maintained in each district in card index Form 13.9(1) of those head constables who have passed the lower school course and the intermediate school course at the Police Training School and are approved by the Deputy Inspector-General as eligible for officiating or Substantive promotion to the rank of assistant sub-inspector. No head constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity.*

(2) Officiating promotion to the rank of assistant sub-inspector shall be made from the list prescribed in sub-rule



(1), as far as possible in rotation, so as to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector-General in accordance with the principles prescribed in rule 13.1, and officiating promotion shall be made in accordance with sub-rule 13.4(2).
(3) Half-yearly reports in Form 13.9(3) on all head constables in this list shall be furnished on the 15th April and the 15th October, to the Deputy Inspector-General.

16.1. Authorized punishments.

(1) No police officer shall be departmentally punished otherwise than as provided in these rules.
(2) The departmental punishments mentioned in the second column of the subjoined table may be inflicted on officers of the various ranks shown in the heading Nos. 3 to 6, by the officers named below each heading in each case, or by any officer of higher rank:-

TABLE

1	2	3	4	5	6
Sr. No.	Departmental punishment		Sergeants, Sub-Inspectors and Assistant Sub-Inspectors	Head Constable	
1.	Dismissal	x x x	Superintendents of Police and Superintendent of Police, Railways	Superintendents of Police, Commandants of Punjab Armed Police and Deputy Superintendent, (Administrative), Government Railway Police, Assistant Superintendent, Government Railway Police, Deputy Superintendents-in-charge of Railway Police Sub divisions senior Assistant Superintendent of Police, Lahore & Officers incharge, Recruits training Centres, Deputy Superintendent of Police Lahaul and Spiti District, Assistant Superintendent of Police, Lahaul and Spiti District, District magistrate, Lahaul and Spiti.	x x x
2.	Reduction in rank		Superintendent of Police, Also Superintendent of Police Railways and (as regard Sub-	Superintendent of Police, Also senior Assistant Superintendent of Police, Lahore Superintendent of Police Railways Deputy Superintendent in charge of	



		Inspectors and Assistant Sub-Inspectors only), Deputy Superintendent in-charge of Railway Police Sub-Division and Officer-in-charge of the Police Recruits Training Centres, Amritsar.	Railway Police Sub-Division and Officer-in-charge of the Police Recruits Training Centre, Amritsar.	
3.	Stoppage of increment.	Ditto	Ditto	
4.	Entry of censure	Superintendent of Police Superintendent of Police Railways and (as regard Sub-Inspectors and only) Deputy Superintendents in-charge of Railway Police Sub Division and Officer in-charge of the Police Recruits Training Centre, Amritsar.	Superintendent of Police also Senior Assistant Superintendent of Police, Lahore Superintendent of Police Railways Deputy Superintendent-in-charge of the Police Recruits Training Centre, Amritsar.	

10.4 From the perusal of Rule 12.1 of PPR, it is quite evident that it has prescribed Appointing Authority of different subordinate ranks. It is apt to notice here that subordinate ranks include posts of Constable to Inspector. The Appointing Authority of Inspector is Deputy Inspector-General of Police and Appointing Authority of Sergeants, Sub-Inspectors and Assistant Sub-Inspectors is Superintendent of Police. As per Rule 13.9, the order of promotion to the rank of Sub-Inspector is passed by Deputy Inspector-General in accordance with principles prescribed in Rule 13.1. The petitioners relying upon judgments of this Court are claiming that it is settled that as soon as order of promotion in terms of Rule 13.9 is passed by DIG, the Appointing Authority no more remains Superintendent of Police.

10.5 The respondent is relying upon Rule 12.1 as well as Rule



16.1 to contend that Appointing as well as Disciplinary Authority of Sub-Inspector is SP, thus, power under Rule 9.18 can be exercised by Superintendent of Police and it is not required to be exercised by DIG/IG. Rule 16.1 prescribes different punishments which may be awarded and authorities which can award. Premature retirement is not one of the punishments, thus, premature retirement cannot be treated as punishment. In the judgments cited by petitioners, Court relying upon Rule 13.9 has held that substantive promotion is made by DIG, thus, Appointing Authority of Sub-Inspector is DIG.

10.6 This Court with due respect finds itself unable to subscribe to opinion expressed in those judgments because if it is accepted that for an officer who has been promoted from the rank of Head Constable to ASI and thereafter to rank of Sub-Inspector, the Appointing Authority would be DIG, in that situation, for an officer who has been directly appointed to the post of Sub-Inspector, the Appointing Authority would be Superintendent of Police whereas an officer who has been promoted to the rank of Sub-Inspector, the Appointing Authority would be DIG. Rule 13.9 provides for promotion whereas Rule 12.1 specifically declares authorities which would be Appointing Authority for subordinate ranks. Once there is a specific Rule prescribing authorities as ‘Appointing Authority’, the Rule which is providing for promotion cannot be relied upon. If on the basis of Rule 13.9, it is held that after promotion from the post of ASI to SI, the Appointing Authority would change, the mandate of Rule 12.1 would become otiose. It is settled principle of interpretation of statute that no provision can be read in such a manner that another provision become otiose or redundant. There is need of harmonious



interpretation of both Rules in case there is conflict or overlap. Rule 12.1 is a specific Rule dealing with concept of 'Appointing Authority', thus, Rule 13.9 which provides for promotion cannot be preferred.

10.7 A Division Bench of this Court in **ASI Gurdev Singh Vs. State of Punjab 1997 (1) SLR 197** has held that judgment of **Karnail Singh (supra)** does not lay down the correct law. The Court has held:

“14. The judgment of the learned Single Judge in Karnail Singh's case (supra), no doubt, supports the argument of Shri Sharma, but, in our opinion, that judgment does not lay down the correct law. In his judgment in Karnail Singh's case, Bahri, J. made reference to the provisions of Rules 12.1, 13.3(2), 13.9 and 13.10 of the Punjab Police Rules and held:—

“that as the Deputy Inspector of Police had confirmed the petitioner on the post of Assistant Sub Inspector and had allowed him to continue beyond the age of 55 years, the power to review the case of the petitioner for retention in service could be exercised only by the Deputy Inspector General of Police and not by the Senior Superintendent of Police who was subordinate to the Deputy Inspector General of Police.”

15. It appears to us that attention of Bahri, J. was not drawn to the provisions of the 1975 Rules as well as the judgment of the Supreme Court in State of Punjab v. Manohar Lal (supra). If that had been done, it could not have been possible for Bahri, J. to take a view contrary to the judgment of the Supreme Court. We, therefore, hold that the judgment in Karnail Singh's case (supra) which has been rendered without noticing the provisions of 1975 Rules is per incurium and in any case, being contrary to the law laid



down by the Supreme Court, that judgment cannot be treated as laying down correct law.”

10.8 Supreme Court in ***State of Punjab Vs. Manohar Lal***, AIR ***1987 Supreme Court 201*** while reversing judgment and decree passed by the Appellate Court and this Court has held that Superintendent of Police is legally competent to pass order of compulsory retirement as he is the Appointing Authority. The Court noticed provisions of Rule 12.1 & 13.9(2) of PPR and held that Senior Superintendent of Police is legally competent to pass order of compulsory retirement. The relevant extracts of the judgment are reproduced as below:

“6. On considering the provisions of the aforesaid rules it is quite clear and apparent that the Senior Superintendent of Police, Gurdaspur being the competent authority to make the appointment to the non-gazetted ranks of Sub-Inspectors, is also legally competent to pass the order of compulsory retirement of the plaintiff-respondent in public interest in accordance with the provisions of Rule 3(1)(a) and (b) of the said rules. It has been tried to be contended by referring to the provisions of Rule 13.9, sub-rule (2) by the respondent wherein it has been provided that substantive promotion to the rank of Assistant Sub-Inspector is to be made by the Deputy Inspector General of Police in accordance with the principles prescribed in Rule 13.1 that the Superintendent of Police is not the competent authority to make the impugned order. It is only the Deputy Inspector General of Police who is competent to make the order of compulsory retirement in question. This argument cannot be sustained in view of the specific provisions made in Rule 12.1 wherein it has been provided that the Superintendent of Police is competent to make the appointment to the non-gazetted ranks of Sub-



Inspectors of Police and Assistant Sub-Inspector of Police. On a reading of both these provisions of the Rules 12.1 and 13.9(2) it is clear and apparent that the Senior Superintendent of Police, Gurdaspur is legally competent to make the impugned order of compulsory retirement of the plaintiff-respondent from service in public interest after his attaining 50 years of age in accordance with the provisions of Rules 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975.”

10.9 Rule 13.3 of PPR as reproduced above clearly provides that substantive promotion to the rank of Sub-Inspector and Assistant Sub-Inspector shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police. Deputy Inspector-General of Ranges who maintain promotion list for these two ranks in case of District Police will notify the Superintendent of Police of a District when a vacancy in either rank is to be filled by an officer in his District. Promotion to the rank of Head Constable shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police. This Rule makes it clear that substantive promotion to the rank of ASI and SI is made by Superintendent of Police.

10.10 In ***Babu Ram Walia v. State of Haryana, 2007 (1) SCT 288*** and ***Shamsher Singh v. State of Haryana, 2008 (2) SCT 616***, Division Benches of this Court have expressed opinion contrary to that formed in ***ASI Krishan Singh (supra)***. Relying upon judgments of this Court in ***Babu Ram Walia (supra)*** and ***Shamsher Singh (supra)***, a Coordinate Bench of this Court in ***Ram Chander (supra)*** has held that judgment in ***ASI Krishan Singh (supra)*** is not a binding precedent. The relevant extracts of the judgment in ***Ram Chander (supra)*** read as under:



“49. If Babu Ram Walias' and Shamsheer Singh's cases had not been decided prior to Krishan Kumar's case, then the ratio of judgment in Krishan Kumar's case, holding that even at the age of 55 years, a police official cannot be retired from service except by the Inspector General of Police with the prior approval of the Government, would be a ratio binding on this Bench. However, as already seen hereinabove, the judgments in Walias' and Shamsheer Singh's cases not having been brought to the notice of the single Judge or the Division Bench in Krishan Kumar's case, therefore even after simple dismissal of the SLP of the State, the judgment of the Division Bench (in Krishan Kumar), would not be a binding ratio on the issue in question, whereas what has been held in Babu Ram Walia's case would constitute the 'binding ratio'. Of course, in personem, naturally dismissal of the SLP would result in the judgment of the Division Bench and the single Judge remaining to be binding on the parties to that specific lis.”

10.11 In ***Ram Chander (supra)***, this Court has held that Appointing Authority of Sub-Inspector is Superintendent of Police. Rule 12.1 cannot be ignored on the basis of Rule 13.9 or 13.10 of PPR. The Court has held:

“50. Thus, after considering the above aspects, what also needs to be considered is, (though no specific argument has been raised in that regard, but the issue in fact having been raised in the written statement), whether or not the appointing authority of the petitioner was the Superintendent of Police, Railways, the petitioner being a Sub-Inspector. As already noticed, Rules 12.1 and 16.1 of the Police Rules have been reproduced in the written statement filed by the respondents (to state to that effect); in the first of which (Rule 12.1), it is clearly stipulated, in the chart depicted in



the rule itself, that the authority to whom the power of appointment is delegated, in the case of Sergeants, Sub-Inspectors and Assistant Sub-Inspectors, is the Superintendent of Police. (Actually even the chart reproduced in the written statement is from the rule applicable to Punjab and not Haryana, but that would make no difference, because even in Haryana, the Rule stipulates to the same effect, simply substituting the words “Commandants of Punjab Armed Police ———,” with the words “Superintendent of Police, Railways.”)

51. Thus, the petitioner being a Sub-Inspector of Police, as per the said rule, very obviously his appointing authority was the Superintendent of Police (Railways).

52. Further, it is also stipulated in the chart which is contained in Rule 16.1, that even for the purpose of dismissal of a Sub-Inspector of Police, or for reducing an official of that rank to a lower rank, the Superintendent of Police is the authority competent to do so.

53. Undoubtedly, Rule 13.10 of the Police Rules stipulate that a list of all Assistant Sub Inspectors, who have been approved by the Deputy Inspector General of Police to be fit for trial in independent charge of a police station, or for specialist posts on the establishment of Sub-Inspectors, shall be maintained by the Range Deputy Inspector General, and that vacancies of long duration may be filled in by the promotion of any eligible person in the range, at the discretion of the DIG; however, in the opinion of this Court, that does not alter the fact that the appointing authority of a Sub-Inspector remains a Superintendent of Police in terms of Rules 12.1 and 16.1.

54. Since the DIG (now an Inspector General) is the officer-in-charge of a range consisting of many districts, with a Superintendent of Police being the officer-in-charge



of a district, naturally, filling up of posts of Sub-Inspectors in different districts from amongst eligible Sub-Inspectors across different districts, can only be done by the DIG. Thus that would be the rationale behind maintaining a list of Sub-Inspectors (List-E) in the DIGs' office in terms of Rule 13.10, even though the appointing and punishing authority is the Superintendent of Police.

55. The obvious result then is that for a Sub-Inspector to be appointed on promotion from the rank of an Assistant Sub-Inspector, it would have to be with the approval of the DIG, to the extent that such Assistant Sub-Inspector is fit for promotion to the rank of Sub-Inspector, but with the appointment letter still having to be issued by the Superintendent of Police concerned. Similarly, for the purpose of dismissal and reduction in rank of a Sub-Inspector, in terms of Rule 16.1 it is the Superintendent of Police who has been empowered to do so. (The DIG being the punishing authority for a person in the rank of an Inspector, as per the chart contained in Rule 16.1. Similarly, the appointing authority of an Inspector has also been shown to be a DIG of Police, or the Assistant Inspector General, Government Railway Police (the latter post now being non-existent, and replaced by a Superintendent of Police (Railways), who falls under the supervision of a DIG/IG/ADGP, (Railways)).

56. The result of the aforesaid discussion therefore is that as regards the actual appointment of, and punishment to be awarded to, a Sub-Inspector of Police, it is the Superintendent of Police, that is the competent authority in terms of Rules 12.1 and 16.1 respectively, with the DIG being the authority without whose approval promotion to the rank of a Sub-Inspector cannot be made from the rank of an ASI.”



10.12 In order to interpret provisions of compulsory retirement of PPR, it would be apt to notice that Food Corporation of India has framed FCI (Staff) Regulations, 1971 (for short, '**FCI Regulations**') governing service of its employees. Regulation 56 of FCI Regulations deals with disciplinary action. Explanation to said Regulation clearly provides that authority empowered to make appointment to the post which the employee for the time being holds or the authority which appointed the employee to such post shall be Appointing Authority. In case both the authorities are different, the higher authority would be Appointing Authority. Regulation 56 of FCI Regulations is reproduced as below:

“56. Disciplinary authorities:

The Board or the authority specified in Appendix 2 in this behalf or any other authority (higher than the authority specified in Appendix-2) empowered in this behalf by a general or special order of the Board, may impose any of the penalties specified in Regulation 54 on any employee.

Provided that the penalties of reduction in rank, compulsory retirement, removal from service or dismissal from service specified in clauses (v) to (ix) of Regulation 54 shall not be imposed on any employee by an authority lower than the appointing authority.

Explanation: *'Appointing Authority' in relation to an employee for the purpose of this Regulation shall be as under:*

(i) the authority empowered to make appointments to the post/grade which the employee for the time being holds;
or

(ii) the authority which appointed the employee to such post/grade as the case may be; whichever authority is the higher authority.”

[Emphasis Supplied]



In case of PPR, there is no Rule or explanation which provides that if the authority empowered to make appointment and authority which had actually made appointment are different, the higher authority would be Appointing Authority. Indubitably, the petitioners were initially appointed as Constable and they were further promoted. The order of promotion was issued by DIG/IG in terms of Rule 13.9 of PPR. The said Rule did not wipe out color and contour of Rule 12.1. Even though Rule 16.1 is not applicable with respect to compulsory retirement, however, cue for the purpose of interpretation of Rule 12.1 and 13.9 can be taken. The said Rule too provides that Disciplinary Authority of Sub-Inspector is Superintendent of Police. If contention of the petitioners is accepted, the Superintendent of Police would be empowered to dismiss an employee, however, he would not be empowered to order for compulsory retirement.

11. Q. No.(iv): Whether Appointing Authority while passing order under Rule 9.18(1)(c) is required to comply with instructions dated 05.02.2019 issued by State Government?

11.1 The petitioners are claiming that respondent while passing impugned order has invoked instructions dated 05.02.2019 issued by the State Government and as per those instructions, order of compulsory retirement can be passed with concurrence of Administrative Department. In the case of petitioners, the order has been passed by Superintendent of Police without concurrence of any senior officer leaving aside Government. The respondent has specifically noticed instructions dated 05.02.2019, thus, respondent was bound to comply with instructions



dated 05.02.2019. From the perusal of instructions dated 05.02.2019, it is evident that one of the conditions is that service record of last 10 years would be considered before passing order of compulsory retirement. In the impugned order, the respondent has observed that as per instructions dated 05.02.2019 service record of last 10 years has been noticed. The noticing of last 10 years service record in the light of instructions dated 05.02.2019 does not mean that instructions *in toto* are applicable to petitioners.

11.2 In the instructions, Rules 144 & 145 of 2016 Rules are discussed at length. The State Government has issued instructions with respect to Rules 144 & 145 of 2016 Rules. From the reading of Rules 144 & 145 alongwith Rule 9.18 of PPR, it is evident that Rules 144 & 145 are *pari materia* with Rule 9.18 of PPR. Rule 9.18 of PPR is applicable to officers holding subordinate ranks whereas 2016 Rules are applicable to civil servants of the State Government. There is no gainsaid that 2016 Rules may be applicable to Police Officials, however, those Rules can be invoked where PPR are silent. If a situation is specifically adverted to by PPR, there is no question of invoking of 2016 Rules. The instructions are issued with respect to Rules 144 & 145, thus, there is no question of applicability of those instructions. The Director General of Police, Haryana has issued instructions dated 11.06.2019 which are based upon judgments of this Court. As per those instructions, there is no need to seek sanction/approval of Government while retiring an official at the age of 55 years. The relevant extracts of instructions dated 11.06.2019 issued by Director General of Police are reproduced as below:

“In view of judgments mentioned above; it is clear that



previous approval of the Government is not required for retiring any Police officer on or after he attains the age of 55 years as per Punjab Police Rule 9.18 (1) (c).

The other provision under Punjab Police Rule, 9.18 (2) pertains to compulsory retiring a police officer/official after completion of 25 years of service with prior approval of the Government to be sought through Inspector General of Police (now DGP).

Therefore, please take necessary action in all individual cases according to the judgements referred above and there is no requirement to seek sanction/approval of the Government while retiring an officer/official at the age of 55 years and all codal formalities including the provisions laid down under rule 9.18(1) be completed and no reference of Civil Services Rules should be made in the show cause notices as well as retirement orders. However, previous approval of the Government through this office be sought before retiring any police officer/official after completion of 25 years of service in compliance of provisions of PPR 9.18(2).”

The petitioners being Police Officers are governed by PPR and Rule 9.18 provides for compulsory retirement. The instructions relate to Rules 144 & 145 of 2016 Rules which are inapplicable to Police Officials, thus, instructions dated 05.02.2019 are inapplicable to petitioners. There is no need to comply with procedure contemplated by those instructions which are nothing more than elaboration of Rules 144 & 145 of 2016 Rules.

12. Q. No.(v): Whether impugned order is stigmatic?

12.1 The petitioners are claiming that impugned orders are stigmatic, thus, could not be passed in terms of Rule 9.18 of PPR.



12.2 In *Maneka Gandhi Vs Union of India, (1978) 1 SCC 248 at page 281*, a constitution bench elaborated and expounded the relationship between different articles guaranteeing fundamental rights and enunciated that every action of the State is violative of Article 14 which is arbitrary. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic, while the other, to the whim and caprices of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Justice Bhagwati speaking for the bench has held:

7. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3* namely, that “from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14”.



Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

12.3 The object of compulsorily retirement of a Government servant is to weed out the dead woods in order to maintain efficiency and initiative in the service as well as to dispense with services of those whose integrity is doubtful so as to preserve purity in the administration.

The Supreme Court in ***State of Gujarat Versus Umedbhai M. Patel 2001 (3) SCC 314*** has elaborated principles which ought to be followed in the matters relating to compulsory retirement. The relevant extracts of the judgment read as:

“11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be



passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

[Emphasis Supplied]

12.4 Supreme Court in catena of judgments including ***R.K. Panjetha v. Haryana Vidyut Prasaran Nigam Ltd., (2002) 10 SCC 590***

has laid down that if order of compulsorily retirement casts stigma on the Government servant means it contains statement casting aspersion on the conduct or character, the Court will treat the said order as an order of punishment attracting provisions of Article 311 (2) of the Constitution. Simple order of compulsory retirement cannot be regarded as an order of punishment. If the statement in the order refers only to the assessment of his work and does not at the same time cast aspersion on the conduct or character of the employee, it would not be proper to hold that order of compulsory retirement an order of punishment. The authorities passing order of premature retirement are not supposed to pass a speaking order.

Pre-mature retirement is prerogative of Government but it should be



based on material and has to be based on the subjective satisfaction of the Government.

12.5 In view of aforesaid judgments of Supreme Court, the order of compulsory retirement cannot be stigmatic. In case it is stigmatic, it becomes punitive and authorities are bound to comply with mandate of Article 311(2) of the Constitution of India.

For the ready reference, the impugned order being a short order is reproduced as below:

“NOTICE-CUM-ORDER

No. 31401/0201

Dated. 18-12-24

You, SI Naresh Kumar No. 73/SPT, 524/RR, will attain the age of 55 years on 03.03.2025, your date of birth is 04.03.1970. Whereas, it is proposed to retire you. SI Naresh Kumar No. 73/SPT, 524/RR, from service compulsorily due to chequered service record in the public interest under Punjab Police Rules 9.18(1), on the following grounds/material:-

Sr. No.	Summary of ACR	Remarks
1.	01.04.2020 to 31.03.2021 01.04.2021 to 25.10.2021 21.04.2022 to 28.07.2022	1.Integrity- Dishonest 2.Reliability- Unreliability

2. In addition to above adverse remarks recorded in your ACR, you were found involved and arrested in corruption cases FIR No. 01 dated 10.02.2021 u/s 7 PC Act Police Station SVB, Rohtak and FIR No. 12 dated 16.05.2022 U/s 7 PC Act PS SVB Gurugram in connection with demanding illegal gratification.



3. *In view of the above, your service record during the last ten years has not been found upto the mark, in view of the criteria/parameter laid down in the State Government's instruction dated 05.02.2019. Hence, you are not allowed to serve more in the Police Department, and it has been decided that you should be retire from Govt. service in the public interest under rule 9.18(1)(C) of Punjab Police Rules, 1934. You are, therefore, served upon with this three months notice, as to why you should not be compulsorily retired from service after the expiry of the period of this notice.*

-Sd/-
(Ganga Ram Punia)
Superintendent of Police.
Karnal, 17.12.2024”

12.6 On being confronted with impugned order and judgments of Supreme Court, learned State Counsel expressed her inability to controvert the fact that impugned order is stigmatic, however, submits that orders passed in **CWP No.3670 of 2025** and **CWP No.34741 of 2024** are not stigmatic. She further submits that Appointing Authority may be granted opportunity to pass fresh order where orders are stigmatic.

13. In the wake of above discussion and findings, the answer to above referred questions are:

(i) A Police Officer who is governed by PPR may, in terms of Rule 9.18(1) of PPR, be compulsorily retired on attaining the age of 55 years.

(ii) The order of compulsory retirement may be passed under Rule 9.18(1) and it is not necessary that every order of premature/compulsory retirement should be passed under



Rule 9.18(2) of PPR.

(iii) Superintendent of Police is Appointing Authority of Assistant Sub-Inspector and Sub-Inspector.

(iv) The Appointing Authority while passing order under Rule 9.18(1) is not required to comply with instructions dated 05.02.2019 issued by State Government.

14. In the above premise, all the petitions are disposed of in below terms:

CWP No.2766 of 2025

The impugned order has been passed by Superintendent of Police, Karnal. The petitioner is holding rank of Sub-Inspector. The order has been passed under Rule 9.18(1)(c) of PPR. The Authority in the impugned order has noticed adverse entries of ACR as well as pending FIRs against the petitioner, thus, it is stigmatic. It could not be passed without complying with mandate of Article 311(2) of the Constitution of India. In view of answer to different issues raised hereinabove, the impugned order being stigmatic is hereby set aside with liberty to respondent to pass fresh order.

CWP No.2327 of 2025

The impugned order has been passed by Superintendent of Police, Fatehabad. The petitioner is holding rank of EASI. The order has been passed under Rule 9.18(1)(c) of PPR. The Authority in the impugned order has noticed adverse entries of ACR as well as pending FIRs against the petitioner, thus, it is stigmatic. It could not be passed without complying with mandate of Article 311(2) of the Constitution of India. In view of answer to different issues raised hereinabove, the



impugned order being stigmatic is hereby set aside with liberty to respondent to pass fresh order.

CWP No.3670 of 2025

The respondent for the perusal of this Court produced the original file. From the perusal of official file/notings, it is evident that the the Competent Authority has noticed ACR(s) of last 10 years as well as punishment awarded on different occasions. Considering the entire service record, the impugned order has been passed. In view of findings on different issues, there is no infirmity in the impugned order. The petition deserves to be dismissed and accordingly dismissed.

CWP No.34741 of 2024

The respondent for the perusal of this Court produced the original file. From the perusal of official file/notings, it is evident that the the Competent Authority has noticed ACR(s) of last 10 years as well as punishment awarded on different occasions. Considering the entire service record, the impugned order has been passed. In view of findings on different issues, there is no infirmity in the impugned order. The petition deserves to be dismissed and accordingly dismissed.

Original record produced by respondent is returned to Ms. Rajni Gupta, Addl. AG, Haryana.

(JAGMOHAN BANSAL)
JUDGE

13.02.2025
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No