

Before G. R. Majithia, J.

DR. K. S. THIND,—Petitioner.

versus

THE STATE OF PUNJAB & ANOTHER,—Respondents.

Civil Writ Petition No. 7834 of 1989

30th August, 1990.

Constitution of India, 1950—Arts. 226/227—Punjab Civil Services (Premature Retirement) Rules, 1975—Rl. 3—Premature retirement on the basis of Annual Confidential Reports—No adverse remarks reflecting work & conduct—Remarks of doubtful integrity not recorded by Reporting Officer but recorded by reviewing officer—Such remarks never conveyed to the petitioner—Order of premature retirement—Whether sustainable.

Held, that from the perusal of the resume of the entries in the annual confidential reports of the petitioner reveals that the petitioner did not earn any adverse remarks reflecting upon his work and conduct. His integrity was never doubted except in the reporting year 1986-87, which was never communicated to him and he had no opportunity to file representation against the same and it could not be taken into consideration for forming the requisite opinion under Rule 3 of the Rules. The service record of the petitioner for the last ten years preceding his premature retirement does not indicate any deficiency in his work and conduct and it would be unjust and unreasonable to retire him prematurely on the basis of the adverse entries for the years 1986-87 and 1987-88, which I have quashed. The Apex Authority which ordered the premature retirement of the petitioners in public interest took into consideration irrelevant and non-existent material. It is beyond comprehension that to what extent that material weighed with it. The order cannot be sustained. (Para 28)

Held, that the annual confidential report is the subjective opinion of the reporting officer and it has to be formed on an objective appraisal of material and not arbitrarily. (Para 25)

Writ Petition under Article 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to :

1. (a) issue an appropriate writ, order or direction in the nature of certiorari quashing order of premature retirement Annexure-1. It be declared that the petitioner continues in service and is entitled to all consequential reliefs.
- (b) It is further prayed that the operation of order Annexure P-1 be stayed.
2. (a) issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case;

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

- (b) *dispense with the filing of certified copies of Annexures;*
- (c) *dispense with the requirement of advance notice to the respondents;*
- (d) *award the cost of this petition to the petitioner.*

CIVIL MISCELLANEOUS NO. 7176 OF 1990.

APPLICATION UNDER SECTION 151 CPC praying that the application may kindly be allowed and the representation of the petitioner as Annexure R-1 may kindly be allowed to be placed on the record and any action which this Hon'ble Court may deem appropriate in accordance with the law may kindly be taken.

J. L. Gupta Sr. Advocate (Vikrant Sharma, Jaswant Singh Chauhan & Nirmaljit Kaur, Advocates with him), for the Petitioner.

S. S. Saron, Asstt. A.G., Pb., for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) The petitioner has impugned the order of his premature retirement from service dated June 6, 1989 passed by respondent No. 1, in this writ petition under Articles 226/227 of the Constitution of India.

(2) Reference to a few relevant facts is necessary for resolving the dispute. The petitioner did his M. S. in Medical Microbiology, Bacteriology, Virology from Pennsylvania University (U.S.A.) and thereafter did his Ph.D. therefrom. He has published a large number of papers and has been on the teaching faculty of the University of Pennsylvania, U.S.A. (Jefferson Medical Centre) and the P.G.I., Chandigarh. He taught M.D. and M.S. students in U.S.A. and India. He established and organized the Department of Microbiology, Virology, Parasitology at the P.G.I., Chandigarh. In the year 1968, respondent No. 1 advertised six posts in Punjab Civil Medical Services Class I, including the one in the Speciality of Bacteriology. The petitioner applied for the post and was selected by the Punjab Public Service Commission. He was appointed to PCMS Class I post on December 6, 1968. Since he was not granted promotions due to him, he moved this Court through Civil Writ Petition No. 977

of 1987 and the same was disposed of by this Court on February 6, 1989. The relevant extract of this order reads thus:—

- “(i) That C.W.P. No. 3877 of 1970 filed by Dr. P. K. Narang against the appointment of Dr. K. S. Thind in PCMS I was dismissed by the High Court,—*vide* its judgment dated 31st May, 1977. The stand of the State of Punjab then was that the petitioner, Dr. K. S. Thind fulfilled all the qualifications though he was not possessing the basic medical degree of M.B.B.S. Although no findings were recorded that M.B.B.S. degree was necessary for appointment to PCMS Class I under 1940 Rules, which were then prevalent and under which Dr. Thind was appointed, therefore Dr. Thind could not be termed as usurper.
- (ii) That the authorities concerned considered the representations of Dr. Thind and recommended the inclusion of the post in PCMS Class I. Instead of complying with the orders of the Minister, the State of Punjab granted selection grade and non-practising allowance to Dr. Prithipal Singh ignoring the case of the petitioner, Dr. Thind. Again on July 1, 1983, Dr. Prithipal Singh was appointed as Deputy Director. Further on January 24, 1986, he was promoted as Joint Director. At all these stages, the case of the petitioner, Dr. Thind, was not considered for promotion. Dr. Thind should not be deprived of similar benefits on such *ex-cadre* posts. Ordinarily stagnations in Government service is not contemplated. When the petitioner, Dr. Thind, has chances of getting selection grade as well as promotion to different posts in the service when he joined the same, he should be allowed similar benefits even in *ex-cadre* posts and such benefits and promotion from the dates he would have otherwise got such service benefits if he had remained in the PCMS Class I. Depriving the petitioner, Dr. Thind of such service benefits as were promised to him at the time of his induction into service would amount to manifest injustice to the petitioner. In this manner, the members of the service would not be effected at all and due justice would be done to the petitioner, Dr. Thind.
- (iii) For the reasons recorded above, the petition is allowed with costs. The respondents are directed to consider the case of the petitioner for all the service benefits such as

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

grant of selection grade and promotions on such dates when juniors to the petitioner were granted such benefits in PCMS Class I.”

Against the judgment rendered in Civil Writ Petition No. 977 of 1987, respondent No. 1 preferred Letters Patent Appeal No. 515 of 1989 and Civil Misc. No. 7559 of 1989 for suspending operation of the judgment of the Single Judge. The Letters Patent appeal as well as the civil miscellaneous application were heard by a Division Bench on May 4, 1989 and the following order was passed:—

“Notice.

We have formally admitted the LPA but we are satisfied that the learned Judge has appreciated the matter more from justice angle and he felt that the Officer deserved some special treatment and it is in those circumstances that he had given certain directions. We do hope that pending LPA, the Government will take into consideration all the facts and circumstances of the case and make suitable orders so that the Government orders could stand the Courts orders. However, we make it clear that there is no interim stay. The matter to come up on 17th July, 1989”.

(3) The petitioner was expecting promotion orders pursuant to the directions given by the learned Single Judge of this Court while deciding C.W.P. No. 977 of 1987 and in the light of the directions given by the Motion Bench in L.P.A. No. 515 of 1989, but respondent No. 1 instead of granting him the relief as mentioned in these orders, issued the impugned order dated June 6, 1989, ordering his premature retirement from service. He further alleges that during the course of hearing in C.W.P. No. 977 of 1987 and L.P.A. No. 515 of 1989, it was never suggested at any stage that he was unfit for any of the promotions because of the adverse entries in the annual confidential reports. The impugned order is wholly arbitrary. If the service record of the other officers who are continuing in service, including that of the present Director, Health and Family Welfare, is compared with the petitioner's, it will be found that the petitioner had better record of service. He alleges that the impugned order in fact has been passed to defeat the directions given in the writ petition and the Letters Patent appeal referred to above.

(4) The impugned order was passed by respondent No. 1, but the written statement has been filed by Dr. H. S. Aneja, PCMS-1, Deputy Director, Health & Family Welfare, Punjab, Chandigarh, on behalf of the respondents. It would have been proper if the

written statement on behalf of respondent No. 1 had been filed by the Secretary of the concerned Department to justify the impugned order. I do not want to express any opinion on this score since the learned counsel appearing for the respondents produced the original record for my perusal.

(5) In the written statement, it is pleaded that after receipt of the High Court's orders passed in C.W.P. No. 977 of 1987 and L.P.A. No. 515 of 1989, the petitioner's case for grant of selection grade and for promotion as Deputy Director was considered and rejected. Similarly, his case for promotion as Joint Director and Director, Health and Family Welfare was also considered and rejected. The petitioner's case for premature retirement was referred to the Apex Committee as per policy procedure laid down by the Department of Personnel and Administrative Reforms, Government of Punjab. The Committee took note of the Punjab Government's extant policy and the latest legal authority as laid down by the Supreme Court of India in *Brij Mohan v. State of Punjab* (1), relating to the review of cases of premature retirement of Government employees. It was noted that adverse entries of a Government employee in his service record cannot be taken into account and attached any weightage for premature retirement of an employee:—

- (i) Adverse entries prior to promotion;
- (ii) Adverse entries not conveyed;
- (iii) Adverse entries conveyed but representation against which is pending; and
- (iv) Adverse entries more than 10 years old.

Petitioner's record of last ten years was perused by the Committee. He earned one good report, two above average reports, six average reports and one report was not recorded. During this period, he was conveyed the following adverse remarks:—

<i>Reporting year</i>	<i>Adverse remarks</i>
1978-79	... Relations with colleagues not fair.
1979-80	... Relations with other departments were poor. Relations with his colleagues not cordial, especially with Public Analyst.
1980-81	... Relations with his colleagues i.e. Public Analyst, not cordial.
1986-87	... He concentrates more on golf than on his work. His integrity also is doubtful.
1987-88	... He does not attend to his work and is absent in the afternoon.

(1) A.I.R. 1987 S.C. 948.

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

The Committee adjudged his overall record as 'poor' and recommended that the petitioner may be retired immediately in the public interest.

(6) The petitioner's integrity has been mentioned as doubtful in the A.C.R. for the year 1986-87. It was denied that the petitioner's record was either good or satisfactory. Adverse remarks have also been conveyed to the petitioner and he cannot deny that he has not been conveyed any adverse remarks. Dr. Thind earned 19 reports, out of which 9 are adverse in nature and in these 9 A.C.Rs. bad remarks have invariably been conveyed to the doctor.

(7) The petitioner filed an additional affidavit as a rejoinder to the written statement, in which he denied that the adverse remarks in the A.C.R.s for the years 1979-80 and 1986-87 were ever conveyed to him. Since these adverse entries were not conveyed to him, he could not file any representation against these.

(8) Dr. H. S. Aneja, Joint Director, Health and Family Welfare, Punjab filed a reply to the additional affidavit of the petitioner by way of affidavit dated December 15, 1989. He controverted that the adverse entries recorded in the A.C.R.s for the years 1979-80 and 1986-87 were not conveyed to the petitioner. The adverse entries in the A.C.R.s for the years 1979-80 and 1986-87 were conveyed to the petitioner,—vide letter No. 1-EIII-80/4094, dated July 10, 1980 and letter No. EIII(I)-Pb-87/8210, dated November 2, 1987 respectively. The letter dated November 2, 1987,—vide which the remarks recorded in the A.C.R. for the year 1986-87 were conveyed to the petitioner was received by Shri Arun Kumar, Laboratory Assistant of the office of the petitioner. An extract of the peon dak-book was also placed on record.

(9) The petitioner was prematurely retired on June 6, 1989 in exercise of the power under rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter referred to as the Rules) and the same reads as under:—

"3. Premature Retirement:—

- (1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service

or attains fifty years of age or on any date thereafter to be specified in the notice.

- (1)(b)
 (2)”

(10) The above rule gives absolute right to the appropriate authority to retire an employee prematurely on completion of twenty-five years of qualifying service or on his attaining fifty years of age. The rule does not lay down any criteria/guidelines for the exercise of power, although public interest is specified in the rule, which means power has to be exercised in public interest only. The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those employees who are inefficient or corrupt and dishonest. The State Government issued a Government order on September 26, 1975 laying down the guidelines and the procedure necessarily to be followed by the officer exercising power under Rule 3 of the Rules. The order provided that the appropriate authority should use the powers under Rule 3 in a judicious manner. Opinion has to be formed by scrutiny of the annual confidential reports of the concerned employee and by taking into consideration any other substantial material on record. The order also provided that it was not feasible to lay down in absolute terms as to how many adverse entries about the inefficiency or lack of integrity would justify the premature retirement but it laid stress that the service record as a whole would determine the merit of each case. Paragraph 6 of the letter further stated that remoteness of an adverse entry, the scrutiny of the service record of the employee concerned such as crossing of efficiency bar, confirmation and promotion to a higher post or any other meritorious service rendered by the employee, would have their relative importance. The order emphasizes that the appropriate authority may consider premature retirement of a Government employee if it has reasonable cause to believe that the employee concerned was lacking in integrity irrespective of the assessment of ability and efficiency in work. Respondent No. 1 issued another order on August 4, 1978 pointing out that while exercising power under rule 3 of the Rules, the service of an employee as a whole would determine the merit of each case but if there was a single entry describing the employee concerned as a person of doubtful integrity, that would justify the premature retirement under the Rules. The executive instructions issued as contained in these two Government orders provide sufficient guidance

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

for the exercise of power under Rule 3. According to these instructions, the service record of an employee has necessarily to be considered while taking decision for the premature retirement of an employee and if there was a single entry casting doubt on the integrity of an employee, the premature retirement of such an employee would be in public interest. These guidelines were issued by the State Government since details by which the question of public interest could be determined were not stated in the Rules.

(11) I will now examine the petitioner's service record for the last 10 years, which is as under:—

Reporting Year	Grading by the Reporting Officer	Grading by the Reviewing Officer
1979-80	Average	Average
1980-81	Above average	Above average
1981-82	Average	Very Good Officer
1982-83	Above average	Above average
1983-84	Above average	Average
1984-85	Average	Average
1985-86	No ACR written, but in the report of the Deputy Director, it is mentioned as 'Satisfactory'.	
1986-87	ACR not recorded.	An Average Officer. He concentrates more on Golf than on his work. His integrity also is doubtful.
1987-88	Average	He does not attend to his work and remains absent in the after noon.
1988-89	Not recorded	Not recorded

(12) It is significant to note that in none of these reports except for the year 1986-87, integrity of the petitioner was doubted. The petitioner has levied a challenge that the adverse entry for the year 1986-87 was never communicated to him. Dr. H. S. Aneja, Joint Director, Health Services, Punjab in his affidavit dated December 15, 1989 for the first time disclosed in this Court that the adverse entry in the annual confidential report for the year 1986-87 was conveyed to the petitioner,—*vide* letter No. E.III(1)-Pb-87/8210, dated November 2, 1987 and the letter was received by Shri Arun Kumar, Laboratory Assistant in the office of the petitioner. The counsel for the State produced before me Peon Dak-Book containing an entry that letter No. E.III(1)-Pb-87/8210, dated November 2, 1987 was received in the office of the petitioner. It could not be deciphered who had received the said letter. The averment in the written statement filed by Dr. Aneja on behalf of the respondents is to the effect that the petitioner cannot deny that the adverse remarks for the year 1986-87 were not conveyed to him. The plea taken in the written statement was not finding support from the official record produced before me. I felt that some part of the service record of the petitioner was being withheld from the Court. In the interest of justice, I summoned and recorded the statements of the following officers of the Punjab Government:—

- C.W.1. Shri Prem Chand Sangar,
Deputy Secretary (Personnel),
Department of Personnel &
Administrative Reforms, Punjab,
Chandigarh.
- C.W.2. Dr. Manmohan Singh,
Joint Secretary to Government, Punjab,
Health & Family Welfare Department,
Chandigarh.
- C.W.3. Dr. H. S. Aneja,
Additional Director,
Health & Family Welfare, Punjab,
Chandigarh.
- C.W.4. Shri Bansi Lal Sharma,
Superintendent, Health-I Branch,
Punjab Civil Secretariat,
Chandigarh.

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

(13) C.W.1 Shri Prem Chand Sangar, produced Guidelines/ Instructions for recording the annual confidential reports (Ex.C.1). C.W.2 Dr. Manmohan Singh, produced three files containing noting as well as the correspondence portions concerning the petitioner (Ex.C.2, C.3 and C.4) and A.C.R.s of Dr. Thind, Ex.C.5. C.W.3 Dr. H. S. Aneja stated on oath that the portion marked A to A/1 appearing at pages 3 and 4 in paragraph 3 of the preliminary objections in the written statement, which reads thus, was verified by him on the basis of the communication received from the Superintendent, Health Branch-I of the Office of the Secretary, Health and Family Welfare, Punjab:—

“Keeping in view the above recommendations of the Apex Committee, Dr. Thind was retired prematurely from Government service as per instructions on the subject. His integrity has been mentioned as doubtful in the A.C.R. for the year 1986-87. It is wrong to say that record of Dr. Thind is good or satisfactory. Adverse remarks have also been conveyed to Dr. Thind and he cannot deny that he has not been conveyed any adverse remarks. Dr. Thind earned 19 reports out of which 9 are adverse in nature and in these nine A.C.R.s bad remarks have invariably been conveyed to the Doctor.”

He admitted that the draft written statement sent by the Director, Health and Family Welfare to the Secretary, Health and Family Welfare, did not contain the above portion of the written statement but it was included in the draft written statement sent by the Secretary, Health and Family Welfare to the Director, Health and Family Welfare. This statement apparently is incorrect. C.W.4 Shri Bansi Lal Sharma, Superintendent, Health-I Branch, Punjab Civil Secretariat, stated on oath that the draft written statement, Ex. CW4/A, sent by the Director, Health and Family Welfare, was received in the office of the Secretary, Health and Family Welfare and it was returned to the Director, Health and Family Welfare without any additions, alterations, modification or omission, by a forwarding letter, Ex. CW4/B. Dr. Aneja wrongly stated that the portion A to A/1 of the written statement, reproduced above, was supplied to him by the Secretary, Health and Family Welfare. The conduct of this witness deserves to be deprecated, but I leave it here. C.W.2 Dr. Manmohan Singh stated that the file containing the annual confidential reports of Dr. K. S. Thind is kept in the office of the Director, Health and Family Welfare. He further stated that the

annual confidential report is recorded by the Director, Health and Family Welfare and thereafter it is transmitted to the Reviewing/Accepting Authority. After the Reviewing/Accepting Authority has recorded its observations thereon, the annual confidential report is returned to the Director for onward communication of the adverse remarks, if any, to the concerned officer. Communication of the adverse remarks has to be done by the Director.

(14) C.W.3 Dr. H. S. Aneja stated on oath that there is no material available on the record that Memo No. E.III(I)-Pb-87/8210, dated 2nd November, 1987 containing adverse remarks for the year 1986-87 was actually received by the petitioner. He was asked to examine the entry Ex. C6/1 at serial No. 10 dated 2nd November, 1987 recorded in the Peon Dak-Book, and pin-point the name of recipient of the letter dated 2nd November, 1987 and he categorically admitted that he cannot say the name, designation and rank of the recipient of the aforesaid communication. The Peon Dak-Book and the statement of Dr. Aneja do not prove that the adverse remarks in the annual confidential report for the year 1986-87 in which for the first time, it was recorded by the Reviewing Authority that the integrity of the petitioner was doubtful was ever conveyed to the petitioner. Whenever any adverse remarks are recorded in the annual confidential report of an employee, the same must be communicated to him to afford him an opportunity to improve his work and conduct and to make representation to the appropriate authority against those remarks. If the adverse remarks are not conveyed to the Government employee concerned, no action can be taken on their basis. In *Gurdial Singh Fiji v. State of Punjab* (2), the appellant therein was denied promotion on account of certain adverse entries against which he had made representations to the Government, but for some reason or the other those representations could not be considered or disposed of. In view of those entries, he was not selected for promotion. The apex Court while considering the effect of non-consideration of the representation observed as under:—

“The principle is well settled that in accordance with the rules of natural justice, an adverse report in confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report.

(2) A.I.R. 1979 S.C. 1622.

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for some reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified."

(15) In *Amar Kant Choudhary v. State of Bihar* (3), the apex Court again emphasized that adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned. In *Brij Mohan Singh Chopra v. State of Punjab* (4), A.I.R. 1987 S.C. 948, the apex Court held that the same consideration must apply to a case where the adverse entries in a confidential roll of Government employee are taken into account in retiring him prematurely from service. The apex Court held thus:—

"10. ... These decisions lay down the principle that unless an adverse report is communicated and representation, if any, made by the employee is considered, it cannot be acted upon to deny promotion. We are of the opinion that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service. It would be unjust and unfair and contrary to principles of natural justice to retire prematurely a Government employee on the basis of adverse entries which are either not communicated to him or if communicated representations made against those entries are not considered and disposed of."

(16) As observed earlier, the adverse remarks in the confidential roll for the year 1986-87 were not conveyed to the petitioner. The same, therefore, could not be acted upon for ordering premature retirement of the petitioner.

(17) In the annual confidential report for the year 1987-88, the Reporting Officer did not record that the petitioner remained absent from duty and that during working hours he used to play Golf.

(3) A.I.R. 1984 S.C. 531.

But entry to this effect was made by the reviewing/accepting authority. Confidential remarks in the annual confidential report are after all an assessment of the work, conduct and performance of an officer by his superior. The assessment by its very nature would be somewhat subjective, but as it is well settled the subjective opinion has to be formed on a just appraisal of material and cannot be done arbitrarily. The opinion of the reviewing authority is purely subjective, but there has to be objective data available on record in forming that opinion. Since the reporting officer did not record in the confidential roll for the year 1987-88 that the petitioner remained absent from duty, the reviewing authority could come to a different conclusion if material existed before him to form that opinion. C.W.2 Dr. Manmohan Singh, Joint Secretary to Government, Punjab, Health and Family Welfare Department, was put a specific question in this context and it will be useful to reproduce the question and answer herein below:—

“Question : Please see the remarks, Ex.C.5/3, of the Reviewing Authority on the annual confidential report of Dr. Thind for the year 1987-88. Attention of the witness has been drawn to the remarks, Ex.C.5/3, of the Accepting/Reviewing Authority. Please state the material/facts available on the record in respect of this observation?

Answer : There is no material/fact available on the file to support the above observation.”

Similarly, for the reporting year 1986-87, the reporting officer did not write the confidential remarks, but the reviewing authority reported thus:—

An average officer. He concentrates more on Golf than on his work. His integrity also is doubtful.”

The same was marked as Ex. C.5/1. C.W.2 Dr. Manmohan Singh was asked to produce the relevant record/material in support of adverse entry, Ex. C.5/1, and it will be apt to reproduce the exact answer given by the witness:—

“There is nothing on record of the office of the Secretary, Health and Family Welfare, Punjab, for supporting the remarks, Ex. C. 5/1, recorded by the Reviewing Authority.”

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

(18) Standing Guide on Annual Confidential Reports has also been produced as Ex.C.1 and paragraph 13 thereof reads as under:—

“The integrity of the Government employees, being of greatest importance, needs a special mention in the confidential reports. It should be clearly stated if the officer/official is suspected of corruption or is believed to be corrupt and this opinion should generally be fortified by reasons, which may be in the possession of the reporting officer. Any ill-considered remarks in this respect may do a lot of harm to the officer/official reported. The reporting officer should give a definite, frank and honest opinion on the integrity of their subordinates in the column “Defects, if any” or elsewhere. The practice of making non-committal/ill-considered remarks in this regard should be discouraged. Reporting Officers should give a definite opinion on the integrity of their subordinates, and avoid remarks like “no complaints.” Further, instances have come to the notice of the Government in which even though, officers/officials reported upon were proceeded against for serious forms of corruption, their confidential reports for the same periods certified their integrity to be good. It is felt that contradictions of this type arise only because reporting officers fail in their duty to make entries in the column relating to integrity forthrightly and without hesitation. In case an officer/official has been given a good report of integrity which is later proved to be wrong, the reporting officer will run the risk of earning Government displeasure. Ordinarily, inference would be that either he did not exercise proper supervision or he was in dishonest collusion with his subordinate. The intension of the Government is that the truth about subordinates should be known to reporting officers and brought to the notice of higher authorities. This would not, however, justify the entering of ill-considered remarks based on inadequate observation.”

(19) The learned counsel for the State vehemently argued that the confidential reports are the subjective satisfaction of the reporting officer and it cannot be subjected to judicial scrutiny. In support of this submission he relied upon *K. Kalyanaraman v. The Inspecting Assistant Commissioner of Income Tax, Range V,*

Madras-6 and others (4), *Baldev Kapoor, P.C.S. v. The Union of India and others* (5), *A. R. Darshi v. State of Punjab and others* (6) and *State of Punjab v. Janak Raj Jain* (7).

(20) In *K. Kalyanaraman's case* (supra), the writ petitioner was an Upper Division Clerk in the office of the Income-tax Officer. The reporting officer-Inspector of Income-tax, in the column under the heading "Amenability to discipline", remarked "Disputatious". The Income-tax Officer agreed with the remarks of the reporting officer and the same were counter-signed by the Inspecting Assistant Commissioner of Income-tax. The writ petitioner filed a representation against those remarks and the Appellate Authority—Commissioner of Income-tax recorded that instead of "disputatious", it should be recorded as "not satisfactory". The writ petitioner further unsuccessfully challenged the order of the Appellate Authority before the Central Board of Direct Taxes and the order of the Central Board of Direct Taxes was challenged in the writ petition. It was in this context that a learned Single Judge of the Madras High Court observed that the High Court cannot sit in judgment over the remarks of the officer and while dismissing the writ petition held that the confidential reports are the subjective satisfaction of the officer concerned, though normally one is expected to come to that satisfaction on an objective assessment of the work of the subordinate.

(21) In *Baldev Kapoor's case* (supra), the writ petitioner was a member of the Punjab Civil Service (Executive Branch). He challenged the validity of the selected list prepared by the Selection Committee under rule 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, *inter alia*, on the ground that persons with inferior record of service were selected while he was superseded. One of his grouse was that Mr. K. S. Raju could not be selected by the Selection Committee since the adverse reports given to him were illegally expunged by the State Government. The adverse reports given to Mr. Raju were expunged by the orders of the Chief Minister. It was urged that the orders of the Chief Minister were not in accordance with the instructions dated March 27, 1960 laid down for expunction of the adverse remarks.

(4) 1980(2) S.L.R. 35.

(5) 1980(2) S.L.R. 309.

(6) 1988(7) S.L.R. 275.

(7) I.L.R. (1987) Punjab and Haryana 412.

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

The contention was rejected and it was in this context that it was observed by a Bench of this Court that these instructions are only meant for the guidance of the officer concerned; non-compliance did not render the decision illegal.

(22) In *A. R. Darshi's case* (supra), the writ petitioner moved this Court for quashing the adverse remarks in the annual confidential reports communicated to him and also the order by which the representation was dismissed. It was in this context that a Single Judge of this Court held that the recording of annual confidential reports, communication of adverse remarks, if any, and filing of representation for their expunction as also the consideration of the representations by the higher authorities, are the matters which are regulated by executive instructions issued by the State Government from time to time and these instructions are non-statutory and administrative in nature and were not justiciable.

(23) In *Janak Raj Jain's case* (supra), a Taxation Inspector in the Excise and Taxation Department was conveyed adverse remarks with regard to his integrity. His representation against the adverse remarks was also rejected. He challenged the order in a civil Court and the Civil Court decreed the claim. The State came up in appeal and this Court held that the instructions laid down for recording the annual confidential reports cannot be enforced in a Civil Court. On merits, the Bench found that the reporting officer had fortified his remarks by reasons according to the instructions issued by the Chief Secretary to Government and the reporting officer disclosed the material on the basis of which the adverse remarks were recorded. It was in the light of this fact that this Court allowed the State's appeal and dismissed the civil suit.

(24) The aforesaid authorities have no applicability to the facts of the instant case. Even if the guidelines for reporting the Annual Confidential reports are non-statutory, yet the officers of the State cannot ignore the same with impunity. Even if the order regarding the annual confidential remarks is purely administrative order, it must be based upon reasons. In *S. R. Venkataraman v. Union of India and another* (8), somewhat identical matter came up for consideration before the apex Court. The appellant before the apex Court was working as a Joint Director, Family Planning in the Directorate General of All India Radio before she was promoted to the post of

(8) 1979 S.L.J. I.

Director in the All India Radio. When she was working as a Joint Director, she was served with an order dated March 26, 1976 retiring her prematurely from service with immediate effect. Mr. V. D. Vyas, Chairman of the Central Board of Film Censors made adverse entry with regard to her integrity, in the annual confidential report. Thereafter, the order of premature retirement was passed in public interest under clause (j)(i) of rule 56 of the Fundamental Rules. She pleaded that the order of premature retirement was arbitrary and capricious. It was in this context that the apex Court observed thus:—

“It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law putting a rule which make a useful provision for the premature retirement of Government servants only in the ‘public interest’ to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power.”

(25) The annual confidential report is the subjective opinion of the reporting officer and it has to be formed on an objective appraisal of material and not arbitrarily. In *Union of India v. Mr. Ranjit Singh Grewal and others* (9), a Division Bench of the Delhi High Court held thus:—

“Confidential remarks are after all an assessment of the work, performance and conduct of an officer by his superiors. The assessment by its very nature would be somewhat subjective but as is well settled the subjective opinion has to be formed on an objective appraisal of material and cannot be done arbitrarily.”

(26) In *Rishi Parkash v. The State of Haryana and others* (10), a Single Judge of this Court held that the annual confidential reports form the basis of service record of a Government servant and future promotions, confirmation, grant of selection grade, crossing of efficiency bar, etc. are all dependent on the service record. If the adverse remarks are recklessly recorded and allowed to be

(9) 1980(3) S.L.R. 256.

(10) 1989(1) S.L.R. 436.

Dr. K. S. Thind v. The State of Punjab & another (G. R. Majithia, J.)

retained on the service record of a Government servant, they continue to haunt him throughout his future career and seriously prejudice the prospects of his future promotions resulting in his supersession by his juniors.

(27) In the light of the ratio of the judgments in *Ranjit Singh Grewal's case* (supra) and *Rishi Parkash's case* (supra), the adverse entries in the annual confidential reports for the years 1986-87 and 1987-88 have to be quashed. There was absolutely no material as admitted by C.W.2 Dr. Manmohan Singh before the reviewing authority to make those remarks.

(28) Perusal of the resume of the entries in the annual confidential reports of the petitioner reveals that the petitioner did not earn any adverse remarks reflecting upon his work and conduct. His integrity was never doubted except in the reporting year 1986-87, which was never communicated to him and he had no opportunity to file representation against the same and it could not be taken into consideration for forming the requisite opinion under Rule 3 of the Rules. The service record of the petitioner for the last ten years preceding his premature retirement does not indicate any deficiency in his work and conduct and it would be unjust and unreasonable to retire him prematurely on the basis of the adverse entries for the years 1986-87 and 1987-88, which I have quashed. The Apex Authority which ordered the premature retirement of the petitioner in public interest took into consideration irrelevant and non-existent material. It is beyond comprehension that to what extent that material weighed with it. The order cannot be sustained.

(29) I accordingly allow the petition and set aside the impugned order dated June 6, 1989 (Annexure P-1) retiring the petitioner prematurely and direct that the petitioner shall be treated to be in service without any break. He shall also be entitled to costs which are assessed at Rs. 1,000.

(30) Before I part with this judgment, I am constrained to observe that the authorities have not acted fairly in the instant case. No reason is forthcoming why the annual confidential report for the year 1988-89 was not recorded. May be, there were some plus points in favour of the petitioner which the authorities did not want to record in his confidential report.

(31) On August 25, 1990, Civil Misc. No. 7176 of 1990 was moved by the State to bring on record the representation filed by the writ-petitioner before the Secretary to Government, Punjab, Department

of Health and Family Welfare. In the representation, the petitioner stated that the order of compulsory retirement dated June 6, 1989 had been quashed by the High Court and various benefits mentioned in the representation be accorded. It is unfortunate that the petitioner made the representation making a wrong averment when the matter was pending adjudication in this Court. The petitioner appears to be in the habit of building castles in the air or he may be over enthusiastic. I condemn this conduct of the petitioner, but leave the matter at that since I do not find that any misconduct can be attributed. He may be under lot of stress and may be imagining that if the writ petition succeeds, he will be entitled to so many benefits and it is in this context that he may have moved this representation. The application is accordingly rejected.

P.C.G.

Before J. S. Sekhon, J.

PRITHVI RAJ GROVER,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 7966 of 1987.

13th September, 1990.

Constitution of India, 1950—Arts. 14 & 16—Punjab Re-organisation Act, 1966—S. 82—Punjab Service of Engineers Class I, P.W.D. (Building & Roads) Branch Rules, 1960—Rls. 5, & 9—Inter-se seniority—Fixation of—Promotion—Retrospective amendment of Class I Rules changing conditions of service without previous approval of Central Government—Amendment changing conditions of service to person's disadvantage rendering him ineligible for promotion—Such amendment is violative of Arts. 14 & 16 and beyond powers of the State Government.

Held, that the notification dated 14th January, 1985 amending Rules 6 & 9 of the Class I Rules with retrospective effect is quashed being violative of the provisions of Articles 14 & 16 of the Constitution of India and ultra vires the State Government as the prior approval of the Central Government was not taken under S. 82(6) of the Punjab Reorganisation Act, 1966.

(Paras 11 & 14)

T. R. Kapur and others v. State of Haryana AIR 1987 S.C. 415.
B. M. Sharma v. The State of Haryana 1987(5) S.L.R. 531.

(FOLLOWED)