

(1997) 10 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 3573 of 1997

Kapoor Singh

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

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 reputation for capacity to work knowledge of
Qualification for the promotion	:	
(whether the employee can discharge his duty satisfactorily)	:	: N.A.
Special Interest	:	
Classification :		

Outstanding, Very Good, Good,
average and below average)

: Ave

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.