

(FULL BENCH)

Before : S. S. Sodhi, A.C.J., M. S. Liberhan & R. S. Mongia, JJ.

PUNJAB STATE AND OTHERS,—Appellants.

versus

KULWANTBIR SINGH,—Respondent.

Letters Patent Appeal No. 11 of 1992.

2nd November, 1992.

(1) *Constitution of India, 1950—Art. 226—Punjab Civil Services (Premature Retirement) Rules, 1975—Rl. 3(1) (a)—Premature retirement—Review of service record—Adverse entries prior to crossing of efficiency bar, and crossing of efficiency bar itself are relevant for purposes of forming requisite opinion for retention in service—Entire service record with greater emphasis on record of later years should be taken into consideration.*

(2) *Constitution of India, 1950—Art. 226—Punjab Civil Services (Premature Retirement) Rules, 1975—Rl. 3(1)(a)—Promotion—Adverse remarks recorded after crossing of efficiency bar and past record can be looked into to assess present conduct—Adverse remarks prior to promotion to a higher post will, however, lose significance particularly where promotion is based on merit and not seniority.*

(3) *Constitution of India, 1950—Art. 226—Punjab Civil Services (Revised Pay) Rules, 1988—Proficiency step up—Grant of—Stands on the same plane as promotion to a higher post—Hence, similar considerations applicable.*

Held, that the crossing of the efficiency involves no element of comparative merit or promotion nor the stoppage of the efficiency bar any punishment. All it grants or denies is the next increment in the pay scale, for the grant of which the employee has no vested right. This particular increment to be granted after the crossing of the efficiency bar being dependent upon a conscious evaluation of the efficiency of the employee concerned in the light of the relevant instructions issued by the government from time to time. Further, there is a qualitative difference in emphasis in considering a case of crossing of the efficiency bar and retention in service on completion of the requisite qualifying service. Past performance being the yardstick for the former while with regard to the latter it is dependent upon an assessment of the usefulness and quality of an employee for continued service with the dominant consideration there being that of public interest. In other words, for crossing of the efficiency bar, we look to the past and for retention in service, to the needs of the future.

(Paras 7 & 8)

Held, that the principles that emerge are:—

- (i) As different consequences flow from crossing of the efficiency bar, retention in service or premature retirement after the requisite qualifying period and promotion, considerations applicable for their decision have inevitably to be relevant in their context, thus separate and distinct;
- (ii) The previous history of a Government servant, or to put it in different words, his past adverse remarks are not to be completely ignored, once he is allowed to cross the efficiency bar or to continue in service after the requisite qualifying service;
- (iii) If, there are some unfavourable remarks pertaining to such government servant after the crossing of the efficiency bar, his continuance in service after the qualifying period or promotion, as the case may be, past events may be looked into to assess his present conduct;
- (iv) On the other hand, the adverse remarks prior to promotion to a higher post particularly where it is based upon merit and not seniority alone would lose their significance and such promotion would take away the sting of the adverse remarks against the Government servant concerned;
- (v) The entire record of service of the Government servant concerned, with greater emphasis and importance being given to his record during the later years, must be taken into consideration while deciding the matter pertaining to his retention in service of premature retirement after the requisite qualifying service;
- (vi) The adverse entries against the Government servant prior to the efficiency bar and indeed the crossing of the efficiency bar itself would form part of the record of service which must be considered in dealing with retention in service or premature retirement as the case may be.

(Para 39)

(This case was referred to Larger Bench by Hon'ble Mr. Justice R. S. Mongia & Hon'ble Mr. Justice S. S. Sodhi on 13th February, 1992 for deciding an important question of law mentioned in the judgment as these questions arise almost every day and quite a few cases involving the said points are pending adjudication in this Court. The Larger Bench consisting of Hon'ble the Acting Chief Justice Mr. S. S. Sodhi, Hon'ble Mr. Justice M. S. Liberhan and Hon'ble Mr. Justice R. S. Mongia decided the matter on 2nd November, 1992.)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 27th September, 1991 passed by Hon'ble Mr. Justice N. K. Sodhi in Civil Writ Petition No. 16330 of 1989.

Mr. H. S. Riar Addl. A. G. Punjab, *for the appellants.*

Mr. D. S. Brar Advocate and Mr. Sukhdeep Singh Brar, Advocate, Mr. P. S. Patwalia Advocate, *for the respondents.*

JUDGMENT

S. S. Sodhi, A.C.J.

The controversy here, though lying within a narrow compass, namely, whether the crossing of the efficiency bar by a government servant has the effect of washing away all previous adverse entries in his service record, also raises other and no less significant consequential issues, in the context of retention in service on completion of the requisite qualifying service or pre-mature retirement, as the case may be, and further promotion in service.

(2) What has brought this matter to the fore is the order passed by the Divisional Manager, Transport Department, Punjab, prematurely retiring the writ petitioner Kulwantbir Singh from service on his attaining the age of 50 years in terms of Rule 3(1) (a) of Punjab Civil Services (Pre-mature Retirement) Rules, 1975, which is in these terms:—

“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.”

(3) The petitioner Kulwantbir Singh had joined service as Conductor with the Punjab Roadways. He was confirmed as such in December 1971 and in August, 1982 was promoted as Inspector. During his first three years as Inspector, that is from 1982 to 1985 he earned the grading ‘Average’ but in 1985-86 his reputation for honesty was branded as ‘Below Average’ which was also the overall grading given to him. This adverse report was duly conveyed to him. The petitioner had no doubt contended that it had not been communicated to him, but after perusal of the original record the learned Single Judge took it that it was sent to the petitioner and must have been received by him. We see no reason to hold otherwise. Be that as it may, it appears that no representation was filed against it.

(4) In the meanwhile the petitioner became due to cross the efficiency bar with effect from March 1, 1987, but on account of his average record and the adverse report for 1985-86, he was not allowed to do so and, instead, a notice was issued to him on March 8, 1988, to show cause why the crossing of the efficiency bar by him be not withheld for a year. The representation of the petitioner in reply was not accepted. He was, however, later allowed to cross the efficiency bar with effect from March 1, 1988. In other words, having regard to his record of service the crossing of the efficiency bar was withheld for a year. It was thereafter that on September 28, 1988, the impugned order pre-maturely retiring him from service came to be passed.

(5) The learned single judge quashed the impugned order of pre-mature retirement holding that with the crossing of the efficiency bar with effect from March 1, 1988, the previous adverse report of the petitioner stood obliterated and that being so, there was no other material on record to justify it. It being observed in this behalf, "an adverse entry stands washed away if the official is subsequently allowed to cross his efficiency bar or is allowed to be promoted to a higher post or grade, no matter whatever may be the allegations on which the entry is based."

(6) When the appeal against the judgment of the learned single Judge came up for preliminary hearing, it was referred to a Full Bench, keeping in view the conflicting opinions expressed in various judgments of our Court on whether or not adverse entry in the service record of a government employee prior to his crossing the efficiency bar can be looked into for the purpose of pre-maturely retiring him from service and whether an entry recording doubtful integrity can be taken into account after the promotion of such employee subsequent to the adverse remarks made against him. This is how this matter has come up before us.

(7) In terms of rule 4.7 of the Punjab Civil Services Rules Volume I, Part I, an increment in the time scale has ordinarily to be granted as a matter of course, but where an efficiency bar is prescribed in a time scale, rule 4.8 thereof prescribes that the increment next above the bar shall not be given to a government employee except with the specific sanction of the competent authority. Crossing of the efficiency bar is, however, not otherwise a concept figuring in the statutory rules. There are, of course, executive instructions on the subject of crossing of the efficiency bar where it figures in the pay scales. The significant aspect of it that deserves emphasis is

that the crossing of the efficiency involves no element of comparative merit or promotion nor the stoppage of the efficiency bar any punishment. All it grants or denies is the next increment in the pay scale, for the grant of which the employee has no vested right. This particular increment to be granted after the crossing of the efficiency bar being dependent upon a conscious evaluation of the efficiency of the employee concerned in the light of the relevant instructions issued by the government from time to time.

(8) Further, there is a qualitative difference in emphasis in considering a case of crossing of the efficiency bar and retention in service on completion of the requisite qualifying service. Past performance being the yard-stick for the former while with regard to the latter it is dependent upon an assessment of the usefulness and quality of an employee for continued service with the dominant consideration there being that of public interest. In other words, for crossing of the efficiency bar, we look to the past and for retention in service, to the needs of the future.

(9) Promotion, on the other hand, is a matter which stands on an entirely different footing, with the essential characteristic thereof being that of comparative merit, which has no role to play in the crossing of the efficiency bar and only occasionally in retention in service on completion of the qualifying service. It is in this light that the issues raised have to be considered, understood and adjudicated upon.

(10) The earliest instructions issued by the Government with regard to the crossing of the efficiency bar were of July 5, 1948. These read as under :—

“Subject :—*Efficiency bar.*

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To ensure uniformity of action by different Departments in the matter of stoppage of officers at efficiency bars, Government consider it necessary to lay down certain general principles for the guidance of all concerned.

2. The crossing of an efficiency bar is to be distinguished from the earning of an annual increment. In the case of the annual increment, onus is on the authority to show cause why it should be withheld; in the case of crossing a bar

the onus is on the official, tacitly or otherwise, to show cause why he should cross it.

3. Crossing of an efficiency bar amounts to promotion; stoppage at one is a form of punishment under Rule 49 of the Civil Service (Classification, Control and Appeal) Rules or Rule 14.10 of Civil Services Rules (Punjab) Volume I (Part I). It is, however, not necessary, before it is decided to stop an officer at a bar, to inform him in writing of the grounds on which it is proposed to take such action. The order is, however, appealable accordingly as the officer concerned is a member of the All India or Provincial and Subordinate Service and it is desirable that every case should be scrutinised carefully by the Head of the Department and good reasons given in support of an order of stoppage.
4. As the efficiency of a service depends to a great extent on the quality of the officials at the top, it is essential that each case is dealt with care and that the passing of an efficiency bar is not regarded as a mere matter of formality. Broadly speaking, efficiency and honesty should, taken together, be the deciding factors. These factors do not always hang together, on the contrary, a dishonest officer is more often efficient than otherwise while an honest officer may not necessarily be efficient.
5. There are usually two bars in every time-scale, the first at the stage when an officer may be considered as ceasing to be a 'Junior' and as fit to perform satisfactorily the ordinary duties of his service, and the second at the stage when he becomes a 'senior' and may be expected to be fit to perform any of the duties which the service is called upon to undertake. No particular difficulty should arise with regard to the first bar, and in respect of this bar, Government only desire to lay down that no officer should be allowed to pass this bar until he has proved himself competent to perform satisfactorily the ordinary duties of his service.
6. The second bar presents greater difficulty, and it is clear that, in the absence of definite instructions as to the standard required, number of officers, who are not fit to perform the highest duties that could be allotted to them

in their service, have been nevertheless allowed to rise to the highest pay in the ordinary scale. Government consider that in future no officer should be allowed to cross the second and final bar unless he is adjudged fit to be placed in charge of the full duties attaching to the heavier charges which officers of his rank can be called upon to fill. Heads of Departments will be able to fix in their minds the standard charge which each grade of officer should be expected to be able to fill before passing the bar, but in each case it should be remembered that the charge should be one which an officer can be called upon to fill in the ordinary course of the duties of his grade.

7. While Head of Departments are required to exercise their judgment and discretion in each case, the following instructions will be helpful and should be kept in view :—
 - (1) The efficiency bars must be real and recommendations for passing them should not be given as a matter of course to those Government servants who just manage to avoid getting into trouble;
 - (2) For the purpose of crossing the efficiency bars, Government servants will broadly fall into three divisions as below and their case will be dealt with as explained against each;
 - (a) Good—Are those who consistently earn good reports and who will in the ordinary course be permitted by competent authority to cross the efficiency bars.
 - (b) Fair—Are those who secure at least 50 per cent good reports. They should not be permitted to cross the bar unless the head of department is satisfied, on a careful study of the record, that they merit promotion and give promise of satisfactorily filing the heavier charges in the grade.
 - (c) Poor—Are the remainder, and they will not be permitted to cross the bar.
8. Heads of Departments while considering each case on the basis of the above classification should take into account the severity or leniency of the officers whose reports are under consideration and the nature of the work on which the Government servant was employed.

9. Stoppage at an efficiency bar should be for general bad work and inefficiency continued over several years and not for one or two lapses for which ordinary stoppage of increment (with or without future effect) should be the punishment.
10. As there is at present no definite provision for periodical review of orders stopping Government servants at efficiency bars, Government consider that there should be such a provision and have accordingly decided that cases of stoppage of efficiency bar should be reviewed at the expiration of the period of one year from the date of the order, and, if necessary, at the same interval thereafter. In the case of an officer who is stopped at the bar by the Provincial Government, the most convenient procedure would be at the time of the passing of the order, to ask for a special report on the work at the end of one year or to require his superior officers to deal with the matter in the annual confidential report on him.
11. The procedure for giving effect to the order regarding the review of cases of officers or services other than the provincial services is left to the Head of the Department to settle.
12. The instructions supersede all previous instructions whether Departmental or general, on the subject."

(11) It will be seen that for crossing the efficiency bar the deciding factors were efficiency and honesty; with the stoppage at the efficiency bar being prescribed for general bad work and inefficiency continued over several years. Crossing of the efficiency bar was, consequently, treated as promotion, while stoppage of the efficiency bar a form of punishment.

(12) Significant changes in the executive instructions regarding crossing of efficiency bar, however, came to be incorporated in the subsequent instructions issued by the Government on October 26, 1973. These instructions being in the following terms :—

"*Subject* : Crossing of efficiency bar policy/rules regarding—
up to date position. I am directed to invite your attention to Punjab Government Memo No. 3574-G-35863 dated the 5th July, 1948, on the subject noted above and to say that

keeping in view the fact that the instructions contained therein were issued long ago and many changes have taken place since then in violation to the crossing of efficiency bars, it is necessary to outline the up to date position in connection therewith.

2. Rule 4.7 of the Rules quoted in the margin, *inter alia*, lays down that an increment shall be drawn as a matter of course, unless it is withheld whereas under Rule 4.8 *ibid* when an efficiency bar is prescribed in a time scale, the increment next above efficiency bar shall not be given to a government employee without the specific sanction of the authority empowered to withhold increments.
3. Under the Punjab Civil Services (Punishment and Appeal) Rules, 1952, withholding of increment or promotion including stoppage at efficiency bar, if any, was a penalty without any exception whether the stoppage of efficiency bar be on ground of unfitness or otherwise. However, under the Punjab Civil Services (Punishment and Appeal) Rules, 1970, stoppage of a Government employee at the efficiency bar in the time scale of pay on the ground of his unfitness shall, *inter alia*, not amount to penalty,—*vide* Explanation given under rule 5 of the Rules *ibid*. Under rule 15 of the Rules *ibid*, an order stopping a Government employee at the efficiency bar including stoppage on grounds of his unfitness to cross the bar, is appealable.
4. In terms of Regulation 5(b) and (c) of the Regulations quoted in the margin, cases of the following nature are referable to the Punjab Public Service Commission before imposing the specified penalty :—
 - (i) any original order proposed to be issued by the Punjab Government imposing *inter alia*, penalty of withholding of increment or promotion, including stoppage at an efficiency bar, with continuing effect, or with non-continuing effect for more than one year, as the case may be;
 - (ii) any order proposed to be issued by the Punjab Government on appeal amounting to enhancement of the penalty to that extent for which consultation with the Commission is necessary under the Regulations *ibid*.

5. (i) In the light of Rules quoted in para 2 and 3 above the crossing of efficiency bar is to be distinguished from the normal admissibility of an annual increment. A Government employee may be allowed to cross the efficiency bar when there is good reason to show that he is fit to cross it i.e. he has acquired the requisite standard of efficiency.
 - (ii) As the efficiency of a service depends to a great extent on the quality of the officials at the top, it is essential that each case is dealt with care and that the crossing of an efficiency bar is not regarded as a matter of form.
 - (iii) There are usually two bars in every time-scale of pay, the first at the stage which the Government employee concerned acquires a certain seniority in his grade after having rendered a few years service and is fit to perform satisfactorily the ordinary duties of his service and the second at the time when certain higher standards of responsibilities are expected from him.
 - (iv) Stoppage at an efficiency bar should be for general bad work and inefficiency continued over several years and not for one or two lapses for which ordinary stoppage of increment (with or without future effect) should be adequate.
6. Cases of stoppage of efficiency bar on grounds of unfitness should be reviewed at the expiry of one year from the date of the order and if necessary at the same interval thereafter. In order to make such a review realistic a special report on the work and conduct of the employee concerned should be obtained from the officer under whose control he may be working but such a special report is not necessary to be obtained in cases in which the annual confidential report of the employee concerned was written less than three months and as in such cases the question of allowing to cross the efficiency bar should be decided on the basis of annual confidential reports already written.
 7. Where it is proposed to stop a Government employee at the efficiency bar in the time scale of pay as penalty, i.e. on grounds other than unfitness, the procedure laid down under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 should be observed. As regards

the stoppage at efficiency bar on grounds of unfitness, although it would not be a penalty as stated in para 3 above, yet keeping in view the principles of natural justice and the fact that the order of stopping the Government employee concerned, at the efficiency bar "entails evil consequences" for him, it is considered desirable to give him an opportunity to explain his position before such an order is passed.

In terms of instructions contained in Punjab Government Circular Letter No. 3973-SII(3)—72/16816, dated the 18th July, 1972, where an order is issued stopping an employee at the efficiency bar for reasons other than unfitness, it should be a speaking order but where it is solely on grounds of unfitness, it would be enough to indicate in the order that the stoppage at the efficiency bar is on grounds of unfitness.

8. The receipt of the letter may please be acknowledged."

(13) In terms of these instructions, crossing of the efficiency bar ceased to be looked upon as promotion and stoppage at the efficiency bar as any penalty. The yard stick for the crossing of the efficiency bar being of the employee having acquired "the requisite standards of efficiency". Stoppage at the efficiency bar, however, was to be for the same reason, namely, general bad work and inefficiency continued over several years and not one or two lapses for which it was said, "ordinary stoppage of increment (with or without future effect) should be adequate."

(14) Before proceeding further, it would be relevant to advert here to the instructions issued by Government on July 16, 1985, with regard to adverse entries prior to the crossing of efficiency bar in the context of promotion, retention in service or premature retirement in service, as the case may be. These instructions read as under :—

"Subject : Effect of adverse entries prior to the date of crossing of efficiency bar on promotion/retention in service/premature retirement from service.

Sir,

I am directed to invite reference to Punjab Government circular letter No. (6680)—1/1/18-2PP/33043, dated the 20th October, 1978, on the subject cited above and to state that

it has been laid down therein that adverse entries in the annual confidential reports of an official, earned for any period prior to the date of crossing of an efficiency bar, can be taken into consideration for judging his suitability for promotion to a higher post and also for deciding the question of his retention in, or premature retirement from, service.

2. The above instructions have been interpreted by some departments to mean that while considering the cases of premature retirement, the fact of an employee having crossed an efficiency bar from a date subsequent to the period to which the adverse remarks relate, has the effect of altogether negating any effect which the adverse remarks may have on the question of premature retirement. On the other hand, some departments have interpreted the above instructions to mean that the fact that an employee has crossed an efficiency bar should not at all be taken into account while considering the case of his premature retirement. In order to settle the matter, the advice of the Law Department has been obtained on the subject in the light of recent court rulings.
3. It is hereby clarified that while considering the case of premature retirement of an employee, his entire service record is to be considered as a whole. Any adverse remarks earned by an employee, and the fact that he has been allowed to cross an efficiency bar, would both form part of the service record that is to be considered. Thus, while there would be cases in which, on consideration of the entire service record of an employee, a department may justifiably conclude that an employee should be prematurely retired despite his having crossed the efficiency bar, there may be cases in which the circumstances of an employee having crossed an efficiency bar, might be considered sufficient reason to ignore adverse remarks earned previously. It is not possible, therefore, to lay down any rigid principles and each case would have to be decided on its merit.
4. The above clarification may please be brought to the notice of all concerned.
5. The receipt of this communication may also please be acknowledged."

(15) As regards the matter of retention in service or premature retirement after the requisite qualifying service, it will be seen that the dominant consideration is 'public interest'. This expression 'public interest' being as Justice K. N. Singh in *Hardwari Lal v. Divisional Engineer* (1), observed, "of wide import and a matter which is in public interest would necessarily depend upon the time, place and circumstances with respect to which the consideration of the question arises. In the context of 'public service', 'public interest' would certainly require to weed out unsuitable, inefficient government officers or those who are not able to discharge their duties satisfactorily on account of physical infirmity."

(16) In a similar strain the Supreme Court in *Gian Singh Mann v. The High Court of Punjab and Haryana* (2), held that the expression 'public interest' "In the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competence and utility called for by the government service to which he belongs."

(17) Earlier in *Union of India v. M. E. Reddy* (3), it was observed that the object of the rule relating to premature retirement was, "to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences."

(18) Further, it was said that the main object of the rule relating to premature retirement was to, "instil a spirit of dedication and dynamism in the working of the State Services so as to ensure

(1) 1972 S.L.R. 279.

(2) A.I.R. 1980 S.C. 1894.

(3) 1979(2) S.L.R. 792.

purity and cleanliness in the administration which is the paramount need of the hour as the Services are one of the pillars of our great democracy. 'Any element or constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has outlived his utility has to be weeded out.'

(19) Next, in dealing with the Punjab Civil Services (Premature Retirement) Rules, 1975, the Supreme Court in *Brij Mohan Singh v. State of Punjab* (4), observed, "The purpose and object of premature or compulsory retirement of Government employee is to weed out the inefficient, corrupt, dishonest or dead-wood from the Government service." It was further observed, "The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those who are inefficient, dead-wood or corrupt and dishonest."

(20) It would be pertinent to note here that in *Brij Mohan Singh's case* (supra), the Supreme Court also had the occasion to consider the guidelines issued by the State Government with regard to premature retirement. Regarding these instructions and their validity, this is what was observed therein :—

"Since the rule does not contain any further guidelines, the State Government issued a Government order on September 26, 1975, laying down the guidelines and the procedure necessary to be followed in exercising powers under Rule 3 for premature retirement of a Government employee. The order stated that the appropriate authority should utilise the power under Rule 3 in a judicious manner to retire a Government employee on formulating its opinion by scrutiny of the confidential reports of the employee and by taking into consideration any other substantial material, it may have before it. The order further stated that it was not feasible to lay down any absolute terms as to how many adverse entries about inefficiency or lack of integrity would justify the premature retirement but it laid stress that the service record as a whole would determine the merit of each case. Paragraph 6 of the letter further stated that remoteness of an adverse entry, the scrutiny of the service record of the employee concerned such as crossing of efficiency bar, confirmation and promotion to a higher post or any other meritorious service rendered by the

employee, would have their relative importance. The order emphasizes that the appropriate authority may consider premature retirement of a Government employee if it has reasonable cause to believe that the employee concerned was lacking in integrity, irrespective of the assessment of ability and efficiency in work. It further provides that the appropriate authority should review the cases of employees on their completing 25 years of qualifying service or their attaining 50 years of age. The Government issued another order on August 4, 1978, pointing out that while exercising power under Rule 3 the service of an employee as a whole would determine the merit of each case but 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. The executive instructions issued as contained in these two Government orders provide sufficient guidance for the exercise of power under Rule 3. According to these instructions the service of an employee has necessarily to be considered while taking decision for the premature retirement of an employee and if there was a single entry casting doubt on the integrity of an employee, the premature retirement of such an employee would be in public interest. In the absence of any details by which the question of public interest could be determined in the rules it was open to the State Government to issue executive instructions for the guidance of the appropriate authority to exercise the power of premature retirement and the instructions so issued as contained in the aforesaid Government orders have binding character."

(21) The often quoted judicial precedent with regard to premature retirement is *Union of India v. J. N. Sinha* (5), where with regard to it, it was said, "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 an 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 should be

there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead-wood. It is in public interest to chop off the same."

(22) What now sets the matter at rest is the recent judgment of the Supreme Court in *Baikuntha Nath Das v. Chief Dist. Med. Officer* (6), where after a review of the earlier cases, the following principles were held to emerge :—

- "(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary—in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
- (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

(23) We now come to the central question raised in this reference, namely, the precise effect of the crossing of the efficiency bar upon earlier adverse entries, while considering the employee's retention in service after completion of the requisite qualifying service and further promoted, as the case may be.

(24) A review of the judicial precedents relevant to the point in issue must begin with a reference to the judgment of the Supreme Court in *State of Punjab v. Dewan Chuni Lal* (7), where during his service as a Police Officer, Dewan Chuni Lal had earned some adverse reports on the basis of which a charge-sheet was served upon him and a departmental enquiry held. One of the charges being founded upon the adverse reports for the years 1941 and 1942. Keeping in view the fact that he had been allowed to cross the efficiency bar in 1944, it was held that reports earlier than 1944 could not have been considered, it being observed, "It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942, they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944."

(25) Following *Dewan Chuni Lal's* case (supra) it was held by B. R. Tuli, J. in *Shadi Lal v. D. C. Gurgaon* (8), that the crossing of efficiency bar condoned all previous adverse entries.

(26) A directly contrary view was, however, expressed by a Division Bench of this Court in *Ran Singh Kaison v. State of Haryana* (9), where it was observed, "On a proper analysis of Dewan Chuni Lal's case, we are unable to hold that the adverse entries prior to the date when a public servant is allowed to cross the efficiency bar are completely wiped out or cannot be taken into consideration while judging his suitability for promotion to higher rank. We are, therefore, of the considered view that the case of Shri Shadi Lal (supra) was not correctly decided and that while considering the case of a public servant for future promotion, it is open to the competent authority to take the entire record of service into consideration for judging his suitability."

(27) Next to note is the judgment of the Supreme Court in *Swami Saran Saksena v. State of U.P.* (10). The matter their

(7) A.I.R. 1970 S.C. 2086.

(8) 1974 (1) S.L.R. 217.

(9) 1978 (1) S.L.R. 450.

(10) A.I.R. 1980 S.C. 268.

concerned the compulsory retirement of a judicial officer who only a few months earlier had been allowed to cross his second efficiency bar. In the intervening period, between the crossing of the second efficiency bar and the order of compulsory retirement, there was no adverse report against him. It was held, "we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second Efficiency Bar the appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement. The entries in between in the records pertaining to the appellant need to be examined and appraised in that context. There is no evidence to show that suddenly there was such deterioration in quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed."

(28) A somewhat similar case arose before the Supreme Court in *Baldev Raj Chadha v. Union of India and others* (11), which concerned the compulsory retirement of an Accounts Officer who was ordered to be prematurely retired after having crossed the efficiency bar. In passing this order what weighed so heavily with the Court was the fact that there had been no adverse report against the employee during the five years preceding his compulsory retirement. The order, it was found, had been passed on the ground that several years ago, his performance had been poor. In deciding in favour of the employee, the Court observed, "one wonders how an officer whose continuous service for 14 years after crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement, could be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms."

(29) There is then the case of *State of U.P. v. Chandra Mohan* (12). This concerned an I.A.S. Officer who had been ordered to be compulsorily retired. On the first review of the officer on attaining the age of 50 years, the State Government had recommended his retention in service. The Central Government sought a reconsideration of this recommendation where upon the State Government again reiterated its earlier view but on a second review six months later, recommended the compulsory retirement of the

(11) 1980 (3) S.L.R. 1.

(12) 1978 (1) S.L.R. 12.

officer. It was held that the second review on the same material was not permissible and the order of compulsory retirement was consequently quashed.

(30) Another precedent cited was *Baljinder Singh v. Union of India* (13), where in the case of a police officer, adverse remarks against him prior to the award to him of the president's Medal were taken into account in ordering his compulsory retirement. It was held that they did not constitute valid material for deciding the matter of compulsory retirement.

(31) A precedent more directly to the point is provided by the judgment of the Division Bench in *K. K. Vaid v. State of Haryana* (14), where it was held that any adverse entry would be rendered inconsequential by crossing of the efficiency bar.

(32) We turn now to a string of judicial precedents highlighting the point that different considerations arise in the matter of crossing of the efficiency bar, confirmation or retention in service and promotion. In *Kishan Chand Kaura v. State of Haryana* (15), the petitioner, a teacher, who had been allowed to cross the efficiency bar was, however, not found fit to be confirmed in service. It was observed in this behalf, "For allowing to cross the efficiency bar, different considerations apply. Whether a person should be confirmed or not is quite a different question. A person who has just a colourless type of record may be allowed to cross the efficiency bar but he may not be recorded suitable for being confirmed." In holding so, a distinction was drawn between the termination of services after crossing the efficiency bar and confirmation in service, while distinguishing *Dewan Chuni Lal's case* and *Swami Saran Saksena's case* (supra). It being held that it was not incumbent upon the employer to confirm an employee who had been allowed to cross the efficiency bar and that the service record of an official prior to the date of crossing the efficiency bar can be taken into consideration for the purpose of judging his suitability for confirmation.

(33) There is then the judgment of the Division Bench in *Bhana Ram v. State of Haryana* (16). The petitioner here was an Assistant Sub Inspector of Police. The crossing of the efficiency bar in his case was withheld for a year with effect from April 1, 1983. In

(13) 1980 (1) S.L.R. 433.

(14) 1990 (1) S.L.R. 1.

(15) 1984 (1) S.L.R. 496.

(16) 1992 (2) P.L.R. 160.

March, 1991, he was compulsorily retired from service. The contention was raised that after confirmation, the adverse entry of doubtful integrity which had been recorded for the year 1980-81 could not have been taken into account while deciding his case for crossing the efficiency bar. This was repelled with the observations, "Adverse entries of different types have different effect in service matters. Two types of orders are passed; one relating to confirmation, promotion or grant of selection grade/higher grade and the other for crossing of Efficiency Bar or retention in service/compulsory retirement. If orders like confirmation or promotion to a higher rank are passed, the adverse remarks contained in Confidential Reports prior thereto lose their significance for giving further promotion or confirmation on the promoted post. However, this position is not applicable to the second category of cases relating to crossing of Efficiency Bar or retention in service after completion of 25 years or beyond 50 or 55 years of age. In this category of cases, the entire service record even before the orders of confirmation, promotion or grant of selection grade etc. has to be considered. Particular reference may be made to an adverse entry of "Integrity Doubtful", which, as per instructions of the State Government, usually affects the service career for about 10 years, which fact has not been disputed." The Court, in fact, went on to hold that the adverse entry of doubtful integrity would not be washed away even by promotion.

(34) The view expressed in *Bhana Ram's case* (supra) that an adverse entry is not obliterated even after promotion has, however, to be considered in the light of what was held by the Supreme Court in *State of U.P. v. Hari Shankar Tewari* (17), namely that adverse entries awarded to the employee lose their significance on or after his promotion to a higher post.

(35) To the same effect is what was said in *Baidyanath Mahapatra v. State of Orissa* (18).

"When a Government servant is promoted to a higher post on the basis of merit and selection, adverse entries if any contained in his service record lose their significance and those remain on record as part of past history. It would be unjust to curtail the service career of Government servant on the basis of those entries in the absence of any significant fall in his performance after his promotion."

(17) A.I.R. 1987 S.C. 998.

(18) 1989 (4) S.L.R. 220

(36) There remains to notice two judgments of our Court, *R. D. Malhotra v. Union of India* (19), and *Jaswant Singh v. State of Punjab* (20). In *R. D. Malhotra's case* (supra), it was laid down that in considering premature retirement of an employee, the Government was entitled to review the entire service record of the concerned member of the service in order to decide objectively whether or not to allow his retention in service. In *Jaswant Singh's case* (supra) where promotion of juniors in preference to the petitioner who was their senior was challenged, it was held that when the efficiency bar is allowed to be crossed, the earlier defaults or acts of misconduct are condoned and he cannot thereafter be punished on the basis of his earlier record of service, but for promotion, his entire record has to be examined to determine comparative merit. In other words, the earlier adverse entries cannot be treated to have been wiped out, for this purpose, by the crossing of the efficiency bar.

(37) What was held and decided in *R. D. Malhotra's* and *Jaswant Singh's cases* (supra) has, however, now to be read down in terms of the observations in *Brij Mohan Singh's* and *Baidyanath Mahapatra's cases* (supra).

(38) To put the matter on an even keel, reference may be made to the judgment of the Supreme Court in *Dr. Ramaswami v. State of Tamil Nadu* (21), where it was observed, "If there was some entry, not wholly favourable to the appellant after his promotion, one might hark back to similar or like entries in the past, read them all in conjunction and conclude that the time had arrived for the Government servant to quit." Further, "we do not say that the previous history of a Government servant should be completely ignored, once he is promoted. Sometimes, past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past."

(39) The principles that thus emerge are :—

- (i) As different consequences flow from crossing of the efficiency bar, retention in service or premature retirement after the requisite qualifying period and promotion, considerations applicable for their decision have inevitably to be relevant in their context, thus separate and distinct;

(19) 1974 S.L.W.R. 858.

(20) 1975 (1) S.L.R. 899.

(21) 1982 (1) S.L.R. 690.

- (ii) The previous history of a Government servant, or to put it in different words, his past adverse remarks are not to be completely ignored, once he is allowed to cross the efficiency bar or to continue in service after the requisite qualifying service;
- (iii) If, there are some unfavourable remarks pertaining to such government servant after the crossing of the efficiency bar, his continuance in service after the qualifying period or promotion, as the case may be, past events may be looked into to assess his present conduct;
- (iv) On the other hand, the adverse remarks prior to promotion to a higher post particularly where it is based upon merit and not seniority alone would lose their significance and such promotion would take away the sting of the adverse remarks against the Government servant concerned.
- (v) The entire record of service of the Government servant concerned, with greater emphasis and importance being given to his record during the later years, must be taken into consideration while deciding the matter pertaining to his retention in service or premature retirement after the requisite qualifying service;
- (vi) The adverse entries against the Government servant prior to the crossing of the efficiency bar and indeed the crossing of the efficiency bar itself would form part of the record of service which must be considered in dealing with retention in service or premature retirement as the case may be.

(40) While on this subject, another matter of relevance which deserves comment, even though not directly arising in this case is that pertaining to the new concept of "Proficiency Step-up," which has recently been adopted by the State Government, in implementation of the recommendations of the Third Pay Commission. The relevant extract of the decision in this regard, as incorporated in the letter of December 1, 1988, being, "1. Subject to suitability besides the regular annual increment, one additional increment on each occasion on completion of 8 years' and 18 years' service on or after the 'appointed day' (as defined in Punjab Civil Services) (Revised Pay) Rules, 1988 published in Punjab Government Gazette (Extra.) on 13th September, 1988) against a post, in the form of

proficiency step-up(s) shall be granted to all the Punjab Government employees except the members of the Punjab Civil Service (Executive Branch) Deputy Superintendents of Police and Members of the Punjab Forest Service-Class II. 2. In adjudging the suitability for the proficiency step-up(s), the procedures for assessing the work and conduct to be satisfactory as applicable to a case of promotion, shall be followed and it shall be given only if the employee is found suitable for the same. An employee, who is not considered fit for a proficiency step-up(s), that is, whose assessment of work and conduct is below the requisite standard, shall not be given the additional increment(s) but his regular increment if otherwise due, shall be released as usual."

(41) The concept of proficiency step-up as spelt out shows that the grant of it, stands on the same plane as promotion to a higher post. Similar considerations as would be applicable while considering the case for promotion to a higher post, would thus apply with regard to this proficiency step-up too.

(42) Turning now to the case of the appellant and the impugned order of compulsory retirement passed against him; the view expressed by the learned single Judge that by the crossing of the efficiency bar, the adverse entry of 'doubtful integrity' figuring against the petitioner stood washed away, cannot with respect be accepted as a correct enunciation of law. In dealing with the challenge to the impugned order, the entire record of service of the petitioner was required to be considered. Seen in this light, two matters stand out; one the adverse entry of doubtful integrity and the other that the crossing of efficiency bar was withheld for one year. This being so, there can be no escape from the conclusion that the impugned order passed against the petitioner was indeed founded upon relevant and material considerations which amply justify the opinion that it was in public interest to prematurely retire him. The impugned order thus warranted no interference in writ proceedings.

(43) We consequently hereby set aside the order of the learned single Judge and dismiss the writ petition filed by the petitioner Kulwantbir Singh. This appeal is thus accepted. There will, however, be no order as to costs.

R.N.R.