

(2018) 05 PAT CK 0108

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6040 Of 2013

Om Prakash Singh

APPELLANT

Vs

State Of Bihar Through The Secretary And Ors

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Bihar Police Manual, 1978 — Rule 854(A)

Citation : (2018) 3 PLJR 588

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Pramod Mishra, Madhaw Pd. Yadav, Meera Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 13.12.2012 by which the Superintendent of Police, Rail, Patna (respondent no. 6) has ordered compulsory retirement of the petitioner w.e.f. 07.12.2012 with further direction for adjustment of period of leave as extraordinary leave and further to reinstate him in service.
3. Briefly stated, the case of the petitioner is that he joined in the service as Sergeant on 26.04.1984 and performed his duty sincerely and to the satisfaction of higher authorities and has been awarded many times. After serving at various places in Bihar lastly he joined as Sergeant in Patna Rail Police on 19.08.2010.
4. The Superintendent of Police, Nalanda recommended for promotion of petitioner and send letter to the Deputy Inspector General of Police, Central

Rail, Patna vide letter dated 29.09.2008 and on account of denial of promotion he had preferred CWJC NO. 17005 of 2012 for grant of promotion and pensionary benefits.

5. Petitioner was asked explanation by letter issued by respondent no. 3 dated 24.08.2009 under Rule-854(A) of Bihar Police Manual, which was served upon the petitioner by respondent no. 7 vide memo dated 28.08.2009 and petitioner was reminded by letter dated 16.09.2009 and petitioner submitted his representation on 18.09.2009 to the respondent no. 3 asking entire ACR so that he could file effective representation.

6. Petitioner was not provided the documents he asked for and respondent no. 7 issued memo dated 07.11.2009 for submitting explanation in view of Rule-854(A) of Bihar Police Manual enclosing the letter of respondent no. 3 dated 28.10.2009 and petitioner submitted his explanation on 03.11.2010.

7. The petitioner submitted representation to the respondent no. 1 to drop the proceeding of compulsory retirement by his representation dated 04.11.2010 with details giving his satisfactory service throughout. It has been further contended that respondent no. 4 submitted its report to respondent no. 3 vide memo dated 10.10.2011 in respect of petitioner's compulsory retirement.

8. The respondent no. 6 passed an order for compulsory retirement of the petitioner w.e.f. 07.12.2012 and the same was communicated to the petitioner vide memo dated 13.12.2012 and in the said order respondent no. 6 also passed order for adjusting the service of petitioner from 01.04.2012 till the order of compulsory retirement on the basis of no work no pay.

9. A counter affidavit has been filed on behalf of respondents in which it has been stated that petitioner has been compulsory retired from service w.e.f 07.12.2012. Petitioner was appointed on the post of Sergeant in the year 1984, the service period the job proficiency of personnel is reviewed by State Police Establishment Board, Police Headquarter, Patna. Vide letter dated 24.08.2009, issued by the Police Headquarter, Patna, which mentions the performance of the petitioner was assessed in a meeting of State Police Establishment Board on 15.03.2007. In the meeting, State Police Establishment Board found that during 25 years of service petitioner has been awarded nine major punishment and it has been remarked in his Annual Confidential Character Record for his compulsory retirement.

10. It has been further stated that as per Rules laid down in Bihar Police Manual State Police Establishment Board decided to call for an explanation

from the petitioner against his compulsory retirement. Thereafter in the meeting of promotion committee held on 04.03.2011, it was decided

unanimously to carry out the decision of State Police Establishment Board for compulsory retirement of petitioner and in light of said decision, the I.G.

Rail, Patna vide letter dated 07.04.2011 send a letter to DIG, Rail, Patna, to act per provisions laid down in Rule-854(A) of Bihar Police Manual and

called for an explanation from the petitioner against compulsory retirement.

11. D.I.G, Rail, Patna after reviewing the matter, send a report to Police Headquarter vide letter dated 10.10.2011 but the Police Headquarter did not

agree and as such in the light of direction of Police Headquarter the I.G. Rail, Patna vide letter dated 30.08.2012 send a letter to S.P. Rail,

Patna/Katihar, to obtain explanation from petitioner against his compulsory retirement and the same was obtained and send it to I.G. Patna, by office

letter dated 14.11.2011 and on receipt of explanation from petitioner I.G, Rail, Patna assessed the entire matter and service record of petitioner and

passed the order of compulsory retirement.

12. There is provision in Rule-854(A) of Bihar Police Manual to compulsory retire incompetent police personnel which is akin to Bihar Service Code

74(A) who has completed 21 years of active service or 25 years of total service.

13. Petitioner was appointed as Sergeant on 26.04.1984 and had a distinguished and exemplary service record having awarded 84 medals for his

outstanding performance and devotion to duty but when he was posted in the Vaishali district his misfortune started when he became Eye Sore to a

superior police officer and many proceeding was initiated against him and he was punished on trivial issues. An entry was also made in the ACR of

the petitioner for making him compulsory retire and accordingly, in the meeting in the State Police Establishment Board on 15.03.2007 after perusing

the service record for the period from 1986 to 2003 a decision was taken to compulsory retire him under Rule-854(A) of Bihar Police Manual.

14. The recommendation and decision taken by the Bihar Police Establishment Board was communicated to Superintendent of Police, Nalanda and as

per Rules petitioner was given a show cause and he demanded the entry made in his ACR and the same was conveyed to the Police Headquarter and

in the meanwhile petitioner submitted a representation dated 03.11.2010 against initiation of proceeding to compulsory retire him and Department of

Home, Government of Bihar, asked I.G. (Rail) and Deputy Inspector General of Patna region to submit their comments on the representation filed by

the petitioner and D.I.G. Patna by his letter dated 10.10.2011 after perusing the entire service record and making a comparative assessment of

performance of petitioner submitted in his letter that petitioner has been awarded eight major punishment and eleven minor punishment and has been

granted 119 awards and he was not subjected to any punishment till 1997 before joining in the Vaishali district. The approach of superior police officer

against petitioner was vindictive and revengeful and even without any evidence he was subjected to departmental proceeding and punished. The

approach of superior police officer against their subordinates is deplorable, condemnable and regrettable. Petitioner was made to suffer without any

fault. From the report of the D.I.G, it appears that petitioner was not a liability or deadwood for the department rather appears to be an asset for the

department and no action was taken thereafter. Petitioner was given 40 awards during the period 2003 to 2010. Apart from this petitioner was given

appreciation certificate by District Magistrate, Nalanda for his excellent services at the time of visit of Honâ??ble President of India and Honâ??ble

Prime Minister of Mauritius. He was also rewarded for his sincere duty during parliamentary election of Nalanda. He was also appreciated and

acknowledged for courage and bravery shown to control extremist activities.

15. However, said report was not accepted by the State Police Establishment Board and appointing authority was again directed by the State Police

Establishment Board to initiate fresh proceeding and issue show cause to the petitioner before compulsory retiring him. Pursuant to that show cause

notice was issued to the petitioner by the I.G.(Rail) and letter dated 30.08.2012 was sent to S.P.(Rail), Patna to issue show cause notice and after

considering the reply petitioner may be compulsory retired and in compliance of which S.P.(Rail), Patna, obtained the explanation from the petitioner

and send it to S.P.(Rail), Patna, by letter dated 14.11.2012.

16. It has been submitted on behalf of respondents in paragraph no. 11 of the counter affidavit that after obtaining the explanation from petitioner the

I.G. Rail, Patna before passing the final order again assessed the entire matter

that petitioner was imposed major and minor punishment and as such in view of Rule-854(A) of Bihar Police Manual he has compulsory retired. It has been further submitted in paragraph no. 12 of the counter affidavit that petitioner is incompetent and unfair Government servant who has completed 21 years of active service (excluding leave) for 25 years of total service and service record of petitioner is poor, as such by order dated 07.12.2012 the D.I.G. Rail, has passed order of compulsory retirement.

17. After hearing both the parties and perusing the materials available on record, the order passed by the respondent-authority is neither sustainable in

law nor on fact. A Government employee can be compulsory retired from service after completing 25 years of service if his service has been

unsatisfactory and he had become deadwood or liability for the department. In order to judge whether an employee has become a deadwood, his

entire service record is to be looked into before any such decision is taken by the competent authority. The service record of recent years is more

relevant to be considered by the competent authority. It appears that only because adverse remark was entered in his ACR that he should be

compulsory retired from service decision has been taken without considering his entire service record and appreciation and award of distinguished

service given to petitioner. There is nothing to suggest that petitioner had become a deadwood or liability for the department. The previous misconduct

can be taken into account to judge whether an employee can be compulsory retired but for the said misconducts petitioner has already been punished

and on the basis of said misconduct a decision to retire petitioner compulsory cannot be taken as the same would be double jeopardy. The order has

been passed in a biased and mechanical manner, without application of mind and contrary to materials available on record and without assessing the

distinguished and outstanding service record of petitioner.

18. For the reasons as stated above the order passed by the respondent no. 7 compulsory retiring the petitioner from service is set aside. However,

since the petitioner has already attained the age of superannuation from service, petitioner will be deemed to continue in service till attaining the age of

superannuation and is entitled for difference of salary and also revision of pension and gratuity and leave encashment and all other dues retiral dues

for which he is found to be entitled and same to be paid within 3 months from

the date of production/receipt of a copy of this order.

The writ petition stands allowed.