

## Kapoor Singh Vs State of Haryana and Another

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Oct. 9, 1997

**Acts Referred:** Constitution of India, 1950 " Article 226

**Citation:** (1998) 119 PLR 133

**Hon'ble Judges:** V.K. Jhanji, J

**Bench:** Single Bench

**Advocate:** R.K. Malik, for the Appellant; Ritu Bahri, A.A.G., for the Respondent

**Final Decision:** Allowed

### Judgement

V.K. Jhanji, J.

In this petition filed under Article 226 of the Constitution of India, prayer made by the petitioner is for issuance of Writ in

the nature of Certiorari, quashing order dated 28.2.1997 (Annexure P-10) whereby the petitioner has been retired compulsorily from service.

2. Petitioner joined as Transport Officer on adhoc basis on 27.10.1980 and his service were regularised w.e.f. 1.11.1986. The date of birth of the

petitioner is 9.8.1941 and he would have attained the age of 58 years (age of superannuation from service) on 31.8.1999, but by order dated

28.2.1997, petitioner has been compulsorily retired from service.

3. It has been stated in the petition and contended by counsel for the petitioner that according to the instructions issued by the State Government, if

an employee" has 70 per cent good reports in the last 10 years and there arc no adverse remarks, then the employee is entitled to be retained in

service upto the age of 58 years. It has been contended that in the instant case, petitioner was conveyed one average report for the year 1991 and

that too in September, 1996, i.e. after more-than five years and all his other reports are good or even better than good. It has been averred that

the petitioner has 90 per cent good reports in the last 10 years and there is no adverse remark regarding integrity. It has thus been submitted that

order, Annexure P-10 is contrary to instructions, Annexure P-11. It has been next contended that although instructions, Annexure P-14, clearly

say that the adverse remarks wherever recorded in the annual confidential reports, should, be conveyed promptly, but in the case of petitioner

adverse remarks for the year 1991 were conveyed to him only in September, 1996 and at that belated stage the petitioner was not in a position to

file any representation against the same since a long period of about six years had passed and he had forgotten the factual position of the year

1990-91. It has thus, been stated that the remarks recorded for the year 1990-91 are liable to be ignored on the ground of delay.

4. Notice of the petition was issued to the respondents. Written statement has been filed by. Additional Director (Admn.) on behalf of respondents

1 and 2. Respondents have submitted that petitioner was conveyed the adverse remarks recorded in his annual confidential reports for the year

1990-91, 1994-95 and 1995-96. He made representation against the adverse remarks given in annual confidential report for the year 1995-95

which was considered by the competent Authority and rejected. Ms. Ritu Bahri, A.A.G., Haryana, appearing for the respondents, from the record

has admitted that the adverse remarks recorded in the annual confidential report for the year 1990-91 were conveyed to the petitioner in

September, 1996. It has been submitted by the respondents that the petitioner did not make any representation against the remarks conveyed to

him with regard to ACR for the year 1990-91 in which his integrity has been doubted. It has thus, been stated that order dated 28.2.1997,

Annexure P-10, is quite just, legal and not arbitrary.

5. The question to be considered in this case is whether the Government while compulsorily retiring the petitioner from service, had exercised its

power in the public interest and the order is legal. In regard to premature/compulsory retirement on attaining the age of 50/55 years, the State of

Haryana has laid down guidelines in its instructions dated 19.11.1991. The instructions provide that if an employee has 70 per cent good or above

good reports during the last 10 years and there is no entry regarding doubtful integrity during this period, then he is entitled to be retained in service

upto the age of 58 years. In a series of judgments, namely, Baldev Raj Chadha Vs. Union of India (UOI) and Others, ; C.D. Ailawadi v. Union of

India AIR 1990 S.C. 1004; Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, ; Union of India Vs. V.P.

Seth and another, and S. Ramachandra Raju Vs. State of Orissa, , it has been settled by the Apex Court that the exercise of power of compulsory

retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from

corruption and incompetence. The officer would live by reputation built around him. Their Lordships of the Supreme Court have said that the entire

service record or character rolls or confidential reports maintained would furnish the back-drop material for consideration by the Government or

the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the Government should

form the opinion that the government officer needs to be compulsorily retired from service. It has been held that on total evolution of the entire

record of service, if the government or the governmental authority forms the opinion that in the public interest the officer needs to be retired

compulsorily, the Court may not interfere with the exercise of such bonafide exercise of power but the Court has power and duty to exercise the

power of judicial review not as a court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised

or is arbitrary or vitiated either by malafide or equated by extraneous consideration or arbitrary in retiring the government officer compulsorily from

service. In the instant case, petitioner has been retired on 28.2.1997 and therefore, the confidential record upto the year 1995-96 had to be taken

into consideration. It is not in dispute that except for the year 1990-91 all the confidential reports of the petitioner are graded as good. From the

averments made in the written statement filed by the respondents, we find that even for the years 1994-95 and 1995-96, the overall grading is

good. In the "Remarks" column of the report for the year 1994-95 it has been recorded ""he should be careful in performing his duties"". The

remarks recorded therein are advisory and not adverse. For the year 1995-96 in the column of "Defects, if any", it has been recorded ""Got repairs

of some vehicles, without permission of competent authority."" This remark too cannot be taken to be one of doubtful integrity. It appears that the

only report on the basis of which petitioner has been ordered to be retired compulsorily is the one recorded in annual confidential report for the

year 1990-91. The remarks recorded in annual confidential report for the year 1990-91 are as follows :-

Industrious and Honesty : Average

Capacity and intelligence : Good

Knowledge of Rules and Procedure : Average

Quickness in Disposal : Average

Manners and power of working with others : Good

Punctuality : V. Good

Integrity : Average

Defects, if any : Should improve his

reputation for honesty and

capacity to work and

knowledge of Rules.

Qualification for the promotion :

(whether the employee can discharge his duty : N.A.

satisfactory)

Special Interest :

Classification :

Outstanding, Very Good, Good, : Average

average and below average)

Although annual confidential report for the year 1990-91 was recorded in 1991, but admittedly remarks therein were conveyed to the petitioner in

September, 1996, i.e. after a period of more than five years. Instructions dated 7.5.1974 issued by the Government regarding conveying of

adverse remarks, clearly state that an employee should not at any time, be kept ignorant about the reporting officers"s opinion and adverse

remarks wherever recorded in the annual confidential reports should be conveyed, promptly. It states that all Authorities entrusted with the

responsibility of (maintaining annual confidential reports should ensure that adverse remarks are so conveyed and further more no notice should be

taken of adverse remarks if they have not been conveyed. In Himansu Sekhar Jha v. State of West Bengal and Ors. 1979 (1) S.L.R. 837, a

learned Judge of the Calcutta High Court in the context of delay in communicating the adverse remarks recorded in the confidential report, has held

that the purpose of communicating the annual confidential report to the officer concerned appears to be to apprise the said officer to rectify himself

in the light of such remarks for future action by the authorities wherever necessary in respect of such officer. In case the lapses are rectified it is

obvious that the incumbent will be considered for better position or promotion as may be warranted by the Rules. It is, therefore, essentially

necessary that the adverse remarks should be communicated to the officer concerned as early as possible. If this is not done the officer does not

get any opportunity to know the defects he may suffer from or to take steps for rectifying the same, if possible. We are in respectful agreement

with this statement of law. The learned A.A.G., Haryana when asked to explain the reasons for such long delay on the part of the respondents in

communicating the adverse remarks to the petitioner which had been recorded in his annual confidential report for the year 1990-91, was unable

to state anything in this regard. In the written statement as well, no explanation whatsoever has been put forward as to why the adverse remarks

recorded in the ACR for the year 1990-91 were conveyed after a period of more than five years. Such delay has certainly caused prejudice to the

petitioner and, therefore, in our view the remarks in question, without there being any justification on the part of the State for conveying the same

belatedly, are able to be ignored. Otherwise too, we are of the view that assumption of the Government that the report for the year 1990-91 is of

doubtful integrity, is wrong and petitioner cannot be retired from service compulsorily on the basis of this assumption. A Division Bench of this

Court in *Amrik Singh v. State of Haryana*, 1995 (4) R.S.J. 269 on consideration of the administrative instructions issued in regard to recording of

remarks in the annual confidential report has opined that an onerous obligation is placed on, the reporting or other authority, who makes adverse

remarks regarding integrity of an officer, to be extra-cautious and careful while making adverse entry pertaining to integrity. Instructions provide

that while recording his remarks relating to integrity of an official, the Reporting Officer should fortify the same with reasons. It has further been

emphasised that non-committal remarks or baseless remarks should not be made by the Reporting Officer. The Bench has gone to the extent of

observing that if the adverse remarks regarding integrity are found to be casual, perfunctory or cryptic or where it is found that the adverse entries

have been made for extraneous considerations or material available on record is sufficiently indicative of the non-application of mind, the Court will

have to scrutinise the challenge to such remarks with great anxiety. In the letter dated 12.12.1985, the Government once again emphasised the

need for greater care in recording of entry in the column of integrity. The Government made it clear that ill-considered remarks based on

inadequate observations cause lot of damage to the official concerned and, therefore, there must exist material to substantiate the adverse opinion

regarding integrity. In the instant case, the Reporting Officer has not stated in the annual confidential report of the year 199-91 that the petitioner is

suspected of corruption or believed to be corrupt. It has not been indicated that the integrity of the petitioner is doubtful. Against the columns of

reputation for honesty and integrity and reputation for honesty, remarks recorded are ""average"". In the column of defects, if any, what has been

stated is that the petitioner should improve his reputation for honesty. It appears to us that the remarks recorded in the column of "defects, if any",

were only advisory in nature and in no case, such remarks can be considered to be one doubting the integrity of the petitioner.

6. Learned State counsel then contended that since the petitioner has been retired in the public interest and no mala fides have been alleged, this

Court should not interfere with such bonafide exercise of power of the Government, it is true that the Government is competent to retire a

Government servant prematurely if it is thought that such premature retirement is necessary in the "public interest." The conditions precedent for

exercise of such power is bonafide formation of opinion by the competent Authority. Where concerned Authority made an order without

application of mind and ignored two important facts, namely, (1) entry about integrity having not been made according to government instructions

and being vague and indefinite, and (ii) constant good reports about integrity prior to the solitary period of 1991 and for the period immediately

succeeding thereof, there can be no other conclusion except the one, i.e. order of compulsory retirement is arbitrary and bad in law.

7. Consequently, this petition is allowed and order dated 29.2.1997 (Annexure P-10) retiring the petitioner compulsarily by taking the entry in the

ACR for the year 1990-91 to be one of integrity doubtful, is quashed. Petitioner shall be allowed all consequential benefits. No costs.