
(2005) 02 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17771 of 1995

Tara Chand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 323, 342, 392, 409, 500
Prevention of Corruption Act, 1988 — Section 5
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 6

Citation : (2005) 1 ILR (P&H) 467

Hon'ble Judges : K.S. Garewal, J

Bench : Single Bench

Advocate : R.S. Khundu, for the Appellant; Vijay Dahiya, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

K.S. Garewal, J.—D.S.P. Tara Chand has filed this petition to challenge order dated 3rd July, 1995 whereby he was compulsorily retired in public interest.

2. The Petitioner was posted as S.H.O., Police Station Sadar, Hisar in 1987. He received secret information to the effect that certain persons were in illegal possession of arms, whereupon he registered F.I.R. 236 dated 2nd August, 1987 u/s 25 of the Arms Act and Section 6 of the Terrorists and Disruptive Activities Act. On 25th September, 1987 Shri Bhajan Lal, Respondent No. 3 and at that time then a Cabinet Minister in the Government of India telephoned him and threatened him with dire consequences for harassing his supporters. The Petitioner received the telephone call and recorded the gist of the call in the daily diary of the Police Station.

3. On 21st November, 1987, one Dharampal addressed a communication to the Chief Minister of Haryana, which was received by the Petitioner through

Superintendent of Police, Hisar with the endorsement "please register a case and investigate". Dharampal's representation was a complaint against Respondent No. 3 and was registered as F.I.R. No. 372 u/s 161/165 and Section 5 of the Prevention of Corruption Act, 1988. F.I.R. was later challenged before this Court and was quashed but when Respondent No. 3 was elected to the Haryana Legislative Assembly in May, 1991 and appointed as Chief Minister of the State, he got the Petitioner placed under suspension. This suspension order was subsequently dropped but on 5th July, 1991 an order of suspension was again passed against the Petitioner "in view of the criminal offence against him under trial in the Court and that he is evading the service of process of the Court for almost one year and nine months".

4. The main ground for challenging the order of compulsory retirement was that it was unlawful to retire the Petitioner while he was continuing under suspension. Reliance has been placed on Prem Singh v. State of Haryana and Anr. 1993 (2) R.S.J. 526, a Single Bench judgment of this Court and on S.K. Taneja v. State of Haryana 1994 (2) R.S.J. 425, a Division Bench judgment of this Court in which reliance has been placed on Prem Singh's case.

5. In reply to the relevant paragraphs of the petition, it was submitted that the Petitioner had been placed under suspension in view of the criminal complaint against him u/s 323/342/500 I.P.C. and for evading the process of the Court. The Petitioner also faced prosecution u/s 409 I.P.C. in a case registered at Police Station, Civil Lines, Hisar. Furthermore, the Petitioner was convicted by this Court on 22nd February, 1990 and awarded simple imprisonment for three months in a contempt case, Court of its own motion v. Tara Chand, D.S.P. Haryana, (Cr. O.C.P. No 9 of 1989) regarding criminal contempt of the Court of Sessions Judge, Hisar committed by him on 29th August, 1989.

6. It was further submitted by the Respondents that the Petitioner had been retired from service after attaining the age of 55 years in terms of Rule 5.32-A (C) of the Punjab Civil Services Rules, Volume-II read with Rule 3.26 (d) of the Punjab Civil Services Rules, Volume-I as applicable to Haryana. This action had been taken considering his record rendering him unfit for further continuation in service. There was absolutely no mala fide intention on the part of the Respondents. The Petitioner was given three months pay and allowances in lieu of three months notice. Furthermore, it was asserted that the appointing authority retained an absolute right to retire any Government employee on or after attaining the age of 55 without assigning any reason. Separate reply was filed by Respondent No. 3. The Petitioner also filed replication to the written statements.

7. Subsequently, the Petitioner filed C.M. No. 16367 of 2004 and placed on record copies of four Judgments/orders and the copy of a recommendation. The judgments/orders were the following:

(i) Judgment dated 30th April, 1994 passed by Judicial Magistrate, 1st Class,

Hisar in criminal complaint titled Ram Narain Kaushik, Advocate v. Tara Chand u/s 504/506 I.P.C. The accused was given the benefit of doubt and acquitted.

(ii) Order dated 17th March, 1994 in criminal complaint titled Banwari Lal v. Tara Chand, D.S.P. Narnaul, under Sections 323/342/504/506 I.P.C. passed by Additional Chief Judicial Magistrate, Narnaul. The matter was compounded and the accused was acquitted.

(iii) Judgment dated 1st October, 1992 Sultan Singh v. Tara Chand passed by Chief Judicial Magistrate, Hisar in a case under Sections 342/504/506/323/392 I.P.C. The accused was discharged.

(iv) Order dated 1st February, 1994 passed by a Division Bench of this Court in Ram Narain Kaushal, Advocate v. Inspector Tara Chand in Criminal Appeal 371-DBA of 1992. The appeal was not pressed by the Appellant and was dismissed as withdrawn.

8. The Petitioner also relied upon communication dated 11th September, 2001 addressed by Director-General of Police, Haryana to Financial Commissioner and Secretary to Government of Haryana, Home Department containing a recommendation that compulsory retirement order passed on 3rd July, 1995 may be withdrawn.

9. The State filed a reply to C.M. 16367 of 2004 and admitted that the Director General of Police, Haryana had recommended the withdrawal of the retirement order but referred to order dated 10th November, 1999 (Annexure R-I) wherein the following order had been passed:

Shri Tara Chand, D.S.P. retired was convicted and awarded 3 months S.I. CRL. O.C.P. No. 9 of 1989 u/s 2(c) of the Contempt of Courts Act confirmed by the Hon"ble Supreme Court of India as such during the period of suspension from 5th September, 1989 to 1st December, 1989 nothing more than the subsistence allowance which the officer had already been paid can be granted though the period may be counted towards pension. The suspension period from 5th July, 1991 to 3rd July, 1995 will be treated as duty period. He will be entitled for all consequential benefits.

10. Reference was also made to the consideration of the above recommendation by the Government and its rejection on 11th December, 2001 (Annexure R-III). Later a request for reconsideration was made but it was also turned down on 21st May, 2003 (Annexure R-V).

11. A copy of this Court's order dated 22nd February, 1990, in Cr. O.C.P. 9 of 1989, Courts of its own motion v. Shri Tara Chand Dy. S.P. Haryana was placed on record by the Respondents. In this case a Division Bench of this Court rejected the apology tendered by the Petitioner and found him guilty of criminal contempt, the contemner was (Petitioner herein) awarded sentence of simple imprisonment of three months.

12. Compulsory retirement is one of the major penalties which can be imposed on a Government servant after full inquiry in accordance with the relevant punishment and appeals rules. However, compulsory retirement is also a means of retiring a Government servant after he has completed a fixed period of employment but has not reached the age of superannuation. The object and purpose of premature or compulsory retirement of the Government servant is to weed out insufficient, corrupt, deadwood and dishonest employees from service. It is a well established right which is exercised in accordance with law and it is an absolute right. The powers to retire a Government servant are exercised in public interest. Public interest in relation to public administration emphasises that only honest and efficient persons should be retained in service. Compulsory retirement simpliciter, in accordance with the terms and conditions of service, does not amount to dismissal or removal or reduction in rank under Article 311 because the Government servant does not lose the terminal benefits earned by him. However, if the compulsory retirement is proposed by way of penalty for proven misconduct, the provision of Article 311(2) of the Constitution of India would be attracted and an inquiry in accordance with the rules shall have to be initiated before the penalty of compulsory retirement is imposed. Furthermore, if the order of compulsory retirement casts a stigma on the Government servant, in the sense that it contains a statement casting a doubt on his conduct, character or integrity, then the Court shall treat that order as an order of punishment. This would attract the provisions of Article 311(2) of the Constitution.

13. The point to be considered in the present case is whether the compulsory retirement of the Petitioner was stigmatic. Could it be said that the Petitioner's continuation on suspension from 5th July, 1991 until his compulsory retirement on 3rd July, 1995 necessarily required that suspension should have been revoked before the order was passed.

14. In Prem Singh's case (Supra) the Government servant had been placed under suspension,--vide order dated 14th January, 1974, he was tried in 15 cases but acquitted by the Magistrate on 18th September, 1984 in all cases yet he was not reinstated. Consequently, he filed a writ petition, during the pendency of which petition, the order of compulsory retirement was passed on 21st March, 1989. This order was challenged on the ground that it was penal and thus violative of Article 311 of the Constitution of India. The Court held that retirement of a person while he is under suspension was not per se innocuous but in the said case the order of retirement which the employee was still under suspension carried a definite stigma as also penal consequences of loss of certain benefits like arrears of salary etc. In such a situation the order of retirement could have been passed only after complying with the provisions of Article 311. The above exposition of law was followed by the Division Bench in S.K. Taneja's case (Supra).

15. In the present case the Petitioner has given no details of the nature of disciplinary proceedings that were initiated against him after he was suspended.

However, this much is clear from the suspension order that the Petitioner had evaded service of the process of a Court for almost a year and nine months. The Petitioner has given no justification for his failure to appear before the court for such a long time. The Petitioner displayed a defiant attitude which was certainly unbecoming of a police officer. For this kind of defiance the Petitioner could have been awarded any of the major penalties like withholding of increments with cumulative effect, reduction to lower stage in time scale of pay, compulsory retirement, removal from service or dismissal from service. The Government did not award any of these penalties to the Petitioner. The Petitioner was not compulsorily retired as a measure of punishment but retired after he had attained 55 years of age.

16. The Petitioner's date of birth was 12th October, 1938, he served in the Army as an Education Instructor from 1964 to 1967 and joined as Assistant Sub-Inspector on 30th March, 1971. He was promoted to the rank of sub-Inspector on 2nd February, 1977 and to the rank of Inspector on 16th February, 1986. He was awarded promotion to the post of Deputy Superintendent of Police in 1988. In his petition, the Petitioner boasted about his having recorded in the Daily Diary of a Police Station, that Respondent No. 3, a Central Cabinet Minister, had threatened him. He further boasted about the fact that he had registered a case under the provisions of Corruption Act, 1988 against Respondent No. 3. This had been pleaded to bolster his ground of mala fides against Respondent No. 3.

17. The Petitioner was not penalised for his various acts of misconduct. The two main items of misconduct being evading service for a year and nine months and conviction for contempt of court followed by sentence for three months for lowering the dignity of the Court of Sessions, both inside as well as outside the Court. Both the above acts were unbecoming of a police officer who had completely overlooked the strong and settled bonds between the police and the criminal Courts and the need to keep these bonds strong and firm in the interest of the successful working of the criminal justice system. In spite of the above, the Petitioner was compulsorily retired, not as a measure of punishment but in public interest. The Petitioner received three months pay in lieu of notice and only a year to serve till his superannuation in October, 1996. The Petitioner was later on also given pay for the period of suspension upon the said period being treated as duty period. He was held entitled to all consequential benefits.

18. In view of the above, it is felt that the Petitioner's case is not covered by the rule laid down in Prem Singh's case. This Court in J.M. Sharma v. State of Haryana and Ors. 1981 (1) S.L.R. 554. had laid down as under:

If the rules give jurisdiction to the competent authority to compulsorily retire a public servant and the said authority passes order of such compulsory retirement in exercise of that jurisdiction, then unless it is shown that the order is by way of punishment, no fault can be found with the ? said order of retirement. Merely that a delinquent public servant has been placed under suspension before the order of his compulsory retirement is passed does not, to my mind, lead to the

only inference that it has been passed by way of punishment.

19. In the present case the order of compulsory retirement was not a measure of penalty and carried no stigma with it. The order was passed in terms of Rule 5.32 A (C) of the Punjab Civil Services Rules, Volume-II read with Rule 3.26(d) of the said Rules, Volume-I, as applicable to the State of Haryana. One cannot help recording that after the conviction of the Petitioner for contempt, which was upheld by the Supreme Court, he had left the Government with no choice but to proceed departmentally against him and award him major penalty. At that time he was already under suspension for evading a Court's process. The Government chose not to punish him but relieved him through retirement without any stigma whatsoever. The said action was in fact somewhat lenient on the Petitioner. The Respondents had chosen the path of moderation when they would have been perfectly justified to adequately punish the Petitioner.

20. In view of the above, the writ petition is without merit and is dismissed.