
(2008) 12 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8403 of 2006

Ranbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, 170, 323, 342, 384
Punjab Police Rules, 1934 — Rule 9.18

Citation : (2009) 2 ILR (P&H) 109

Hon'ble Judges : Mehtab S. Gill, J; K. Kannan, J

Bench : Division Bench

Advocate : R.K. Malik and Parveen Kumar Rohila, for the Appellant; Harish Rathee, D.A.G., for the Respondent

Judgement

K. Kannan, J.

I. Scope of enquiry:

1. The head constable who had been fighting for expunction of remarks in his ACR lost the first battle when his representations were rejected and before he could take any action, he was visited with an order of compulsory retirement on the ground that his services were no longer required in the public interest. The writ petition challenges the order of the Inspector-General of Police, dated 11th July, 2005 rejecting his application and the order of compulsory retirement that was passed on 4th April, 2006.

II. Details of adverse entries in the ACR:

2. The Petitioner had joined the police department on 28th April, 1978 as a Constable and later promoted as Head Constable on 25th December, 1995. He had a blemished service record all along and was graded as a disciplined person with no complaint against integrity, having been further assessed as reliable with good moral character. ACR entries took a tumble when FIR had been registered

against him along with another person in FIR No. 289, dated 17th September, 2001 for the alleged offences under Sections 170/323/342/384/419/420/452/506 read with Section 120B IPC with Chandni Bagh police station. This police complaint had a direct impact in the remarks made by Superintendent of Police and in the ACR between the period from 1st April, 2001 to 3rd November, 2001. The following entries were made:

Discipline -- Bad Integrity -- Doubtful Reliability -- Not reliable Conduct -- Not upto mark Special Remarks -- Case (FIR No. 289, dated 17th September, 2001) under Sections 419/420, 342/452/170/384/323 506/120-B IPC was registered at Police Station Chandni Bagh

III. Rejection of Petitioner's representation and resultant action of compulsory retirement:

3. The Petitioner had made representations against the adverse entry stating that the criminal case was not true and it had been foisted against him. Simultaneously the departmental proceedings had been initiated against him and he was exonerated when the report of the Enquiry Officer was accepted on 10th June, 2003. The representation filed by the Petitioner against the adverse remarks was rejected by the Inspector-General of Police, Rohtak Range on 3rd March, 2005 and the further appeal to the Director-General of Police also did not result in favourable orders, when it was passed on 11th July, 2005.

4. Soon thereafter, the Director-General of Police had served show-cause notice upon the Petitioner on 27th September, 2005 (Annexure P6) for compulsory retirement from service and the Petitioner had set out his objections therefor. Along with show-cause notice, the grounds/ material for compulsory retirement had been set out replicating the adverse entries found in the ACR after setting out the adverse entries, the communication recited "in view of the above resume of service record of HC Ranbir Singh, No. 813/PPT, he has outlived his utility as Police Officer and is not fit for retaining in service any further. It has, therefore, been proposed to retire him compulsorily in the public interest under PPR 9.18(2)".

IV. Acquittal after show cause notice:

5. Immediately, thereafter the criminal Court had rendered a judgment acquitting him on 1st October, 2005. The Petitioner gave his representation pointing out to the effect that the case had ended in acquittal and the material on which the show-cause notice for compulsorily retiring him had been taken during the pendency of the criminal case against him was no longer to be taken into consideration, having regard to the fact that he had been acquitted. The Director General of Police, however, passed an order on 14th April, 2006 compulsorily retiring him and even in the said order, he had referred to the adverse entry in his ACR for the period between 1st April, 2001 to 3rd November, 2001 and that the decision was being taken after considering the reply taken by the Petitioner. The order also purported to have secured the sanction of the State

Government in its memo No. 5/28/2006-3HGI, dated 22nd February, 2006.

V. State's justification:

6. To the challenges made by the Petitioner as regards expunction of adverse entries and quashing the order of compulsory retirement, the response from the State Government is predictable: (i) at the time when the decision had been taken to reject the adverse entries in the ACR, the criminal case was still pending and the rejection of his representations has become final. The decisions have been taken on an objective consideration of all relevant facts and, therefore, it was not justiciable; (ii) the order of compulsory retirement is not a punishment and the Petitioner shall have no ground to assail the decision and there is hence no warrant for intervention under Article 226 of the Constitution of India.

VI. Relevant provision for compulsory retirement

7. It is well known proposition that compulsory retirement itself is not a punishment and the Courts have held that there is not even a scope for observing the principles of natural justice. (Ref. Baikunthnath Das v. Chief District Medical Officer 1992 (2) S.C.C. 92. The Punjab Police Rules, 1934 with its amendment to Haryana details the various forms of punishment in paragraph 16 and the compulsory retirement itself does not find a place as form of punishment. The provision for compulsory retirement obtains reference under the heading "retiring pension" under Rule 9.18 of PPR. Sub-clause (2) of the said rule reads as follows:

The Inspector-General of Police may with the previous approval of the State Government, compulsorily retire any police officer other than belonging to IPS or Punjab State Police Services who have completed 10 year's qualifying service without giving any reasons. Any officer who is so compulsorily retired, will not be entitled to claim any special compensation for his retirement.

Note I.--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, such as on account of inefficiency, dishonesty, corruption or infamous conduct. Thus the rule is intended for use--

(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 use the provisions of this rule as a financial weapon, that is to say, the provision should be used only in the case of an officer who is considered unfit for retention on personal as opposed to financial grounds; in cases where reputation for corruption, dishonesty or in favour 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 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.

VII. Compulsory retirement--Procedural requirement

8. All that the law, therefore, requires is that the Officer shall be given an adequate opportunity to make any representation that he may decide to make against the proposed action and such a representation shall be taken into consideration before a final decision is rendered. Relying on this provision, the counsel for the State would contend that the representation had been taken note of and the ultimate decision had been rendered. The only relief that the law admits of through judicial pronouncements had been the issue as to whether the decisional exercise had been rendered after duly considering the relevant factors and the interference of the order of compulsory retirement can only be on the satisfaction of the Court that the order passed is mala fide or it is based on no evidence or it is arbitrary in the sense that no person will come to the conclusion that authority had taken (vide *ASI Dilbagh Singh alias Rai v. State of Haryana* 1999 (2) SCT5 6 (P&H)). Thus, compulsory retirement is resorted to when an employee is liable to be treated as dead wood and jettisoned but does not deserve to lose the right to terminal benefits by the fact that it is not a punishment, however, bringing to an end service of an employee prematurely. It is but imperative that the decision is never arbitrary but is based on relevant materials.

VIII. Pendency of Criminal case--only material for decision

9. There is always a difference between compulsory retirement which is in public interest and compulsory retirement by way of punishment as laid down by the Hon'ble Supreme Court in *Bishwanath Parsad v. State of Bihar* 2001 (2) S.C.C. 305. Rejection of representations against adverse entries as well as show-cause notice against compulsory retirement refer only to the fact of pendency of criminal case which by its necessary implication reveals that it is that case which is taken as a material to assess the suitability of the employee and the basis for the assessment of his conduct. It is nowhere seen that it was ever brought to the attention of either the SP or the Inspector-General of Police or the still higher authority of the Director General of Police that they were aware of the fact of the Petitioner's acquittal from the criminal case and the fact that even department enquiry had exonerated him.

10. It was pointed out by the counsel for the Petitioner that yet another person who had been implicated in the same criminal case had also obtained the adverse entry but when he was acquitted, the adverse entry had been expunged but it was not so done for the Petitioner only because at the time when the

representation was disposed of, the result of the criminal case had not been made available. This issue is not without relevance for a similar entry for yet another employee who had been similarly entered with adverse remarks found the expunction of remarks happening when the criminal case ended in acquittal. It is not possible to believe that any other material was available or there were any other considerations for the Government to apply a different yardstick for the Petitioner alone.

IX Examination of original records undertaken

11. We had sent for the entire original file relating to the Petitioner on the subjects dealing with compulsory retirement and the AC Rs recorded over a period of time from 17th January, 1991 till the date when he was compulsory retired. We find that the Petitioner had been consistently recorded as either good or very good and on the only occasion for the period from 1st April, 1991 to 3rd November, 2001, his discipline has been stated to be bad; Integrity-doubtful; Reliability-not reliable; Morality-poor, bad moral character; General remarks involved in FIR No. 289, dated 17th September, 2001 registered under Sections 170/323/342/384/419/420/452/506 read with Section 120-B IPC.

12. It is not possible to see from the records that the Reviewing Officer had any other objective criterion to make adverse entries than the fact of his involvement in the criminal case. The representation made against the adverse remarks has been disposed of by the Inspector General on 3rd May, 2005 with the cryptic observation that the representation was duly considered and rejected as devoid of merit. The result of the criminal case had not been available at the time when the subject was taken up by the Inspector General of Police and that had entailed the rejection of his representation. The counsel also refers us to the relevant instructions which detail the reasons to be recorded wherever adverse entries are made. He states that no reasons have been given in the ACR for the adverse entries apart from the reference to the pendency of a criminal case. His contention was that there was no other material before the Reviewing Officer than the pendency of the criminal case to make the adverse entry and when the criminal case ended in acquittal, the entry was also required to be expunged. He would further contend that even apart from the criminal court Judgment, the departmental proceedings which had been taken up against the Petitioner, had exonerated him and the retention of adverse entry in the ACR was, therefore, most unjust.

13. In a normal situation, we would have merely set aside the impugned orders rejecting his claim for expunction of the adverse remarks and sent the matter back to the Respondents for re-consideration of the issues in the light of the acquittal in the criminal case and the exoneration of the charges in the departmental proceedings. However, that exercise cannot be done in a situation where the adverse entry itself has been taken to be a ground for consideration of the matter whether he should be retained in the department or not on his completing 25 years of service. Such an exercise had been undertaken and the

Petitioner had been ordered to be compulsorily retired. The order of compulsory retirement follows close on the heels of the Petitioner's representation for expunging the adverse remarks. On verifying the original files on the subject of compulsory retirement, we find that the adverse entry recorded is for the period from 1st April, 2001 to 3rd December, 2001 has been the singular aspect which has gone into consideration for compulsorily retiring him. The result of the criminal case itself does not appear to have been gone into reckoning since the file does not make any reference to the representations of the Petitioner drawing attention of the authorities to the effect that the criminal case had ended in acquittal and the departmental proceedings had exonerated him. The entire file makes reference only to the fact of the pendency of the criminal case and evidently that has weighed with the authorities for awarding compulsory retirement.

X. Non-consideration of relevant material vitiates decision

14. The contention on behalf of the State Government is that compulsory retirement is not a punishment and it is a matter by which the establishment could dispense with dead wood and compulsory retirement ought not to be understood as casting of any aspersion at all. Counsel for the Petitioner responds to this argument by pointing out that compulsory retirement itself is indeed a form of punishment if it is inflicted on the basis of pendency of a criminal case. The court is bound to examine whether the relevant materials have been taken into account at the time when the order is passed. We have already pointed out to the fact that the only relevant consideration at the time taken up as a subject of compulsory retirement is the pendency of the criminal case and the acquittal by the criminal court and the ultimate exoneration of the Petitioner in the departmental proceedings are not even in the file. The Hon'ble Supreme Court said in *State of Gujarat v. Suryakant Chunilal Shah* (1999) SCC 529 that pendency of criminal cases was not sufficient to doubt a person's integrity. It depended on the nature of criminal case. It interfered with the decision of compulsory retirement, holding, however, that there was a collateral purpose of removing the employee. This Court has cautioned in *Amrik Singh v. State of Haryana* 1995 (4) R.S.J. 1, that there is an onerous obligation placed on the reporting or other authority, who makes adverse remarks regarding integrity of an officer and he has to be extra-cautious, careful, while making adverse entry pertaining to integrity. It is indeed doubtful whether the Superintendent of Police had even properly noticed the adverse entries, since his note to the IG of Police refers to them as for the period from 1st April, 2004 to 3rd December, 2004, when actually it is for the period from 1st April, 2001 to 3rd December, 2001. Even if this was to be taken merely clerical error, it would still be seen that the ultimate acquittal of the Petitioner in the criminal case had not been communicated to his Superior Officer at all. Even the fact that the departmental enquiry exonerated him does not find mentioned in the note sent to the Inspector General of Police. Having regard to the fact that the only incident of pendency of criminal case had formed the solitary basis both for the adverse entry as well as

for the order affecting compulsory retirement, we find that non consideration of acquittal in the criminal case and the exoneration of the charges in the departmental proceeding vitiates the ultimate decision.

15. It has been held by a decision of this Court in *Jaspal Singh v. State of Haryana* 1995 (4) S.C.T. 302, that where neither service record has been considered nor properly re-evaluated before a decision for premature retirement is taken the decision cannot be legally sustainable. In that case, this Court was dealing with the case of the Petitioner who had earned many good reports, appreciations and promotions for the posts of ASI & SI but he had been retired only on the basis of one stale entry of doubtful integrity. The Court reasoned that there had been no proper evaluation of the entire service record and quashed the proceedings. The learned Counsel for the Petitioner also refers to the Division Bench of this Court in *Ranbir Singh, ASI v. State of Haryana* rendered in CWP 867 of 2007 dated 29th March, 1987, the decision of civil court setting aside punishment which was the basis of adverse entry in ACR constitutes a fresh cause of action and a failure to consider a fresh cause of action and a failure to consider the same in the second representation vitates the decision to retain the adverse entry. In the present case also, we are dealing with the situation of the case of the Petitioner who after joining the service on 28th April, 1978 had no adverse entries at all against him except for one incident of censure between the period from 1st April, 1991 to 3rd December, 1991 and the adverse entry between the period from 1st April, 2001 to 3rd November, 2001 on the basis of the pendency of criminal complaint. It is likely that the acquittal in the criminal case and the exoneration of charges in the department proceeding would have had a different bearing as relevant materials at the time the final decision had been taken. The same having not been placed before the competent authority when the impugned orders were passed, we agree with the contention of the counsel for the Petitioner that the impugned orders are liable to be interfered with and the adverse entry in the ACR with the order of compulsory retirement due to pendency of criminal case on the solitary basis have to go.

XI. Final Disposition

16. In the circumstances, the writ petition is bound to succeed and adverse entries in the ACR are directed to be expunged. The order of compulsory retirement impugned in the writ petition is also set aside. The Petitioner is entitled to be reinstated in service with all consequential benefits.