

Ram Sarup and another v. State of Punjab and another
(A. L. Bahri, J.)

of the death of Hans Raj, an employee of the Municipal Committee, Kharar, to Ram Sarup and Shiv Parshad, to the extent of 4/5th and 1/5th share respectively with interest. Thus the present petitioners would be entitled to the amount as discussed above in that proportion.

(14) Since the Municipal Committee did not pay to the petitioners the amount due after the death of Hans Raj, the petitioners would be entitled to the interest on such amount as they were deprived of the same illegally by the Municipal Committee.

(15) For the reasons recorded above, this writ petition is partly allowed. Respondent No. 2, the Municipal Committee, is directed to pay the amount of provident fund, gratuity, if any, and salary, if due, as observed above, to the petitioners, Ram Sarup and Shiv Parshad, 4/5th and 1/5th respectively with interest at the rate of 12 per cent per annum from the date of death of Hans Raj till payment. The petitioners would get costs of this petition. Counsel fee Rs. 500.

R.N.R.

Before A. L. Bahri, J.

KARNAIL SINGH,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3237 of 1984

March 7, 1989.

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rls. 12.1, 13.3(2), 13.9 and 13.10—Compulsory retirement—Petitioner confirmed as A.S.I. and promoted as S.I. by D.I.G.—S.P. not competent to pass order of compulsory retirement—Adverse remarks in A.C.R. communicated—Order of compulsory retirement cannot be passed before decision on representation against adverse remarks.

Held, that for all intents and purposes the appointing authority of the petitioner to the post of Assistant Sub Inspector and Sub Inspector was Deputy Inspector General of Police and not the

Superintendent of Police. This being a case of promotion and not initial appointment, Superintendent of Police cannot be treated as competent appointing authority under Rule 12.1 of the Punjab Police Rules, 1934. (Para 5)

Held, that where no decision was taken by the authorities on the representation and no sufficient time was allowed to challenge adverse remarks communicated. According to instructions contained in letter No. 36/28/81-5(1), dated August 16, 1983, then prevailing such a representation against the adverse remarks could be entertained within six months. The petitioner was not afforded this opportunity and thus he was condemned unheard which is against the principles of natural justice. Therefore, the order of compulsory retirement cannot be sustained. (Para 10).

Civil Writ Petition Under Articles 226 and 227 of the Constitution of India praying that :—

- (a) *a writ in the nature of Certiorari or any other appropriate writ direction or order quashing Annexures P3 and P4 and further directing the respondents to treat the petitioner as continuing in service with all consequential benefits be kindly issued.*
- (b) *an ad interim order staying operation of Annexure P4 and the illegal departmental and other action against the petitioner be kindly passed.*
- (c) *service of advance notices of motion be kindly exempted.*
- (d) *any other order deemed to be just and proper be also passed.*
- (e) *costs of the petitioner be also awarded.*

Rameshwar Sharma, Advocate with Arya Mittal, Advocate, for the Petitioner.

Rameshwar Malik, Advocate, for A.G. (Hy.), for the Respondent.

JUDGMENT

A. L. Bhari, J.

In this petition filed under Articles 226 and 227 of the Constitution, Karnail Singh Sub Inspector of Police, Karnal, challenges order Annexure P.4 passed by Superintendent of Police, Karnal, compulsorily retiring him with effect from May 16, 1984 on payment of three months pay in lieu of notice.

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2. Karnail Singh joined police in Punjab force on October, 1, 1947 as constable. He was promoted as Head Constable with effect from February 1, 1958. In 1966 he was allocated to the State of Haryana. With effect from April 15, 1974 he was promoted as Assistant Sub Inspector of Police. He was brought on list 'E' and promoted as Sub Inspector on April 1, 1977. With effect from February 1, 1980 he was confirmed as Assistant Sub Inspector,—*vide* order dated February 28, 1983 Annexure P.1 passed by the Deputy Inspector General of Police. The petitioner was expecting his further promotion as Inspector as there were only two other seniors to him. His case for retention beyond 9 years of service was recommended by the Superintendent of Police and ultimately Deputy Inspector General of Police,—*vide* his order dated April 20, 1983 allowed the petitioner to continue in service beyond 55 years. Copy of the order communicated through the Superintendent of Police is Annexure P-2. Some adverse remarks were communicated to him on May 1, 1984 by Deputy Inspector General of Police relating to the period May, 1983 to March 31, 1984. Copy Annexure P.3. Karnail Singh petitioner was directed to remove the defects mentioned in this report. The petitioner was still preparing his representation when he received order Annexure P.4 on May 16, 1984 retiring him from the service. Certain other allegations were made in the petition in order to show that on political reasons he was made a scape-goat. The main challenge to the order of his compulsory retirement is that Superintendent of Police, respondent No. 4, had no jurisdiction to retire him more so when the petitioner was allowed to continue in service after 55 years by the Deputy Inspector General of Police. The other ground taken is that the Deputy Inspector General of Police while preparing the annual confidential report and after referring to certain matters had merely directed the petitioner to remove certain defects. On the basis of the same the Superintendent of Police was not justified in compulsorily retiring the petitioner.

3. Written statement was filed by Superintendent of Police on behalf of the official respondents. The previous conduct of the petitioner was referred to as he had earned three punishments of censure during his service. It was alleged that the Superintendent of Police was the punishing authority and as such competent to pass the impugned order retiring the petitioner from service. No representation against the adverse remarks was received in the office. Till the adverse remarks were quashed, on the basis of the adverse entries the petitioner could be compulsorily retired.

4. I have heard counsel for the parties. On the question of competency of the Superintendent of Police to pass the impugned order, the stand of the respondents does not seem to be correct. The stand of the respondents is that appointing authority of Assistant Sub Inspectors and Sub Inspectors is Superintendent of Police as provided under Rule 12.4 of Chapter XII of the Punjab Police Rules as applicable in Haryana. Superintendent of Police is also the punishing authority of Sub-Inspectors and Assistant Sub Inspectors as provided under Rule 16.1 of Chapter XVI of the Police Rules. Thus the Superintendent of Police was competent to pass the impugned order retiring the petitioner from service on giving three months notice. After careful consideration I find that this contention cannot be accepted in the present case as the petitioner was promoted to the post of Assistant Sub Inspector as well as Sub Inspector by the Deputy Inspector General of Police. No doubt the Superintendent of Police is the appointing authority of Assistant Sub Inspectors and Sub Inspectors as provided under Rule 12.1, however, this rule provides the authorities competent to make appointments. There is a separate chapter dealing with the promotions i.e., Chapter XIII in the Police Rules. Rule 13.3(2) empowers the Deputy Inspector General of Police to make promotions to the rank of Inspectors. It also provides for substantive promotions to the rank of Sub Inspectors and Assistant Sub Inspectors to be made by Superintendent of Police in the case of District Police. Rule 13.4(2) provides for officiating promotions to the rank of Sub Inspector, Assistant Sub Inspector and Head Constables to be made by Superintendent of Police in the District and if the Deputy Inspector General of Police finds the flow of promotion unevenly distributed amongst Districts, he can make suitable transfers. The relevant rules concerning the case in hand are Rule 13.9 and 13.10. This gives power to the Deputy Inspector General of Police for making officiating or substantive promotion to the rank of Assistant Sub Inspector. Sub-rule (2) of Rule 13.9 further provides for making substantive promotion of Assistant Sub Inspectors by the Deputy Inspector General of Police in accordance with sub-rule (2) of Rule 13.4. Rule 13.10 further provides for officiating promotions of short duration to be ordinarily made within the District concerned,—*vide* sub-rule 13.4(2), but vacancies of long duration are to be filled by the promotion of any eligible man in the range at the discretion of the Deputy Inspector General.

5. Reverting to the case in hand, the stand of the petitioner in para No. 4 of the writ petition that he was confirmed as Assistant

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Sub Inspector,—*vide* order dated February 28, 1983 Annexure P.1 with effect from February 1, 1980, was not refuted in the written statement. Annexure P.1 shows that the order passed by the Deputy Inspector General of Police, dated February 28, 1983 and was communicated by Superintendent of Police, Karnail whereby Karnail Singh petitioner was confirmed with effect from February 1, 1980. Further more it was Deputy Inspector General of Police who passed the order on April 23, 1983 Annexure P.2 allowing retention in service of the petitioner beyond the age of 55 years. The petitioner was brought on list 'E' and he was promoted as Sub Inspector on April 1, 1977 as mentioned in para No. 4 of the petition. This fact was not denied in the corresponding para in the written statement. It is not the case of the respondents that the petitioner was promoted as Sub Inspector by the Superintendent of Police. The case of the petitioner is that of promotion to the post of Assistant Sub Inspector and Sub Inspector. Substantively he was confirmed on the post of Assistant Sub Inspector under orders of the Deputy Inspector General of Police. Thus, for all intents and purposes the appointing authority of the petitioner to the post of Assistant Sub Inspector and Sub Inspector was Deputy Inspector General of Police and not the Superintendent of Police. This being a case of promotion and not initial appointment, Superintendent of Police cannot be treated as competent appointing authority under Rule 12.1 of the Police Rules in this case.

6. Looking from another angle, the same conclusion could be arrived. As already noticed above, it was Deputy Inspector General of Police, who confirmed the petitioner as Assistant Sub Inspector and further it was he who allowed retention in service of the petitioner beyond 55 years of age while the petitioner was working as officiating Sub Inspector. Assuming for the sake of arguments that this order could be reviewed subsequently as per instructions issued of the State Government, it was the Deputy Inspector General of Police, who could review his own order and not an officer of the rank of Superintendent of Police subordinate to him.

7. Learned counsel for the petitioner has placed reliance on the decision of this Court in *Roshan Lal Gogia vs. Financial Commissioner, Haryana and others*, 1968 Services Law Reporter 650. In that case Financial Commissioner was not the appointing authority. Financial Commissioner had directed retirement from service beyond 55 years on serving three months notice. This order was challenged in the writ petition and it was held after making reference to Rule 3.26 of the Punjab Civil Service Rules Volume I Part I and Rule 5.32 of Punjab Civil Service Rules Volume II that power of compulsory retirement vested in the appointing authority under the rules. An authority superior to the appointing authority could not pass order of retirement when the appointing authority was inclined to do so. Earlier the matter was considered by the Full Bench in *Pritam Singh Brar vs. The State of Punjab* (1), wherein it was held that the appointing authority has the power to retire a Government servant and on his attaining the age of 55 years by serving him notice without assigning any reason. There is no dispute regarding the proposition of law as laid down in the two judgments referred to above. As already noticed above, in reference to Rule 13.9 and 13.10 of the Police Rules it is held that it was the Deputy Inspector General of Police who was the appointing authority of the petitioner on the post of Assistant Sub Inspector when he was so confirmed as well as on the post of Sub Inspector where the petitioner was appointed by promotion. Superintendent of Police was thus **not competent** to pass the order compulsorily retiring the petitioner, more so, when the Deputy Inspector General of Police had passed the order retaining the petitioner in service beyond 55 years of age.

8. Coming to the merits of the case it may be noticed that adverse remarks as recorded by the Deputy Inspector General of Police were communicated to the petitioner as contained in.

(1) 1967 SLR 688.

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Annexure R. 2. Sub Inspector Karnail Singh, the present petitioner was intimated about these adverse remarks and he was given direction to remove the defects mentioned therein. These remarks related to the period August 5, 1982 to March 31, 1983. Against these adverse remarks the petitioner filed a representation, Annexure P. 5, explaining the circumstances and requesting for expunging the same. No decision on the representation, Annexure P. 5, has so far been taken by Deputy Inspector General of Police. For the period May 19, 1983 to March 31, 1984 adverse remarks were communicated to the petitioner,—*vide* letter dated May 1, 1984 by Deputy Inspector General of Police addressed to Superintendent of Police, Karnal. The petitioner was not given sufficient time to file representation against these adverse remarks. On May 16, 1984 Superintendent of Police, Karnal passed the impugned order Annexure P. 4 retiring the petitioner from service. In para 4 of the written statement the stand taken by Superintendent of Police is that because of above adverse remarks order of retiring the petitioner was rightly passed. Reference has been made to the Government Instructions, Annexure R. 1, after passing order of allowing retention in service beyond 55 years, the same could be reviewed on the ground of doubtful integrity of the employee coming to notice. This contention in the facts of the present case cannot be accepted. No decision was taken by the authorities on the representation Annexure P. 5 and no sufficient time was allowed to challenge adverse remarks communicated on May 1, 1984. As per instructions of the State Government, Haryana, contained in letter No. 36/28/81-S(1), dated August 16, 1983, then prevailing such a representation against the adverse remarks could be entertained within six months. The petitioner was not afforded this opportunity and thus he was condemned unheard which is against the principles of natural justice. The impugned order Annexure P. 4 cannot be sustained in view of the decision of the Supreme Court in *Brij Mohan Singh Chopra vs. State of Punjab*, (3), wherein it was held as under :—

“There is no doubt that whenever an adverse entry is awarded to a Government servant it must be communicated to him.

The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation is a valuable right to a Government employee and if the representation is not considered, it is bound to affect him in his service career, as in Government service grant of increment, promotion and ultimately premature retirement all depend on the scrutiny of the service records."

It is further held as under :—

"It would be unjust and unfair and contrary to principles of natural justice to retire prematurely a Government employee on the basis of adverse entries which are either not communicated to him or if communicated representations made against those entries are not considered and disposed of. The appellant had submitted his representations against adverse entries for the year 1971-72 and 1972-73 and admittedly those representations were not considered and disposed of and yet the appropriate authority considered those entries in forming opinion that the appellant's premature retirement was in the public interest. We are, therefore, of the opinion that for this reason the order of the State Government is not sustainable in law."

9. For the reasons recorded above, this petition is allowed with costs. Counsel fee Rs. 500. Order Annexure P. 3 passed by Superintendent of Police compulsorily retiring the petitioner from service on serving three months notice or giving pay of three months is quashed.

R.N.R.

(3) AIR 1987 SC 948.