
(1995) 10 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12690 of 1993

Daulat Ram, Sub Inspector

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 10-10-1995

Acts Referred:

Citation : (1996) 112 PLR 65

Hon'ble Judges : R.S. Mongia, J

Bench : Single Bench

Advocate : Deepak Agnihotri and Girish Agnihotri, for the Appellant; Deepak Sibal, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—This judgment will dispose of Civil Writ Petition No. 12690 of 1993 as well as Civil Writ Petition No. 14948 of 1993, both having been filed by the same petitioner. Petitioner who was working as a Sub Inspector in the Haryana Police filed the former writ petition for seeking a direction to the respondents to consider and promote him to the rank of Inspector w.e.f. the date his juniors i.e. respondents No. 4 and 5 had been promoted. The latter writ petition is for quashing the order dated 26.11.1993 vide which the petitioner had been compulsorily retired from service. Brief facts may be noticed.

2. The petitioner was appointed as a constable in the Haryana Police on February 15, 1962, and was promoted as a Head Constable on April 1, 1967, and was confirmed as such w.e.f. December 11, 1974. He was further promoted as Assistant Sub Inspector on April 23, 1976 and was confirmed as such on February 1, 1980. He was still further promoted as Sub Inspector on April 25, 1982, and vide order dated March 21, 1989, he was confirmed as such w.e.f. August 1, 1985. It has further been alleged in the said confirmation order that the petitioner figures at Sr. No. 17 whereas respondents No. 4 and 5 figure at Sr. No. 23 and 29 respectively. Further in February, 1990, respondents No. 4 and 5 were promoted as Inspectors. Since the petitioner had met with an accident in

July, 1990, as a result of which he received multiple fractures and injuries, he could not make immediate representation against the promotion of respondent No. 4 and 5. He made a representation on February 7, 1993, which was rejected on March 18, 1993. This led the petitioner to file the first writ petition. Thereafter, as observed above, the petitioner was compulsorily retired vide order dated November 26, 1993, which led the petitioner to file the second writ petition.

3. In reply to the first writ petition, it has been averred on behalf of the respondent that no doubt respondent No. 4 and 5 were junior to the petitioner, but when they were promoted, the petitioner was duly considered but was not found fit for promotion on the basis of his service record. It has further been averred that the petitioner had adverse annual confidential reports for the period April 22, 1976 to March 31, 1977, April 4, 1977 to March 31, 1978, July 11, 1983 to March 31, 1984 and April 1, 1984 to January 4, 1985 copies of the annual confidential reports of the above period have been attached as Annexure R-2 to R-5 with the written statement in the first writ petition. In the annual confidential report of the petitioner for the period July 4, 1977 to March 31, 1978, against the column "honesty, it has been mentioned "correct", against the column "moral character", it has been mentioned "low, drunkard" and the general remarks by the Superintendent of Police were "this is a corrupt, inefficient and drunkard official, who is not fit for the police". The Deputy Inspector General of Police had recorded that a warning should be issued to the petitioner. So far as the annual confidential report for the period July 11, 1983, to March 21, 1984, is concerned, against the column "honesty" it has been mentioned "there were complaints of dishonesty but no specific complaint proved. Reputation in the general public is not good". In the annual confidential report for the period April 1, 1984, to January 4, 1985, against the column "honesty" it has been mentioned "doubtful" and against the column "defect, if any" , it has been recorded "Not performed entrusted work with keen interest and there are complaints about making false Ravangi to wander idle to and fro without bringing into notice of his higher officers". The general remarks recorded by the Superintendent of Police, Kurukshetra, were "He is an official of average category about whom it is generally said that he does not work without taking money. No keen interest has been taken in the work of investigation of the F.I.R. cases. Even he did not join the accused whose names figures in the investigation and showed negligence". According to the learned counsel for the respondents, it was on the basis of this record of service that the petitioner was not found suitable for promotion as inspector. Apart from this, learned counsel for the respondent also submitted that the promotions of respondents No. 4 and 5 took place in February, 1990, whereas the first writ petition was filed on October 11, 1993.

4. So far as the second writ petition regarding compulsory retirement is concerned, the respondents have also stated that in the annual confidential report for the period July 2, 1991, to February 14, 1992, it was conveyed that the petitioner was an average type of Sub Inspector and he had also been awarded

some punishment of censure. It was on the basis of overall record that the petitioner was ordered to be compulsorily retired as he had outlived his utility as a police officer.

5. Learned counsel for the petitioner argued that adverse remarks lose their significance after an order of confirmation or promotion is passed in favour of the person concerned. Since the petitioner had been promoted as Assistant Sub Inspector on April 23, 1976, and further confirmed as such on February 1, 1980, any adverse record prior to that date cannot be taken into consideration for any purpose. Further since the petitioner had been promoted as Sub Inspector on April 25, 1982, and confirmed as such w.e.f. August 1, 1985, any adverse remarks prior to August 1, 1985, cannot be taken into consideration for the purpose of further promotion to the rank of Inspector. Similar was the argument for assailing the order of premature retirement. In support of his submission, learned counsel for the petitioner relied on two Division Bench Judgments of this Court-one reported as *Bhana Ram Vs. State of Haryana and Others*, and the other decision in *Ajmer Singh v. State of Haryana etc.* C.W.P. No. 5413 of 1993 rendered on March 16, 1994.

On the other hand learned counsel for the respondents submitted that both the Division Bench judgments did not lay down that the order of confirmation would wash away even the previous entry regarding doubtful integrity. Rather in *Bhana Ram's* case (*supra*), the Division Bench went to the extent that even promotion to higher rank would not wash away an entry of doubtful integrity prior to the date of promotion. However, learned counsel argued that according to the Full Bench of this Court reported as *Punjab State and Others Vs. Kulwantbir Singh*, which relies upon Supreme Court judgments in *State of U.P. Vs. Hari Shankar Tewari*, *Baidyanath Mohaptra v. State of Orissa* 1989(4) SLR 220 and *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, that an entry of doubtful integrity would lose its sting after promotion. The Full Bench never laid down that merely on confirmation on a post, the adverse entry regarding doubtful integrity would be washed away.

After hearing the learned counsel for the parties, I am of the view that there is no merit in these writ petitions. The criteria and considerations for considering a case of an officer for crossing the efficiency bar, confirmation, promotion and premature retirement are quite different. In case of confirmation, it is only to be seen whether a person is fit to be confirmed in a particular rank and for that purpose entry of doubtful integrity may not have that much significance as for promotion. If in spite of an entry of doubtful integrity, a person is promoted by taking into consideration his other record, then it can be said that after the date of promotion, the entry of doubtful integrity would lose its significance and sting. Can the same result follow in case an official is confirmed? In *Bhana Ram's* case (*supra*) the petitioner was an assistant Sub Inspector of Police. The crossing of the efficiency bar in his case was withheld for a year w.e.f. April 1, 1983. In March, 1991, he was compulsorily retired from service. The contention was

raised that after confirmation, the adverse entry of doubtful integrity could not have been taken into account while deciding the case for crossing the efficiency bar. This was repelled with the observation:

"Adverse entries of different types have different effect in service matters. Two types of orders are passed; one relating to confirmation, promotion or grant of selection grade/higher grade and the other for crossing of efficiency bar or retention in service/compulsory retirement. If orders like confirmation or promotion to a higher rank are passed, the adverse remarks contained in Confidential Reports prior thereto lose their significance for giving further promotion or confirmation on the promoted post. However, this position is not applicable to the second category of cases relating to crossing of efficiency bar or retention in service after completion of 25 years or beyond 50 or 55 years of age. In this category of cases, the entire service record even before the orders of confirmation, promotion or grant of selection grade etc. has to be considered. Particular reference may be made to an adverse entry of "integrity doubtful" which as per instructions of the State Government, usually effects the service career for about 10 years; which fact has not been disputed".

In that case, the Division Bench went to the extent of holding that the adverse entry of doubtful integrity would not be washed away even on promotion. When the Division Bench observed that entry of doubtful integrity would not be washed away even on promotion, surely it could not be intention to lay down that on confirmation, the entry regarding doubtful integrity would be washed away. Where it has been observed "if orders like confirmation or promotion to the higher rank are passed, the adverse remarks contained in the confidential reports prior thereto lose their significance for giving further promotion on confirmation", can at best mean that on confirmation, the prior adverse remarks other than "doubtful integrity" would stand washed away inasmuch as the Division Bench had itself observed that even on promotion, the remarks of "doubtful integrity" would not be washed away. If on promotion, the adverse entries regarding doubtful integrity" are not to be washed away, surely these cannot be washed away merely on confirmation. I have my reservations on the proposition whether on confirmation the adverse entries even other than doubtful integrity would be washed away or not. Bhana Ram's case (supra) was a case of withholding of the crossing of the efficiency bar and its effect on premature retirement. The Full Bench in Kulwantbir Singh's case (supra) while considering the case of Bhana Ram observed that the observation of the Division Bench in the said case that the adverse entry of "doubtful integrity" even on promotion had to be considered in the light of what was held by the Supreme Court in Hari Shankar Tiwari's case (supra), Bedyanath Mohapatra's case (supra) and also the latest case on the point i.e. Baikuntha Nath's case (supra) i.e. that on promotion the adverse entries prior thereto including entry of "doubtful integrity" would lose its significance and sting.

Learned counsel for the petitioner also relied on the following observations of the

Division Bench Judgment of this Court in Ajmer Singh's case (supra) in support of the contention that on confirmation, the adverse remarks even of doubtful integrity" would stand washed away. The Division Bench had made these observations while discussing the ratio of the Full Bench judgment in Kulwantbir Singh's case (supra). The Division Bench had observed as under :-

"After laying down broad principles it was held that on the crossing of efficiency bar, the adverse entry of "doubtful integrity" figuring against the petitioner could not be treated to have been washed away .The entire record of service of the petitioner was required to be considered. However, with respect to the effect of such adverse remarks after confirmation or promotion it was held as under:-

"On the other hand, the adverse remarks prior to promotion to a higher post particularly where it is based upon merit and not seniority alone would lose their significance and such promotion would take away the sting of the adverse remarks against the government servant concerned."

Keeping in view the ratio of the decisions aforesaid the adverse entry as recorded in Annexure P-3 for the period ending March 31, 1984 "he is dishonest" loses its sting as the petitioner was confirmed."

It may be observed here that where the Division Bench in Ajmer Singh's case (supra) observed that the Full Bench had "however, with respect to the effect of such adverse remarks after confirmation or promotion it was held as under", the Full Bench did not held anything in respect to the effect of the adverse remarks regarding "doubtful integrity" after confirmation. It was only dealing with the effect on the adverse remarks after promotion and not confirmation. From the observation of the Full Bench (noticed by the Division Bench in Ajmer Singh's case (supra), it is further clear that those observations were in respect to the effect on the previous adverse remarks after an officer gets promoted. I was one of the members of the Full Bench in Kulwantbir Singh's case (supra). I would rather follow the Full Bench. The observations of the Division Bench regarding the washing away of the adverse remarks even of "doubtful integrity" on confirmation on a post can at best be held to. be per incuriam. Consequently, I hold that on confirmation, the remarks regarding "doubtful integrity" against the petitioner do not get washed out and can be taken into consideration for purpose of promoting an officer or prematurely retiring him. Consequently, there was nothing wrong in considering the adverse entries regarding doubtful integrity in case of the petitioner.

6. Through Misc. application (C.M. No. 9791 of 1995), another point is sought to be raised that at the time of considering the case of the petitioner for retention of service after 50 years of age on June 21, 1992, it was found that he should be allowed to continue upto the age of 55 years and consequently he could not be prematurely retired vide the impugned order. This point was not specifically taken in the writ petition. Moreover, I do not find any bar in reconsidering the case regarding premature retirement after an officer is held entitled to continue

in service at an earlier date.

7. For the foregoing reasons I do not find any merit in these writ petitions, which are hereby dismissed. However, there will be no order as to costs.