

(2013) 08 P&H CK 0250
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 20121 of 2011

Raj Singh Dahiya

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2014) 1 SCT 196

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : P.L. Verma, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Judgement

Rajiv Narain Raina, J.—The petitioner was compulsorily retired from service on attaining the age of 55 years in public interest while serving in the police department as a Sub-Inspector by resort to R. 3.26(d) of the Punjab Civil Services Rules, Vol.-1, Part-1 read with R. 9.18(1)(c) of the Punjab Police Rules, 1934 as applicable to the State of Haryana. The three month notice of compulsory retirement was issued on 22.4.2010. He filed Civil Writ Petition No. 9934 of 2010 before this Court challenging the impugned order of compulsory retirement which was dismissed on 28.9.2011 after stay order was granted earlier on 26.5.2010. The intra court appeal (LPA 1881 of 2010) against the order of the learned single judge failed on 23.1.2012 when the appeal was dismissed. The order has attained finality. On culmination of litigation the petitioner was retired on 15.2.2012. The petitioner was awarded punishment of censure vide order dated 30.1.2003 on the allegations of extorting money from truck drivers including a driver of Canter No RJ-14-27G-6160 carrying goats by way laying him on NH 8 while the petitioner etc. were deployed on duty on the night intervening 9/10.8.2002. The Canter was stopped for police extortion at 5 different points while passing through district Rewari and at 8 places in Gurgaon with driver and owner of livestock in the Canter. Another startling revelation from the report of Sh. Murari Lal, HPS, DSP, Haryana Highway Patrol & Road Safety,

Karnal who was deputed to verify the information is that in the area of two police stations viz. Dharuhera and Manesar, the SHOs had sent their own official vehicles with police personnel for extorting money from truck drivers passing by. This report is subject matter of communication (R-1) dated 17.8.2002 from Superintendent of Police, Haryana Highway Patrol & Road Safety, Karnal to the Director General of Police, Haryana, Panchkula shows up another horrendous feature, that is, unabated highway robberies at the hands of men in uniform or in disguise go on every night but the intensity goes up on Tuesdays and Fridays because a larger number of vehicles ferrying animals and livestock proceed to Delhi on these nights. The SP has suggested that:

Professionally speaking between mid-night and 6 O'clock in the morning, most of the crimes like burglary, dacoity etc., take place in the interior colonies and not on the National Highway. As most of the crimes on National Highways take place during evening hours, therefore, police should concentrate on these Highways (both National and State) more during evening hours whereas after mid-night they should concentrate more on the residential areas. The few crimes taking place on the highways during these hours can be taken care of by Highways Patrol personnel.

2. The petitioner complains that censure was awarded without following procedure laid down in R. 16.24 of the Punjab Police Rules, 1934 as applicable to Haryana, inasmuch as no regular enquiry was held before inflicting minor punishment. The order is thus illegal because it was not preceded by charge sheet or disciplinary proceedings where he would have had an opportunity to prove his innocence. Still further that petitioner did not have a statutory right of appeal under R. 16.29 against an order of censure since appeals are competent only against major punishments. He has therefore gone unheard.

3. The facts as they emerge from the written statement filed by the respondent State are that after the above incident of extortion a preliminary enquiry was conducted by the Deputy Superintendent of Police, Head Quarters, Gurgaon which prima facie found the petitioner guilty of the charges levelled and which found actually on a surprise checking carried out where the petitioner was caught red handed. The competent authority was of opinion that instead of holding regular enquiry for major misconduct a show cause notice of censure be issued to the petitioner by resort to provisions of R. 16.9 of the PPR, 1934. Therefore, a show cause notice was issued on 17.9.2002. The petitioner filed a reply thereto which was considered and not found satisfactory. That is how the punishment order was passed in 2003 which has been challenged through the present petition filed in 2011 after a delay of 8 years. It has been stated in paragraph 3 of the return that the petitioner had been inflicted punishments of censure three times and had been awarded major punishment of stoppage of two future annual increments with permanent effect in a departmental enquiry conducted against him on the allegations that he did not arrest an accused Vinod Kumar in case FIR No. 123/2009 registered in Police Station sector-10, Gurgaon under Ss. 302,

201, 34 IPC.

4. Though the present petition has been filed laying challenge to the order of censure after 8 years of its passing yet in the writ petition it has not been disclosed that the petitioner had filed CWP No 9934 of 2010 before this Court challenging the impugned notice of compulsory retirement dated 22.4.2010 which petition was ultimately was dismissed on 28.9.2011 though after granting interim stay on 26.5.2010.

5. When confronted with suppression of material facts as revealed in the written statement it appeared that the petitioner seems to be labouring under a mistaken belief that because he has been awarded punishment of censure without due process as perceived by him, therefore he has been compulsorily retired from service prematurely. If the censure order goes then the substratum of the proceedings in the earlier writ petition as affirmed in intra court appeal would vanish. It is urged that underlying censure was a charge of corruption and would make his integrity doubtful without it being reflected in the annual confidential report of the year in question and therefore operate to his prejudice since he believes that it is only censure which has been used against him as integrity doubtful. The petitioner urges obsessively that censure amounts to integrity doubtful and he has been undone by reason of it. I can only marvel at the ingenuity of the argument raised before me which I dare say left me speechless for a moment. However, I find that he has not been compulsorily retired on the basis of censure alone but in larger public interest and service record as not justifying retention in service beyond 55 years or of his continued utility to the police organization which interfaces with the community and the public at large 24/7/365. Orders of compulsory retirement when not passed punitively are not stigmatic. They are not intended to operate as punishments for misconduct. The employer reserves the absolute right to retire a person from service who in its subjective satisfaction are inefficient and have become parasites on the system or are bringing the disciplined force to disrepute. These are underlying principles not legally required to be spelt out in notices issued under R. 3.26 (d) of the Punjab Civil Services Rules, Vol.-1, Part-1 read with R. 9.18(1)(c) of the Punjab Police Rules, 1934 as applicable to the State of Haryana. The law on the subject has been already explained threadbare by the Supreme Court and the extent and scope of judicial review in writ jurisdiction testing orders of compulsory retirement which are not inflicted by way of punishment following disciplinary action *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, The dicta laid down is: (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 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 interfere. Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 above.

The issue raised in challenge to the impugned order 30.1.2003 is also barred by limitation besides the principles of delay and laches would apply since the action has been brought after unexplained and extraordinary delay of 8 years. This Court had already dismissed the writ petition in which the petitioner's challenge was to the notice of compulsory retirement. If the compulsory retirement order has become final the present petition is rendered merely academic. At any rate, the impugned order of censure was available to him for challenge in 2010 but no prayer was made then as is now being argued although the question of delay would have arisen then as well. The question of bar of Order 2 Rule 2 CPC would also come into play.

For the foregoing reasons, I do not find any merit in this petition which is ordered to stand dismissed.