

Before Ranjit Singh, J

DEWAN CHAND,—*Petitioner*

versus

PUNJAB AND HARYANA HIGH COURT AND OTHERS,—
Respondents

C.W.P. No. 4203 of 2004

27th October, 2009

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Volume I—Rl.3.26—Punjab Civil Services (Premature Retirement) Rules, 1975—Rl.3—Request by a Judicial Officer made for voluntary retirement by giving 3 months notice—A complaint against petitioner pending at time of submission of request—Full Court considering request for voluntary retirement along with matter of retention of service beyond 55 years—Request of petitioner declined—Order compulsorily retiring from judicial service passed in public interest—Adverse remarks doubting integrity of petitioner—On representation, High Court upgrading adverse report ‘C’ (below average) to ‘B’ (Good)—Petitioner’s detailed representation rejected without referring it to Full Court—Remarks of doubtful integrity recorded without any material thus, based on hunch—Preponderance of probability on touch stone for reasonable man to entertain doubt regarding that possibility is not satisfied—Petition allowed, order of compulsory retirement set aside and prayer of petitioner for voluntary retirement allowed.

Held, that I have not been able to find any material which would go to support the remarks endorsed in the annual confidential report of the petitioner. No source, details of the cases, names of the persons are forthcoming from whom the petitioner had allegedly taken money while deciding the cases. Judicial Officers are to perform very pious duties. To condemn them as dishonest, there has to be a material, some material which would provide basis of endorsing such remarks. No doubt, the judicial Officers must be seen to be above suspicion. Even a small or a lurking suspicion may be enough but it has to be on the basis of some material. It cannot be on a hunch. Judicial Officer has to be honest, is to be seen as honest and he has to have it in him as a need and a requirement. If there are reports about the doubt of integrity of an officer, the same must not

only get reflected in the reports but such officer should not have any place in the judicial family and must be cut off with speed. Honesty is not a virtue for a Judicial Officer. It is not a credited qualification that he can claim or flout but is a need, a necessity and requirement for him and the service. That being the high pulpit where the judicial Officers stand, their assessment about integrity cannot or should not be made lightly. It is to be with extra care and caution as is the requirement in case of any other employee while being remarked about honesty, one may look for material in support so that they are treated in a fair manner. When such high standard of integrity and honesty is expected from a Judicial Officer then equally high degree of caution and care may have to be exercised while assessing the Judicial Officer in such qualities.

(Para 22)

Further held, that want of material is almost equivalent to next situation that from the available materials, no reasonable man would reach such a conclusion. While evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim that no one becomes dishonest all of sudden is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. Though the authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held but to dunk an officer into the puddle of doubtful integrity, it is not enough that the doubt fringes on a mere hunch.

(Para 22)

Further held, that it is rather very difficult to uphold the remarks of doubtful integrity recorded in the annual confidential report of the officer. These remarks are recorded without any material and thus, are based on hunch. If there had been reports, the same should have been placed or at least shown to the Court, The name of the counsel through whom this money had passed could easily be disclosed. The preponderance of probability on the touch stone for the reasonable man to entertain doubt regarding that possibility is not satisfied.

(Para 23)

R.S. Bains, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana *for respondent Nos. 1 and 2.*

Shailendra Jain, Advocate, *for respondent No. 3.*

Kamal Sehgal, Advocate, *for respondent No. 4.*

RANJIT SINGH, J.

(1) Judicial Officer retired compulsorily has filed this writ petition to pray for a very limited relief. He pleads that his request for voluntary retirement with effect from 29th August, 2003, as made by him, be accepted instead of retiring him compulsorily with effect from 2nd September, 2003 and the order of compulsory retirement be withdrawn. As per counsel for the petitioner, this order would rather be beneficial to the State inasmuch as the petitioner would then be required to deposit a sum of Rs. 64,500 which will be an amount payable on account of shortfall in the notice period of three months issued by the petitioner and the State will also be able to get back a sum of Rs. 71,975 paid to the petitioner in lieu of notice while directing his compulsory retirement.

(2) The facts, leading to filing of the petition and the prayer as made, noticed in brief are that the petitioner at the relevant time was working as Additional District and Sessions Judge in the State of Haryana. He had initially joined the service as Subordinate Judicial Officer on 14th May, 1981 and had completed 22 years of judicial service, when he made a request for voluntary retirement through his letter dated 25th July, 2003. The petitioner had prayed for his retirement with effect from 10th November, 2003, thus giving notice for three months. Later, the petitioner remitted an amount of Rs. 64,500 and prayed that he be voluntary retired with effect from 29th August, 2003. The petitioner had also undertaken to pay any additional amount, if due, on account of the shortfall of this notice period.

(3) The petitioner would plead that no disciplinary case was either pending or under contemplation, when he submitted his request for voluntary retirement. He would also plead that once he has submitted this request, then under law there may not be a need to accept the same and that he would be deemed to have been retired with effect from 29th August, 2003 i.e. the date when he remitted his salary in lieu of the period falling short of the three months' notice as required by the statute. Instead, an order dated 2nd September, 2003 was served on the petitioner alongwith a bank draft of Rs. 71,975 on 5th September, 2003. *Vide* this order, the petitioner was compulsorily retired from his judicial service. In this background, the petitioner has made a prayer for permitting him to voluntary retire from service with effect from 29th August, 2003 instead of giving effect to the

order of compulsory retirement with effect from 2nd September, 2003. As per the petitioner, this will be an advantageous to the State as he would not only then have to refund the amount of Rs. 71,975 paid to him by the Government but he would also be required to deposit a sum of Rs. 64,500 as was sent by him while forwarding his request for voluntary retirement.

(4) Rule 3.26 of Punjab Civil Services Rules, Volume 1 (as applicable to Haryana), when read with note 8, requires three months salary and all allowances to be paid simultaneously with the retirement order. The petitioner thus, would contend that salary for there months' would work out to be Rs. 1,02,627 whereas he was only paid Rs. 71,975. So, the petitioner would plead violation of the statutory provisions contained in the Rules to make first ground of his challenge to the order of his compulsory retirement. The petitioner would further make a grievance that his request for voluntary retirement, by dispensing with the condition of three months' notice period, was never forwarded to the competent authority i.e. Governor of Haryana and the same was declined by a non-speaking order passed by respondent No. 1 (High Court). Though his request was declined but the amount of Rs. 64,500 sent by him alongwith request letter was not refunded.

(5) The record would show that the order of compulsory retirement of the petitioner is statedly passed in public interest. The petitioner would term this to be contrary to the public interest as such and also in violation of the Rules. He would refer to some of the instances where such request made by Judicial Officers was granted and in this regard would make reference to the cases of S/Sh. B.L. Gulati, S.D. Tyagi, P.L. Goyal and K.K. Chopra, all Members of Superior Judicial Service, who, while working as District/Additional District and Sessions Judge in Haryana served with a charge sheet, had sought voluntary retirement and their request in this regard was accepted. Not only this the enquires in progress/under contemplation were dropped in those cases where these were in progress. As per the petitioner, these officers were allowed to proceed on voluntary retirement. The petitioner may term his case to be on better footing than those as there was no disciplinary proceeding pending against him, when he made a request for voluntary retirement.

(6) The petitioner would then make reference to the procedure of assessing the Judicial Officer serving in the State. He would also make reference to his service record to say that he was allowed to cross the efficiency bar and was released selection grade and had been granted various promotions and ultimately was promoted as Additional District and Sessions Judge on due dates. Even while serving as Additional District and Sessions Judge, the petitioner claims to have earned 'good' and 'very good' annual confidential reports. He would then point out that throughout his service, he was conveyed two reports, which could be termed as adverse. First was at the very initial stage of his service career and pertains to the year 1981-82, when overall assessment was shown as 'C'. The second report concerning the remarks regarding doubtful integrity was issued in the year 2000-01, which ultimately has led to the impugned order being passed against the petitioner.

(7) The petitioner has then made a mention to the background for which he was so assessed in the report for the year 2000-2001. He would disclose that in the year 1988-89, he was posted as Chief Judicial Magistrate, Hisar, when respondent No. 3 was the District and Sessions Judge of the said Sessions Division. The work and conduct of the petitioner was graded as 'very good' by respondent No. 3 in the year 1988-89. In February 1999, respondent No. 3 was elevated as a Judge of this Court. Respondent No. 3 later became the Inspecting/Administrative Judge of the Hisar Sessions Division in the year 2000-2001, while petitioner was posted back as Additional District and Sessions Judge. The petitioner states that respondent No. 3 was annoyed with him due to an incident, which he has mentioned in detail in the writ petition. As per the petitioner, Shri Sandeep Garg, son of respondent No. 3, was running a factory in the name of 'Sandeep Ceramics', for which he had obtained a loan from Haryana Financial Corporation. To secure this loan, house of respondent No. 3 situated at Faridabad had been mortgaged. It is stated that son of respondent No. 3 could not pay the loan installments and, thus, a sum of Rs. 2.33 crores became payable and due from him. Respondent No. 3 asked the petitioner, he being related to the then Chief Minister, to get this loan amount waived off and to get his house released from the incumbrance. The petitioner avers that he was also asked to get him an industrial plot at Gurgaon allotted in the name of wife of respondent No. 3. The petitioner states that he could

not succeed in this regard and this made respondent No. 3 to get annoyed with him and ultimately assessed the petitioner in the impugned report in the manner it is done. Other averments are also made to the effect that respondent No. 3 had initiated this report late, though it was due on 31st May, 2001.

(8) In this report, the petitioner was assessed to be 'not industrious' or 'prompt in disposal of cases'. It was also commented that his judgments are good but they are motivated. The judgments were assessed in the 'C' category, which is below average. The petitioner was also termed as 'efficient' but 'dishonest'. He was also given remarks of 'Integrity doubtful' against the column of reputation for honesty and impartiality. In addition, it is mentioned that **“there are reports that he has taken money in large number of applications under NDPS Act through a particular lawyer and has been taking money in other civil and criminal matters”**. The net result of the report was 'C' (integrity doubtful).

(9) When these remarks were conveyed to the petitioner, he filed an interim representation. By then, respondent No. 3 had already retired. The representation filed by the petitioner was marked to another Judge of this Court. The request of the petitioner for personal hearing was statedly declined. However, on the basis of the representation made, adverse entry in Column No. 3, relating to quality of judgment and the order passed by the petitioner was upgraded to 'B' from 'C' but other prayers were rejected. This was communicated to the petitioner by respondent No. 1 through letter dated 15th March, 2003. After inspecting the records, the petitioner sent a final representation on 24th April, 2003, in which he had made some additional pleas. This again was rejected without granting any opportunity of personal hearing. The petitioner would term this order to be a non-speaking one. In addition, the petitioner pleads that the representation was not decided by the competent authority. As per the petitioner, the report of an officer is also required to be approved by the Full Court as per the practice and accordingly representation against the annual confidential report was also required to be placed before the Full Court. The representation filed by the petitioner, however, was not placed before the Full Court but was decided by the assigned Judge.

(10) The petitioner has made very serious challenge to the recording of adverse remarks and the manner in which these have been endorsed. As per the petitioner, no complaint had been received against him either by the High Court or by respondent No. 3. Before recording this adverse remarks, the petitioner was not apprised of any adverse material. He would, thus say that such serious adverse remarks, doubting his integrity, have been recorded without any material or basis. In this regard, the petitioner would urge that neither the name of the Advocate nor the details of the NDPS Cases, which the petitioner decided by taking money, has been mentioned anywhere. Rather, no mention has been made to any of the case, which the petitioner had decided allegedly by taking money. The petitioner would then make reference to his two reports recorded subsequently in the years 2000-01 and 2002-03 where he was graded as 'good' with B+ grade. On the basis of this report, where the petitioner was termed as 'doubtful integrity', he was compulsory retired with effect from 2nd September, 2003. The petitioner would term this to be a punishment, which is inflicted without holding any enquiry or without issuing any show cause notice. He would accordingly say that this order is arbitrary, discriminatory and violative of the Constitutional guarantees, besides being in violation of principles of natural justice. Here only, the petitioner would also refer that he was to complete 58 years of age on 12th August, 2006 but was retired compulsorily on 5th September, 2003, when he was 55 years of age. The petitioner would also urge that he had completed 22 years of qualifying service and, thus, has sought voluntary retirement with effect from 10th November, 2003. He had, in this regard, remitted a sum of Rs. 64,500 through his letter dated 29th August, 2003, seeking voluntary retirement with effect from 28th August, 2003. In response, he was served with this impugned order.

(11) Initially, the petitioner had filed a writ petition under Article 32 directly before Hon'ble Supreme Court. He was thereafter given liberty to file a writ petition before this Court. He accordingly withdrew his writ petition filed before the Supreme Court and filed the present writ petition.

(12) Replies on behalf of respondents, including High Court, have been filed. The averment that no disciplinary proceeding or complaint was pending against the petitioner when he submitted his request for voluntary retirement, is disputed. Reference is made to a complaint made by one Ram Singh, which was statedly pending. The details in regard to this complaint

were called for by the then Administrative Judge. The submission made by the petitioner that he, though retired with effect from 29th August, 2003 i.e. the date on which he had deposited the salary in lieu of the remaining period of notice is stated to be not tenable. It is then pointed out that request of the petitioner for voluntary retirement was duly considered by the Hon'ble Judges in the Full Court alongwith the matter of his retention in service beyond 55 years and it was decided to make recommendation to the Government for retiring him by giving pay and allowance by which the notice falls short of in public interest. Even judicial work was also withdrawn from the petitioner. Other contentions of the petitioner that his request was required to be forwarded to the Governor for acceptance is disputed. The cases of B.L. Gulati, S.D. Tyagi, P.L. Goyal and K.K. Chopra are stated to be distinguishable and not similar to the case of the petitioner. The remarks made by respondent No. 3 in regard to the work and conduct of the petitioner are justified as these were endorsed after observing the work, conduct and reputation of the petitioner. The averment in regard to the background of endorsing these remarks is rightly not replied by the official respondents as it would relate to respondent No. 3. However, while responding to the plea of the petitioner that his representation was not placed before the Full Court, it is stated that the same had been referred to the Full Court and was statedly pending consideration, when this reply was filed. Similarly, it is stated in the reply that the annual confidential report was also pending consideration of the Full Court and was to be recorded after his representation was decided by the Full Court.

(13) Respondent No. 3 has filed a separate short reply wherein he has justified the report recorded by him. As per respondent No. 3, the petitioner was retired compulsorily and in order to challenge the said compulsory retirement order, he has taken help of patently false and reckless allegations against him just to mislead the Court. Respondent No. 3 would deny if he had ever accepted or asked the petitioner to get the loan of M/s Sandeep Ceramics waived of from the Government and get released the mortgaged house, as has been averred. He has also denied the averments made in the petition that the petitioner was asked to arrange and industrial plot in the name of his family member. Respondent No. 3 would further say that the fact that Co-Directors had borrowed a loan from Haryana Financial Corporation was the well known fact to everybody, including the

petitioner and in this background would mention that the characters, like the petitioner are always on a look out to find out some ground to gain a point on the basis of which they can get unwarranted gain. In short, he has tried to justify the adverse remarks and the assessment of the petitioner made in the annual confidential report. The fact that the industrial concern being run by son of respondent No. 3 had defaulted in payment of loan, is not disputed in the reply filed by respondent No. 3.

(14) It is seen from the record that on an oral request made by counsel for the petitioner, Haryana Financial Corporation was impleaded as respondent No. 4. The Corporation subsequently came forward and submitted a report on direction issued by this Court. The report submitted by the Financial Corporation is on record. The fact that land measuring 20 kanals 9 marlas situated in Village Nuna Majra and a double storey house bearing No. 63, Sector 9, Faridabad, owned by respondent No. 3, being a collateral security, was given to the Financial Corporation to secure the loan, which had been obtained by M/s Sandeep Ceramics Limited, Bahadurgarh is confirmed. There are some other aspects of the report, which need not be referred to. Suffice it to notice that the fact of loan and the house being mortgaged is as per the record.

(15) Though number of pleas are made to impugn the order of compulsory retirement, yet, in my view, there would not be any need to examine the allegations made against respondent No. 3 for initiating this report or to see if these are substantiated or not. The prayer made in the petition would show that ultimately the petitioner has made a limited prayer for setting-aside the order of compulsory retirement to give effect to his prayer of voluntary retirement. He has also prayed for expunging adverse confidential reports, being arbitrary and based on no material.

(16) The counsel for the petitioner has drawn my attention to number of judgments to contend that when an adverse remark is endorsed in a confidential report without any basis or material, the same would be amenable to scrutiny by the writ Court. In this regard, he would first make reference to the case of **Amrik Singh versus State of Haryana (1)**. In this case, this court has viewed that while exercising jurisdiction under Article 226, the High Court does not act as a Court of appeal while making an

adjudication on administrative matters and the Court interference in such like matters is on a limited grounds like violation of law, *malafide* or patent arbitrariness. It is further observed in this case that an onerous obligation is placed on the reporting or other authority, who makes adverse remarks regarding integrity of an officer to be extra cautious and careful while making adverse entry pertaining to integrity. Counsel then refers to the case of **Avtar Singh versus The State of Haryana and others, (2)**. In this case, the reporting had not clearly mentioned in the annual confidential report that the petitioner is suspected of corruption or is believed to be corrupt. He has also not indicated the integrity of the petitioner is doubtful. What has been stated is that oral complaints regarding honesty were received. These remarks were found to be vague and indefinite.

(17) Strong reliance is placed on the case of **M.S. Bindra versus Union of India and others (3)**. Two principles seem to have been enunciated in this case. It is held that judicial scrutiny of any order imposing compulsory retirement is permissible if the order is either arbitrary or *malafide* or if it is based on no evidence. In this judgment, it is noticed that the principles of natural justice may have no place in the context of compulsory retirement but it does not mean that if the version of delinquent officer is necessary to reach the correct conclusion, the principles can be deviated on the assumption that other materials alone need to be looked into. In this case, the Hon'ble Supreme Court also held that while evaluating the material, the reviewing authority should not altogether ignore the reputation held by the officer. Any conclusion about the doubtful integrity should not be based on mere hunch. Order of compulsory retirement was ultimately set-aside by observing that there was utter dearth of evidence for the screening committee to conclude that appellant was having a doubtful integrity.

(18) I have examined the pleadings in detail and have heard the submissions made by learned counsel for the parties appearing before me.

(19) The petitioner would plead that the report is an aftermath of the incident referred to by him, which has been rebutted with much vehemence by respondent No. 3. Though the petitioner has so asserted in his petition that the remarks are due to the background given by him, yet the counsel

(2) 1995 (3) R.S.J. 262

(3) 1998 (3) SLR 358

would mainly plead that there is no material to support these damning remarks against him. There is, thus, no need to examine the veracity of this background as pleaded .

(20) The impugned report recorded on the petitioner pertains to the year 2000-01 and on the basis of the same, he has been compulsorily retired with effect from 2nd September, 2003. The record would reveal that the petitioner had submitted a representation against the impugned report on 18th December, 2001. On the basis of this representation, part of his assessment was upgraded to 'B' from 'C'. This was an interim representation filed by the petitioner. His prayer for personal hearing was declined. The petitioner was informed through a letter dated 15th March, 2003 that column No. 3 of the adverse report and entry made 'C' below average has been upgraded to 'B' i.e. 'good'. Thereupon, the petitioner filed a detailed representation immediately after inspecting the record, which as per the petitioner, was rejected by a Judge of this court without referring it to Full Court. The rejection order is placed on record as Annexure P-6. It is not disputed before me that the representation against adverse confidential report was required to be placed before the Full Court. In fact, the petitioner had been allowed to inspect the record and thereafter had filed a final representation on 24th April, 2003, where he has raised some additional pleas. This representation was again marked to a Judge of this Court, which was rejected. It appears that this was also rejected without reference to the Full Court. While responding to these averments made by the petitioner, it is disclosed in reply, as already noticed, that the representation submitted by the petitioner was referred to the Full Court and was statedly pending when the reply was filed. This reply was filed on 28th April, 2004. Mr. Bains has drawn my attention to Annexure P-17, which is an order, dated 1st May, 2004, through which the petitioner was informed that his representations, dated 24th April, 2003 and 15th September, 2003 against the adverse remarks stood rejected and that he was graded 'C' integrity doubtful in this confidential report.

(21) The question, thus, would arise if this entry could have been taken into consideration to compulsorily retire the petitioner from service once representation against the same was pending before the competent authority. The petitioner was compulsorily retired on 2nd September, 2003. Another added factor would be that not only the representation of the

petitioner was pending consideration before the competent authority but final assessment in the annual confidential report regarding integrity doubtful was yet to be approved by Full Court. It could have been open to be used only once it was so endorsed by the competent authority i.e. Full Court. In the reply filed, it is clearly stated that his annual confidential report was to be recorded after his representations were decided by the Full Court. Thus, even the assessment of the petitioner as 'C' integrity doubtful was yet to be finalised before it was used to compulsorily retire the petitioner from service. The subsequent approval of these remarks by the Full Court and rejection of the representation of the petitioner would be no solace in law to validate the order, which has been passed prior to this date, when it could legally have not been made. It is not disputed before me that compulsory retirement of the petitioner was ordered only on account of this assessment made in the year 2000-01. There is no other reason for which the petitioner could have been so dealt with. In my view, this infirmity, as noticed, would be enough to interfere in the order of compulsory retirement, especially so when the limited prayer of the petitioner is to permit him to proceed on voluntary retirement for which he had made a prayer.

(22) I have persuaded myself to take this view on the ground that I have not been able to find any material which would go to support the remarks endorsed in the annual confidential report of the petitioner. No source, details of the cases, names of the persons are forthcoming from whom the petitioner had allegedly taken money while deciding the cases, Judicial Officers are to perform very pious duties. To condemn them as dishonest, there has to be a material, some material which would provide basis of endorsing such remarks. No doubt, the Judicial Officers must be seen to be above suspicion. Even a small or a lurking suspicion may be enough but it has to be on the basis of some material. It can not be on a hunch. Judicial Officer has to be honest, is to be seen as honest and he has to have it in him as a need and a requirement. If there are reports about the doubt of integrity of an officer, the same must not only get reflected in the reports but such officer should not have any place in the judicial family and must be cut off with speed. Honesty is not a virtue for a Judicial Officer. It is not a credited qualification that he can claim or flout but is a need, a necessity and requirement for him and the service. That being the high pulpit where the Judicial Officers stand, their assessment about integrity can

not or should not be made lightly. It is to be with extra care and caution as is the requirement in case of any other employee while being remarked about honesty, one may look for material in support so that they are treated in a fair manner. When such high standard of integrity and honesty is expected from a Judicial Officer then equally high degree of caution and care may have to be exercised while assessing the Judicial Officer in such qualities. In **Avtar Singh's** case (*supra*), it is noticed that if adverse remarks regarding integrity are found casual, perfunctory or cryptic or where it is found that the adverse remarks have been made for extraneous consideration or there is non-application of mind, the Courts will have to scrutinise the challenge to such remarks with greater seriousness. The remarks have been made without any material being available. One complaint available was found to be by a non-existing person. Even now, the respondents have nothing to substantiate the allegation made against the petitioner. There is a mention made in the confidential report that there were reports that the petitioner had taken money in large number of applications under the NDPS Act through a particular lawyer. Details of these reports could have easily been either mentioned or brought out in the reply. Even the lawyer's name could be easily disclosed in confidence, if not openly. In fact, the pleadings made on behalf of the respondents are blissfully silent in this regard. Respondent No. 3 would urge that he has retired and hence, the material is available with the High Court. The High Court, on the other hand, would pass on the responsibility in this regard to respondent No. 3, who had endorsed this confidential report on the petitioner. In this background, the observations recorded in the case of **M.S. Bindra** (*supra*) may have to be kept in view. While viewing the case from the angle of judicial scrutiny i.e. want of evidence or material to reach such a conclusion, it is held that want of material is almost equivalent to next situation that from the available materials, no reasonable man would reach such a conclusion. While evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim that no one becomes dishonest all of sudden is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. Though the authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held but to dunk an officer into the puddle of doubtful integrity, it is not enough that the doubt fringes on a mere hunch. It is further observed that doubt should be of such

a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label 'doubtful integrity'.

(23) Where is the material in this case ? Seen from the standard of assessment set by the Hon'ble Supreme Court, it can be said that it is rather very difficult to uphold the remarks of doubtful integrity recorded in the annual confidential report of the officer. These remarks are recorded without any material and thus, are based on hunch. If there had been reports, the same should have been placed or atleast shown to the Court. The name of the counsel through whom this money had passed could easily be disclosed. The preponderance of probability on the touch stone for the reasonable man to entertain doubt regarding that possibility is not satisfied. Here it may be apt to note what the Hon'ble Supreme Court observed in the case of **High Court of Punjab and Haryana through R.G. versus Ishwar Chand Jain and another (4)** :—

“Inspection of the subordinate courts is one of the most important functions which High Court performs for control over the subordinate courts. Object of such inspection is for the purpose of assessment of the work performed by the subordinate judge, his capability, integrity and competency. Since judges are human being and also prone to all the human failings, inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring subordinate judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardships. A satisfactory judicial system depends largely on the satisfactory functioning of courts at grass root level. Remarks recorded by the inspecting judge are normally endorsed by the Full Court and become part of

(4) J.T. 1999 (3) S.C. 266

the Annual Confidential Reports and are foundations on which the career of a judicial officer is made or marred. Inspection of subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman like. Inspection of subordinate court is not a one day or an hour of few minutes affair. It has to go on all the year round by monitoring the work of the court by the inspecting judge. The casual inspection can hardly be beneficial to a judicial system. It does more harms than good. As noticed in the case of *R. Rajiah* (JT 1988 (2) SC 567) there could be ill conceived or motivated complaints. Rumour mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts.”

(24) These were stated to be extremely important observations to constitute important guidelines for assessing the work of a Judicial Officer. These observations also indicate the attitude with which the inspecting Judge should objectively consider the work and conduct of Judicial Officer, who sometimes have to work under difficult and trying circumstances. Making adverse remarks in the absence of material may give an impression that the petitioner has not been treated fairly. The observation noted above would certainly come into play. I may hasten to add here that this may not be taken as an expression of opinion on the veracity of the allegations made by the petitioner in the petition. I may rather add that it would have been appropriate for the petitioner to avoid this effrontery in making these allegations against respondent No. 3 with impetuosity, who was none other than a Judge of this Court. Respondent No. 3 has repelled these allegations with enough conviction. These allegations may not have had any nexus with the remarks endorsed in the annual confidential report of the petitioner or for initiating the same. The petitioner did not file any rejoinder in rebuttal to the replies filed by the respondents. Reference is made to these allegations to notice the case as pleaded and not for any purpose in forming the view in the case. The remarks, as endorsed in the confidential report, are found to have been made without support of any material and can not be sustained in view of the law laid down by the Hon’ble Supreme Court and the standard set for scrutinising these remarks. These are accordingly set-aside.

(25) The writ petition is allowed. The order of compulsory retirement of the petitioner is set-aside. The order rejecting the prayer of the petitioner for voluntary retirement is also set-aside. The prayer of the petitioner made for his voluntary retirement with effect from 29th August, 2003 shall stand allowed. The adverse remarks of integrity doubtful and the remarks endorsed in various columns of the report and the general remarks made are also quashed. The petitioner shall deposit the amount, which was found short and is required to make up the requirement of shortfall in the notice period, if he has not already so deposited. The amount received by the petitioner from the respondents in lieu of three months' notice i.e. a sum of Rs. 71,975 shall be refunded by the petitioner within a period of two week from the date of receipt of the copy of this order. The respondents would be at liberty to calculate the amount, which the petitioner is required to deposit to give effect to his prayer for voluntary retirement and in case any amount is required to be deposited, the petitioner would do so. The petitioner shall be deemed to have voluntarily retired from service with effect from 29th August, 2003. The necessary consequence would follow.

R.N.R.

Before Augustine George Masih, J

**HARYANA ROADWAYS ENGINEERING CORPORATION,
BEHRAMPUR ROAD, KHANDS, GURGAON (HARYANA)
THROUGH ITS GENERAL MANAGER—Petitioner**

versus

**INDUSTRIAL TRIBUNAL-CUM-LABOUR, COURT-I
(PRESIDING OFFICER), GURGAON
AND ANOTHER,—Respondents**

C.W.P. No. 16364 of 2008

14th May, 2009

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S.11-A—Charges of theft against workman proved—Termination after consideration of reply of workman—Appeal rejected—Industrial dispute—Labour Court finding inquiry conducted by Enquiry Officer in accordance with principles of natural justice—Labour Court by invoking its powers u/s 11-A