
(1982) 04 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Pawittar Singh Walia

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-04-1982

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Penal Code, 1860 (IPC) — Section 120B, 193, 467, 474

Citation : (1984) 1 LLJ 408

Hon'ble Judges : S.S. Sandhawalia, C.J; Surinder Singh, J

Bench : Division Bench

Judgement

Surinder Singh, J.—This Writ Petition has been filed by Pawittar Singh Walia, impugning the order passed by the Punjab State respondent No. 1 on 30th September, 1981 (Copy Annexure P-4) retiring him prematurely from the post of Controller, Printing and Stationery Department, Punjab. Only the salient facts as alleged in the Writ Petition which runs into several pages, need be noticed for the purpose of considering the controversy. The petitioner joined as Proof Reader (Class III) in the Government Press, Patiala (PEPSU) in July, 1950, and was promoted as In-charge Publications in February 1953. With effect from 1st March, 1959 the petitioner was promoted to the post of Deputy Controller (Class II) in the Printing and Stationery Department, Punjab, at Chandigarh. It is stated that subsequently the petitioner was promoted and appointed to the post of Controller in the said Department, with effect from May, 1973. In Para 4 of the Writ Petition, the petitioner has reproduced the annual confidential reports which he earned during the period of 1967 to 1981. These reports are stated to be varying from average to outstanding during different years. The petitioner further disclosed that a simple warning was issued to him on 9th September, 1974, while he was working as a Deputy Controller in the Department. He also averred that in the year 1972, a case u/s 5(2)(C) of the Prevention of Corruption Act was registered against him but by the order of the Additional Chief Judicial Magistrate, Patiala, dated 12th August, 1975, the case was consigned to Record Room being untraced. A material fact which has been alleged is that vide order,

dated 1st September, 1981 (Copy Annexure P-I), the petitioner was allowed to cross the Efficiency Bar with effect from 1st May, 1981. The said order, however, recites that the petitioner was allowed to cross the Efficiency Bar without prejudice to the action which was under contemplation by the Government on the basis of some inquiries which were being conducted against him. The petitioner made a mention of some approbatory letters issued by the Government in appreciation of his good work.

2. Making a reference of the circumstances leading to his premature retirement, the petitioner alleged in the Writ Petition that after he attained the age of 55 years, his case was recommended for permitting him to continue but as Shri Tejinder Khanna, Principal Secretary to Chief Minister, Punjab, Chandigarh, (respondent No. 2) was not very happy with him, he sent for the file from the Administrative Department and obtained the orders of the Chief Minister, prematurely retiring the petitioner. It is alleged that there was no application of mind on the part of the respondents in passing this" order. In the later part of the Writ Petition, a reference is again made to respondent No. 2 who was working as Administrative Secretary of the petitioner's Department. The petitioner averred in the Writ Petition that "the reason for the displeasure of Shri Tejinder Khanna is best known to him.

3. Separate written statements were filed by the State of Punjab-respondent No. 1 and Shri Tejinder Khanna, respondent No. 2. In the reply on behalf of the State Government, some of the facts in regard to the service career of the petitioner were admitted as correct with suitable variations, wherever necessary. It was, however, admitted that the petitioner was appointed as Controller, Printing and Stationery Department with effect from 25th May, 1973 in relaxation of the Proviso under Rule 6(i) of the Punjab Printing and Stationery Department Service (State Service) Class I and It Rules, 1962, as per Government's letter, dated 24th March, 1977, copy of which has been produced as Annexure R/2. In regard to the annual confidential reports of the petitioner, the same as reproduced in Para 4 of the Writ Petition, were denied and all these reports in their correct form and detail were reproduced in Para 4 of the reply. In Para 4 of the reply, it was stated that the petitioner, while he was working as Deputy Controller in the year 1972, was charge-sheeted for various charges vide Punjab Government Memo, dated 9th June, 1972. On receipt of his explanation to the charge-sheet, an Inquiry Officer was appointed by the Government to enquire into the various charges levelled against him. The report of the Inquiry Officer was received and the matter was considered by the Government as result of which the petitioner was administered a warning to be careful in future for tampering with Government record as also for committing irregularities concerning the appointment of Class III and IV employees. A copy of the letter of warning, dated 9th September, 1974 was produced as Annexure Rule 4. As regards the criminal case u/s 5(2) and 5(1)(c) of the Prevention of Corruption Act, read with Sections 120B, 193, 467 and 474, IPC, which was registered against the petitioner at Police Station" Patiala City in the year 1972, it was averred that the

Government passed orders on 29th August, 1974 that this case need not be pursued further. It was, however, denied that the case was dropped for want of evidence and that it had been registered on account of enmity. The fact that the petitioner while working as Deputy Controller, was allowed to cross the Efficiency Bar as per order of the Government, dated 12th February, 1976, was admitted, but it was contended that this did not go to show that the adverse entries in his annual confidential record have been washed off.

4. Dealing with the claim of the petitioner for having crossed the Efficiency Bar as a Controller, it was admitted in the reply that the petitioner was allowed to cross the Efficiency Bar, but it was asserted that the same was absolutely independent of the action which might be taken by the Government against the petitioner on the basis of disciplinary proceedings under contemplation. The petitioner was, therefore, stated to be not entitled to any legal benefit in this behalf.

5. Para 8 of the written reply of the Government enumerates a list of irregularities and illegalities committed by the petitioner during the course of his service, which are quite a number. Without recapitulating the same at this stage it may suffice to say that certain allegations were also made against the character and reputation of the petitioner, as mentioned in Item (E) under the caption "Reputation."

6. In the reply of the Government, it was stated as a matter of fact that the petitioner became 55 years of age on 8th September, 1981 and his case for premature retirement was considered under the Government instructions, as a result of which the Government took a decision to retire him after considering the whole of his record. The action is said to have been taken under the Punjab Civil Service (Premature Retirement) Rules, 1975. The retirement was stated to be in the absolute right vested in the Government under Rule 3 of the said Rules. The order regarding the premature retirement was averred to be based on material set out in Para 8 of the written statement. The same was passed after full application of the mind of the Government, and in public interest. The written reply of the Government does not need any further recapitulation, except the averment that the Chief Minister, Punjab, acting as a competent authority; and after applying his mind, had taken the impugned action exercising the discretion vested in him.

7. The written reply filed by Shri Tejinder Khanna, respondent No. 2 is quite brief and he has naturally repudiated only that part of the allegation in the Writ Petition which pertains to him personally. The respondent averred that it was incorrect that he was in any way unhappy with the petitioner. He also denied that the post of Administrator-cum-Additional Controller, Government Press at Patiala, was created with a view to harm the petitioner. As regards the order for the premature retirement of the petitioner, it was averred that the file relating to the matter was called for under orders of the Chief Minister and was submitted to him accordingly. The Chief Minister considered the merits of the case on the

basis of the record before him and passed the necessary orders. The respondent further highlighted that the petitioner had earned "Average" reports for the year 1977-78 and 1978-79. The respondent also denied the other allegations relating to him contained in Para 23 of the Writ Petition.

8. A replication was filed by the petitioner to the reply of respondent No. 1, The petitioner reiterated his earlier stand in the Writ Petition and boosted up these allegations by appending no less than twenty-five more Annexures, most of which are meant to highlight some appreciation earned by the petitioner for good work done by him from time to time.

9. In this age of speed, brevity is the soul of life. Let us consider briefly but succinctly the points raised by Mr. Kuldip Singh, Bar-at-Law, learned Counsel for the petitioner. In the foremost, he has placed an argument that the essential ingredients for the passing of an order for premature retirement, namely, that the said action was in public interest, is lacking in the present case. There is no gainsaying that the impugned order Annexure P-4 makes no reference to this point, and it merely recites that the Governor of Punjab is pleased to retire the petitioner prematurely with effect from 30th September, 1981. The learned Counsel does not make any grievance in regard to the non-mention of the above ingredient in the order, but has submitted that the circumstances of the case indicate that there was no application of mind by the competent authority, on the question of public interest. Here it might be beneficial to refer to the written statement filed on behalf of the State, wherein it is mentioned in various paragraphs, particularly para 11 that in exercise of the absolute right and in accordance with the statutory provisions of the Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975, the petitioner has been prematurely retired in the public interest on the basis of material mentioned in para 8 of the written statement. The assertion that the order was the result of full application of mind is reiterated in subsequent paragraphs, i.e., Paras Nos. 12, 13, 21 etc. The learned Counsel for the petitioner has, however, emphasised that at the time when the case of the petitioner for continuance of his service beyond the age of 55 years, was under process, it was recommended that he should be allowed to continue in service. However at a later stage Shri Tejinder Khanna respondent No. 2, who was not happy with the petitioner, sent for his file from the Administrative Department and it is alleged that the said respondent without examining service record of the petitioner and without looking into his annual confidential reports "obtained" the order of the Chief Minister prematurely retiring him. This suggestion has indeed been strenuously refuted both by the State Government as also by Shri Tejinder Khanna. The latter in his affidavit has frankly averred that the file relating to the premature retirement of the petitioner was called for under the orders of the Chief Minister to whom the same was submitted. Thereafter the Chief Minister passed orders on merits on the basis of the record before him, which was considered. In order to prove bias against Shri Tejinder Khanna, some vague allegations were made in the Writ Petition that he was not happy with the petitioner. However, in para 20 of the Writ

Petition, the petitioner himself mentioned that "the reason for the displeasure of Shri Tejinder Khanna is best known to him." In the same breath, it was alleged in the said para that Shri Tejinder Khanna as Secretary of the Department, distributed the work amongst the petitioner who was working as Controller, and the Administrator-cum-Additional Controller. This distribution is said to have been done to harm the petitioner. Shri Tejinder Khanna has, however, stated in his reply that the post of the Administrator-cum-Additional Controller, Government Press at Patiala, was created keeping in view the administrative requirement. He has strenuously refuted the allegation that this was done to harm the petitioner in any way. The delegation of powers to the Officer holding the above mentioned post was made for the effective administration and Management of the Government Presses at Patiala. Excepting for reiterating their stand in the replication, the petitioner was unable to produce any other material to show that Shri Tejinder Khanna was in any way biased against him. The contention of the learned Counsel in this behalf is, therefore, repelled.

10. Coming now to the second leg of the argument of the learned Counsel that for a proper application of mind, the Government ought to have seen the entire record of the petitioner, Counsel has stressed that the petitioner had earned different types of confidential reports during various years of his service. Indeed, some of these reports are quite creditable, i.e., "Very Good" and "Outstanding", but it is significant to note that after and including the year 1977-78, the confidential reports of the petitioner were mostly "Average" excepting for the year 1980-81 which was "Very Good". Even earlier to the aforesaid year, the petitioner earned some adverse reports. The report for the year 1960-61 indicates that a warning was administered to him to exercise better supervision in future. Similarly the report for the year 1965-66 is to the following effect:

An arch intriguer and believes in getting favours done through die Political Pressure. Capacity for management and control adjudged poor (Conveyed vide Punjab Government Memo. No. I049-6-(c), Dated 1st August, 1966)

Again for the year 1969-70 to 1972-73, though the original Annual Confidential Reports were not available on the file, but on inquiries having been made from the Reporting Authority, Shn V.P. Malhotra, I.A.S., vide Annexure Rule 3, dated 22nd May, 1975, the petitioner was described as a man of doubtful reputation.

11. In this context, it may be mentioned that according to the averment made in para 8 of the written statement on behalf of the State Government, the petitioner is said to have committed a number of irregularities and illegalities during the course of his service and the various items enumerated in the said para include an incident pertaining to the moral reputation of the petitioner. It is the stand of the State Government that all these irregularities and illegalities apart from the Annual Confidential Reports earned by the petitioner were taken into consideration by the Chief Minister, Punjab, who after application of mind passed the order of premature retirement. In these circumstances, we fail to understand how it can be urged that there was no application of mind by the

competent authority on the question of public interest. As already observed, it is not the contention of the learned Counsel for the petitioner that the formality of using the words "in public interest" in the impugned order of premature retirement ought to have been observed, we hold that the order is quite legal and unexceptionable on that score.

12. Mr. Kuldip Singh, learned Counsel for the petitioner has laid great emphasis on the point that even though the petitioner had earned "Average" reports for file years soon before his retirement, his past record was quite meritorious and the same ought not to have been ignored from consideration. At this stage, it would be beneficial to refer to the rules framed by the State Government in this connection. The relevant instructions have been reproduced in para 15 of the Writ Petition itself. The State Government has also produced a copy of these instructions as Annexure R/8 of their written statement. The instruction at Serial No1 recites that the appropriate authority has been given absolute right to retire any Government employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter by giving the employee prior notice of three months in writing. Paragraph 4 of the instructions further amplifies, that the primary anxiety of the Government is in the interest of administrative efficiency, to ensure that dead-wood, or more precisely, the inefficient and the corrupt elements should be weeded out from the services. Reading through para 6, we find that a useful guideline in this behalf has been provided, in that the service record of the employees as a whole would determine the merits of each case in this behalf. It is further mentioned that quite often, the confidential roll 1 alone would be sufficient to guide the appropriate authority in reaching the conclusion. In fact as prescribed in para 12, the Annual Confidential Reports would play a vital role in the matter. While on the subject, it may be noticed that the petitioner along with his replication, has produced a copy of the letter, dated 22nd June, 1981 (Copy Annexure P-31) in which some further guidelines were laid down by the Government on the question of premature retirement. One of the guidelines in this behalf is that an employee may not be retired prematurely if during the last five years his work and conduct has been "good" or better than that. As already observed in the case of the petitioner, two of his Annual Confidential Reports within the said period of five years were "Average" which is below "good". It is further stated in the said letter that if an adverse entry relating to integrity exists in the Confidential Reports during the ten years preceding the review, that single entry should be considered sufficient for ordering premature retirement. As already seen for the period 1969-70 to 1972-73, the Reporting Officer of the petitioner had confirmed on 22nd May, 1975 that the petitioner is a man of doubtful reputation and an entry to this effect has been recorded on his file on account of the non-availability of the original Annual Confidential Reports pertaining to those years. The case of the petitioner would, -therefore, fall squarely within the latent instructions of the Government, as prescribed in Annexure P-31 *ibid*.

13. Making his submissions on the legal aspect of the matter, the contention of

Mr. Kuldip Singh is that even if the "Average" reports of the petitioner are to be considered, they are not to be treated to mean that he was an inefficient Officer. In the same sequence, the argument is that such "Average" reports not having been communicated to the petitioner, the same cannot be made a basis to decide that his continuation in service would be detrimental to public interest. In support of his argument, the counsel has relied upon the observation made in *Md Mahmood Hussain v. Osmania University* (1978) 1 Serv LR 721, which is a decision of a learned single Judge of the Andhra Pradesh High Court. He has also sought support from the observations made by the Supreme Court in *Gurdial Singh Fijji v. State of Punjab* (1979) 1 Serv. LK 804, on the point that adverse reports in a Confidential Roll cannot be acted upon, if they are communicated to the person concerned. The above-mentioned contentions of the learned Counsel will have to be examined in the light of the dicta of the Supreme Court in some other authorities. In so far as the consideration of Annual Confidential Reports is concerned, as already observed, according to the guidelines laid down by the Government of which the petitioner was an employee the service record of the employee as a whole would determine the merits of each case and we have already held that this had been done by the Government. In a later decision of the Supreme Court, i.e., *Brij Biharil Agarwal v. Hon'ble High Court of Madhya Pradesh* 1982 1 L.L.J. 1, the Supreme Court made a reference to its earlier decision and added an opinion that at the time of considering the question of compulsory retirement, it is no doubt desirable to make an overall assessment of the Government servant's records, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It was further observed that whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance.

14. As regards the un-communicated adverse reports, Mr. J.K. Sibal, learned Counsel for the State has placed reliance upon *Union of India v. M.K Reddy* 1980 1 L.L.J. 7. On the subject of compulsory retirement of employee, it was observed as follows:

On a perusal of the impugned order passed by the Government of India it would appear that the order fully conforms to all the conditions mentioned in Rule 16(3). It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311(2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead-wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked

improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, deepened an impression which is carried by most of the employees that compulsory retirement under this condition involves some sort of stigma must be completely removed because Rule 16(3) does nothing of the sort.

It was further observed as follows:

It seems to us that the main object of this Rule is to instill a spirit of dedication and dynamism in the working of the State Services so as to ensure purity and cleanliness in the administration which is the paramount need of the hour as the Services are one of the pillars of our great democracy. "Any element or constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has outlived his utility has to be weeded out. Rule 16(3) provides the methodology for achieving this object." We must, however hasten to add that before the Central Government invokes the power under Rule 16(3), it must take particular care that the Rule is not used as a ruse for victimisation by getting rid of honest and unobliging officers in order to make way for incompetent favourites of the Government which is bound to lead to serious demoralisation in the Service and defeat the laudable object which the rule seeks to subserve. If any such case comes to the notice of the Government the officer responsible for advising the Government must be strictly dealt with. Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative and energy so that it is made poignant and piquant, specious and subtle so as to meet the expanding needs of the nation which require exploration of "fields and pastures new". Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of the administration.

An order of compulsory retirement on one hand causes no prejudice to the Government servant who is made to lead a restful life enjoying full pensionary and other benefits and on other gives a new animation and equanimity to the Services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts to a fruitful incident of the Service made in the larger interest of the country- Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this

is his small contribution to his country for every good cause claims its martyr.

The above observations have brought out in detail the true import of the scheme of compulsory retirement, the summum bonum of which is that the object of the rule relating to compulsory retirement is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services and public interest would be of paramount importance. Further it has been emphasised that compulsory retirement involves no stain or stigma, nor does it entail any penalty or civil consequences. Furthermore, it causes no prejudice to the Government servant who continues to enjoy full pensionary and other benefits. In regard to the absolute right conferred on the appropriate authority to compulsorily retire a Government servant within the frame work of the rules, their Lordships of the Supreme Court in the authority extracted above, placed reliance upon an earlier decision of that Court in Union of India (UOI) Vs. Col. J.N. Sinha and Another, and the following observations in that case on the subject of compulsory retirement were noted with approval.

The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.... Compulsory retirement involves no civil consequences. The afore-mentioned Rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the "pleasure" doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exerting the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in. Public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may farther be that in certain key posts of public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations there is a good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds die balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energies its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

15. The learned State counsel has also relied upon S.M. Jog v. State of Madhya Pradesh (1981)2 Serv L.R. 352, which is a Division Bench judgment of the Iviadhya Pradesh High Court. In this authority, the entire case law on the point

as to whether uncommunicated adverse reports could be taken into account for purposes of compulsory retirement and other ancillary matters on the same subject, was discussed and the Bench opined as follows:

In our opinion, Brij Behari Lai's case *supra* cannot be read as laying down such a proposition and that too when the Supreme Court decision in *Union of India v. M. Reddy*, (*supra*) saying the contrary, is expressly relied on therein. In *M.E. Reddy's* case (*supra*) the requirement of communicating adverse remarks in confidential reports before taking decision of compulsory retirement, under a similar provision, was considered at length and it was held that there was no such requirement, since compulsory retirement of a Government servant in public interest in accordance with an express power, does not cast any stigma and is not punitive in nature as held repeatedly by the Supreme Court and such a rule permitting compulsory retirement on attaining a specified age, excludes the principles of natural justice. It was held that so long as the authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before the Court. It was also held that it is not every adverse entry or remark that has to be communicated to the officer concerned, e.g. some of the remarks may be purely innocuous or be connected with general reputation of honesty and integrity enjoyed by the officer and it will be difficult, if not impossible, to prove the same by positive evidence, but those who had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation he enjoys. It was also pointed out that the fact that an officer is of doubtful integrity stands on a separate footing and if he is compulsorily retired, that does not attach any stigma. *M.E Reddy's* case (*supra*) also says that before passing an order of compulsory retirement, it is not only the entries in confidential reports which have to be taken into consideration but the overall picture of the officer during the long years of his service which has to be considered from the point of view of achieving higher standard of efficiency and dedication so as to be retained even after the officer has put in the requisite number of years of service. Earlier decisions of the Supreme Court were referred which lay down that the right to be in public employment is defeasible according to rules, which also provide for compulsory retirement. It was unequivocally reiterated in *Reddy's* case referring to the earlier decisions of the Supreme Court, that confidential reports can certainly be considered while passing an order of compulsory retirement, even if they are not communicated to the officer concerned. The decisions relied on in *M.E Reddy's* case (*supra*), are of larger Benches and it is reasonable to assume that the decision of *Brij Behari Lai's* case (*supra*) by a Bench of two Judges, is not contrary to the law reiterated in *M.E Reddy's* case, following the earlier decisions of larger Benches. It is, therefore, in this background that *Brij Behari Lai's* case (*supra*), has to be read.

16. We are in respectful agreement with the above observations of the Division Bench. As a result of the above resume of the case law, the conclusion is obvious that the Authority seized of the matter of compulsory retirement, has to take into

consideration the overall record of the Officer and may also take into account the adverse remarks in his confidential reports, even though they are not communicated to him. This test, when applied to the case of the petitioner indicates that no illegality whatsoever had been committed by the Government in passing the impugned order of retirement against the petitioner. It may also be observed in this context that on the insistence of the learned Counsel for State to produce the original record of the Government pertaining to the Case of the petitioner and on perusing the same, we are satisfied that there was due and proper application of mind by the appropriate authority before passing the impugned order.

17. The next submission of the learned Counsel for the petitioner is that in Section 3 of the Punjab Civil Service (Premature Retirement) Rules, 1975, only an appropriate authority can pass the order of retirement, which according to the case of the petitioner himself, as in Paragraph 12 of the Writ Petition is the State Government. The contention is that there was no opinion formed by the State Government that it was in public interest to retire the petitioner, as the appropriate authority in the matter would be the Secretary to the Government and not the Chief Minister who is only called upon to render approval of the proposal sent to him by the Department. In this behalf, the learned Counsel has relied upon the decision of Supreme Court in *State of Punjab v. Bakhtawar Singh* (1980)3 Service LR 573 . That case is however, quite distinguishable on facts. The aggrieved officer in the said case was a Naib Tehsildar in the service of the State of Punjab. It was intended to institute criminal proceedings against him u/s 5(2) of the Prevention of Corruption Act, but the State Government directed the Commissioner, Patiala Division, to institute proceedings for the respondent's premature retirement. The necessary order of retirement was then passed by the Commissioner retiring the petitioner who had attained the age 55 years. In a Writ Petition filed by the Naib Tehsildar, the order of the Commissioner was quashed on the ground that he had not applied his mind to the question of premature retirement and had acted at the behest of the State Government. A Letters Patent Appeal filed by the State Government was dismissed and this order was maintained by the Supreme Court. In the case in hand, no such thing has happened. There was no delegation on the part of the State Government to pass the order of retirement of a lower officer. On the other hand, it was the Chief Minister who had passed the order after personally satisfying himself about the matter. If under the Rules of Business, the Chief Minister has the authority to approve or disapprove the proposed action of a functionary of the State Government, he surely has the powers to pass a final order himself. The objection in this behalf is, therefore, not tenable.

18. The last submission of the learned Counsel for the petitioner is that the petitioner having been allowed to cross the Efficiency Bar as Controller on 1st September, 1981, all previous adverse entries against him in the confidential record are deemed to have been washed off and the very fact that he was allowed to cross the Efficiency Bar, disentitles the Government to retire him

prematurely. The argument has just to be looked into and rejected. The order as per which the petitioner was allowed to cross the Efficiency Bar, is Annexure P-I which itself recites "that the fact that he (petitioner) has been allowed to cross this efficiency bar on the basis of existing record is absolutely independent of the action which might have to be taken by Government against him on the basis of disciplinary proceedings that may be started on the finalization of inquiries that are being conducted against him". The rider attached to the aforesaid order clearly indicates that disciplinary proceedings were contemplated against the petitioner on the finalization of some inquiries which were being conducted. The petitioner cannot, therefore, take benefit of such a conditional order in support of the contention that he could not be legally retired after he had been allowed to cross the Efficiency Bar.

19. No other point arises in this Writ Petition which is without merit and is consequently dismissed. However in the circumstances of the case, we leave the parties to bear their own costs.

20. The oral prayer made by the counsel for the petitioner for the grant of permission to file an appeal to the Supreme Court is declined.

S.S. Sandhawalia, C.J.

21. I agree.