
(1995) 09 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4155 of 1995

Harinder Singh Asi

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-09-1995

Acts Referred:

Punjab Police Rules, 1934 — Rule 9.18(2)

Citation : (1995) 111 PLR 540

Hon'ble Judges : K.S. Kumaran, J; Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : I.S. Balhara and N.K. Malhotra, for the Appellant; Ritu Bahri, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner, an Assistant Sub Inspector of Police, impugns the order dated October 4, 1994 by which he has been retired from service under Rule. 9.18 of the Punjab Police Rules, Volume I. A few facts may be noticed.

2. The petitioner was recruited as a Constable on August 27, 1963. He was promoted as a Head Constable in the year 1974. On August 18, 1978, the petitioner was confirmed as a Head Constable. He was promoted as an Assistant Sub Inspector of Police on July 20, 1982. He was confirmed as such with effect from October 31, 1986. The petitioner states that during his entire career, only one departmental enquiry was initiated against him in the year 1984 which was filed vide order dated November 10, 1994. While he was expecting his promotion, he was "shocked and surprised to receive a notice on 3.6.1993 which was alleged to have been issued by the Director General of Police on May 5, 1993". By this notice the petitioner was called upon to show cause as to why he should not be compulsorily retired from service in public interest under the provisions of Rule 9.18(2) of the Punjab Police Rules, 1934. Along with this notice, the material on the basis of which the petitioner was sought to be

compulsorily retired was also conveyed to him. The petitioner submitted his reply to the show cause notice on June 3, 1993. Thereafter, he received the order dated October 4, 1994, a copy of which is at Annexure P-3 with the writ petition. The petitioner alleges that the impugned order of retirement is wholly without jurisdiction as it has not been passed by the competent authority viz. the Director General of Police. He further submits that the action is even otherwise unfair and arbitrary. The petitioner also avers that he had been awarded 40 Commendation Certificates during his career.

3. A written statement has been filed on behalf of the respondents. It has been averred that the petitioner has been actually awarded 37 Commendation Certificates which are, however, not relevant for the decision of the writ petition. It has been further stated that the petitioner was confirmed as an Assistant Sub Inspector on February 1, 1986 and not on October 31, 1986. It has also been pointed out that the Home Department had approved the compulsory retirement of the petitioner after evaluating the entire record of his service. The Government had sent its approval to the Director General of Police, Haryana who vide endorsement dated September 21, 1994, had "ordered for the compliance of approval of the State Government". The Superintendent of Police had issued the orders in pursuance to the directions of the higher authorities. The retirement of the petitioner was in strict conformity with the provisions of the rules. Reference to the adverse reports earned by the petitioner from 1.4.83 onwards has also been made. Copies of these adverse reports have been produced as Annexure R-7 to R-12/A. According to the respondents, the petitioner was retired in public interest "on consideration of his entire service record...." Emphasis has been laid on the latest reports.

4. Mr. I.S. Balhara, learned counsel for the petitioner has contended that the reports conveyed to the petitioner cannot be categorised as "C reports in view of the provisions of Rule 13.17. He has further contended that the action of the respondents does not conform to the provisions of Rule 9.18 in as much as the approval of the State Government was not obtained and the order was not passed by the competent authority viz. the Director General of Police. The claim has been controverted by Ms. Ritu Bahri, appearing for the respondents. She has also produced before us the file to show that the orders had been passed by the Director General of Police and the decision was merely conveyed by the Superintendent of Police.

5. Rule 9.18 (2) undoubtedly authorises the Inspector General of Police to compulsorily retire an Assistant Sub Inspector of Police who has completed 25 years" qualifying service with the previous approval of the State Government. However, this power has to be exercised in public interest. Furthermore, the employee is entitled to "be given an adequate opportunity of making any representation that he may desire to make against the proposed action and such representation" has to be "taken into consideration before his compulsory retirement is ordered". This is a valuable safeguard given to an employee. Firstly,

it is incumbent on the competent authority to examine the record. If on consideration of the record, the authorities feel that the employee should be compulsorily retired, he has to be given an opportunity to make a representation. It is also the duty of the authority to consider that representation.

6. We have perused the file produced before us by the learned counsel for the respondents. On May 4, 1993, the Director General of Police proposed that the petitioner should be compulsorily retired in public interest under Rule 9.18(2). Reference to certain reports recorded upto March 6, 1986 was made in this proposal. The petitioner was given a notice. He filed his reply. The comments on the representation were given by the Superintendent of Police and by the Deputy Inspector General. After certain inter-departmental correspondence, the matter was forwarded by the Director General of Police to the Commissioner and Secretary to Government, Haryana Home Department vide memorandum dated May 4, 1994. It was requested that approval of the Government for the compulsory retirement of ASI Harinder Singh may be accorded and conveyed. Along with the character roll and ACR file of the petitioner (Pages 1 to 68) the parawise comments of the D.I.G., Ambala Range, were forwarded to the Government. Vide letter dated August 11, 1994, the Government asked for the annual confidential reports of the petitioner for the year 1992-93 and 1993-94. On August 12, 1994, a TPM message was sent by the Director General of Police to the D.I.G. Ambala Range for sending the confidential reports of the petitioner for the aforesaid two years. These were sent by the DIG via his letter dated August 17, 1994. The Director General of Police forwarded them to the Home Secretary vide memo dated August 30, 1994. It was thereafter that the Government's approval was conveyed to the Director General of Police vide letter dated September 15, 1994.

7. On a perusal of the file, it appears that the State Government had accorded the approval on consideration of the petitioner's entire record of service. This is also the categorical averment in para 18 (vii) of the written statement. It also appears that after March 1986, adverse reports had been recorded against the petitioner for the period from April 1, 1992 to December 31, 1992, January 1, 1993 to March 31, 1993 and April 1, 1993 to March 31, 1994. It, thus, appears that the final order of compulsory retirement has been passed against the petitioner by taking into consideration even these reports. Admittedly, these were not mentioned in the show cause notice issued to the petitioner. He had, thus, no opportunity to submit any representation vis-a-vis these reports. In this situation, it is apparent that the petitioner was given no opportunity to represent in respect of at least a part of the material which was taken into consideration by the respondents before ordering his compulsory retirement. This was clearly an infraction of the rules.

8. In view of our above conclusion, we find that the impugned order cannot be sustained. It is, accordingly, quashed. Consequently, it does not appear to be necessary for us to go into the other questions, raised by the counsel for the

petitioner.

9. The writ petition is allowed. The impugned order is quashed. It is, however, clarified that it will be open to the respondents to proceed afresh in the matter in accordance with law. In the circumstances, we make no order as to costs.