

Before I. S. Tiwana, J.

SAT PAL SINGH,—*Petitioner.*

versus

DEPUTY INSPECTOR GENERAL OF POLICE AND ANOTHER,
Respondents.

Civil Writ Petition No. 2932 of 1984.

February 1, 1985.

Punjab Civil Services (Premature Retirement) Rules, 1975—Rule 3(1)(a)—Adverse entries recorded in confidential record of Government employee—Such employee subsequently allowed to cross efficiency bar—Adverse entries prior to efficiency bar—Whether deemed to have been wiped out—Such entries—Whether can be used for purposes of pre-mature retirement—Entire service record of employee—Whether to be considered while ordering pre-mature retirement.

Held, that the crossing of efficiency bar is not always relevant in the matter of premature retirement as the entire service record of a Government servant has to be scanned and reviewed for deciding whether the official should be allowed or not to continue beyond the age at which the rules permit him to be retired. It is not an entry here or an entry there which has to be taken into consideration by the Government, but the overall picture of the officer during the long years of service from the point of view of achieving higher standard of efficiency and dedication. In this view of the matter the adverse entries prior to the crossing of efficiency bar are not washed out and can be looked into to form the basis of an order of pre-mature retirement under Rule 3(1)(a) of the Punjab Civil Services (Premature retirement) Rules 1975.

(Paras 4 and 5)

Civil Writ Petition under Article 226 of the Constitution of India praying that:—

- (a) call for the records of the case and after perusal of the same issue a Writ in the nature of certiorari quashing Annexures P/1, and P/3,
- (b) to issue any other Writ, Order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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- (c) *service of notice of motion on the respondents be dispensed with as the matter is urgent one,*
- (d) *filing of certified copies of Annexure P/1 to P/8 be exempted,*
- (e) *costs of the Writ Petition filed by the petitioner may be awarded to him,*

It is further prayed that during the pendency of the Writ Petition, the operation of the impugned order Annexure P/1 may be stayed and the public interest allegedly used by the respondent to victimise the petitioner may be looked into.

H. S. Mann, Advocate, for the Petitioner.

H. S. Bedi, D.A.G. Punjab, for the Respondent.

JUDGMENT

I. S. Tiwana, J. (oral)

(1) The petitioner who was employed as an Assistant Sub Inspector of Police in the Punjab Police Force, has been retired from that service in pursuance of a notice issued to him on July 3, 1984 (Annexure P. 1), conveying that he would stand retired from service with effect from October 3, 1984. This notice was served on him in exercise of powers under Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (for short, the Rules). The petitioner impugns this retirement primarily on the ground that it is wholly arbitrary and is not warranted by his service record.

(2) In order to support the above noted stand, his learned counsel places primary reliance on an order dated February 18, 1984 (Annexure P. 2) passed by the Superintendent of Police, Rupar, allowing him to cross the efficiency bar with effect from January 1, 1984, raising his pay from Rs. 700 to Rs. 725 per month. The argument of the learned counsel in a nut shell is that in the wake of this order all earlier entries in his service record which may be adverse to him, stand washed off and could not be taken into consideration for purposes of his premature retirement. It is, however, conceded in the petition itself that this order (Annexure P. 2), allowing the petitioner to cross the efficiency bar, was

superseded by another order dated March 14, 1984 (Annexure P. 3) passed by the same authority, i.e., Superintendent of Police, Rupar. This latter order says that the order Annexure P. 2 is 'cancelled on administrative grounds'. The petitioner impugns this cancellation also on the short ground that it has been ordered without affording any opportunity of hearing to him and thus it is violative of principles of nature justice. It is further maintained in the petition that this order (Annexure P. 3) has been passed by the Superintendent of Police under the pressure of the Deputy Inspector General of Police of the range, who, according to him is annoyed with him on account of his levelling certain allegations in a civil suit which is pending between the petitioner and the State Government. It is again the admitted case in the petition that subsequent to the passing of the order Annexure P. 3 the petitioner was served with a show cause notice dated March 21, 1984 (Annexure P.4), telling him that in the light of his service record, he was not considered fit to cross the efficiency bar and the Superintendent of police was tentatively of the view that he should have been withheld at the efficiency bar. The petitioner made a representation dated March 30, 1984 (Annexure P. 5) in response to this notice but the same was dismissed on April 7, 1984,—*vide* order Annexure p. 6. He preferred an appeal against this order to the Deputy Inspector General of police, Patiala, but that too has been dismissed on July 18, 1984, i.e., subsequent to the filing of the present writ petition.

(3) As opposed to the above, the case of the respondent authorities is that the service record of the petitioner did not warrant the passing of the order Annexure P. 2, allowing him to cross the efficiency bar and since at the time of the passing of that order his service record only upto the year 1979 was placed before the competent authority, later it was found justifiable to cancel that order (Annexure P. 2), in the light of his service record from 1979 to January 1, 1984, i.e., the date with effect from which the petitioner was allowed to cross the efficiency bar. But since the order Annexure P. 3 cancelling the order Annexure P. 2 was passed without affording any opportunity to the petitioner, the authority concerned realising its mistake, issued a show cause notice (Annexure P. 4) asking the petitioner as to why order Annexure P. 2 be not cancelled. Besides this it is maintained in the written statement filed by the Superintendent of Police, Rupar, that the service record of the petitioner does not justify his retention in service and he genuinely and in a *bona fide* manner formed the opinion that it

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was in the public interest to retire the petitioner in exercise of his powers under Rule 3(1)(a) of the Rules. The allegation of bias attributed to the Deputy Inspector General has also been denied with the submission that no doubt a suit filed by the petitioner with regard to the determination of his seniority was pending in the Court of Additional Senior Sub Judge, Patiala in which the allegation of the petitioner that he had not been considered for purposes of promotion had been controverted by the Deputy Inspector General by filing an affidavit that he was so considered, yet that averment made by the petitioner in that suit had not in any way prejudiced or annoyed the Deputy Inspector General against him. It deserves to be noticed here that the Deputy Inspector General, who filed the affidavit, has not been arrayed as a party in this petition.

(4) Having heard the learned counsel for the parties at some length, I hardly find any scope for interference with the impugned order of retirement, Annexure P. 1. It is no doubt true that the petitioner had been allowed to cross the efficiency bar on February 18, 1984 with effect from January 1, 1984,—*vide* order Annexure P. 2, but that order, as already pointed out, stands cancelled,—*vide* order Annexure P. 3. The submission of the learned counsel for the petitioner that this order of cancellation, Annexure P. 3 cannot be sustained or acted upon as it had been passed without affording a prior hearing to the petitioner, might have deserved some credence or even acceptance had all the facts which have been pointed out not taken place in the case in hand. The Superintendent of Police realising his mistake in passing the order Annexure P. 3 without affording an opportunity of hearing to the petitioner has rectified the same by issuing a show cause notice in the form of Annexure P. 4 conveying to the petitioner that he was tentatively of the view to cancel the order Annexure P. 2 in the light of his service record and he could show cause against the same. As already pointed out, the representation filed by the petitioner in response to this notice was dismissed by the said authority on April 7, 1984,—*vide* Annexure P. 6 and the appeal against the said order too has been dismissed by the Deputy Inspector General on July 18, 1984. Be that as it may, I do not feel impressed by the argument of the learned counsel for the petitioner that merely by virtue of the allowing of the petitioner to cross the efficiency bar,—*vide* order Annexure P. 2, his service record prior to January 1, 1984, i.e., the date with effect from which he was allowed to cross the efficiency

bar, could not be looked into or form the basis of the order of premature retirement. This aspect of the matter has been considered threadbare by a Division Bench of this Court in *Gurdial Singh, Assistant Sub Inspector of Police v. The State of Punjab and others*, (1) and this is what has been ruled in this regard:—

“The crossing of efficiency bar is not always relevant in the matter of premature retirement as the entire service record of a Government servant has to be scanned and reviewed for deciding whether the official should be allowed or not to continue beyond the age at which the rules permit him to be retired. In support of his contention that the crossing of efficiency bar washed out all the previous adverse entries in this personal file, counsel relied on the judgment of the Supreme Court in the *State of Punjab v. Dewan Chuni Lal*, (2) judgment of the Madras High Court in *P. Shankar Rao v. The Government of India and another* (3), the judgment of a learned Single Judge of this Court in *Shadi Lal v. The Deputy Commissioner, Gurgaon and others*, (4) and *Shri Tarlok Singh Pat-Patia v. The State of Punjab and others* (5). All that was held in *Dewan Chuni Lal's* case (supra) was that reports earlier to the crossing of efficiency bar should not have been considered at all in the departmental inquiry against him resulting in his dismissal. That was not a case of premature retirement. The judgment of Madras High Court in *P. Shankar Rao's* case (supra) does not at all help the petitioner. It was firstly held in that case that when an order of compulsory retirement does not contain any stigma it cannot be considered as a punishment, and secondly that an order of compulsory retirement does not result in forfeiture of the benefits which the officer has already earned. It was further held that the only circumstance in which a Court may be justified to set aside the decision of compulsory retirement is where the grounds on which the retirement is ordered are non-existent or invalid. The observation in the judgment of the Madras High Court about whatever had been brought up against P. Shankar

(1) 1976(1) S.L.R. 78.

(2) 1970 S.L.R. 375.

(3) 1971(1) S.L.R. 2.

(4) 1974(1) S.L.R. 217.

(5) 1974(1) S.L.R. 728.

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Rao in the inquiry against him would no longer be operative in law as a Division Bench of the High Court had found the material to be non-existent cannot help the petitioners as no such finding has been recorded by any Court in any of the cases before us. In *Shadi Lal's case* (supra) decided by Tuli, J., the crossing of the efficiency bar was held to condone all previous adverse entries at the time of consideration of the officer for promotion. That was also not a case of retirement, but was one of promotion. The ratio of the judgment of the same learned Judge in *Tarlok Singh Pat-Patia's case* (supra), which relates to compulsory retirement, is against the petitioner. It was held therein that if after an inquiry an official is reinstated and given increments and also promotion, the adverse reports earned by him earlier cannot be used for his compulsory retirement."

Shadi Lal's case (supra) has later specifically been overruled by a Division Bench of this Court in *Ran Singh Kalson, Deputy Superintendent of Police v. The State of Haryana and others*, (6).

(5) In order to sustain his above noted stand and to add a second string to his bow, the learned counsel for the petitioner then relies on certain observations made by their Lordships of the Supreme Court in *Swami Saran Saksena v. The State of U.P.* (7) and wants to infer therefrom that once an officer is found worthy of being permitted to cross the efficiency bar a few months earlier to the order of his premature retirement, the action of the Government or the competent authority is not to be styled anything else than arbitrary. As a matter of fact, the learned counsel in this regard makes a pointed reference to paragraph 3 of the judgment which reads as follows:—

"Several contentions have been raised in this appeal by the appellant, who appears in person. In our judgment, one of them suffices to dispose of the appeal. The contention which has found favour with us is that on a perusal of the material on the record and having regard to the entries in the personal file and character roll of the appellant, it is not possible reasonably to come to the conclusion that the compulsory retirement of the appellant

(6) 1978(1) S.L.R. 450.

(7) 1979(2) S.L.R. 781.

was called for. This conclusion follows inevitably from the particular circumstance, among others, that the appellant was found worthy of being permitted to cross the second Efficiency Bar only a few months before. Ordinarily, the Court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a Government servant. And we would have been even more reluctant to reach the conclusion we have, when the impugned order of compulsory retirement was made on the recommendation of the High Court itself. But on the material before us 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 the 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. The appellant will be deemed to have continued in service on the date of the impugned order."

A bare perusal of this paragraph brings it out clearly that it was not solely the factum of permitting the appellant in that case to cross the efficiency bar which led to the decision of the case in his favour, but it was the absence of the material before their Lordships which could justify or reconcile the contradiction in the order of the authority concerned in allowing the appellant to cross the efficiency bar and then to retire him prematurely only within a few months of the earlier order, that weighed with their Lordships. This aspect of the matter is made abundantly clear by the following sentence in the above quote:—

"The contention which has found favour with us is that on a perusal of the material on the record and having regard to the entries in the personal file and character roll of the appellant, it is not possible reasonably to come to the con-

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clusion that the compulsory retirement of the appellant was called for."

and further:

"There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired."

for the above noted conclusion of mine I also seek support from the following material observation made by their Lordships of the Supreme Court in a case, i.e., *Union of India v. M. E. Reddy and another*, (8) relating to premature retirement:—

"It is not an entry here or an entry there which has to be taken into consideration by the Government but the overall picture of the officer during the long years of his service that he puts in has to be considered from the point of view of achieving higher standard of efficiency and dedication so as to be retired even after the officer has put in the requisite number of years of service."

(6) Finding it difficult to overcome the weighty observations referred to above from different precedents, the learned counsel seeks to reinforce his contention with certain observations made in the Government instructions contained in the Punjab Government Circular Letter No. 2764-2SII-74 dated April, 1974, wherein it has been said in the light of the above noted judgments that "if an employee is allowed to cross the efficiency bar then while considering the cases of promotion, punishment or compulsory retirement, etc., it would not be legally tenable to again rely upon the previous adverse entries in the A.C. Rs. in the context of which the matter was considered and the efficiency bar was allowed to be crossed." Firstly, I am of the view that through these instructions the Government had only sought to convey the ratio or the implications of the judgments referred to above, i.e., *Dewan Chuni Lal's* case (supra) and *Shadi Lal's* case (supra) and thus the interpretation attached by the Government to these judgments has hardly any weight so far as this Court is concerned and secondly, I find that the Government has itself chosen to modify these instructions in the light of

(8) 1979(2) S.L.R. 792.

the above noted judgment in *Gurdial Singh's* case (supra), (the relevant part of which has already been quoted above) by later instructions contained in its Circular Letter No. (6660)7/778-2PP/33043 dated October 20, 1978, conveying to all concerned that:—

“Whereas in the matter of punishing an employee, the crossing of efficiency bar gives a clear bill to him upto that date, adverse entries prior to the date of crossing of efficiency bar can be taken into consideration for judging his suitability for promotion to a higher post and also for judging his suitability for his retention in or premature retirement from service.”

Thus this argument of the learned counsel too falls to the ground. He then to clutch at a straw, urges that subsequent to these instructions the Inspector General of Police has issued a circular on February 11, 1982, to all Heads of Police Offices in Punjab, conveying that “in some cases the officers concerned were allowed to cross the efficiency bar or were confirmed in that rank, but subsequently they were retired prematurely taking into account their previous adverse reports. Premature retirement in such cases was obviously wrong especially when such officers had been considered fit for crossing the efficiency bar or for confirmation in that rank.” This letter, a copy of which has been produced before me by the learned counsel for the petitioner, appears to have been issued in the wake of the Government instructions dated June 22, 1981 which read as follows:—

“*Subject* : Punjab Civil Services (Premature Retirement) Rules, 1975—Weeding out corrupt, dishonest or inefficient officers/officials from services.

I am directed to invite your attention to Punjab Government Circular letter No. 6520-2SII-75/38581, dated the 26th September, 1975 relating to the weeding out of corrupt, dishonest or inefficient officers/officials from services under the Punjab Civil Services (Premature Retirement) Rules, 1975, and to say that Government have reviewed the matter in the light of the revised policy of the Government of India and other administrative requirements. Government have decided to lay down the following guidelines in the matter:—

- (i) Although to the entire service record of an employee has to be considered, premature retirement should not

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be ordered if during the last 5 years the work and conduct of the employee has been good or better than that.

- (ii) Ordinarily no retirement should be ordered within a period of one year preceding the date of superannuation of the Government employee.
- (iii) If an adverse entry relating to integrity exists in the confidential reports during the 10 years preceding the review, or if after its recording there has been no change in the class, status or the post of the officer that single entry should be considered sufficient for ordering premature retirement.
- (iv) If the adverse report on integrity relates to the distant past or is more than 10 years old, the subsequent record of the employee should be scrutinised carefully. If the subsequent reports vouchsafe the integrity of the employee in unambiguous term, the inference is that he has improved his conduct and it should not be necessary to order his premature retirement. A similar view can be taken if an employee has been promoted after the recording of the adverse remarks.

2. I am to request that the above guidelines may please be brought to the notice of all concerned officers/officials for information and guidance."

A bare perusal of these instructions clearly indicates that the implication of the same is not what the Director General-cum-Inspector General has sought to convey on the subject,—*vide* his circular dated February 11, 1982, a reference to which has already been made. Further I am of the view that the Director General-cum-Inspector General of Police has no jurisdiction to lay down any guidelines or the conditions concerning the premature retirement of civil servants under the Rules. The question of jurisdiction to issue instructions has been considered by a Full Bench of this Court in *Sardul Singh Head Constable v. Inspector General of Police, Punjab and others*, (9) and the learned Judges of the Bench opined:—

"We are also of the opinion that the instructions issued in the memo dated September 16, 1933, and the memo dated

August 25, 1964, cannot be enforced as supplemental to the Police Rules because they were not issued by the State Government which alone had the right to make rules under the Police Act 5 of 1861. According to their Lordships of the Supreme Court, in *Sant Ram Sharma v. State of Rajasthan*, (10) the supplemental instructions can only be issued by the State Government which is competent to make the rules provided they are not inconsistent with the rules already framed."

In the light of this authoritative pronouncement it is apparent that it is only the State Government which can lay down the guidelines for the premature retirement of its employees or can supplement the rules on the subject, i.e., Rules in the instant case. The submission of Mr. Mann, learned counsel for the petitioner that the Inspector General of Police is competent to frame any such rules under section 12 of the Police Act, has simply to be stated to be rejected as I find that this section only entitles the Inspector General of Police to frame rules which relate to organisation, classification and distribution of the police force or other ancillary matters and not to service conditions more particularly dealing with the question of premature retirement of a police official.

(7) Besides all this, Mr. Bedi, learned Deputy Advocate General, appearing for the respondent authorities has produced before me the entire service record of the petitioner wherefrom I find that subsequent to the year 1979—upto which year the said record had been considered by the Superintendent of police while allowing the petitioner to cross the efficiency bar,—*vide* order Annexure P. 2—more than one entry doubting petitioner's honesty and integrity has been recorded. In the face of that I do not feel the necessity of making a detailed reference to all the entries made in his service record as to my mind the existence of even one entry doubting the integrity of an employee during the last ten years, as per the Government instructions referred to above, can well form the basis for his premature retirement. Thus I find no infirmity in ordering the retirement of the petitioner.

(8) In the light of the discussion above, this petition fails and is dismissed but with no order as to costs.

H.S.B.

(10) A.I.R. 1967 S.C. 1910.