

ensue. Since the petitioner has already crossed the age of 58 years in August 1991, no order of reinstatement can be passed. The petitioner shall also be entitled to his costs, which are assessed at Rs. 2,000.

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S.C.K.

*Before Hon'ble Jawahar Lal Gupta, J.*

TARA CHAND,—*Petitioner.*

*versus*

DIRECTOR GENERAL OF POLICE, HARYANA,—*Respondent.*

C.W.P. No. 11127 of 1988

4th March, 1992

*Constitution of India, 1950—Arts. 226/227—Compulsory Retirement—Adverse record prior to crossing of efficiency bar—Consideration of such record—Stale and obsolete material—Reliance on such material whether permissible.*

*Held*, that the petitioner had been permitted to cross the efficiency bar, the record prior to the crossing of efficiency bar could not have been taken into consideration. The record from the year 1969 onwards has been taken into consideration. Reliance on such old and stale entries is contrary to the rule of law pronounced by the Apex Court.

(Para 7)

*Further held*, that while considering the negative aspect of the petitioner's case, the fact that the petitioner has been promoted, confirmed, deputed for the courses and also allowed to cross the efficiency bar, was also relevant. It is the cumulative effect of the positive and negative aspects that has to be taken into account while deciding the matter. While the negative aspect is clearly considered, the positive aspect was clearly ignored and consideration was thus not proper.

(Para 9)

K. S. Keer, Advocate, for the Petitioner.

Jaswant Singh, Advocate, for the Respondent.

## JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) The petitioner herein is aggrieved by the order of his compulsory retirement from service. A few admitted facts may be noticed.

(2) The petitioner was enrolled as a Constable on November 25, 1962. After having passed the Lower School course, the petitioner was promoted as Head Constable on August 10, 1974. He was confirmed as a Constable with effect from November 16, 1977 and as Head Constable with effect from December 4, 1980. He was further allowed to cross the efficiency bar as Head Constable with effect from April 1, 1985. Thereafter,—*vide* letter dated January 8, 1988, the petitioner was served with a notice to show cause as to why he may not be compulsorily retired from service in accordance with the provisions of rule 9.18(2) of the Punjab Police Rules, 1934, Volume I. In this notice, details regarding the 11 orders of punishment and 10 adverse entries existing on the petitioner's record of service were furnished. On this resume of the record, it was sought to be concluded that the petitioner "has outlived his utility as a Police Officer and is not fit to be retained in service any further....." The petitioner submitted his reply,—*vide* letter dated February 12, 1988. On December 3, 1988, in pursuance to the directions given by the Superintendent of Police, Rohtak, to the Station House Officer, the petitioner was relieved of his duties. Aggrieved by the action of the respondent, the petitioner has approached this Court through this writ petition.

(3) In the written statement filed on behalf of the respondent, it has been *inter alia* averred that the petitioner "had a chequered record with ill reputation." It has been further pointed out that the petitioner was punished with forfeiture of one year's service for "carrying out unauthorised traffic checking" with effect from April 22, 1975. It has been further averred that the 10 adverse entries against the petitioner was duly conveyed to him and were sufficient to dispense with his services by way of compulsory retirement. It has been further pointed out that the commendation certificates obtained by the petitioner cannot wash out the major punishment awarded to him "for his misconduct as explained above and the adverse remarks etc.——". The petitioner has filed a replication.

(4) I have heard Mr. K. S. Keer learned counsel for the petitioner and Mr. Jaswant Singh for the respondent. I have also perused the original record which has been produced by Mr. Jaswant Singh.

(5) A perusal of the record shows that comments of the Superintendent of Police and Deputy Inspector General were obtained on the representation dated February 12, 1988 submitted by the petitioner. Thereafter,—*vide* letter dated October 26, 1988, the Director General of Police made a recommendation to the Financial Commissioner and Secretary to Government Haryana (in the Home Department) for the petitioner's compulsory retirement under rule 9.18(2) on the ground that he has "outlived his utility as a Police Officer". The State Government granted the requisite approval,—*vide* letter dated November 22, 1988. Accordingly, the petitioner was ordered to be retired with effect from December 3, 1988.

(6) A perusal of the record indicates that while considering the petitioner's case for compulsory retirement, all the punishments awarded to him as also the adverse reports recorded during the entire tenure of service have been taken into consideration. It further appears that while the punishments awarded and the adverse reports were taken into consideration, the factum of petitioner's promotion and confirmation was not at all adverted to. Even the factum of his crossing the efficiency bar in spite of the various adverse reports, has not been taken note of. Still further, the record shows that as many as 7 adverse reports/orders were shown to have been conveyed to the petitioner,—*vide* letter dated May 28, 1987. Some of these 7 reports apparently relate to the years 1974 and 1975. Still further, while forwarding various documents like the copy of the show cause notice along with grounds/material and the comments of the Superintendent of Police, Rohtak and the Director General of Police, Gurgaon Range. The reply submitted by the petitioner to the show cause notice was not forwarded to the Government Mr. Jaswant Singh, learned counsel for the respondent has on instructions from HC Kishan Singh who has brought the record, stated before me that the reply submitted by the petitioner to the show cause notice was not forwarded to the Government. It is in the background of this factual position that the validity of the order has to be examined.

(7) Admittedly, the petitioner had crossed the efficiency bar with effect from April 1, 1985. It is also not disputed that most

of the adverse reports and punishments relate to the period prior to April 1, 1985. In view of the fact that the petitioner had been permitted to cross the efficiency bar and the rule of law as laid down in *Dr. Om Parkash Gupta v. The State of Haryana and another* (1), the record prior to the crossing of efficiency bar could not have been taken into consideration. Still further, even if it is presumed for the sake of argument that the record prior to the crossing of efficiency bar could be taken into consideration, the department could not have relied upon stale and obsolete material. It has been repeatedly held that the case for compulsory retirement should be considered on the basis of the reports for the last five to ten years. In this case, the record from the year 1969 onwards has been taken into consideration. Reliance on such old and stale entries is contrary to the rule of law pronounced by their Lordships of the Supreme Court in *Baldev Raj Chadha v. Union of India and others* (2) and *Brij Mohan Singh Chopra v. State of Punjab* (3). Still further, even if a concession is made in favour of the State, one cannot lose sight of the fact that a majority of adverse reports, on which the reliance has been placed for the impugnea action, were conveyed to the petitioner only,—vide letter dated May 28, 1987. The Government has issued instructions for prompt communication of the adverse reports. The avowed object of communication is not only to enable the person concerned to represent within the prescribed time but also to make endeavour to remove his deficiencies. In the instant case, no explanation whatsoever, is either available on the record or has been furnished by the learned counsel for the respondent for such a belated communication of adverse reports. I hope somebody would look into the matter and find out as to why the reports/orders for the years 1974 and 1975 were not conveyed to the petitioner till the year 1987. One cannot compliment the authorities for such a lapse.

(8) Mr. Jaswant Singh relies on the record to support the impugned order but submits that the belated communication of the reports is not under challenge before this Court. The factum of belated communication of the reports is clear from the record. No justification is however, forthcoming. Consequently, the matter has to be considered.

(9) Still further, while considering the negative aspect of the petitioner's case, the fact that the petitioner has been promoted,

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(1) 1988 (6) S.L.R. 370.

(2) 1980 (3) S.L.R. 1.

(3) A.I.R. 1987 S.C. 948.

confirmed, deputed for the courses and also allowed to cross the efficiency bar, was also relevant. The power under rule 9.18 has to be exercised in public interest. The authority charged with the duty of final order has to see as to whether or not an officer's value 'is clearly' incommensurate with the pay which he draws. It is the cumulative effect of the positive and negative aspects that has to be taken into account while deciding the matter. While the negative aspect is clearly considered, the positive aspect was clearly ignored and consideration was thus not proper.

(10) Accordingly the writ petition is allowed and the impugned order of retirement of the petitioner is set aside. In the circumstances of the case, the parties are left to bear their own costs.

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S.C.K.

*Before Hon'ble A. P. Chowdhri & Jawahar Lal Gupta, JJ.*

BIR SINGH KADIAN AND OTHERS,—*Petitioners.*

*versus*

STATE OF HARYANA AND ANOTHER,—*Respondents.*

C.W.P. 12568 of 1993

26th April, 1994

*Constitution of India 1950—Arts. 226/227—Employees. granted promotion with retrospective effect—Claim for refixation of their pay, pension etc.—Tenability of such claim.*

*Held, that whenever a person is found entitled to the grant of retrospective promotion, he is entitled to the refixation of his pay and the grant of arrears of salary.*

(Para 9)

*Further held, that it is only on account of either the failure of the respondents to act in accordance with the Rules or the pendency of litigation that the orders of their promotion with effect from the due dates or posting were not issued. As a result, they were deprived of the right to work on the higher posts. If the petitioners had refused to work on the higher posts in spite of the fact that orders of their promotion and posting had been issued, it may have been possible for the respondents to contend that they are not entitled to the arrears of salary. However, this is not the position.*

(Para 7)