

(13) Consequently, impugned order dated 16.10.2013 passed by learned Sub Divisional Judicial Magistrate, Jalalabad (West) as well as the revisional order dated 02.01.2015 passed by learned Additional Sessions Judge, Fazilka, are set aside. The application moved by the petitioner under Section 311 Cr.P.C. stands allowed. The learned trial Court is directed to allow the petitioner to re-examine the concerned witness i.e. Branch Manager, Punjab & Sind Bank, Branch Chak Kherewala, on the abovesaid material aspect of the matter. However, it goes without saying that the respondent shall be at liberty to cross-examine the witness who is being sought to be recalled by the petitioner.

(14) Resultantly, with the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

Arihant Jain

Before Daya Chaudhary, J.

ONKAR SINGH — *Petitioner*

versus

STATE OF HARYANA AND OTHERS — *Respondents*

CWP No.7084 of 2003

August 05, 2015

Constitution of India, 1950 — Art. 226 — Allegations against petitioner, who was an ASI in the Police, regarding demand of bribe — Departmental inquiry absolved him of charge — Punishing Authority after collecting evidence independently, imposed penalty of stoppage of two increments with cumulative effect — Based on above adverse remarks in his ACR, petitioner compulsorily retired — High Court held that though punishing Authority for valid reason could disagree with the inquiry report, it could not collect independent evidence to justify compulsory retirement an employee — Smacks of vindictiveness — Order of Punishing Authority and order of compulsory retirement set aside — Writ petition allowed.

Held, that the punishing authority can differ with the finding recorded by the Inquiry Officer but he has no business to collect the evidence independently so as to make it a handle for disagreeing with the findings of the Inquiry Officer, especially when those have been affirmed by the Punishing Authority. In such like situation, the

procedure adopted by the Punishing Authority is not only illegal but it smacks of pressure and motives.

(Para 15)

Rajbir Sherawat, Advocate, *for the petitioner*

Harish Rathee, Sr. D.A.G. Haryana, for the respondent-State.

DAYA CHAUDHARY, J.

(1) Six writ petitions bearing Nos.7084 of 2003, 16359 of 2002, 16498 of 2002, 18979 of 2003, 16573 of 2003 and 14818 of 2003 have been filed by petitioner- Onkar Singh to challenge the different impugned orders.

(2) All the aforesaid writ petitions shall be disposed of by passing a common order as the facts and law point, in all, are inter-related, the details of which are as under:-

(i) CWP No.7084 of 2003 has been filed by the petitioner to challenge the punishment of stoppage of two annual increments. A departmental inquiry was initiated against the petitioner on the basis of complaint dated 27.09.2001 made by one Chhaju Ram. An affidavit was also given by said Chhaju Ram on 29.09.2001 to Deputy Commissioner, Panchkula, which was forwarded to Superintendent of Police, Panchkula for further necessary action. The charge-sheet was served upon the petitioner on 18.06.2002 and the petitioner was exonerated by the Inquiry Officer vide his report dated 12.08.2002. At that point of time, the Superintendent of Police-Manoj Yadav was transferred to Ambala. Incidentally, the petitioner was also transferred to same station i.e Ambala on 16.08.2002. As per case of the petitioner, on transfer of Superintendent of Police-Manoj Yadav, he was also got transferred so that the inquiry report, which was in favour of the petitioner, could be manipulated. A Disagreement Note was given by the Superintendent of Police on 31.08.2002 and a Show Cause Notice was also issued on that very day. The impugned order of stoppage of two increments with cumulative effect was passed on 18.09.2002. Thereafter, the petitioner filed an appeal as well as revision against the said order of stoppage of two annual increments with cumulative effect but the same were rejected/dismissed.

(ii) CWP No.16359 of 2002 has been filed by the petitioner for being promoted as Inspector on the ground that he was

enlisted in list 'F' on 27.07.2001 by Director General of Police, Haryana on approval by Departmental Promotion Committee. There was no adverse ACR against the petitioner up to that period. Subsequently, a departmental inquiry was ordered against the petitioner on 27.11.2001 by Superintendent of Police, Panchkula on the basis of complaint made by one Chhaju Ram. Charge was framed against the petitioner on 18.06.2002 and subsequently, the Inquiry Officer exonerated the petitioner vide his report dated 12.08.2002. It is the case of the petitioner that junior to him, namely, Sub Inspector Gurdwaya Ram was promoted as Inspector vide order dated 18.02.2002 and till that time, no adverse ACR was there against the petitioner. The Annual Confidential Report of the petitioner w.e.f 05.05.2001 to 31.03.2002 was recorded by the same Superintendent of Police, Panchkula during the pendency of the inquiry and the same was conveyed to the petitioner on 27.06.2002. The junior to the petitioner was promoted on 18.02.2002 and charge sheet against the petitioner was framed for departmental inquiry on 18.06.2002 i.e after four months. No adverse remarks were there against the petitioner when junior to him was promoted. As per case of the petitioner is that had the petitioner been promoted as Inspector on 18.02.2002 then the Superintendent of Police would not have been the punishing authority and he could not have passed the order of punishment of stoppage of two annual increments.

(iii) CWP No.16498 of 2002 has been filed by the petitioner for challenging the remarks in the Annual Confidential Report from 05.05.2001 to 31.03.2002, wherein, his integrity was recorded as '*doubtful*' on the basis of complaint made by Chhaju Ram. The argument of learned counsel for the petitioner is that the petitioner was exonerated by the Inquiry Officer vide his report dated 12.08.2002 and adverse remarks were conveyed to him on 27.06.2002. No disagreement Note was there at that time of passing of order dated 31.08.2002. The authority, who had given appreciation letter as well as cash reward to the petitioner, has also found the integrity of the petitioner as '*doubtful*'. The adverse remarks were recorded against the petitioner so as to stop his promotion as his case was approved for promotion by the DPC on

27.07.2001. Subsequently, the ACR has been recorded. Even the complainant-Chhaju Ram has filed an affidavit, stating therein in so many words that there was no allegation against the petitioner. It was also mentioned that it was Head Constable-Om Parkash who took the money and the petitioner had no role in any manner. The representation filed by the petitioner was also rejected.

(iv) CWP No.18979 of 2003 has been filed by the petitioner to challenge the remarks recorded in the ACR from 12.10.2002 to 31.03.2003. While being posted as Incharge RAF Police Line, Kurukshetra from 12.10.2002 to 31.03.2003, the Annual Confidential Report of the petitioner was recorded as “good” by the Superintendent of Police, Kurukshetra but it was downgraded by Inspector General of Police, Ambala. However, this fact was conveyed to the petitioner after his retirement. Neither any notice was given nor it was conveyed to the petitioner before his retirement. Petitioner made a representation but the same was rejected on 28.10.2003 i.e. after his retirement.

(v) CWP No.16573 of 2003 has been filed by the petitioner to challenge the order of compulsory retirement. The order of compulsory retirement of the petitioner as well as the order of stoppage of two increments with cumulative effect; stoppage of one temporary increment and three censures were passed on the ground of adverse remarks in the ACR w.e.f. 05.05.2001 to 31.03.2002. At the time of retirement, the petitioner was 48 years of age and was having service of thirty years and six months and his retirement was due in the year, 2013. The petitioner could not have been retired compulsorily when he was below 50 years of age, as has also been held in various judgments relied upon by learned counsel for the petitioner.

(vi) CWP No.14818 of 2003 has been filed by the petitioner to challenge the order of stoppage of one increment. The allegation against the petitioner was that he appeared before the Superintendent of Police, Panchkula in full uniform during the suspension period on 30.06.2002. He was placed under suspension on the ground of misbehaviour with the steno of Superintendent of Police. As per case of the

petitioner that when he appeared before the Superintendent of Police, he had not been conveyed the order of suspension.

(3) Learned counsel for the petitioner submits that the service record of the petitioner has been meritorious and very excellent as he has earned promotions from the post of Constable to Sub Inspector. A Commendation Certificate was given to the petitioner on 28.08.2001 and a Cash Award was also given to him in the year 2001. The case of the petitioner for promotion was also recommended by the Superintendent of Police, namely, Manoj Yadav and thereafter, he was promoted to the post of Inspector and was brought on the list 'F' (meant for promotion to the post of Inspector). Subsequently, in collusion with one Parmjeet Ahlawat, Deputy Superintendent of Police, the career of the petitioner was spoiled by the same officer.

(4) Learned counsel for the petitioner also submits that the petitioner had received a call from Mr. Manoj Yadav, so as to withdraw the complaint under Sections 500, 504, 506 and 452 IPC filed by the wife of the petitioner against Mr. Paramjit Singh, Deputy Superintendent of Police with regard to his misbehaviour. On his refusal to do so, he managed to file a complaint against the petitioner by one Chhaju Ram and on that basis, departmental enquiry was ordered. The enquiry officer exonerated the petitioner but by disagreeing with the findings recorded by the Inquiry Officer and without affording any sufficient opportunity of hearing to the petitioner, the impugned order of stoppage of two annual increments with cumulative effect was passed. The promotion of the petitioner to the post of Inspector was cleared up to DGP level and thereafter, it was stopped with *mala fide* intention. Even junior to the petitioner was promoted on 18.02.2002. He further submits that just to stop the petitioner from being promoted, a false charge sheet was served upon him. The petitioner was debarred from promotion by recording adverse remarks in the ACR for the period from 05.05.2001 to 31.03.2002 on the same charges, against which, the inquiry was already pending. The petitioner filed CWP No.16359 of 2002 claiming promotion as Inspector and thereafter, he filed CWP No.16498 of 2002 challenging adverse remarks in the ACR. The petitioner was exonerated by the Inquiry Officer vide his report dated 12.08.2002 but by disagreeing with the findings recorded by the enquiry officer, the Superintendent of Police awarded punishment of stoppage of two annual increments with cumulative effect to the petitioner on 18.09.2002. Learned counsel also submits that just to falsely implicate the petitioner and to debar him

from promotion, another inquiry was started by the Superintendent of Police on the allegation that he misbehaved with his Steno. In another inquiry, the allegation against the petitioner was that he appeared before the Superintendent of Police in uniform, whereas, he was under suspension. Learned counsel, in response to this allegation, submits that this incident occurred on the same day when the petitioner was placed under suspension and he was not aware about this order. Learned counsel also submits that the petitioner has been compulsorily retired on the basis of adverse remarks made in his Annual Confidential Report in spite of the fact that he was exonerated in the inquiry. Subsequently, on the basis of false allegations, the petitioner has been implicated. He further submits that had the adverse remarks been not recorded in the ACR of the petitioner, he would have been promoted and would not have been retired compulsorily. All these actions have been taken against the petitioner just to stop his promotion and to form a ground for his compulsory retirement. Learned counsel also submits that no Show Cause Notice was ever given before recording the final disagreement on the findings recorded by the Inquiry Officer. The disagreement note as well as show cause notice of the proposed punishment were issued on the same date and at the same time. It is also the argument of learned counsel for the petitioner that the petitioner was appointed as Sub Inspector under the orders passed by the Inspector General of Police. The Superintendent of Police, being the lower authority, was not competent to pass the order of punishment against the petitioner. Superintendent of Police was not the Appointing Authority for the post of Sub Inspector. Learned counsel also submits that the complainant-Chhaju Ram, himself appeared before the Deputy Commissioner of Police and filed his affidavit stating therein that the petitioner was not involved in the alleged incident. Even his statement was also recorded before the Inquiry Officer but still the same was not considered. Head Constable-Om Parkash also deposed before the Inquiry Officer that no money was accepted by the petitioner and he was not involved in the case in any manner. Still a show cause notice was issued to the petitioner, stating therein, that he has imposed pressure upon the witnesses to make such a statement. Only on the basis of oral assertion that the witness had told the Superintendent of Police privately that the petitioner had accepted bribe, the action was taken, whereas, neither any document nor any concrete material was there before the Inquiry Officer to this aspect. The Superintendent of Police even tried to produce one new witness, namely, Ramesh Gupta despite of the fact that his name was not there in the list of the

witnesses. Said Ramesh Gupta was a life convict and was arrested by uncle of the petitioner, namely, Bhopal Singh, who, at that time, was working as a Station House Officer. He even was not an eye witness of the incident but still, his testimony was relied upon, whereas, it was only a hearsay evidence.

(5) Learned counsel for the petitioner has relied upon various judgments titled as *Yoginath D. Badge versus State of Maharashtra etc*¹ *Dayanand College for Women versus State of Haryana*², *S.I. Ram Lal versus State of Haryana*³, *S.I. Ram Niwas versus State of Haryana*⁴, *S.I. Karnail Singh versus State of Punjab*⁵, *ASI Man Singh versus State of Punjab*⁶ and *HC Sunder Singh versus State of Haryana*⁷ support of his contentions.

(6) Learned counsel for the respondent-State submits that it cannot be said that the petitioner was having a good service record as adverse remarks were recorded in his Annual Confidential Report during the year 2001-02 and his integrity was also found to be “*doubtful*”. Petitioner made a representation against the remarks “*integrity doubtful*” but the said representation was also rejected. Learned State counsel also submits that the name of the petitioner was approved for promotion but he was not promoted because of the registration of a criminal case bearing FIR No.161 of 2000 under Sections 500/504/506 IPC at Police Station Mullana and also because of the pendency of departmental inquiry regarding misuse of official power for accepting an amount of `10,000/-as bribe from one Chhaju Ram, resident of Kalka. On the basis of said allegations, an inquiry was also conducted against the petitioner. Learned counsel also submits that the petitioner was awarded “*Commendation Certificate*” as well as cash award for a particular act as he had arrested an accused, who was bail jumper but subsequently, his service record was not good and hence, he was not promoted and punishment of stoppage of two annual increments with cumulative effect was imposed on him. Learned State counsel also submits that a specific reply has been filed by respondent

¹ 1994(4) RSJ 265

² 1995(1) RSJ 794

³ SLR 1997(2) 421

⁴ SCT 2005(1) 343

⁵ SLR 1989(2)345

⁶ SLR 1973(1) 365

⁷ RSJ 2002(1) 15

No.4, wherein, he has denied all the allegations levelled against him. The petitioner was awarded punishment, which cannot be said to be *mala fide*. The disagreement order was passed after going through the entire oral as well as documentary evidence available on the file of departmental inquiry. The Disagreement Note was passed with proper application of mind and the same was a speaking one. Ten grounds for disagreeing with the same were also mentioned explaining as to how he was not satisfied with the findings recorded by the Inquiry Officer.

(7) Learned State counsel also submits that Parmjeet Ahlawat, Deputy Superintendent of Police was not related in any manner to respondent No.4 i.e Superintendent of Police. He further submits that the “Commendation Certificate” as well as “Cash Award” awarded to the petitioner by the same officer, in itself, proved that there was no mala fide against the petitioner. A proper notice was issued to the petitioner after giving disagreement note and the finding recorded by the Inquiry Officer were disagreed by giving specific reasons.

(8) Heard the arguments of learned counsel for the parties and have also perused the impugned orders as well as all documents available on the file.

(9) Admittedly, the petitioner was initially selected and enlisted as Constable on 23.04.1973 in Ambala Range and completed his training. Thereafter, he was promoted as Head Constable w.e.f. 06.09.1979 and as ASI w.e.f. 29.11.1988. Again, he was promoted as Sub Inspector w.e.f. 22.03.1996. His name was recommended and was brought on the promotion list ‘F’ under rule 13.15 of the Punjab Police Rules, 1934. On passing of test, he became eligible for promotion to the post of Inspector. The Departmental Promotion Committee, which was held on 27.07.2001, found the petitioner eligible for promotion as Inspector of Police. It is also not disputed that the petitioner, while being posted as Station House Officer, Kalka, was appreciated and after considering his service record, an appreciation letter was also issued to him. The recommendation of the petitioner along with some other officials as recorded by respondent No.4 i.e Superintendent of Police, Panchkula is reproduced as under :-

“2. The names of the following officials of this district on the above cited subject, are forwarded. It is submitted that overall efficiency of these officials has been very good and they performed their duty very honestly and with dedication and devotion and they performed their assigned work with full devotion, hard work and in proper manner. If

they are deputed for any duty at any time, they remained ready for it. They understand their responsibility very well. Their record is excellent and there is no adverse remark in their annual confidential reports. So far as non-gazetted officers are concerned, their Annual Confidential Reports are kept in your office.

3. Inspector Rajiv Deshwal.

4. Sub Inspector Onkar Singh, 179/A

5 to 14 xx xx xx xx”

(10) On perusal of record, it appears that earlier a complaint was filed under Sections 500, 504, 506 and 452 IPC by the wife of the petitioner, namely, Kanta Chaudhary against Paramjit Singh, Deputy Superintendent of Police, Yamunanagar regarding his misbehaviour. The petitioner was pressurized to withdraw the complaint filed by his wife stating that said Paramjit Singh, Deputy Superintendent of Police was his close friend but the petitioner did not agree and hence, Mr. Manoj Yadav-respondent No.4 got annoyed and threatened the petitioner to face the consequences. Resultantly, the adverse remarks were recorded in the Annual Confidential Report of the petitioner. He was shifted from Kalka to Panchkula. Earlier he was posted as Station House Officer at Kalka but subsequently, he was posted as Incharge Police Post at Panchkula, which was lower in grade. On the basis of complaint made by Chhaju Ram, resident of Kalka, the inquiry proceedings were initiated against him vide Order dated 27.11.2001. In the inquiry, said Chhaju Ram gave a statement along with an affidavit in favour of the petitioner. The Inquiry Officer prepared a fresh list of the witnesses, wherein, the name of one Ramesh Gupta resident of Kalka was also added, to which, the petitioner raised an objection on the ground that he was having an old enmity with Ramesh Gupta as he was arrested by uncle of the petitioner, namely, Bhopal Singh, while being posted as Station House Officer at Kalka. Said Ramesh Gupta was convict in case FIR No.84/84 registered under Section 302 IPC at Police Station, Kalka and was sentenced to life imprisonment. Even an application was submitted by the petitioner to Superintendent of Police, Panchkula to drop the new witness, namely, Ramesh Gupta. The inquiry was transferred to Deputy Superintendent of Police (HQ), Yamunanagar by respondent No.3. In the inquiry report dated 12.08.2002, the petitioner was exonerated on the basis of following findings recorded by the Inquiry Officer :-

“In this departmental enquiry, I have thoroughly perused the statements of PW’s and DW’s and none of the witnesses has deposed anything against S.I Onkar Singh. All the witnesses in their statements have stated that the dispute of Chhaju Ram was settled by Head Constable Om Parkash and the complainant PW7 has stated that SHO, S.I Onkar Singh did not take any money from him and further stated that he was not threatened by him. He has further stated that the compromise was made through respectable. PW7 in his statement has further deposed that he had made complaint against S.H.O. Onkar Singh on somebody’s instigation and that he had also submitted an affidavit Ex. DW 2/A and Ex.DW 1/A. Therefore, I have arrived at the conclusion that charges against S.I. Onkar Singh are not proved and I exonerate S.I Onkar Singh of the charges levelled against him but PW-7 Chhaju Ram, complainant has stated that Head Constable Om Parkash on 19.06.2001 had taken `5,000/- and thereafter again `5,000/- after three or four days later. This misconduct of Head Constable Om Parkash No.76/PKL has spoiled the image of police department, hence, I recommend departmental enquiry against Head Constable Om Parkash.”

(11) Thereafter, the petitioner was transferred from Panchkula to Ambala by Inspector General of Police, Ambala on 16.08.2002 and his inquiry file was also sent to Superintendent of Police, Ambala, who was incidentally the same officer i.e Manoj Yadav and a disagreement note was prepared by him on the findings recorded by the Inquiry Officer.

(12) On giving notice, the petitioner submitted reply but still his two annual increments were stopped with cumulative effect. The appeal as well as revision against the order of stoppage of two annual increments were dismissed. The case of the petitioner was pending for promotion, whereas, it was cleared up to DGP level because of the complaint made by one Chhaju Ram on 27.09.2001. The petitioner was not promoted and his junior was promoted on 18.02.2002. It is also relevant to mention here that the charge sheet was framed against the petitioner on 18.06.2002. Junior to petitioner was promoted on 18.02.2002. The Annual Confidential Report of the petitioner for the period from 05.05.2001 to 31.03.2002 was recorded on the basis of charge sheet, whereas, he was exonerated in the inquiry. Because of

disagreement note dated 30.08.2002, the punishment of stoppage of two increments with cumulative effect was imposed upon him. Due to adverse remarks in the Annual Confidential Report of the petitioner, he was not promoted to the post of Inspector. However, another complaint was made against the petitioner alleging therein that he had misbehaved with the Steno of Superintendent of Police and the inquiry was initiated against him. The allegation against the petitioner was that he appeared before the Superintendent of Police in uniform, whereas, he was not conveyed the order of suspension and he was not aware about the passing of suspension order and he was in the uniform. He was placed under suspension. He was awarded the punishment of stoppage of one increment without cumulative effect vide order dated 18.09.2002.

(13) Ultimately, the petitioner was compulsory retired on 15.10.2003. The height of vindictiveness is also clear from the fact that the petitioner was given adverse remarks in his ACR for the period from 12.10.2002 to 31.03.2003, even after his retirement. This ACR was written as “good” by Superintendent of Police. However, the Inspector General of Police, Ambala downgraded it and that too without giving any notice to the petitioner, which is also a subject matter of challenge in CWP No.18979 of 2003.

(14) Except the punishment awarded by Manoj Yadav as Superintendent of Police Panchkula and Superintendent of Police, Ambala, because of remarks recorded in the ACR for the period from 27.06.2002 to 18.09.2002, no adverse remarks were there during the entire service record of the petitioner. The adverse ACR was written on 27.06.2002 and punishment of three censures was given on 03.09.2002 and again punishment of stoppage of increments was awarded on 18.09.2002. It has also been proved on record that disagreement note and show cause notice of proposed punishment were given on the same date. Even the petitioner was exonerated by the Inquiry Officer and allegations were found to be proved against one Head Constable Om Parkash but by disagreeing with the inquiry report, Sh. Manoj Yadav had stated that the petitioner, being Station House Officer, was having overall responsibility of stopping the incident. Only on the basis of that observation, the adverse remarks were recorded against the petitioner, whereas, at the most, it could have been the allegation of inefficiency or in action but it was termed as misconduct.

(15) Complainant-Chhaju Ram submitted his affidavit before the Deputy Commissioner of Police and while appearing in person stated that the petitioner was not involved in the incident. Same

statement was made by said Chhaju Ram before the Inquiry Officer while appearing as witness. Even Head Constable-Om Parkash also deposed before the Inquiry Officer that the petitioner did not take any money and he was not involved in that case at all. A show cause notice was issued by the Superintendent of Police to said Om Parkash for making such a statement in favour of the petitioner and asked his explanation just to put pressure upon him. In spite of filing of specific affidavit by the complainant before the Deputy Commissioner of Police stating therein that the petitioner was not involved in the incident, still, he was issued Show Cause Notice. It was specifically mentioned in the affidavit by the complainant that the petitioner was not involved in the incident and no money was demanded by him. One new witness, namely, Ramesh Gupta, was added as witness without having any relevancy and his evidence was collected just to implicate the petitioner. The punishing authority can differ with the finding recorded by the Inquiry Officer but he has no business to collect the evidence independently so as to make it a handle for disagreeing with the findings of the Inquiry Officer, especially when those have been affirmed by the Punishing Authority. In such like situation, the procedure adopted by the Punishing Authority is not only illegal but it smacks of pressure and motives.

(16) Same observation has been made in the judgment of this Court in *Head Constable Surender Singh's case* (*supra*).

(17) Similarly, the competent authority is to decide the representation against adverse reports independently without being influenced by the comments of the reporting officer. Only the competent authority has a power and discretion to assess and evaluate the service record of the concerned employee and to reach at a conclusion as to whether the employee is fit to be retained or liable to be retired in the public interest. Without exercising such discretion, the decision taken by the authority is liable to be quashed as the same is without any application of mind as has been held in judgment of this Court in *S.I. Ram Niwas's case* (*supra*). Para no.13 of the said judgment is reproduced as under:-

“13. Notwithstanding the aforementioned conclusion, we are convinced that the order of the learned Single Judge does not call for interference. A look at the Note appended below Rule 9.18(1) of the Rules shows that the power to compulsory retire an employee is to be exercised by the appointing authority. This necessarily means that the appointing authority has to

make its own assessment regarding the suitability and desirability of retaining an employee, who has attained the age of 55 years. For this purpose, it is required to consider the entire service record of the employee including his Annual Confidential Reports and the Departmental enquiries and punishments, if any, with greater emphasis on the record of immediate past and then decide whether the employee should be allowed to continue in service beyond the age of 55 years. In the present case, no exercise was undertaken by Superintendent of Police, Ambala to evaluate the service record of the respondent for the purpose of forming an opinion whether or not it would be in public interest to retain him in service beyond the age of 55 years. Rather, he acted under the dictates of Inspector General of Police, Ambala Range, Ambala, who too did not independently apply mind to the service record of the respondent and simply forwarded the decision taken by the Officers Committee. Thus, there is no escape from the conclusion that compulsory retirement of the respondent is vitiated due to non-application of mind by the appointing authority.”

(18) The petitioner was appointed as a Sub-Inspector by the Inspector General of Police and as such, only the Inspector General of Police was the competent authority and not the Superintendent of Police being the lower in authority.

(19) The issue involved in *Ram Lal's case (supra)* was similar as the petitioner, therein, was promoted from the post of Assistant Sub Inspector to the post of Sub Inspector by the Deputy Inspector General of Police, whereas, he was reverted to the post of Assistant Sub Inspector by the Superintendent of Police, who was not competent in view of Rule 13.3(2) of the Punjab Police Rules. The petition filed by Ram Lal was allowed.

(20) In the present case, the petitioner, during inquiry, was exonerated by the Inquiry Officer but because of Disagreement Note dated 30.08.2002, the punishment of stoppage of two annual increments with cumulative effect was awarded to him. Due to adverse remarks of the petitioner, he was not promoted to the post of Inspector. Another complaint was also made containing the allegations of misbehaviour with the steno of Superintendent of Police and the inquiry was initiated in that case also. The petitioner was not aware about any complaint and he appeared before the Superintendent of

Police in proper uniform, while he was placed under suspension. It has not been proved on record that the order of placing under suspension was conveyed to the petitioner. The punishment of stoppage of one increment without cumulative effect was awarded to the petitioner only because of allegation of appearance in proper uniform before the Superintendent of Police.

(21) Admittedly, the order of compulsory retirement can be passed, in case, there is no longer utility of a government employee or it is necessary to chop him off like a dead wood or there is such an adverse entry in his Annual Confidential Reports that it is not in the public interest to allow him to continue in public service any more, the competent authority may exercise its discretion but the order of premature retirement cannot be treated or passed as a measure of punishment as has been held in *B.R. Aggarwal versus The Chairman, Haryana Warehousing Corporation and others*⁸ Certain principles were laid down in the judgment of Hon'ble the Apex Court in *Baikuntha Nath Das versus Chief District Medical Officer*⁹ for retiring a government employee compulsorily. The adverse remarks of 'honesty doubtful' were recorded by Manoj Yadav, Superintendent of Police, Panchkula on the basis of complaint of one Chhaju Ram but said Chhaju Ram submitted his affidavit denying all the allegations made in the complaint. The petitioner was exonerated by the Inquiry Officer on 12.08.2002, whereas, the Annual Confidential Report was written earlier and the same was conveyed to the petitioner on 27.06.2002. The Disagreement Note was not there at that time as the same was passed on 31.08.2002. During this period, the petitioner got appreciation letter as well as cash reward by the same Superintendent of Police on 28.08.2001. Even his case was recommended by the same Superintendent of Police by stating that the petitioner is having good record. The remarks with regard to "integrity" were recorded in the Annual Confidential Report just to debar the petitioner from promotion, whereas, the same was approved by the Departmental Promotion Committee on 27.07.2001. Moreover, the integrity of the petitioner was assessed to be doubtful because of complaint made by one Chhaju Ram as the allegations of demand of money was levelled but later on in the affidavit, it was specifically mentioned that no money was ever demanded. The petitioner was compulsorily retired on 15.10.2003 on the basis of adverse remarks recorded in the ACR for the period from

⁸ 2004(6) SLR 179

⁹ Baripada 1992(2) SCT 92

05.05.2001 to 31.03.2002; stoppage of two increments with permanent effect and stoppage of one increment with temporary effect. The case of recording adverse remarks in the ACR of the petitioner was challenged and the same was pending after admission. At the time of retirement, the petitioner was 48 years of age and was having service of thirty years and six months. Prior to that, there was no complaint against the petitioner and all his service record was good. The petitioner had completed 25 years of service in the year 1998. Had the petitioner been retired at that point of time, he could not have been retired compulsorily under the Rules, being below 50 years of age.

(22) The case of promotion of the petitioner to the post of Inspector was cleared up to DGP level and thereafter, because of the complaint made by Chhaju Ram, he could not be promoted, whereas, junior to the petitioner was promoted on 18.02.2002. At that time, no charge sheet was served upon the petitioner and the said complaint was made just to debar him from being promoted. The charge sheet against the petitioner was framed for initiating departmental inquiry on 18.06.2002 and the remarks of “integrity doubtful” were recorded in the ACR for the period from 05.05.2001 to 31.03.2002 on the basis of the same charge on which the inquiry was pending. The petitioner had also filed CWP No.16359 of 2002 claiming promotion on the post of Inspector and thereafter, he filed CWP No.16498 of 2002 challenging adverse remarks in the ACR. The petitioner was exonerated by the Inquiry Officer vide his report dated 12.08.2002 but the Disagreement Note was given on 31.08.2002 and punishment of stoppage of two increments with cumulative effect was awarded on 18.09.2002 by Manoj Yadav, Superintendent of Police just to justify the adverse remarks recorded by him so as to debar the petitioner from promotion. The allegations against the petitioner were that he misbehaved with the steno of Superintendent of Police and appeared before the Superintendent of Police in uniform, while he was under suspension. However, out of these inquiries, the petitioner was exonerated of the allegations of misbehaviour. The period of suspension was ordered to be treated as duty period. For the allegations of appearing in uniform, the punishment of stoppage of one increment without cumulative effect was awarded on 18.09.2002.

(23) The submissions made by learned counsel for the petitioner regarding the statement of Chhaju Ram and introduction of new witness, namely, Ramesh Gupta in the inquiry proceedings have not been disputed by learned State counsel. It has also not been disputed

that the said witness was a life convict and he was arrested by uncle of the petitioner, namely, Bhopal Singh. Even the said witness-Ramesh Gupta had not stated that he was an eye witness of the incident. Merely by saying that Chhaju Ram told the Superintendent of Police about this incident, his testimony was relied upon, which was hearsay evidence. Said Chhaju Ram had already submitted his affidavit stating therein that the petitioner was not involved. Ultimately, the petitioner was compulsorily retired from service on the basis of adverse remarks recorded in his ACR for the period 05.05.2001 to 31.03.2002. The petitioner was awarded the punishment of stoppage of two increments with cumulative effect; stoppage of one increment without cumulative effect and three censures. Subsequently, three censures were quashed by the Inspector General of Police, Ambala vide his Order dated 07.02.2003 but subsequently again all three censures were ordered to be continued.

(24) It is apparent from the facts as mentioned above that the petitioner has been made a scapegoat by one officer i.e. Manoj Yadav, Superintendent of Police.

(25) In view of the facts as well as law position as discussed above, there is a merit in the contentions raised by learned counsel for the petitioner and the writ petitions bearing Nos.7084 of 2003 (challenging the punishment of stoppage of two annual increments); 16359 of 2002 (for being promoted as Inspector); 16498 of 2002 (challenging the remarks recorded in the ACR for the period w.e.f. 05.05.2001 to 31.03.2002); 18979 of 2003 (challenging the remarks recorded in the ACR from 12.10.2002 to 31.03.2003); 16573 of 2003 (challenging the order of compulsory retirement) and 14818 of 2003 (challenging the order of stoppage of one increment) are allowed and the impugned orders dated 18.02.2002 and 07.02.2003 (Annexures P-6 and P-8, respectively in CWP No.7084 of 2003) ; 16.09.2002 (Annexure P-6 in CWP No.16359 of 2002); 27.06.2002 and 09.09.2002 (Annexures P-2 and P-5, respectively in CWP No.16498 of 2002); 11.06.2003 and 13.11.2003 (Annexures P-3 and P-7, respectively in CWP No.18979 of 2003); 07.10.2003 (Annexure P-5 in CWP No.16573 of 2003); 18.09.2002, 04.04.2003 and 30.04.2003 (Annexures P-5, P-7 and P-8, respectively in CWP No.14818 of 2003) are set aside.

(26) Respondents are directed to give all the consequential benefits to the petitioner and he shall also be entitled to arrears of three months prior to the date of filing of the petition.
