

State of Punjab and another v. Frithi Singh Monga (H. S. Bedi, J.)

date the order is received. In the circumstances of the case the parties are left to bear their own costs.

J.S.T.

Before : G. C. Mital, A.C.J. & H. S. Bedi, J.

STATE OF PUNJAB AND ANOTHER,—*Appellants.*

versus

PRITHI SINGH MONGA,—*Respondent.*

Letters Patent Appeal No. 1319 of 1990.

26th April, 1991.

Punjab Civil Services (Premature Retirement) Rules, 1975—Rl. 3(1)(a)—Premature retirement—A.C.Rs. of government servants bearing adverse remarks and several entries of doubtful integrity—Employee, however, allowed to cross the efficiency bar—Adverse entries prior to crossing of efficiency bar taken into account while retiring employee prematurely—Such entries not washed away automatically—Entire service record of government servant is relevant for forming opinion for premature retiring government servant—Scrutiny of service record need not be confined to last 10 years alone—No specific rule has been laid down regarding period of 10 years—Court should decide such cases on the facts and circumstances.

Held, that the crossing of the efficiency bar in the case of the respondent did not wash away the entries as it was a conscious decision to allow him to cross the efficiency bar subject to conveyance of the adverse entries and also because no representation was filed against those remarks.

(Para 15)

Held, that no specific rule regarding the period of 10 years has been laid down. The work and conduct of the respondent has been uniformly poor to 'Average' throughout his career coupled with 6 reports of doubtful integrity and, as such, to confine scrutiny to ten years alone would not be proper. It would be anomalous to lay down this as an inflexible rule. It would also be a travesty of justice to ignore all adverse entries of doubtful integrity starting from the 11th year backward. No hard and fast rule can be formulated.

(Para 18)

SWAMI SARAN SAKSENA V STATE OF UTTAR PRADESH A.I.R.
1980 S.C. 269.

DR. OM PARKASH GUPTA V. STATE OF HARYANA 1988(6)
S.L.R. 370.

BAIDYANATH MAHAPATRA V. STATE OF ORISSA 1989(4)
S.L.R. 220.

(DISTINGUISHED)

Letters Patent Appeal Under Clause X of the Letters Patent against the judgment of Hon'ble Single Judge Mr. Justice Amarjeet Chaudhary passed in the above noted case on 17th May, 1990.

O. P. Goyal, Addl. A.G. Pb., with Sonu Chahal, Advocate, for the appellants.

P. S. Patwalia, Advocate, for the respondent.

JUDGMENT

Harjit Singh Bedi, J.

(1) The present Letters Patent Appeal is directed against the judgment of the learned single Judge, whereby the order of premature retirement of the respondent, dated 24th January, 1986, Annexure P-1 to the writ petition, has been quashed. The facts leading to the filing of the writ petition are given hereunder:

(2) The respondent, in this Letters Patent Appeal, joined the Animal Husbandry Department, Punjab, on 22nd September, 1959, as a Veterinary Assistant Surgeon. He was confirmed on this post in the year 1966. In the year 1972 the post of Veterinary Assistant Surgeon was declared to be a Gazetted one and in the year 1985, this designation was changed to that of Veterinary Officer. It will be clear from the above that the respondent held the post of Veterinary Officer (with different designations) from 22nd September, 1969 to 24th January, 1986.

(3) The case of the respondent further is that he had an unblemished record of service up to the year 1981 and he was never conveyed any adverse remarks. It has further been stated that,—*vide* order dated 14th September, 1981, the respondent was allowed to cross the efficiency bar with effect from 1st April, 1977. A copy of

State of Punjab and another v. Prithi Singh Monga (H. S. Bedi, J.)

this order is appended to the writ petition as Annexure P-2. It has also been averred that,—*vide* order dated 10th June, 1983, appended as Annexure P-4 to the writ petition, the respondent was allowed to cross the second efficiency bar with effect from 1st April, 1980. It has been averred in the writ petition that an adverse report for the year 1983-84 was conveyed to the respondent against which a representation had been made to the concerned authorities, but the same had not been decided till the date of premature retirement, i.e. 24th January, 1986.

(4) In reply to the writ petition, the State of Punjab averred that the premature retirement of the respondent was made in public interest on account of his adverse record based on the reports recorded by the reporting officers. Particular emphasis was laid on the fact that during his tenure of service a large number of entries of doubtful integrity had been recorded. It has also been stated in the reply that the respondent had been convicted by the Sessions Judge in a corruption case but was acquitted by the High Court and further that he had been prosecuted for attempting to commit rape on the daughter of his class IV employee, but had been acquitted of the charge after being given the benefit of doubt.

(5-A) The consolidated confidential reports of the respondent is reproduced below:—

Sr. No.	Year	Comments	Page	Remarks
1.	1960-61	(2) Unsatisfactory (10) Irregular worker (11) Lazy	3	Conveyed on 4th December, 1981.
2.	1961-62	(1) Unsatisfactory (2) Doubtful integrity (10) Unreliable	5	Conveyed on 4th December, 1981.
3.	1962-63	(8) Boyish habits	7	Conveyed on 4th December, 1981.

Sr. No.	Year	Comments	Page	Remarks
4.	1963-64	(3) Complaints about honesty (4) Not so capable and also not tactful	9	Conveyed on 4th December, 1981.
5.	1964-65	(4) He did not enjoy good reputation	11	Conveyed on 4th December, 1981.
6.	1965-66	Report satisfactory	13	
7.	1966-67	Satisfactory	15	
8.	1967-68	(3) Honesty not beyond doubt (8) Could not pull on with stock Asstt. of Poultry (11) Talks much	17	There are many complaints against him. Integrity doubtful, very unpopular among juniors, could not pull on with the Stock Assistant of Poultry. Conveyed on 4th December, 1981.
9.	1968-69	(7) Just average (8) Just co-operative (11) There are chances for improvement	19	
10.	1969-70	Good	21	
11.	1970-71 1971-72	Ramined suspended from 20th September, 1970 to 14th November, 1971 and remained dismissed from 15th November, 1971 to 19th September, 1972.	23	

State of Punjab and another v. Prithi Singh Monga (H. S. Bedi, J.)

Sr. No.	Year	Comments	Page	Remarks
12.	1972-73	Satisfactory	25	
13.	1973-74	Average	27	
14.	1974-75	Average	29	
15.	1975-76	Professional Knowledge poor, Handwriting poor. He does not enjoy good reputation, honesty, doubtful, disobedient Below average.	31	Conveyed on 4th December, 1981.
16.	1976-77	Average	33	
17.	1977-78	He is an average intelligent officer, hard working with good professional knowledge but slow in office work, Good.	35	
18.	1978-79	Placed under suspension from 6th October, 1978 to 9th March, 1979	39	
19.	1979-80	Average	41	
20.	1980-81	—do—	43	
21.	1981-82	Average	45	
22.	1982-83	Average	47	

Sr. No.	Year	Comments	Page	Remarks
23.	1983-84	(4) Lot of complaints from public against him. (5) Just tolerable (6) Not pulling on smoothly with the subordinates. (14) Integrity doubtful (15) A one figures registered as declined during his period as with his predecessor.	48, 49	Conveyed on 10.9.
24.	1984-85	Average	50	

It depicts the respondent as a person whose retention in service was absolutely undesirable.

(5) The respondent has been retired by taking recourse to Rule 31(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter referred to as the 'Rules'). The relevant portion of the *ibid* rules is reproduced below:

"3(1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that 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 to be specified in the notice."

The Hon'ble Supreme Court in a series of judgments has construed the meaning of rules which were similarly worded. One of the

State of Punjab and another v. Prithi Singh Monga (H. S. Bedi, J.)

first cases in point of time is *Union of India v. Col. J. N. Sinha and another* (1). It was held by the Hon'ble Supreme Court as follows:

“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 decisionxx.....xx.....xx.....xx..... Compulsory retirement involves no civil consequences. The aforementioned rule 56(1) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facts of the pleasure of doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising 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 the 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 further be that in certain key posts public interest may require that a person of undoubted ability and integrity may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the 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 energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.”

(1) 1971 (1) S.C.R. 791.

J. N. Sinha's case (supra) was followed by the Supreme Court in *R. L. Butail v. Union of India and another* (2), *N. V. Puttabhatta v. The State of Mysore and another* (3), *State of Assam and Anr. etc. v. Basanta Kumar Das etc.* (4) and *Tara Singh etc. v. State of Rajasthan and others* (5). The present situation therefore is that if the retirement is ordered by the authorities in public interest, the Court should not ordinarily interfere with that action as the purpose of the rule is to get rid of inefficient and corrupt officials and the departmental authorities are the best judge in this matter.

(6) *Col. J. N. Sinha's case* (supra) has once again been followed by the Hon'ble Supreme Court in the judgment *C. D. Ailawadi v. Union of India and others* (6). The relevant portion from this judgment is quoted below:

“An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court, (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision. In *Union of India v. Col. J. N. Sinha* (1971)1 S.C.R. 791 : (A.I.R. 1971 S.C. 40) this Court held that if the civil servant is able to establish that the order of compulsory retirement suffered from any of the above infirmities, the Court has jurisdiction to quash the same. It is not disputed that compulsory retirement under R. 56(j) is not a punishment as it does not take away any of the past benefits. Chopping off the dead wood is one of the important considerations for invoking R. 56(j) of the Fundamental Rules. In the instant case, on the basis of the service record, the Committee formed the requisite opinion that the petitioner had ceased to be useful and, therefore, should be retired prematurely. We do not think petitioner has been able to place any satisfactory material for the contention that the decision was on collateral grounds. Once the opinion is reached on the basis of materials on record, the order cannot be treated to be arbitrary. The service

(2) 1971 (2) S.C.R. 55.

(3) 1973 (1) S.C.R. 304.

(4) 1973 (3) S.C.R. 158 at 167.

(5) (1975)3 S.C.R. 1002.

(6) 1990 (4) S.L.R. 224.

State of Punjab and another v. Prithi Singh Monga (H. S. Bedi, J.)

record of more than five years which we have perused shows that the higher officers under whom the petitioner had worked were different and different sets of reviewing officers had also made the entries. Therefore, the reports must be taken to have reflected an appropriate and objective assessment of the performance of the petitioner."

It has been clarified once again in the above-quoted passage that the challenge by an aggrieved civil servant to his premature retirement is to be confined within very restricted parametres and interference is called for only in the three situations mentioned above. Once the authorities have formed the opinion for ordering premature retirement and that opinion is based on material from the records, it cannot be said that the action is arbitrary.

(7) Mr. O. P. Goyal, learned Additional Advocate General, appearing for the appellant, has raised basically three arguments in support of his case—(1) that no inflexible rule can be laid down that all adverse reports are washed off on the crossing of the efficiency bar; (2) that in a case of doubtful integrity the entire service record is to be taken into account, and even one entry of doubtful integrity is sufficient to order premature retirement; and (3) in any case each case must be examined with reference to its own facts. Mr. Goyal has also cited a number of judgments which will be referred to at the appropriate stage.

(8) Mr. Patwalia, appearing for the respondent, has argued to the contrary and urged that the judgment of the learned single Judge is correct on law and facts. For the reasons discussed below, we find that this appeal must succeed.

(9) It has been argued by Mr. Patwalia that as the representation of the respondent against the adverse remarks for the year 1983-84 was still pending on the date of his order of retirement, it could not be taken into account. He has also urged that as the said entry has, in fact, been taken into account, it vitiates the entire action of the government. In support of his case, he has relied on *Brij Mohan Singh v. State of Punjab* (7). In this connection it may be pointed out that during the hearing of this appeal, a direction was issued to

the concerned officer to dispose of the representation. In compliance with these directions, the representation of the respondent has been considered and rejected by the Secretary to Government, Punjab, Animal Husbandry and Fisheries Department,—*vide* order dated 22nd March, 1991, which has also been placed on the record of this case. It is also to be highlighted that when the respondent was allowed to cross his efficiency bar,—*vide* Annexure P-2, dated 14th September, 1981, a specific endorsement had been appended to the order, which is reproduced below:

- “A copy is forwarded to the Director, Animal Husbandry, Punjab, Chandigarh, w/r to this Deptt. Endst. No. 32(19)-AH-6-79/7320, dated 4th June, 1981, for information.
2. He is requested to convey the adverse confidential report to Dr. Prithi Singh Monga, V.A.S. for his future guidance. The Service Book in two parts along with confidential reports of Dr. Monga (pages 1—43) is enclosed. He is requested to acknowledge its receipt.
 3. He is also requested to fix responsibility for not conveying the adverse remarks to Dr. Prithi Singh Monga at the appropriate time which is a very serious matter. A report to this effect may be sent to Government within a month positively.”

It is to be noticed that the adverse entries for the years 1960-61 to 1975-76 were conveyed as a result of the endorsement quoted above, on 4th December, 1981. No representation was filed by the respondent against the adverse entries with the result that they became final. It will be seen that almost from the date of his initial appointment up to the year 1975-76 the respondent continued to have a service record which was to, say the least, deplorable.

(10) The record from 1976-77 to 1982-83 was almost uniformly average, except for one good entry for the year 1977-78. The entry for 1983-84 was again adverse casting doubt on the integrity of the respondent and this entry is the one to which reference has been made in the earlier paragraph of this judgment. *Brij Mohan Singh Chopra's case* (supra) at a first glance does appear to help the respondent but on a close scrutiny it will be clear that, in fact, it does

State of Punjab and another v. Prithi Singh Monga (H. S. Bedi, J.)

not do so. Two matters were decided by the Hon'ble Supreme Court in that case. The first point dealt with was with regard to the order of the government dated August 4, 1978, wherein it was pointed out that if there was a single entry describing the employee concerned as a person of doubtful integrity, that would justify the premature retirement under the rules. It was held that these instructions of the government were of a binding character. This matter also came up before this Court in *Chander Singh Negi v. State of Punjab* (8). The petitioner in the above-noted case had only one stray entry which dubbed him as a "corrupt official", whereas, during his entire service career of 30 years all the annual confidential reports were from "Good" to "Outstanding". The State of Punjab in accordance with the instructions aforementioned ordered the premature retirement of Negi and it was held, relying on *Brij Mohan Chopra's case* (supra), that a civil servant could be prematurely retired even on the basis of a single adverse entry regarding integrity.

(11) It may further be highlighted that in *Union of India v. M. B. Reddy and another* (9), the Hon'ble Supreme Court itself has categorised a person with doubtful integrity as a class apart to be dealt with in a manner different from other persons who are otherwise efficient or lacking in the performance of their duties. It has also been emphasised that an overall picture of the service career is to be taken into account and not a stray entry here and there. In *M. B. Reddy's case* (supra), their Lordships of the Supreme Court have relied upon a decision in *State of Uttar Pradesh v. Chandra Mohan Nigam and others* (10), in which it had been held that the integrity of an officer in question itself is an exceptional circumstance and such an officer stands on a separate footing. Looking to the service record of the respondent, reproduced in the earlier part of this judgment it is clear that from 1960-61 to 1984-85 there were as many as six entries regarding his doubtful integrity and they have been almost uniformly spread out during the entire time span of his service.

(12) The second point dealt with by the Hon'ble Supreme Court in *Brij Mohan Singh Chopra's case* (supra) was as to whether it was possible to retire a government servant while the representation filed

(8) 1990 (2) S.L.R. 293.

(9) 1979 (2) S.L.R. 792.

(10) 1978 (1) S.C.R. 521.

by him against the adverse remarks, duly communicated, was pending. This point too was decided in favour of the appellant in that case and it was held that the adverse entries against which the representation was pending could not be considered for purposes of premature retirement. In the present case, however, we find that in a case of doubtful integrity, the entire service record of the official concerned has to be taken into account and if that be so (and even if the entry of the year 1983-84 is to be ignored), the other entries would be sufficient for ordering the premature retirement of the respondent.

(13) It may be further pointed out that *Brij Mohan Singh Chopra's* case (supra) otherwise also is clearly distinguishable on facts. The Supreme Court has held that Chopra having been promoted in the year 1968, adverse entries prior to that date could not be taken into account. It was further held by the apex Court on an examination of ten years' service record of Chopra that there were only two adverse entries after the year 1968 and those were for the year 1971-72 and 1972-73. On the other hand, for the year 1974-75 and 1975-76 he was rated as a "Very Good" Officer. In 1976-77 he was rated as "Good" and in the year 1977-78, 1978-79 and 1979-80 again entries were "Good". It would be apparent therefrom that during the last five years of his service career, Chopra had reports which classified him as "Good" and neither of the two entries which were adverse, was of doubtful integrity. Therefore, from the peculiar facts and circumstances of that case the Hon'ble Supreme Court decided the matter in favour of Chopra.

(14) The Supreme Court, as also this Court, has in cases of doubt, examined the service record of the concerned officials so as to arrive at a correct decision. This was done in *Brij Mohan Singh Chopra's* case (supra) and also in *M. B. Reddy's* case (supra) by the Hon'ble Supreme Court. On examining the service record minutely we also find that there is absolutely no justification for setting aside the premature retirement of the respondent as his service record has been deplorable.

(15) The learned counsel for the respondent has also urged that once the respondent had been allowed to cross the efficiency bar, all adverse entries prior to that date were deemed to have been washed

State of Punjab and another v. Prithi Singh Monga (H. S. Bedi, J.)

away. For this purpose, he has cited *Swami Saran Saksena v. State of Uttar Pradesh* (11) and *Dr. Om Parkash Gupta v. State of Haryana* (12). In *Swami Saran Saksena's case* (supra), the appellant was allowed to cross the efficiency bar and soon thereafter compulsorily retired. The Supreme Court again examined the record of the concerned official and came to the conclusion that it is not possible to retire the official on the basis of that record. The crossing of the efficiency bar was only one circumstances taken into account in coming to that decision. It may further be highlighted that this case, too, did not pertain to an entry of doubtful integrity. The present case, even on facts, is distinguishable. When the respondent was allowed to cross the first efficiency bar,—vide letter dated 14th September, 1981, (Annexure P-2), it was done with the stipulation that the adverse remarks should be conveyed to him. As a result of this direction, the adverse remarks for the years 1960-61 to 1975-76 were in fact, conveyed. It is, therefore, apparent from the reading of Annexure P-2 (relevant extract has been quoted in the earlier part of the judgment) that the crossing of the efficiency bar in the case of the respondent did not wash away the entries as it was a conscious decision to allow him to cross the efficiency bar subject to conveyance of the adverse entries and also because no representation was filed against those remarks.

(16) The reliances of Mr. Patwalia, learned counsel for the respondent, on *Dr. O. P. Gupta's case* (supra) is also misplaced. That case, too, is distinguishable on facts. The service record of the petitioner in that case was uniformly "Good" from 1974-75 to 1985-86 and the only adverse entry against him was for the year 1963-64. The petitioner in that case had been allowed to cross the efficiency bar subsequent to that date on three occasions and had also been promoted to the higher post. It was in that situation that the Division Bench held in favour of the petitioner but added a note of caution which is quoted below :

"There is no dispute to the proposition of law that overall record of the case is to be seen before passing an order of compulsory retirement. But the recent conduct of a public servant is more relevant than the old adverse entries."

(11) AIR 1980 S.C. 269.

(12) 1988(6) S.L.R. 370.

In *Sat Pal Singh v. D.I.G. of Police* (13), it was observed by an Hon'ble Single Judge of this Court that the adverse entries prior to the date of crossing efficiency bar can be looked into for purposes of ordering premature retirement. This judgment was overruled in *Dr. O. P. Gupta's case* (supra), but the note mentioned above, was also given in the said judgment. The matter has been considered once again in Civil Writ Petition No. 1406 of 1981 (*D. D. Shourie v. The State of Punjab and another*) decided on 10th April, 1989, and it was held following *Dr. O. P. Gupta's case* that each case has to be decided on its own facts. In *D. D. Shourie's case* (supra), the entry regarding doubtful integrity was for the year 1972-73, whereas, the petitioner had been compulsorily retired from service,—*vide* order dated 31st March, 1981. The order of premature retirement was upheld by this Court.

(17) The next contention urged by the learned counsel for the respondent is that an adverse entry against the official concerned must be communicated within a reasonable time, so that an effective representation can be made. For this purpose reliance has been made on *Baidyanath Mahapatra v. State of Orissa* (14). This case, too, does not help the case of the respondent. In that case, the adverse remarks were communicated to the official concerned at a highly belated stage and the representation made against those remarks was also belated. The authorities rejected the representation on account of delay. The Hon'ble Supreme Court held that as the adverse remarks were conveyed late, the authorities could not have rejected the representation on the ground of delay. The case in hand is altogether different. It may once again be highlighted that no representation was filed by the respondent against the adverse remarks for the years 1960-61 to 1975-76, whereas, the adverse remarks for the year 1983-84 were conveyed within a reasonable period and the representation against those remarks has also been rejected. This argument also must fail.

(18) The last argument raised on behalf of the respondent is that not more than ten years of service record of the official must be scrutinised in order to secure his premature retirement. As already stated above, no specific rule regarding this period of ten years has been laid down. The Hon'ble Supreme Court in *Brij Mohan Singh*

(13) 1985 (2) S.L.R. 36.

(14) 1989(4) S.L.R. 220.

Kamal Masih v. Guru Nanak Dev University (S. S. Sodhi, J.)

Chopra's case (supra) as also in several other cases has examined the record up to ten years from the date of retirement, but that, too, has been done on the facts of those individual cases. As already mentioned above, the case of the respondent is again totally different. His work and conduct has been uniformly poor to "Average" throughout his career coupled with 6 reports of doubtful integrity and, as such, to confine scrutiny to ten years alone would not be proper. It would be anomalous to lay down this as an inflexible rule. It would also be a travesty of justice to ignore all adverse entries of doubtful integrity starting from the 11th year backward. No hard and fast rule can, therefore, be formulated.

(19) No other point has been raised. The present Letters Patent Appeal is allowed and the writ petition is dismissed but with no order as to costs.

R.N.R.

Before S. S. Sodhi & G. C. Garg, JJ.

KAMAL MASIH,—Petitioner.

versus

GURU NANAK DEV UNIVERSITY,—Respondent.

Civil Writ Petition No. 6335 of 1991.

24th October, 1991.

Constitution of India, 1950—Art. 226—Cancellation of admission—Student admitted in college on the basis of 10+2 examination conducted by Bihar Pardesh Shiksha Parishad—University allotting him registration No.—After passing B.A. II examination, petitioner again admitted to B.A. III but not allowed to appear in examination on the basis of decision taken by the University not to recognise the Bihar examination—Cancellation of admission on ground of non-recognition is inequitable.—Such decision of non-recognition can work only prospectively—Where there is misrepresentation, concealment of facts, fraud or other wrong doing on the part of candidate, admission once granted cannot be cancelled at a stage where it is inequitable to a candidate—Doctrine of no fault—Candidate cannot be allowed to suffer—Consequently, candidate has a right to declaration of result.

Held, that there is no hint or suggestion of the petitioner having