
(2010) 09 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 21197 of 2008

Davinder Singh ASI

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 439(2)
Penal Code, 1860 (IPC) — Section 34, 344, 383

Citation : (2012) 1 ILR (P&H) 641 : (2012) 1 ILR (P&H) 233

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : A. K. Bura, for the Appellant; R.S. Kundu, Addl. AG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—These two writ petitions have been filed challenging the adverse Annual Confidential Reports for the period 26.04.2006 to 31.03.2007, vide order dated 29.05.2008 (Annexure P-3) in CWP No. 21197 of 2008 and the communication dated 24.12.2008 (Annexure P-4) and the order of compulsory retirement dated 02.01.2009 (Annexure P-6) in CWP No. 476 of 2009. Facts leading to the filing of these two writ petitions are briefly noticed hereunder.

2. Petitioner was appointed as a Constable on 12.12.1978 in District Bhiwani. It is stated that in his long tenure of 29 years of service, he has been awarded as many as 31 commendation certificates including two certificates during the period adverse reports have been recorded against him i.e. 26.04.2006 to 31.03.2007. Petitioner has been conveyed the adverse reports recorded in his service record vide communication dated 23.05.2007. The petitioner made a representation against the aforesaid adverse remarks through proper channel vide Annexure P-2. This representation stands rejected vide memo dated 29.05.2008 (Annexure P-3) by a non-speaking order, which is subject matter of challenge along with the adverse entry in C WP No. 21197 of 2008. While this

writ petition was pending, the petitioner has been served with a Show Cause Notice (Annexure P-2 with CWP No. 476 of 2009) proposing to compulsory retire him in public interest under the provisions of Sub Rule (2) of Rule 9.18 (2) of the Punjab Police Rules, 1934, as applicable to the State of Haryana and amended from time to time. He was asked to submit his reply within 15 days. In response to the aforesaid Show Cause Notice, the petitioner submitted a detailed reply through proper channel vide Annexure P-3 with CWP No. 476 of 2009.. The Director General of Police, Haryana, vide his order dated 23.12.2008 (Annexure P-4 with CWP No. 476 of 2009) ordered compulsory retirement of the petitioner and forwarded the same to the Government for approval as required under Rule 9.18 (2) of Punjab Police Rules, 1934. This order was directed to be communicated to the petitioner vide letter dated 31.12.2008 (Annexure P-5 with CWP No. 476 of 2009). Consequently, the petitioner stands retired with effect from 31.12.2008 vide a subsequent order dated 02.02.2009 (Annexure P-6 with CWP No. 476 of 2009). The Show Cause Notice and the order of compulsory retirement are subject matter of challenge in CWP No. 476 of 2009.

3. Common grounds to challenge the adverse reports and compulsory retirement have been projected in these writ petitions.

4. It is averred that the petitioner was posted as Incharge Railway Police Post, Bhiwani, in the month of November, 2006, where one Suraj Mai, Head Constable, Belt No. 522, was working under him. It is alleged that Suraj Mal was not working sincerely. The petitioner recorded his absence and for this reason he became inimical to petitioner. It is further stated that the petitioner was on leave for a day w.e.f. 11.12.2006 to 12.12.2006 and during this period, Suraj Mal instigated one Jai Singh son of Surat Singh. Caste Sansi to lodge a complaint against the petitioner. On the complaint of Jai Singh, a First Information Report No. 4 dated 03.01.2007, under Sections 344, 383 and 34 of the Indian Penal Code was registered at Police Station, GRP, Hisar. One Inspector, CIA Om Parkash was entrusted its investigation. Petitioner sought anticipatory bail which was granted by the learned Sessions Judge, Bhiwani. A petition u/s 439(2) Cr.P.C. for cancellation of the anticipatory bail, was dismissed by the High Court as withdrawn. After the investigation, the petitioner was not named as an accused in the final report, submitted to the Court u/s 173 Cr.P.C., nor he was summoned by the Court. It is also stated that a departmental enquiry was simultaneously ordered against the petitioner. One Ranvir Singh, DSP who conducted the enquiry, found the petitioner innocent. The petitioner stated that the adverse remarks in his ACR are incorrect and not based on any material. From the perusal of the memo dated 23.05.2007, indicating adverse remarks against the petitioner, it appears that a reference is made to FIR No. 4 dated 03.01.2007, which was registered against the petitioner. Further reference is made to two departmental enquiries initiated against the petitioner and the petitioner has been advised to remove these defects. Petitioner submitted a detailed representation against his adverse remarks, which stand rejected vide memo dated 29.05.2008. The order of rejection of representation is totally

nonspeaking. No reason except "devoid of any merit" have been communicated. The petitioner was never made an accused in the FIR registered against him. In the charge sheet produced in the Court, even the other accused, against whom the charge sheet was filed in the Court of Chief Judicial Magistrate, Bhiwani. were acquitted vide judgment dated 06.12.2008. Even in the departmental proceedings also, the petitioner was exonerated by the Enquiry Officer. The Punishing Authority disagreeing with the report of the Enquiry Officer, issued a Show Cause Notice to the petitioner proposing to award punishment of stoppage of five future increments with permanent effect. Petitioner submitted his reply to the Show Cause Notice. The Punishing Authority, however, awarded the punishment of stoppage of one future increment with permanent effect, vide his order dated 17.10.2008. Aggrieved of the award of punishment, the petitioner preferred an appeal before respondent No. 2 and on hearing the petitioner in person and consideration of the record, appeal of the petitioner was accepted and the punishment of stoppage of one annual grade increment has been reduced to the punishment of Censure, vide order dated 16.07.2008. (Annexure P-5 with CWP No. 21197 of 2008).

5. One of the grievances of the petitioner against his adverse ACR is that the adverse report has been recorded in violation of the Government instructions dated 12.12.1985. The compulsory retirement order passed by the respondents, is also solely based upon the FIR registered against him, the adverse ACR and the departmental proceedings.

6. In reply to both the writ petitions, the plea is almost common. While admitting the fact that the petitioner was not sent to trial in FIR No. 4 dated 03.01.2007, it was conceded that the petitioner was exonerated by the Enquiry Officer in the Departmental Enquiry initiated against him. However, with a view to justify the action against the petitioner, it is alleged that the petitioner was charge sheeted in another. In one case, his annual increment was stopped with permanent effect vide the memorandum dated 09.01.2008. Reference is also made to another complaint filed by one Narain Dutt son of Ganpat Ram, against the petitioner alleging that the petitioner did not take any action on his complaint of theft of ornaments and helped the accused to escape and, thus, he has tarnished the image of the Government/Railway Police, Haryana.

7. Adverse remarks made against the petitioner vide Annexure P-1 for the period from 26.4.2006 to 31.03.2006 are as under:-

(1) Honesty-Doubtful

(3) Moral courage and readiness to expose the malpractices of subordinates-Lacking.

(4) Reputation for fair dealing with the public and accessibility to the public: Not proper.

(9) Personality & initiative: Not proper.

(10) Power of command: Loose

(11) Interest in modern methods of investigation and modern police methods: Does not possess.

(12) Preventive & detective ability: No proper.

(13) Working experience of Criminal Law and Procedure: Lacks experience.

(14) Reliability: Not reliable.

(16) Does official/officer remain at H.Qrs. or not after office hours: Does not remain/stay.

(19) Defects, if any, and whether those were brought to his notice through any letter: was placed under suspension due to involvement in FIR No. 4 dated 3.1.07, U/s 384/342/34 IPC GRPS, Hisar, along with others and departmental inquiry was initiated vide memo No. 1567- 78/A-I dated 9.1.2007. Departmental inquiry was initiated vide memo No. 1599-605/ A-1 dated 9.1.2007 due to non registration of the complaint in time. General Remarks: Unable employee in police department.

ASI Devinder Singh No. 607//GRP be apprised of the above said adverse remarks and be instructed to remove these defects. Signature with date of the employee be obtained on the second copy, attached herewith and the same may be sent to this office as an acknowledgement.

Sd/- Director General of Police Railways & Technical Services, Haryana, Mogi Nand, Panchkula.

8. While communicating the above adverse entries, it was also mentioned in the last paragraph of the communication that the officer be instructed to remove these defects. It also appears that the adverse remarks in various columns are, primarily, based upon FIR No. 4 dated 03.01.2007 and the Departmental Enquiry initiated against the petitioner. Otherwise no other material has been referred for recording adverse entries against the petitioner. The representation of the petitioner has been rejected by the Inspector General of Police, Railways & Technical Services Haryana by a cryptic and non-speaking order. The rejection order dated 29.05.2008 (Annexure P-3) reads as under:-

I have gone through the representation, comments submitted by the Reporting Officer and other relevant records submitted by ASI Davinder Singh No. 607/GRP against the adverse remarks recorded in his ACR for the duration from 26.4.2006 to 31.3.2007. His representation has been considered and rejected being devoid of any merit. The representationist be informed accordingly

Sd/- (K. K. Mishra) Inspector General of Police, Railways & Technical Services Haryana, Mogi Nand, Panchkula.

9. The petitioner has placed on record order dated 06.12.2008 passed by the learned Chief Judicial Magistrate, Bhiwani, in Criminal Case No. 143-1/08 filed

pursuant to FIR No. 4 dated 03.01.2007 in which the petitioner was initially involved. The petitioner has not been arrayed as an accused. Even the two persons who are arrayed as an accused have been acquitted. It is also admitted fact that in the Departmental Enquiry as well the petitioner has been exonerated. Thus, the very basis for adverse remarks against the petitioner disappears.

10. Apart from the above, the petitioner has also relied upon government instructions dated 12.12.1985. The relevant instructions relating to reporting in respect of doubtful integrity requires that the Reporting Officer must clearly state if the officer is suspected of corruption or is believed to be corrupt and this opinion generally should be formulated by reasons which may be in possession of the Reporting Officer.

11. From the adverse reports noticed herein above, it can be conveniently inferred that FIR No. 4 dated 03.01.2007 and the Departmental Proceeding are the reasons for doubting the integrity of the petitioner. In so far other aspects relating to his efficiency etc. are concerned perhaps no interference may be warranted. No material has been referred to except the FIR and the Departmental Proceedings. Even the reasons for such an opinion are not recorded or disclosed in the reply. In view of the outcome of the criminal proceedings and the Departmental Enquiry noticed above, the adverse remarks regarding integrity of the petitioner, are not substantiated by any material and, thus, not justified.

12. The Appellate Authority also did not bother to record any reasons for rejecting the representation which has been dealt with in a most casual manner. Even in the reply, no grounds have been disclosed for rejecting the representation of the petitioner. It is also noticed that while communicating the adverse entries, counseling to the petitioner to remove his defects was suggested. This clearly establishes that at no stage the petitioner was given counseling or apprised of his defects. Thus, the advise or counseling after awarding punishment amounts to putting the cart before the horse.

13. Thus, the order dated 23.05.2007 (Annexure P-I) i.e. adverse remarks is liable to be quashed in respect to entry in Column No. 1 "Doubtful". It is not possible for this Court to interfere in the other columns wherein efficiency etc. of the petitioner has been commented upon. Consequently, the order dated 29.05.2008 (Annexure P-3) passed by the Inspector General of Police, Railways & Technical Services, Haryana, rejecting the representation of the petitioner is also set aside.

14. Now coming to the Civil Writ Petition No. 476 of 2009. The petitioner has been compulsorily retired vide the impugned order dated 24.12.2008 (Annexure P-4) by taking into consideration the adverse remarks referred to above, FIR No. 4 dated 03.01.2007 and the two departmental enquiries. In one Departmental Enquiry, the petitioner has been awarded punishment of stoppage of one increment with temporary effect whereas in another Departmental Enquiry he

has been awarded punishment of stoppage of one increment with permanent effect. The second enquiry was conducted on the complaint of one Narain Dutt son of Ganpat Ram. As regards the second enquiry is concerned, the petitioner has placed on record an order passed by the Appellate Authority i.e. Inspector General of Police, Railways & Technical Services, Haryana, dated 16.07.2008 whereby the penalty of stoppage of one annual grade increment with permanent effect has been reduced to that of Censure only. Regarding the FIR No. 4 dated 03.01.2007, it has already been noticed that the petitioner has not been challaned in criminal case and exonerated in the Departmental Enquiries. It is a matter of concern that the Director General of Police, Railways and Technical Services, Haryana, relied upon a punishment which does not exist, the Appellate Authority having converted the penalty of stoppage of one increment with permanent effect to that of Censure. Either the order of the Appellate Authority was not brought to his notice or he has over-looked the same while passing the order of compulsory retirement. In any case, the order of compulsory retirement merely on the basis of punishment of stoppage of one annual grade increment with temporary effect awarded in one Departmental Enquiry, by no yardstick is justifiable.

15. In the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , Hon''ble the Supreme Court has laid down five principles for examining the validity of the order of compulsory retirement. The relevant observations are as under:-

16. A three-Judge Bench of this Court in Baikuntha Nath Das v. Chief Distt. Medical Officer laid down the following five principles (SCC pp. 315-16 para 34):-

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsory. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence (c) that it is arbitrary- in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter-of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse

remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it uncommunicated, adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

16. This decision has been reiterated in a number of later decisions including in the case of State of Gujarat and another Vs. Suryakant Chunilal Shah, (1999) 1 Supreme Court Cases, 529.

17. In the present case, the opinion has been formulated on non existent material i.e. without evidence, as is apparent from the impugned order of compulsory retirement wherein reference is made to FIR No. 4 dated 03.01.2007 and two Departmental Enquiries. The outcome of these two cases has already been noticed above. Thus, the very basis for compulsory retirement does not exist and it is a case of no material on record. In Suryakant Chunilal's case (supra), Hon"ble the Supreme Court held as under:-

9. This decision was taken under Rule 161 of the Bombay Civil Services Rules, 1959, which provides as under:-

161. (1) (a) Except as otherwise provided in the other clauses of this Rule, the date of compulsory retirement of a government servant other than a Class IV servant, is the date on which he attains the age of 58 years,

Provided-

(i)-(ii) * * * *

(iii) He may be retained in service after the date of compulsory retirement only with the previous sanction of the Government on public grounds which must be recorded in writing.

(aa) Notwithstanding anything contained in clause (a):

(i) An appointing authority shall, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any government servant to whom clause (a) applies, by giving him notice of not less than three months in writing or three month's pay and allowances in lieu of such notice:

(1) If he is in Class I or Class II service or post or in any unclassified gazetted post, the age-limit of for the purpose of direct recruitment to which is below 35 years, on or after the date on which he attains the age of 50 years and,

(2) if he is in any other service or post, the age limit for the purpose of direct recruitment to which is below 40 years, on or after the date on which he attains the age of 55 years.

(ii) any government servant to whom clause (a) applies 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, if he is in Class I or Class II service or post or in any unclassified gazetted post the age-limit for the purpose of recruitment to which is below 35 years and in another case, after he has attained the age of 55 years:

Provided that it shall be open to the appointing authority to withhold permission to retire to a government servant who is under suspension, or against whom departmental proceedings are pending or contemplated and who seeks to retire under this sub-clause.

(b) A Government servant.....

18. I am of the considered view that the order of compulsory retirement is a colourable exercise of jurisdiction and is liable to be quashed.

19. In view of the above, these two writ petitions are accordingly allowed with the following directions:-

1. Entry of a doubtful integrity communicated vide letter dated 23.05.2007 (Annexure P-1 in CWP No. 21197 of 2008) along with order dated 29.05.2008 (Annexure P-3) rejecting the representation to the extent it relate to the entry of doubtful integrity are hereby quashed.

2. The order of compulsory retirement dated 02.01.2009 (Annexure P-6 in CWP No. 476 of 2009, is also quashed.

3. The petitioner is ordered to be reinstated into service forthwith. The petitioner shall not be entitled to any wages during the intervening period i.e. from the date of compulsory retirement till he is reinstated, though he will be allowed the notional benefits of increments, any other benefit which might have been available to him had he been in service, revision of pay etc. if any, for the purpose of fixation of his salary on reinstatement.

A copy of this order be placed on the record of connected file.