

*Before Surya Kant & R.P. Nagrath, JJ.*

**RANDHIR SINGH—Petitioner**

*versus*

**HON'BLE HIGH COURT OF PUNJAB & HARYANA  
AND ANOTHER—Respondents**

**CWP No. 395 of 2006**

July 27, 2012

*Constitution of India, 1950 - Art. 226 - Compulsory retirement - Punjab Civil Services Rules, Vol-I Part-I - Punjab Civil Services Rules Vol II - Rl. 5.32 (as applicable to Haryana) - Petitioner compulsorily retired from service on recommendation of High Court - Adverse remarks in ACR - Representations by the Petitioner turned down - Petitioner's case for retention in service beyond age of 50 was considered and rejected by full Court and he was retired from service - Challenge thereto - Held that contention of remarks of 'doubtful integrity' must be supported with cogent material has no legal basis - Opinion formed by Administrative Judge has stood test of Full Bench - Judicial interference only if formation of opinion rests upon perverse consideration - Writ dismissed.*

*Held*, that contention that the remarks of 'doubtful integrity' must always be supported with cogent material, too has no factual or legal basis. We say so for the reason that an Administrative Judge in his constant endeavour to assess the overall reputation of a Judicial Officer interacts with the litigant public, members of the Bar, other respectable besides a sound briefing from the peers. It is not necessary that the Judicial Officer would always leave a trail of evidence to be caught by the Administrative Judge. The formation of opinion is an onerous and pious duty which is performed on solemn considerations. A bona fide expression of opinion by an Administrative Judge which has withstood the test of Full Court would call for interference in the exercise of power of judicial review only if the formation of such opinion rests upon totally perverse considerations and its

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sustenance shall cause grave injustice to the Officer it is well-settled that such an action is neither a punishment nor does it imply stigma unless passed to impose punishment for a specific misconduct.

(Para 23)

*Further held*, that the power of the High Court under Article 235 of the Constitution to discipline the black sheep or weed out deadwood is well recognized in the interest of judicial services which are incomparable with executive assignments.

(Para 24)

*Further held*, that the sting of adverse remarks against 'integrity' is not removed ipso facto by the subsequent unblemished report(s) and while considering the issue of retention in service after a particular age or length of service, the competent authority is well within its right to consider and rely upon such adverse material against the officer.

(Para 25)

Punect Bali, Senior Advocate with Shaurya Sharma, Advocate, *for the petitioner*

Kanwaljit Singh, Senior Advocate with Rajesh Garg, Advocate, *for respondent No. 1*

RS Kundu, Addl. AG Haryana, *for respondent No. 2*

### **SURYA KANT, J.**

(1) This writ petition at the instance of a former member of Haryana Superior Judicial Service, seeks quashing of the order dated 10.08.2005 (Annexure P18) whereby he has been compulsorily retired from service by the Government of Haryana on the recommendations made by respondent No.1 – the High Court.

(2) Shorn of the details, the petitioner joined the Haryana Civil Services (Judicial Branch) on 11.05.1981 and served as Sub Judge-cum-Judicial Magistrate at different places except from 20.12.1991 to 31.05.1994 when he remained posted on a non-judicial post of Legal Remembrancer, UT Chandigarh. The petitioner was promoted to Haryana Superior Judicial Service in December, 1997 which he joined w.c.f. 02.02.1998.

(3) The petitioner received a communication dated 12.10.1998 from the High Court through the District & Sessions Judge, Gurgaon, conveying adverse remarks in his Annual Confidential Report for the year 1997-98 recorded by the Hon'ble Administrative Judge wherein (i) petitioner's knowledge of law and procedure was observed "not upto mark"; (ii) he was found to be "neither industrious nor prompt"; (iii) his method of writing judgements was assessed as "defective and not as per law"; (iv) petitioner's capability of supervision and control was found "not upto mark"; (v) he was assessed to be "not courteous towards his superiors, subordinates and colleagues"; (vi) his behavior with the members of the Bar was "not good"; and (vii) in the final grading, he was assessed an Officer of 'C' category i.e. 'Integrity Doubtful'. The ACR pertained to the period from 02.06.1997 till 31.03.1998 when the petitioner was posted at Gurgaon firstly as a Civil Judge (Sr.Divn.) and then as Additional District & Sessions Judge.

(4) The petitioner on receipt of the adverse remarks sought some information vide a representation dated 24.10.1998 (Annexure P7) but the same was declined by the Administrative Judge vide memo dated 06.11.1998 (Annexure P8). The petitioner thereafter submitted a detailed representation against the above-stated adverse remarks on 27.11.1998 (Annexure P11).

(5) Meanwhile the Administrative Judge who had recorded the adverse remarks against the petitioner was transferred from the Punjab & Haryana High Court to the High Court of Jammu & Kashmir on 02.12.2001.

(6) The representation dated 27.11.1998 submitted by the petitioner against the adverse remarks was put up before Hon'ble the then Chief Justice on 08.01.1999, who finally turned the same down, vide memo dated 10.02.2004 (Annexure P12).

(7) The petitioner thereafter made two more detailed representations dated 13.03.2004 and 15.02.2005 (Annexures P13 & P14) assailing the adverse remarks in his ACR (1997-98) but those representations along with his first representation also did not find favour with the Full Court as was conveyed to the petitioner vide memo dated 30.07.2005 (Annexure P15).

(8) The petitioner's case for retention in service beyond the age of 50 years was also considered in the same Full Court and on consideration of his entire service record, it was resolved not to grant any extension in

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service to him. The High Court accordingly made recommendations and pursuant thereto, the State Government vide order dated 10.08.2005 (Annexure P18) passed in exercise of its powers under Rule 3.26(d) of the Punjab Civil Services Rules (Vol-I Part-I) read with Rule 5.32 of the Punjab Civil Services Rules (Vol-II) as applicable to Haryana, retired the petitioner from service.

(9) The aggrieved petitioner firstly approached the Hon'ble Supreme Court through Writ Petition (Civil) No.494 of 2005 which was, as it appears from the order dated 03.10.2005 (Annexure P1) was not entertained and the petitioner was permitted to withdraw the same with liberty to approach the High Court under Article 226 of the Constitution. The petitioner thereafter filed the instant writ petition.

(10) Respondent No.1 – High Court has filed its written statement taking a preliminary objection that the Hon'ble Judge against whom allegations of *mala fide* are made, has not been impleaded as a party respondent hence such allegations cannot be gone into. It is explained as to why the petitioner was not granted extension of service, rather was recommended for retirement in 'public interest'. It is maintained that the Hon'ble Administrative Judge who supervised the petitioner's work at Gurgaon from 01.06.1997 till 09.10.1997 did not record any remarks but for remainder of the period, the next Administrative Judge gave the adverse remarks in question. It is explained that since the petitioner in his representation dated 27.11.1998 made allegations of bias and also attributed motive to the then Administrative Judge, the then Hon'ble the Chief Justice vide order dated 08.01.1999 referred the matter to Hon'ble Mr. Justice GS Singhvi (as His Lordship then was), who vide the following selfspeaking note dated 13.02.2001 found no substance in the petitioner's allegations:-

*"I have gone through the representation of Sh. Randhir Singh, the then Additional District & Sessions Judge, Gurgaon and the entire related record. In my opinion, the allegations made by the officer against the Hon'ble Inspecting Judge are totally unfounded. He appears to have concocted the story in order to create ground for seeking invalidation of remarks recorded by the Hon'ble Inspecting Judge."*

(11) Hon'ble the Chief Justice thereafter rejected the petitioner's representation and so did the Full Court. The High Court in its reply has also referred to certain complaints received against the petitioner which were later on filed.

(12) State of Haryana has also filed a short reply/affidavit explaining that the petitioner has been retired in 'public interest' exercising the powers conferred under the Rules and on the recommendations made by the High Court which are binding in nature.

(13) The petitioner has filed replications to the written statements of High Court as well as the State Government, mainly reiterating the allegations of hostility against the then Administrative Judge. The incidents of the petitioner's alleged refusal to oblige the then Administrative Judge and inviting the latter's wrath have also been highlighted. The adverse remarks given to some other Judicial Officers by the same Hon'ble Judge allegedly in a vindictive manner are also pressed into aid. The minute details suggesting as if the remarks in various columns were contrary to the record have also been furnished.

(14) The High Court has also placed on record its rejoinder to the petitioner's replication distinguishing the cases of other Officers referred to by the petitioner, to which the petitioner has submitted yet another reply.

(15) We have heard counsel for the parties and gone through the record including the summary of Annual Confidential Reports of the petitioner and the 'agenda note' put up before the Full Court which led to the rejection of the petitioner's representations and recommendations for his retirement from service.

(16) It was vehemently argued on behalf of the petitioner that :-

- i. the adverse report for the year 1997-98 is tainted with *mala fide* exercise of powers by the then Administrative Judge;
- ii. the then Administrative Judge had an axe to grind against the petitioner as is established from several instances of improper favours unsuccessfully sought from the petitioner;

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- iii. the petitioner possesses unblemished record throughout his service career except the single report under challenge;
- iv. his work, conduct and integrity have been found free from doubt consistently before and after 1997-98;
- v. compulsory retirement at the age of 50 on the basis of solitary adverse report cannot be termed in 'public interest';
- vi. the petitioner has not been given a fair trial and no material information was supplied to him by the High Court to justify the adverse comments;
- vii. the remarks like 'doubtful integrity' cannot be recorded in vacuum or mechanically unless there are proofs to substantiate such remarks, which is conspicuously missing in the instant case.

(17) These contentions were given boost with the aid of case law reported as (i) *RS Dhull versus State of Haryana and others (1)*, (ii) *Avtar Singh versus State of Haryana and others (2)*, (iii) *Amrik Singh versus State of Haryana (3)*, (iv) *Prabh Dayal versus Haryana State and others (4)*, (v) *SK Bansal versus Rajasthan High Court (5)*, (vi) *Dr. Sant Ram Kapoor versus Punjab and Haryana High Court, Chandigarh and another (CWP No.1744 of 2004)* decided on 06.04.2011; (vii) *State of MP versus Laxmi Chand Awadhiya and another (6)*, (viii) *S.Partap Singh versus State of Punjab (7)*, (ix) *Ishwar Chand Jain versus High Court of Punjab and Haryana and another (8)*, (x) *Delhi Transport Corporation versus DTC Mazdoor Congress and others (9)*, (xi) *Baikuntha Nath Das and another versus Chief District Medical Officer, Baripada and another (10)*,

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- (1) 1991(2) SLR 570 (P&H)
  - (2) 1995(3) SCT 214 (P&H)
  - (3) 1995 (4) RSJ 269 (P&H)
  - (4) 2002(2) SLR 307 (P&H)
  - (5) 2002(7) SLR 667 (Raj)
  - (6) 2003(5) SLR 281
  - (7) AIR 1964 SC 72
  - (8) (1988) 3 SCC 370
  - (9) AIR 1991 SC 101
  - (10) AIR 1992 SC 1020

(xii) *UP Jal Nigam and others versus Prabhat Chandra Jain (11)*, (xiii) *Sukhdeo versus Commissioner, Amravati Division, Amravati and another (12)*, (xiv) *State of UP versus Yamuna Shanker Misra and another (13)*, (xv) *RC Sood v. High Court of Judicature at Rajasthan and others (14)*, (xvi) *High Court of Punjab & Haryana versus Ishwar Chand Jain and another (15)*, (xvii) *Madan Mohan Choudhary versus State of Bihar and others (16)*, (xviii) *Sarnam Singh versus High Court of Judicature at Allahabad (17)*, (xix) *Sheo Parkash Mishra versus High Court of Judicature at Allahabad (18)*.

(18) Learned counsel for the High Court and State of Haryana, on the other hand, urged that :-

- i. the petitioner cannot be permitted to allege *mala fide* or bias against the then Administrative Judge who has not been impleaded as a party respondent;
- ii. petitioner's representations against the adverse remarks were independently considered by the then Hon'ble Chief Justice and the Full Court leaving no room for the bias or prejudice as alleged by him;
- iii. the Hon'ble Administrative Judge who gave the adverse remarks did not participate in the process at (ii) above for the reasons like his transfer;
- iv. the allegations of bias or motive behind adverse remarks, were specifically referred to and examined by an Hon'ble senior Judge who found no substance in those allegations which were held to be afterthought;

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(11) (1996) 2 SCC 363

(12) (1996) 5 SCC 103

(13) (1997) 4 SCC 7

(14) (1998) 5 SCC 493

(15) (1994) 4 SCC 579

(16) AIR 1999 SC 1018

(17) 1999 (2) SCT 380

(18) 1999 (3) AWC 2026

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v. subsequent good reports earned by the petitioner did not remove the sting of the previous adverse remarks;

vi. The order of compulsory retirement has been passed in 'public interest' and not as a measure of punishment;

vii. The standards and parameters of propriety, ethical values, honesty and morality in the case of Judicial Services, must be kept and observed at a very high pedestal to maintain public confidence in justice delivery system.

(19) The respondents have also buttressed their contentions on the strength of (i) *Kamal Prasad (Hav.) versus Union of India (19)*, (ii) *Jarnail Singh versus State of Haryana (20)*, (iii) *LPS Tomar versus State of Haryana (21)*, (iv) *Kewal Krishan Lomas versus State of Punjab and other, (CWP No.3704 of 2005)* decided on 13.01.2009; (P&H); (v) *Union of India and others versus EG Nambudiri (22)*, (vi) *Union of India versus Ajoy Kumar Patnaik (23)*, (vii) *State of Orissa and others versus Ram Chandra Das (24)*, (viii) *Jugal Chandra Saikia versus State of Assam and another (25)*, (ix) *Pyare Mohan Lal versus State of Jharkhand and others (26)*, (x) *Rajendra Singh Verma (Dead) through LRs v. Lt. Governor of NCT of Delhi and Another (27)*.

(20) There can indeed be no quarrel nor it could be seriously disputed on behalf of the petitioner that the allegations of personal bias or *mala fide* exercise or misuse of power cannot be looked into by the Court nor can it express its views in relation thereto without an opportunity to controvert the same to the person against whom such allegations are made. It is also one of the facets of the principle of *audi alteram partem* that no one should be condemned unheard. It has been held in a catena of decisions that allegations of personal *mala fides* cannot be entertained

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(19) 2007(1) RSJ 127 (Delhi)

(20) 2007(2) RSJ 412 (P&H)

(21) 2007(3) RSJ 84 (P&H)

(22) 1991(2) SLR 675

(23) (1995) 6 SCC 442

(24) AIR 1996 SC 2436

(25) (2003) 4 SCC 59

(26) 2011(1) RSJ 82

(27) (2011) 10 SCC 1



unless the person against whom such allegations are made is impleaded *eo nomine* [Ref. (i) *State of Punjab and others versus Chaman Lal Goyal* (28), (ii) *Federation of Rly. Officers Assn. versus Union of India* (29), (iii) *Medley Minerals India Ltd versus State of Orissa* (30), (iv) *Purushottam Kumar Jha versus State of Jharkhand* (31).

(21) We, therefore, decline to consider or express our views on the allegations of *animus* made by the petitioner against the then Administrative Judge whom he has not chosen to implead as a party respondent despite an objection to this effect taken by the first respondent in its reply/affidavit.

(22) The sweep of the adverse remarks recorded against the petitioner cannot be otherwise neutralized as the record bears out that on receipt of the petitioner's representation with allegations made against the Administrative Judge, Hon'ble the then Chief Justice referred the matter to another Hon'ble senior Judge who considered the petitioner's allegations independently and found no substance in the same. A categorical observation was made that the allegations were an afterthought to wriggle out of the consequences of an adverse report. In the matter of Annual Confidential Reports though the competent authority is not obligated to hold a fact-finding enquiry on the parity of quasijudicial proceedings, nevertheless and in all fairness, the petitioner's allegations were got examined following the principle of *nemo in propria causa judex, esse debet* (No one ought to be a judge in his own cause) but were found to be baseless. His representations were considered and rejected by the Chief Justice himself. The Full Court also considered the petitioner's explanation in the absence of the Administrative Judge who had recorded the adverse remarks though the presence of the Judge who gives remarks seldom makes an impact on the decision-making process founded upon the collective wisdom.

(23) The petitioner's contention that the remarks of 'doubtful integrity' must always be supported with cogent material, too has no factual or legal basis. We say so for the reason that an Administrative Judge in his constant endeavour to assess the overall reputation of a Judicial Officer interacts with

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(28) (1995) 2 SCC 570

(29) (2003) 4 SCC 289

(30) (2004) 12 SCC 390

(31) (2006) 9 SCC 458

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the litigant public, members of the Bar, other respectables besides a sound briefing from the peers. It is not necessary that the Judicial Officer would always leave a trail of evidence to be caught by the Administrative Judge. The formation of opinion is an onerous and pious duty which is performed on solemn considerations. While the material may remove all sorts of doubts but there is no legal impediment against expression of views on the 'integrity' or 'honesty' of an Officer even in the absence of supporting proof. A *bona fide* expression of opinion by an Administrative Judge which has withstood the test of Full Court would call for interference in the exercise of power of judicial review only if the formation of such opinion rests upon totally perverse considerations and its sustenance shall cause grave injustice to the Officer. The petitioner has miserably failed to satisfy this twin test as his allegations of bias or malicious persecution have gone unsubstantiated. No case to interfere with the adverse remarks for the year 1997-98 is thus made out.

(24) Adverting to the order of compulsory retirement, it is well-settled that such an action is neither a punishment nor does it imply stigma unless passed to impose punishment for a specific misconduct [Ref. *Pyare Mohan Lal* (supra)]. In fact in *Union of India v. Ajoy Kumar Patnaik's* case (supra), the Hon'ble Supreme Court upheld the order of compulsory retirement even in a case where the nature of allegations amounted to misconduct amenable to disciplinary proceedings. The power of the High Court under Article 235 of the Constitution to discipline the black sheep or weed out deadwood is well recognized in the interest of judicial services which are incomparable with executive assignments. The peculiar nature of duties, namely, to impart justice does not permit the High Court for continuing in service the persons of doubtful integrity as has been elaborately ruled by the Apex Court in a recent decision in *Rajendra Singh Verma's* case (supra).

(25) The plea that no order of compulsory retirement in 'public interest' could be passed on the basis of a single adverse report, is also totally misplaced. The sting of adverse remarks against 'integrity' is not removed *ipso facto* by the subsequent unblemished report(s) and while considering the issue of retention in service after a particular age or length of service, the competent authority is well within its right to consider and rely upon such adverse material against the officer.

(26) Similarly, the Division Bench decision in *Dr. Sant Ram Kapoor's* case (*supra*) also does not help the petitioner for the reason that in the cited decision there was not even a whisper against the integrity of the officer and this fact was duly noticed by the Bench in its order dated 06.04.2011.

(27) In the light of the above discussion and for the reasons stated above we do not find any merit in this writ petition which is accordingly dismissed however without any order as to costs.

(28) *Dasti.*