

Before : Jai Singh Sekhon, J.

HARJIT SINGH,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 2907 of 1982.

30th May, 1990.

Constitution of India, 1950—Art. 14—Punjab Police Rules, 1934—Premature retirement—Adverse entries not conveyed—Petitioner debarred from crossing efficiency bar—Plea against same failed—Non-communication of adverse entries not material—Premature Retirement upheld.

Held, that the service record of recent past has been taken into consideration and not the remote and stale entries of the service record have been made the basis for ordering his premature retirement. The non-communication of adverse entries to the petitioner in the instant case makes no difference as admittedly the petitioner was not allowed to cross the efficiency bar and plea against the same has also failed which in turn implies that he was not fit and efficient official and thus his premature retirement was in public interest and does not violate the spirit of the rules.

(Para 8)

Petition under Article 226/227 of the Constitution of India praying that:—

- (a) *That writ in the nature of certiorary be issued quashing orders Annexure P-19 dated 7th July, 1979 and Annexure P-20 dated 8th August, 1979 conveyed on the said date.*
- (b) *That the records be sent for and perused.*
- (c) *That any other Writ, orders or directions which this Hon'ble Court may deem fit under the circumstances of the case, be issued.*
- (d) *That the petitioner may be exempted from filing the certified copies of Annexures.*
- (e) *That the costs of the petition be awarded to the petitioner.*
- (f) *That after quashing the orders of retirement, directions may be issued to the effect that the petitioner is to be*

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deemed to be in service, till he attains the age of super-annuation.

J. S. Randhawa, Advocate, for the Petitioner.

S. S. Ahlawat, DAG, Haryana, for the Respondent.

JUDGMENT

J. S. Sekhon, J.

(1) The petitioner was recruited in the Corps of Signals Indian Army in the year 1941. He underwent the basic Technical Training Course, Grade III successfully in February 1942. He also passed Grade II Trade Board Test of Army Signals in 1944. The petitioner was undergoing training in Grade I Course in the year 1946, when he was released from the Army due to the termination of Second World War. The record of the petitioner remained excellent during army service and the petitioner was also awarded "Indian Service Medal" and "War Medal". The petitioner was selected and appointed as a Constable/Wireless Mechanic in the Punjab Police Wireless Headquarters at Simla in January 1948. The petitioner was promoted to the post of Radio Technician/Assistant Sub-Inspector with effect from 1st June, 1948 in view of his good and satisfactory work. The petitioner was entrusted with the work of construction, installing, repairing and modifying old equipment which fell to the share of India after the partition of the country. In recognition of his good performance, the petitioner was promoted as Supervisor/Sub-Inspector with effect from 1st July, 1948. The petitioner was confirmed as Sub-Inspector Maintenance with effect from 1st February, 1952. The petitioner's four year's service in the Army was also counted as qualifying experience in the Police Wireless Department for the purpose of pension etc. The petitioner was further promoted as Inspector Maintenance/Incharge Police Radio Workshop and Stores with effect from 28th August, 1963 against the permanent vacancy which was caused due to the promotion of Shri Prem Nath as Deputy Superintendent of Police. On the occasion of re-organization of the State of Punjab, the petitioner was allocated to the State of Haryana as Inspector Incharge Police Radio Workshop and Stores with effect from 1st November, 1966. The petitioner was given good reports by the then Assistant Inspector General of Police Technical and Training, Haryana, for holding independent charge of the post of Inspector Police Wireless Haryana

with effect from 1st November, 1966. The petitioner was given good reports by the then Assistant Inspector General of Police Technical and Training, Haryana, for holding independent charge of the post of Inspector Police wireless, Haryana with effect from 1st November, 1966 to 22nd September, 1967. The petitioner was also awarded Rs. 50 as cash reward in recognition of his service in addition to issuing a commendation certificate,—*vide* order book No. 130, dated 27th March, 1967. The petitioner was however reverted to the rank of Sub-Inspector Maintenance,—*vide* order dated 25th January, 1968 by the Inspector General of Police, Haryana, on the ground that he had failed to qualify the Radio Technician/Operator Grade I Test conducted by the Directorate of Coordination (Police Wireless), Government of India, Ministry of Home Affairs, New Delhi. The representation filed by the petitioner against the said order was rejected,—*vide* letter dated May 22, 1968. The petitioner then challenged his reversion before the High Court in C.W.P. No. 2025 of 1968, which was accepted on 9th September, 1969 reported as 1969 S.L.P. 845. The order of reversion of the petitioner was set aside on the ground that the executive instructions prescribing qualifications for promotion to the post of Inspector Wireless were issued later on to the actual promotion of the petitioner. Shri Amrit Lal, one of the respondents in the aforesaid writ petition filed L.P.A. No. 524 of 1969 against the said order of the High Court, which was dismissed *in limine*, by the Division Bench on 7th November, 1969. In the mean time, one Pishori Lal Sodhi filed Civil Misc. Application No. 5889 of 1969 for setting aside the judgment mentioned above in the writ petition on the ground that he was not arranged as a respondent although he was a necessary party to the writ petition. This application was dismissed by the High Court on 6th November, 1969 with the observation that Pishori Lal would have had no right which is being claimed by him now because Respondent No. 1 (the present petitioner) was admittedly senior to him and his chance of promotion would have been after the retirement of the present petitioner. In pursuance of the above-referred judgment of the High Court, the department,—*vide* order dated 26th November, 1969 cancelled the order of reversion of the petitioner. The petitioner maintained that as he had challenged the order of the Inspector General of Police of Haryana before the High Court in the above-referred writ petition, his superior officers were feeling prejudiced and annoyed against him and consequently after the receipt of notice of the aforesaid writ petition, some adverse remarks were recorded in the confidential reports for the period 23rd September, 1967 to 21st March, 1968.

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The adverse remarks pertaining to the petitioner's knowledge of Radio theory being weak as he had failed thrice in Grade I examination, were conveyed to the petitioner on 14th August, 1968. It is further maintained that these very remarks were again repeated in the year 1968-1969 and the representations filed by the petitioner were summarily rejected. The petitioner avers that these remarks were based mainly on the ground of his having failed to clear Grade I examination, but as it was not a condition precedent for his promotion as Inspector as per judgment of the High Court in C.W.P. No. 2025 of 1968 decided on 9th September, 1969, these remarks were of no consequence. It is further maintained that in the year 1970, the petitioner was granted a commendation certificate (Class III) along with a cash reward of Rs. 35 for the good work done during the agitation on Chandigarh issue. The work and conduct of the petitioner for the year 1969-1970 remained satisfactory and good. Again in the year 1970-1971 the petitioner was conveyed the oft-repeated and uncalled for remarks relating to deficiency in the knowledge of Radio theory and on the basis of the failure of the petitioner to qualify Grade I examination. The representation of the petitioner for this period was also rejected. The petitioner alleges that Shri Tarlok Nath, the then Superintendent of Police Wireless was persistently making unnecessary and uncalled for remarks against the petitioner in the confidential reports of the petitioner in this regard although the passing of Grade I examination was held by the High Court in the above referred writ petition to be not a condition of service of the petitioner for promotion to the post of Inspector. The petitioner consequently sought an interview with the Inspector General of Police, Haryana, and submitted a representation in this behalf on 15th May, 1972. Along with this representation, the petitioner produced a copy of letter dated 9th October, 1968 written by the Superintendent of Police himself showing that the latter did not possess any degree in support of his academic/technical qualifications. This representation was sent through proper channel and when the matter came to the notice of Superintendent of Police (Wireless) Shri Tarlok Nath, he served a show-cause notice dated 3rd July, 1972 on the petitioner calling upon to explain why he be not censured for producing the aforesaid document from the record. Ultimately, the Superintendent of Police (Wireless) censured the petitioner on 27th July, 1972. The petitioner went in appeal against this order before the Deputy Inspector General of Police Haryana Shri P. C. Wadhwa, who rejected the appeal on 9th March, 1973. The petitioner has further averred that in the meantime on the occasion of 25th Independence Anniversary, the petitioner was awarded the Anniversary Medal for the good

service rendered by the petitioner from the year 1947 to 1972. Again, for the year 1971-1972, the same adverse remarks were conveyed to the petitioner and the representation filed by him was also rejected by order dated 2nd August, 1973. However, on the other hand, in connection with this very representation, the Inspector General of Police, Haryana, made a reference,—*vide* No. 1/409/B (i) dated 27th December, 1973 to the Deputy Inspector General of Police H.A.P. asking him to look into the matter and give his independent opinion regarding the repeating of adverse remarks by Shri Tarlok Nath, Superintendent of Police (Wireless) and then the Deputy Inspector General of Police Shri Manmohan Singh after examining the matter sent a detailed reply to the Inspector General of Police, Haryana,—*vide* his letter dated 2nd April, 1974 to the effect that the adverse remarks about the weakness of Radio Theory of this Inspector were based on the plea that he had failed to qualify in Grade I examination held by the Directorate of Coordination Police Wireless, Government of India and the same could not be ultimately insisted upon in view of the decision of the High Court in C.W.P. No. 2025 of 1968. It was further remarked that the Superintendent of Police Wireless never tested the knowledge of radio theory of the petitioner and these adverse remarks carry no significance and may be ignored. On receipt of this recommendation of the Deputy Inspector General of Police, Haryana, the Inspector General of Police Haryana wrote a letter to Shri Tarlok Nath, Superintendent of Police (Wireless) to evaluate the work and conduct of the petitioner judiciously and qualitatively and that he should not have repeated the remarks on the basis of the petitioner having failed to clear the Grade I examination. In the meanwhile, the petitioner wrote letter dated 1st August, 1972 to the then Chief Minister, Haryana through proper channel for a personal interview in order to bring certain irregularities committed in the department to his notice, which had already been stated by the petitioner in his representation dated 8th May, 1972 and 15th May, 1972 addressed to the Inspector General of Police, Haryana. The Inspector General of Police then insisted upon giving details of these irregularities upon which the petitioner furnished the same,—*vide* letter dated 22nd January, 1973. Copies of these letters are annexed as Annexures P.6 and P.7 to the writ petition. These representations were entrusted for enquiry to the Deputy Inspector General of Police Shri P. C. Wadhwa who visited the office of the Superintendent of Police, Wireless, Haryana Shri Tarlok Nath and in his presence pressurised the petitioner to withdraw these allegations. On the refusal of the petitioner to do so, Shri P. C. Wadhwa without affording an opportunity to the

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petitioner for proving these allegations, reported that the petitioner had failed to substantiate these allegations. With this background, it is averred that for the period from 1st April, 1972 to 30th September, 1972, the petitioner was again conveyed the adverse remarks on 8th March, 1973. On his representation, the Inspector General of Police called for the comments of the Superintendent of Police, Wireless, Haryana to state the reasons for writing only six-monthly report and not an annual report for the year 1972-73. Accordingly, the Superintendent of Police, Wireless, Haryana,—*vide* letter Annexure P.10 replied that this report should be considered for the entire relevant year. However, another representation against these very remarks for the year 1972-73 filed by the petitioner was accepted by the Inspector General of Police, Haryana,—*vide* letter dated 16th September, 1974 (Annexure P. 11) addressed to the Deputy Inspector General of Police H.A.P., but it was never conveyed to the petitioner. It is further maintained that in view of his good record, the petitioner's case for promotion as Deputy Superintendent of Police was recommended in the month of April 1974 as indicated by Annexure P.12, but on subsequent query, the Superintendent of Police Wireless, Haryana for the above-referred obvious reasons misstated the facts in the letter Annexure P.13 and on its basis the petitioner was ignored for promotion to the post of Deputy Superintendent of Police Wireless. On the basis of this report, Shri Manmohan Singh, then Deputy Inspector General of Police H.P.A. Haryana recommended the case of the petitioner for promotion against the vacant post of the Deputy Superintendent of Police, but stated that some enquiry was still pending against the petitioner. The Inspector General of Police then directed the Deputy Inspector General of Police Shri Manmohan Singh to complete the enquiry and it was at this stage, that a vague summary of allegations was served upon the petitioner on 7th August, 1974 in order to harm the petitioner. Thereafter, nothing happened till 3rd June, 1975, when again fresh summary of allegations was served against the petitioner for the third time in respect of the same allegations by the Deputy Inspector General of Police, Hissar Range,—*vide* letter Annexure P. 16. The petitioner submitted a detailed explanation, but nothing happened thereafter. The petitioner further maintained that the authorities continued victimising the petitioner due to the above-referred complaints and he was held up at the Efficiency Bar with effect from 30th August, 1974,—*vide* order Annexure P. 17, dated 18th December, 1974. The petitioner challenges this order on the ground that it was based upon the remarks for the year 1971-72 and six monthly remarks from 1st April, 1972 to 30th September, 1972, which

were in fact non-existent being already expunged,—*vide* order Annexure P.11. The petitioner then represented against the stoppage at Efficiency Bar to the Inspector General of Police through application dated 17th January, 1975, but this representation was withheld by the Deputy Inspector General of Police and filed. The petitioner then filed another representation dated 28th July, 1976 addressed to the Inspector General of Police, Haryana, through proper channel which was received in the office of the Superintendent of Police, Wireless,—*vide* Diary No. 71516 dated 29th July, 1976 but it was never forwarded to the Inspector General of Police Haryana and ultimately, the department got promoted Shri Pishori Lal, a much junior Inspector to the petitioner, to the post of the Deputy Superintendent of Police.

(2) The petitioner then filed C.W.P. No. 1402 of 1978 *Harjit Singh v. The State of Haryana and others*, which was dismissed by the High Court on 8th May, 1978 as the Inspector General of Police, Haryana, had stated in the written statement that the petitioner was superseded on the basis of record and not on the basis that he had failed to pass Grade I examination. Thereafter, Shri Tarlok Nath, Superintendent of Police Wireless continued conveying to the petitioner, stoppage of increments on frivolous grounds of oft-repeated adverse remarks which had been held illegal by the High Court. The petitioner continued representing every time till his retirement but to no effect. Ultimately, the petitioner sought an interview with the Deputy Inspector General of Police (Administration and Training) Shri Iqbal Singh, who directed the Superintendent of Police Wireless to send the applications of the petitioner dated 28th July, 1976 and 4th September, 1978 which were not received in that office. Thereafter the Superintendent of Police Wireless sent his parawise reply to the aforesaid representation. Shri Iqbal Singh also gave a personal hearing to the petitioner as well as to the Superintendent of Police Wireless and thereafter recommended the clearance of Efficiency Bar in the month of May 1979 to the Inspector General of Police, Haryana Shri Manmohan Singh, who being inimical to the petitioner did not pass any orders thereon till the end of June 1979. Thereafter, Shri P. C. Wadhwa took over as Inspector General of Police Haryana and he being inimical to the petitioner, passed the order of compulsory retirement of the petitioner at the age of 55 years arbitrarily.—*vide* order dated 7th July, 1979 (Annexure P.19). The petitioner was actually retired with effect from 13th August, 1979. The representation for allowing to cross the Efficiency Bar was also arbitrarily rejected by Shri P. C.

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Wadhwa on 31st July, 1979 after the petitioner had already received the order dated 7th July, 1979 for premature retirement. It is further maintained that the petitioner was not granted the benefit of encashment of six months unutilized leave and a cut of Rs. 5 was also imposed in the petitioner's pension by Shri P. C. Wadhawa, Inspector General of Police, Haryana,—*vide* his order dated 10th January, 1980 (Annexure P.21). It is further maintained that the representations filed by the petitioner against these adverse orders were rejected by the concerned authorities arbitrarily.

(3) Under these circumstances, the petitioner seeks the quashment of the order dated 18th December, 1974 (Annexure P.17) stopping him to cross the Efficiency Bar with effect from 30th August, 1974 and the order of the Inspector General of Police rejecting his representation against that. He also alleged that he was entitled to promotion as Deputy Superintendent of Police as his record was good throughout and that at least his compulsory retirement was not legally justifiable. The refusal to grant encashment of six months' unutilised leave at the time of compulsory retirement and the application of cut of Rs. 5 per month from the pension of the petitioner were also assailed on the ground that the authorities being annoyed against him due to above-referred application bringing to the notice of the higher authorities the misdeeds of the concerned officials, all the above-referred orders were passed *mala fide* and arbitrarily.

(4) On notice, Shri Yogender Paul, Superintendent of Police Wireless, Haryana filed the written statement on behalf of all the respondents challenging the maintainability of this writ petition on the ground of principle of *res judicata* as earlier C.W.P. No. 1402 of 1978 filed by the petitioner on almost similar grounds was dismissed by the Division Bench of the High Court on 8th May, 1978. The allegations of the petitioner on merits were refuted. On the other hand, it was maintained that in view of the work and conduct of the petitioner, the above-referred orders regarding withholding the petitioner at the Efficiency Bar not promoting him as Deputy Superintendent his compulsory retirement and withholding the encashment of six months leave preparatory to retirement and cut of Rs. 5 in the pension were perfectly justified. It was also maintained that C.W.P. No. 2025 of 1968 was allowed by the High Court on technical grounds as the qualification of passing the Grade I test for promotion as Inspector,—*vide* executive instructions issued after such promotion of the petitioner were held to be inapplicable.

(5) I have heard the learned counsel for the parties besides perusing the record. A bare perusal of the judgment of the Single

Bench of this Court in C.W.P. No. 2025 of 1968 filed by the present petitioner tiled *Harjit Singh v. The Inspector General of Police Haryana and others* (1), clearly shows that the order of reversion of the petitioner to substantive rank of Sub-Inspector from that of Inspector of Police Wireless was set aside as the executive instructions providing for passing of Grade I test having been issued after the promotion of the petitioner to the rank of Inspector were held to be inapplicable. Thereafter, the authorities had withdrawn the reversion order and restored the promotion of the petitioner to the rank of Inspector Wireless. Thus, it cannot be said by any stretch of imagination that passing of Grade I test would operate as a disqualification or impediment to the work and conduct of the petitioner while being posted in the rank of the Inspector but such lack of academic qualifications had to be considered while judging the work and conduct of the petitioner for further promotion to the rank of Deputy Superintendent of Police. The matter does not rest here as the grievance of the petitioner for being ignored from promotion to the rank of Deputy Superintendent of Police is barred by the principle of *res judicata* as earlier C.W.P. No. 1402 of 1978 on similar grounds was dismissed by the High Court on 18th May, 1978.

(6) Regarding the withholding of the petitioner at the Efficiency Bar with effect from 30th August, 1974,—*vide* order passed on 18th December, 1974 (Annexure P.17), it transpires that this order was based on the confidential remarks of the petitioner for the year 1970-71 and from 1st April, 1972 to 30th September, 1972 which has been reproduced in the impugned order Annexure P.17 to the following effect :—

“This Inspector is weak in Radio theory. He is not hard worker. He does not take special interest to pass Grade I Radio Theory when his juniors have passed this course. He does not take permission from competent authority to remove papers from official files for his own interest. For this he has been censured. This Inspector does not hesitate to raise undesirable remarks against senior officers. He is also lacking Esprit de corps. He needs vigilance and improvement.”

(7) So far as the adverse remarks for the period from 1st April, 1972 to 30th September, 1972 reproduced above are concerned, it

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transpires that on the representation of the petitioner, the Inspector General of Police,—*vide* letter dated 7th August, 1973 (Annexure P.9) written to the Superintendent of Police Wireless, Haryana, had sought for the explanation of the latter as to why the remarks for the period from 1st April, 1972 to 30th September, 1972 were sent and not for the whole year 1972-73. The annual remarks for the year 1972-73 was then called for immediately from the Superintendent of Police Wireless,—*vide* letter dated 17th September, 1973 (Annexure P.10). The Superintendent of Police Wireless corrected the confidential report to the effect that this should be read from 1st April, 1972 to 31st March, 1973. The perusal of the letter dated 16th July, 1974 (Annexure P.11) written by the Inspector General of Police Haryana to the Deputy Inspector General of Police H.A.P. reveals that the representation of Harjit Singh against the adverse remarks for the year 1972-73 was considered and remarks were expunged. It is further mentioned that Harjit Singh be informed accordingly. Thus, the learned counsel for the petitioner alleges that the order of withholding the Efficiency Bar (Annexure P.17) having been passed on non-est adverse remarks which had already been expunged,—*vide* letter Annexure P.11, should not have weighed with the concerned authority in holding the petitioner at the Efficiency Bar. The learned counsel for the respondents on the other hand maintains that only a part of the representation of the petitioner was accepted and some remarks were modified as is apparent from the order dated 2nd November, 1973 (Annexure R.1) passed by the Inspector General of Police Haryana on the representation of the petitioner. For proper understanding of this controversy, the order Annexure R.1 requires reproduction. It reads as under :—

“I have carefully gone through the representation of Inspector Harjit Singh and feel that some of the remarks cannot be fully justified. Accordingly, the following remarks may be expunged :—

(a) “and he could not get through Grade I technician test for three times.”

“These remarks are being removed because such an advice has already been conveyed to him earlier on the basis of similar remarks on previous reports. Thus only the following remarks will stand :—

“That his radio theory is weak”.

- (b) Remarks as have been given below are justified and shall stand :—

“That he does not take any special interest to improve his radio theory while his junior have passed the test in question and he is not a hard worker”.

- (c) Doubting the honesty of a person for producing a copy of some papers from the Government file is rather too harsh. His action in producing a copy from Government record without permission of the competent authority can be termed as indiscreet, irregular and unauthorised. Accordingly, these remarks should be amended as below :—

“He has produced copies of some office papers without the permission of the competent authority, which action is indiscreet, irregular and unauthorised. He was censured for this action.”

- (d) The remarks “He is not straight forward” are rather harsh and accordingly I am inclined to delete them. Only the following remarks will stand.

“He does not hesitate to raise undesirable remarks against senior officer”.

- (e) The following remarks should stand :—

“That he is lacking in Esprit de corps and needs supervision to improve.”

A bare perusal of the above referred order leaves no doubt that some adverse remarks against the petitioner were expunged but the remaining remarks were modified and reshaped. It appears that there was some lapse on the part of the office of the Inspector General of Police in conveying this order to Harjit Singh petitioner through Deputy Inspector General of Police H.A.P. that adverse remarks had been expunged although some adverse remarks did survive regarding the efficiency of the petitioner. Thus, it is not a case of that type where the concerned authorities had relied upon or passed the order of withholding the petitioner at Efficiency Bar on some non-existing reports. Thus, there is no force in this contention of the learned counsel for the petitioner.

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(8) Regarding the grouse of the petitioner as to his premature/ compulsory retirement on attaining the age of 55 years,—*vide* order dated 7th July, 1979 (Annexure P.19), it transpires that the judgment of this Court in CWP No. 2025 of 1968 holding that the condition for clearing the Grade I test would not be applicable to the petitioner as he was already promoted as Inspector before prescribing such qualification by the executive instructions would not operate as a blank protection to the evaluation of the work of the petitioner regarding his knowledge in radio theory or showing more improvement in this regard, independently of the factum although he has not cleared Grade I test, yet due to experience had gained sufficient proficiency in this field for judging his suitability for further promotion. The relevant instructions of the Haryana Government in such like matters are contained in letter dated 3rd September, 1968 written by the Chief Secretary to Government, Haryana to all the Heads of Departments etc. in reference to the earlier letter dated 19th/21st May, 1964 of the Punjab Government containing detailed instructions for dealing with the cases of Government employees for retention beyond the age of 55 years. *Vide* latest instructions issued by the State of Haryana it has been clarified that only those employees shall be retained in service after attaining the age of 55 years who earned outstanding or very good or good reports and persons having average record should not be permitted to be retained in service beyond that age. In the case in hand, the petitioner has been earning average reports, even if the above-referred adverse remarks for the year 1972-73 are not taken into consideration. In the latest reports for the year 1978-79, the work and conduct of the petitioner has been depicted as average with the remarks that he is showing improvement in his work but should improve more before being declared fit. In the special remarks column, it is further depicted that he is average type of Inspector who is disgruntled. These remarks were given by the Superintendent of Police Wireless Haryana but the Deputy Inspector General of Police (Administration and Training) did not agree to the expression "disgruntled". Thus the petitioner having failed to earn any good report regarding his work and conduct, it cannot be said that the order of premature/ compulsory retirement at the age of 55 years (Annexure P-19) was wrongly passed by the authorities on some extraneous considerations. The ratio of the apex Court in *Brij Mohan Singh Chopra v. State of Punjab* (2), helps the respondent State rather than petitioner's case as the service record of recent past has been taken into consideration

and not the remote and stale entries of the service record have been made the basis for ordering his premature retirement. The non-communication of adverse entries to the petitioner in the instant case makes no difference as admittedly the petitioner was not allowed to cross the efficiency Bar and plea against the same has also failed which in turn implies that he was not fit and efficient official and thus his premature retirement was in public interest and does not violate the spirit of the rules.

(9) The question then arises whether the petitioner is entitled to the benefit of encashment of six months leave preparatory to his retirement and that the authorities were justified in applying a cut of Rs. 5 in the pension of the petitioner. In this regard, the observations of the Single Bench of this Court in *O. P. Vijn v. The State of Haryana and Others* (3), can be safely relied upon. In that case while referring to Rule 3.26 (d) of Part I Volume I and Rule 5.32-A (c) of Volume II of the Punjab Civil Services Rules, in paragraph 4 of the judgment it was observed as under by relying upon an earlier judgment of this Court in *Amar Singh v. The Chief Secretary to Government, Punjab and others* (4) :—

“I have heard the learned counsel for the parties. The learned counsel for the petitioner has relied on a recent judgment of this Court in *Amar Singh Superintendent (retired) Printing and Stationery Department, at Chandigarh v. The Chief Secretary to Government, Punjab and others*, 1986(1) SLR 686. He contends that the order of his premature retirement Annexure P.2 does not cast any stigma on the petitioner. The orders were not passed by way of punishment and have no penal consequences. It is beyond dispute that the petitioner is entitled to all pensionary and retirement benefits such as pension and gratuity on his retirement in pursuance of the order Annexure P-2. Further,—*vide* letter Annexure P.5 it has been clarified that the Government servants seeking voluntary premature retirement are also entitled to cash payment in lieu of unutilised earned leave on the date of their retirement. The rules provide for two modes of premature retirement. On given conditions the appointing authority can by issuing three months' notice or by giving

(3) 1988 (1) S.L.R. 741.

(4) 1986 (1) S.L.R. 686.

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three months' salary in lieu thereof can retire a Government servant. Likewise, a Government servant can by serving such a notice or depositing salary in lieu thereof secure voluntary retirement. Therefore, for grant of pensionary and other retirement benefits, including cash payment in lieu of un-utilised earned leave on the date of retirement no reasonable classification can be made between Government servants who are prematurely or compulsorily retired from service and the Government servants who retire either on reaching the age of superannuation or by seeking voluntary retirement by serving notice on the Government. Therefore, the part of the order dated 21st April, 1979 Annexure P-5 containing the following passage is discriminatory and violative of the rule of equity before law and is, therefore, *ultra vires* Article 14 of the Constitution. "These orders shall not, however, be applicable to those Government servants who are compulsorily retired prematurely by the Government."

(10) The above-referred observations of this Court are fully applicable to the case in hand as although the petitioner was compulsorily retired at the age of 55 years, yet he shall be entitled to the benefit of encashment of unutilised earned leave to the extent of 6 months at the most. Thus, the order of withholding of this relief as well as the order of application of cut of Rs. 5 in the pension of the petitioner are discriminatory being violative of the provisions of Article 14 of the Constitution. The same are, therefore, quashed by accepting this writ petition to that extent. The respondents are directed to pay to the petitioner cash payment in lieu of the unutilised earned leave to his credit subject to the maximum of 180 days along with interest at the rate of 12 per cent per annum from the date of the retirement of the petitioner within three months of this order. The petitioner shall also be entitled to full arrears of pension besides interest at the above-referred rate on such arrears within three months. The petitioner shall also be entitled to costs of this writ petition, which are assessed at Rs. 1000.

(11) The writ petition stands accepted to the extent indicated above.

S.C.K.