
(2014) 12 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10167 of 2013 (O and M)

Jawahar Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Citation : (2015) 178 PLR 608

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : R.K. Honda, Advocate for the Appellant; Sunil Nehra, Sr. D.A.G.,
Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.

1. The petitioner, who was serving as a Head Constable with the Haryana Police, has filed the instant writ petition assailing the order dated 30.6.2011 (Annexure P-7), passed by the D.G.P., Haryana, whereby he was ordered to be compulsorily retired from service. Brief facts are that the petitioner joined Haryana Police as Constable on 14.1.1982. He was promoted as Head Constable w.e.f. 13.2.1992. On 20.4.2009 petitioner was served with a show cause notice proposing his compulsory retirement from service and was granted 15 days time to submit a reply. The petitioner submitted his response dated 29.4.2009. After considering the same the impugned order dated 30.6.2011 at Annexure P-7 has been passed.

2. Learned counsel appearing for the petitioner has submitted that the petitioner was awarded Commendation Certificates on a number of times and had discharged his duties diligently and with devotion. It is further contended that the name of the petitioner was recommended for promotion as A.S.I but such benefit having not been granted, the petitioner had been constrained to file CWP No. 3249 of 2007 in this Court and which is still pending adjudication. Argument

raised is that while passing the impugned order the competent authority has not undertaken an exercise of balancing inasmuch as the good service record and the exemplary service rendered by the petitioner, has been completely ignored. It has further been argued that the order of compulsory retirement suffers from a non-application of mind. In such regard counsel would submit that the petitioner was conveyed adverse remarks for the period 1.4.2007 to 9.7.2007 in which his integrity had been doubted. A representation filed against such adverse remarks had been rejected by the Inspector General of Police, Ambala Range, Ambala vide order dated 18.2.2009. The petitioner had instituted a civil suit in the court of Civil Judge (Jr. Divn.), Ambala against the adverse remarks for the period 1.4.2007 to 9.7.2007 as also against the order dated 18.2.2009, whereby his representation had been rejected and such suit was decreed by the Trial Court on 15.12.2011 declaring the adverse remarks as illegal and non-est. Counsel would argue that on account of the decree passed by the Trial Court dated 15.12.2011 the basis for compulsorily retiring the petitioner does not subsist. Counsel apart from having referred to land mark judgment of the Hon'ble Supreme Court in case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, has also placed reliance upon two judgments passed by the Coordinate Benches of this Court in cases of Mahabir Singh Vs. State of Haryana--> and Jaspal Singh v. State of Haryana and others, 1995 (4) S.C.T., 302 to contend that the entire service-record of an employee has to be considered and properly evaluated while passing an order of compulsory retirement and greater importance has to be given to the service record and performance during the later years. By placing reliance on such judicial precedents, counsel would further contend that the power of judicial review of the High Court under Articles 226/227 of the Constitution of India can be exercised in a situation which reflects non-application of mind on the part of the competent authority while taking a decision to compulsorily retire an employee. Yet another submission raised by the counsel is that instead of three months notice as was mandated under the statutory rules, only 15 days time was granted to the petitioner at the time of serving of show cause notice and it is contended that the order of compulsory retirement is bad in law on such short ground alone.

3. Per contra, learned State counsel would refer to the joint written statement filed on behalf of respondents No. 2 to 4 and would contend that adverse remarks were duly recorded and conveyed to the petitioner for the period April, 1995 to September, 1995, October, 1995 to March, 1996, 1.4.2007 to 9.7.2007 and 24.12.2008 to 31.3.2009. A reference has also been made to a tabulation contained in para 4 of the preliminary objections as regards the conduct and punishments awarded to the petitioner. State counsel would submit that the service record pertaining to 25 years service rendered by the petitioner did not warrant his retention in service and as such the impugned order of compulsory retirement is well founded. State counsel has further referred to Rule 9.18 (2) of the Punjab Police Rules (as applicable to the State of Haryana) and would submit

that the statutory rule does not mandate a 3 months advance notice to be served but envisages the grant of an adequate opportunity to the official to make a representation against the proposed action of compulsory retirement. It is submitted that the show cause notice dated 20.4.2009 having been served upon the petitioner and to which a detailed reply dated 29.4.2009 had been submitted the requirement of the rule stood duly complied with.

4. Learned counsel for the parties have been heard at length.

5. The principles governing compulsory retirement/premature retirement were laid down by the Hon''ble Supreme Court in Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, and it had been observed as under:

"32. The following principles emerge from the above discussion:

(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 compulsorily. 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 or (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 an 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 un-communicated adverse remarks were also taken into consideration. That circumstances by itself cannot be a basis for interference."

6. Perusal of the impugned order of compulsory retirement dated 30.6.2011 would reveal that the A.C.R for the period 1.4.2007 to 9.7.2007 in which integrity of the petitioner had been doubted, has been taken into consideration. Even though, it is correct that such report and remarks have been held to be

illegal and non-est on the basis that such remarks had been recorded by an official not competent to do so i.e. of the rank of Dy. S.P., vide judgment and decree dated 15.12.2011, yet, such report and remarks were very much subsisting as on the date of passing of the impugned order. Be that as it may, this Court while going into the validity of the compulsory retirement order dated 30.6.2011 as of today would have to examine as to whether there was any other material with the competent authority to support a decision to compulsorily retire the petitioner from service even if the report/A.C.R for the period 1.4.2007 to 9.7.2007 is to be ignored.

7. Concededly, the petitioner was conveyed adverse remarks for the period April, 1995 to September, 1995 in which he was graded "Below Average" and had been described as an unreliable official and his moral character was rated as not good. That apart, he had been awarded a punishment of stoppage of two annual increments with permanent effect vide order dated 18.6.1990 in pursuance to a departmental inquiry having been conducted on the allegation that he had absented from duty over a period of 21 days 11 hours and 45 minutes. That apart, the petitioner was imposed punishment of censure on four separate occasions. In the written statement that has been filed on behalf of the respondents, Annexure R-1/D has been appended as per which in the A.C.R for the period 24.12.2008 to 31.3.2009 the integrity of the petitioner was again doubted and he was rated as a corrupt official. No replication had been filed at the hands of the petitioner to carry any rebuttal as regards such adverse report.

8. The Hon''ble Supreme Court in Baikuntha Nath Das's case (supra) had held that an order retiring an employee on completion of 55 years of age is not passed as a punishment and it does not imply any stigma. The competent authority has the discretion to retire an employee after he attains a particular age or completes a particular period of service. The High Court while examining an order of compulsory retirement is not to act as an Appellate Court but would interfere only after the order is found to be vitiated by malafides or is passed on no evidence or is arbitrary to the extent that no reasonable person could form the requisite opinion to compulsorily retire on the basis of the given material.

9. The scope of judicial scrutiny in matters of compulsory retirement came up for consideration before the Hon''ble Supreme Court in case of T. Gnanavel Vs. T.S. Kanagaraj and Another, and it was observed in the following terms:--

"When an order of compulsory retirement purports to be one under rule/regulation providing for such premature retirement, the proper approach of the court would be to consider whether the order is sustainable with reference to the requirements of the relevant rule, rather than examining whether the order could also be construed as a punishment for misconduct."

10. It is also well settled that if there is an entry of integrity doubtful in the service record of an employee, then, a view can well be formed to retire such employee prematurely in larger public interest. Reference in this regard may be

made to the judgments of the Hon'ble Supreme Court rendered in cases of Union of India Vs. Ajoy Kumar Patnaik, and Jugal Chandra Saikia Vs. State of Assam and Another, .

11. In the facts of the present case the competent authority has taken into account the entire service record of the petitioner. Even if, the report pertaining to the year 2007 is to be ignored even then concededly there is a subsequent report for the period 24.12.2008 to 31.3.2009, wherein integrity of the petitioner has been doubted and he has been rated as a corrupt official. Even though, such report does not find a mention in the impugned order, yet, this Court cannot proceed oblivious of an A.C.R duly conveyed and in which integrity has been doubted. That apart, he has also been inflicted punishment of stoppage of two increments with cumulative effect on the charge of willful absence from duty. Such charge which stood duly proved in departmental proceedings itself amounts to misconduct in a police force.

12. It is not the case made out in the present petition that the impugned order of compulsory retirement is vitiated by malafides. As such, this Court is of the considered view that the impugned order cannot be held to be without any basis. That apart, an order of compulsory retirement is not to be seen as an order of penalty and the same does not even cast any stigma.

13. Rule 9.18 (2) of the Punjab Police Rules (as applicable to the State of Haryana) reads as under:--

"Rule 9.18 (2) of Punjab Police Rules (Applicable to the State of Haryana) which reads as under:--

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 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-(1) 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 inefficiency, dishonesty, corruption or infamous conduct. Thus the rule is intended for us-

(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 fuse the provisions of this rule as a financial weapon that is to say the provision 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 only 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."

14. Bare reading of the statutory provision would clarify that the competent authority with the previous approval of the State Govt. is vested with the power to compulsorily retire any police officer, who has completed 25 years qualifying service. Such right to compulsorily retire an official is to be exercised only in public interest on grounds such as inefficiency, dishonesty, corruption or infamous conduct. Note-2 along with the rule envisages a protection to the police officer and states that such official shall be given an adequate opportunity of making a representation that he may desire to against the proposed action of compulsory retirement.

15. The impugned order dated 30.6.2011 at Annexure P-7 itself recites that prior approval of the State Govt. as per requirement under Rule 9.18 (2) of the Punjab Police Rules (as applicable to the State of Haryana) was duly accorded on 20.6.2011. Even the requirement of grant of reasonable opportunity to the petitioner was duly afforded as prior to passing of the order of compulsory retirement dated 30.6.2011 he was served with a show cause notice dated 20.4.2009 giving him 15 days time to file a reply. The petitioner had duly submitted his response on 29.4.2009. The requirement of the rule as such was complied with prior to passing of the impugned order.

16. The reliance placed by the counsel upon the judgments rendered in Mahabir Singh and Jaspal Singh's cases (supra) is misplaced as the facts of these two cases are entirely distinguishable. In the case of Mahabir Singh (supra) there was no entry as regards integrity having been doubted and in the case of Jaspal Singh (supra) even though adverse reports for a particular period had been conveyed to the official concerned but thereafter he had earned promotion as Sub Inspector in the Haryana Police and the Court had taken a view that since such benefit of promotion was based on merit, the adverse reports conveyed prior to promotion had lost their sting. It had also been noticed by this Court in Jaspal Singh's case (supra) that after conveying the adverse reports the official had been allowed to cross the efficiency bar and had constantly earned good

reports. To the contrary, as per pleadings on record, the present petitioner possesses a chequered service record including the A.C.R in which his integrity stands doubted. In the totality of circumstances, no case for interference is made out. The impugned order of compulsory retirement dated 30.6.2011 (Annexure P-7) is well founded. Consequently, the writ petition is dismissed.

Petition dismissed.