

Om parkash Gupta v. State of Haryana and another
(Amarjeet Chaudhary, J.)

case (supra) were altogether different and it is for this very precise reason that the decision in *Miss Mohinder Kaur's case* (supra) did not form the basis of the latter two decisions in *Puri Construction Pvt. Ltd's case* (supra) and *M/s Khushi Ram Jain & Co.'s case* (supra). On the other hand, as has been observed above, the observations made in the aforementioned two cases are against the proposition of law unequivocally enunciated by the High Court of Calcutta in *Lal Chand Roy's case* (supra).

(10) For the reasons recorded above, this revision petition is allowed and the impugned order is set aside. However, in view of the fact that intricate questions of law arose for decision before this Court, the parties are left to bear their own costs.

S.C.K.

Before J. V. Gupta and Amarjeet Chaudhary, JJ.

OM PARKASH GUPTA.—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER.—*Respondents.*

Civil Writ Petition No. 3854 of 1986

September 27, 1988.

Constitution of India, 1950—Art. 226—Class II Officers—Adverse report during probation period—Confirmation granted—Allowed to cross efficiency bar—Promoted to Class I—Adverse reports conveyed to him—Representation made against those reports—No decision taken thereon—Employee retired pre-maturely—Recent conduct more relevant—Public interest—Whether the government servant can be retired prematurely only in public interest.

Held, that the order of compulsory retirement is to be passed with abundant caution as the employee who is to be adversely affected by such order becomes ineligible for any Government service at that stage and he is unable to start his life afresh. Generally, his family remains unsettled at that juncture. The record is to be screened with great caution. Even a minor lapse can adversely affect the service career of an employee. The record is to be screened objectively. In case of an employee who has successfully completed probationary period, allowed usual increments and allowed to cross

efficiency bars at various stages and even given promotion, a single or isolated old adverse entry recorded at the threshold of his career should not be given undue weight. What will be justified is that adverse entry prior to promotion, crossing of efficiency bar, etc. should not be taken into consideration while forming opinion to retire an employee pre-maturely because of the reason that adverse entries lose their significance after promotion of an employee for this purpose. There is always scope for improvement. The considerations is to be given to the record of last five years. (Para 9)

Satpal Singh v. Deputy Inspector General of Police and another, 1985(2) S.L.R. 36.

OVERRULED

Petition under Article 226 of the Constitution of India praying that Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents :—

- (i) to produce the complete records of the case ;
- (ii) the order at Annexure P-12 be quashed;
- (iii) this Hon'ble High Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc. etc;
- (iv) this Hon'ble High Court may also pass any other order which it may deem just and fit in the circumstances of the case;
- (v) the petitioner be exempted from filing the originals of Annexures P-1 to P-12;
- (vi) it may also be mentioned that the petitioner has served an advance notice on the respondents as required by law;
- (vii) the costs of this writ petition may also be awarded to the petitioner.

It is further respectfully prayed that pending the disposal of the writ petition, the operation of the impugned order (Annexure P-12) be stayed.

J. L. Gupta, Senior Advocate with Rajiv Atma Ram, Advocate.

P. N. Makani, Advocate, for the State of Haryana, for the Respondent.

JUDGMENT

Amarjeet Chaudhary, J.—

1. This judgment of ours will dispose of C.W.P. No. 3854 of 1986 and C.W.P. No. 430 of 1987, as common questions of law and facts are involved therein.

Om parkash Gupta v. State of Haryana and another
(Amarjeet Chaudhary, J.)

2. The petitioner in CWP No. 3854 of 1986, who is H.C.M.S. (I) doctor serving in the State of Haryana, challenges order dated May 13/20, 1986 (Annexure P. 2), which was received by him on May 24, 1986, whereby he was given three months' notice, on the expiry of which he would have retired from service.

3. The facts relating to the filing of the writ petition (C.W.P. No. 3854 of 1986) are that the petitioner was appointed to the Punjab Civil Medical Service Class II for the year 1962 and joined as such on March 17, 1962. He was placed on probation for a period of two years. During the period of probation, he was conveyed an adverse report for the year 1963-64 (copy Annexure P. 1). It was certified,—*vide* order dated August 19, 1966, that he had completed the period of probation of two years with effect from March 16, 1964. On the re-organisation of the State of Punjab, the petitioner was allocated to the State of Haryana and thus became member of the Haryana Civil Medical Service Class II with effect from November 1, 1966, wherein he was confirmed with effect from that date. The first Efficiency Bar was allowed to be crossed on the due date i.e., April 4, 1968. The petitioner was allowed to cross the second Efficiency Bar on 4th April, 1975, the date on which it fell due. The petitioner was promoted to the Class I service with effect from January 30, 1978 and completed the period of probation on January 30, 1979. The service record of the petitioner for the last 12 years is as under :—

1974-75	Good
1975-76	Good
1976-77	Good
1977-78	Good
1978-79	Good
1979-80	Very Good
1980-81	Good
1981-82	Average
1982-83	Good
1983-84	Good
1984-85	Good
1985-86	Good

During this period, two reports were conveyed to the petitioner; one was for the period 1975-76 and the second for the year 1984-85. The

petitioner represented against his report for the year 1975-76 but it was filed. The petitioner also represented against the report for the year 1984-85 but the same has not been decided so far.

4. The petitioner contends that he was allowed to cross first Efficiency Bar in the Class I Service which fell due in April, 1982,—*vide* order dated November 5, 1985 (Copy Annexure P. 10). The petitioner was administered a simple warning,—*vide* order dated June 24, 1985 (Copy Annexure P. 11). The service record of the petitioner otherwise remained neat and clean. It was only on May 13/20, 1986, that the petitioner was issued three months' notice retiring him from service on attaining the age of 50 years. The said order was issued in pursuance of the relevant provisions contained in C.S.R. The impugned order has been challenged on the ground that an order of pre-mature retirement from service can be passed only in public interest. The impugned order does not reveal as to in what public interest the petitioner is sought to be pre-maturely retired from service. The record of the petitioner for the last 10 years is either good or very good. Consequently, it was for the respondent-State to reveal as to what was the public interest for which the petitioner is being pre-maturely retired.

5. The star argument of Mr. J. L. Gupta, Sr. Advocate, for the petitioner was that the only adverse report conveyed to the petitioner is for the year 1963-64 after which he was certified to have completed the period of probation satisfactorily. Thereafter he was allowed to cross the Efficiency Bar thrice on the dates they fell due. He was confirmed in the service and was promoted to Class I Service. At all these stages, the petitioner's record must have been considered by the respondent-State, before passing the said orders. Mr. Gupta vehemently argued that when an official is allowed to cross the Efficiency Bar and confirmed or promoted, his record is considered and once having been so allowed, the respondents have to show as to how his performance has deteriorated so badly as to merit his premature retirement from service. Lastly, it was argued that old adverse entries which are obsolete cannot be taken into consideration. In support of this contention reliance was placed on a decision in (*Parshotam Singh v. The Haryana State Electricity Board*), (1).

6. In CWP No. 430 of 1987, Jagan Nath petitioner has alleged that he had joined the Health Department in the year 1953 as Cleaner

(1) CWP 2930 of 1982, decided on Jan. 27, 1983.

Om parkash Gupta v. State of Haryana and another
(Amarjeet Chaudhary, J.)

and thereafter appointed as Driver in the year 1959 and earned all annual grade increments from time to time. The petitioner attained the age of 55 years on October 10, 1985 and the superannuation age is 58 years which according to him comes to 10th October, 1988. The department,—*vide* order dated 18th October, 1986 (Annexure P. 1) served three months' notice to retire the petitioner from service prematurely with effect from 6th February, 1987, i.e. the date of expiry of the notice period. He alleges that there is nothing against him on the record. He was allowed to cross the Efficiency Bar after the adverse report for the year 1970-71. He got selection grade and was confirmed as Driver with effect from 2nd November, 1966,—*vide* letter dated November 19, 1981 (Annexure P. 15).

7. In the written statement in CWP 430 of 1987 filed on behalf of the respondents, it has been stated that the Annual Confidential Report for the year 1970-71 earned by the petitioner carried adverse remarks regarding his 'integrity'. That adverse remarks were conveyed to the petitioner,—*vide* letter March 22, 1974 (Annexure P. 2). The respondents denied that the petitioner had represented against the adverse remarks conveyed to him.

8. The sole question which requires our consideration is whether obsolete record regarding integrity being doubtful of a public servant can be taken into consideration while considering his case for premature retirement. In *Shri Satpal Singh v. Deputy Inspector General of Police and another*, (2), I. S. Tiwana, J. has taken the view that in such matters the overall record of a Government servant has to be taken into account. The mere fact that such an officer has been allowed to cross Efficiency Bar after the report of 'integrity doubtful', is of no consequence. The old report can be acted upon.

The learned Single Judge upheld the order of pre-mature retirement. However, a contrary view was taken in *Parshotam Singh's case* (supra), decided by S. S. Kang, J. on January 27, 1983. In that case it was held that obsolete reports even reflecting upon the integrity of a Government servant cannot be taken into account for determining his suitability for being retained in service on his attaining the age of 50/55 years as provided in the statutory rules governing his service.

9. The case of an employee for further retention in service is considered at the age of 50 years. The objection of such consideration is to weed out the inefficient, corrupt, dishonest or to chop off the dead wood from Government service. Admittedly, the Government has absolute powers and there is no criteria or guidelines prescribed except 'public interest'. The object is to retain in service honest and efficient employees. The competent authority has the power to retire its employee pre-maturely on his attaining the age of 50 years or completion of 25 years service. The order of compulsory retirement is to be passed with abundant caution as the employee who is to be adversely affected by such order becomes ineligible for any Government service at that stage and he is unable to start his life afresh. Generally, his family remains unsettled at that juncture. The record is to be screened with great caution. Even a minor lapse can adversely affect the service career of an employee. The record is to be screened objectively. In a case of an employee who has successfully completed probationary period; allowed usual increments and allowed to cross Efficiency Bars at various stages and even given promotion, a single or isolated old adverse entry recorded at the threshold of his career should not be given undue weight. What will be justified is that adverse entry prior to promotion, crossing of Efficiency Bar etc. should not be taken into consideration while forming opinion to retire an employee pre-maturely because of the reason that adverse entries lose their significance after promotion of an employee for this purpose. There is always scope for improvement. The consideration is to be given to the record of last five years. This view of ours finds support from *Brij Mohan Singh Chopra v. State of Punjab*, (3). In the case in hand the petitioner had only one adverse entry against him, i.e., for the year 1963-64 but subsequent to that he was allowed to cross Efficiency Bar on three occasions; was promoted from H.C.M.S. (II) to H.C.M.S. (I). Much water has flown since an adverse entry was made in his service record. We find no justification in the stand taken by the respondent-State of Haryana in retiring the petitioner pre-maturely, in the circumstances of the case, on the basis of an isolated and old adverse entry recorded about two decades back.

10. It is well settled that an official or officer is not entitled to cross the Efficiency Bar as of right. His performance and service

Om Parkash Gupta v. State of Haryana and another
(Amarjeet Chaudhary, J.)

record have to be evaluated. If he is found suitable and fit, only then he is allowed to cross the Efficiency Bar. If the performance of the petitioner in the recent past had been poor he would not have been confirmed and allowed to cross the Efficiency Bar. These very vital factors relevant to the decision have not been taken into account and obsolete materials which are not so relevant to the decision at the relevant stage have been allowed to influence the mind.

11. In *Baldev Raj Chadha v. Union of India and others*, (4), there was no report of doubtful integrity. As regards the petitioner in that case the order was passed on the record of service. His record was found to be below average. The principle enunciated was that it is not in public interest to dig up obsolete circumstances in the service record of an employee and to ignore the recent past in which that employee has worked satisfactorily and has not been awarded any adverse report. An estimate of his future performance and efficiency can be made with reference to his immediate past performance in the recent years as evidenced by his service reports. An officer who may have due to inexperience, carelessness or the occasional lapse on his part may earn a bad report on the threshold of his career. If thereafter he improves his performance, the previous bad report should not be allowed to doom his career, and should not be a ground for branding him a dead wood. In *Baldev Raj's case* (supra), it was held that an employee with no adverse entries for at least five years immediately before his compulsory retirement could not be cashiered on that score. The mere fact that this principle has been incorporated in Government instructions will not clothe the authority with any legality or constitutionality.

12. In *Sat Pal Singh's case* (supra), the learned Single Judge has not taken into consideration the ratio of Supreme Court's Judgment in *Baldev Raj's case* (supra) whereas the dictum as laid down by the Supreme Court was duly discussed and followed in *Parshotam Singh's case* (supra), decided by Sukhdev Singh Kang, J. on January 27, 1983. It was the basis of that ratio that the Single Judge arrived at the conclusion that obsolete adverse reports are not to be taken into consideration, whereas, the learned Single Judge in *Shri Sat Pal Singh's case* (supra) has taken the view that entries made in employee's service record, the existence of even one

entry doubting the integrity of an employee during the last ten years, can well form the basis for his pre-mature retirement. In *Shri Satpal Singh's case* (supra), I. S. Tiwana, J. has taken the view that in such matters the overall record of a Government servant has to be taken into account and the mere fact that such an officer has been allowed to cross Efficiency Bar after the report of 'integrity doubtful', is of no consequence. It is also held that the old report can be acted upon. But the learned Single Judge in that case had not taken into consideration the Supreme Court's decision in *Baldev Raj's case* (supra), whereas S. S. Kang, J. in *Parshotam Singh's case* (supra) has followed the dictum in *Baldev Raj's case* and on the basis of that the learned Judge has held that the obsolete reports even reflecting upon the integrity of a Government servant cannot be taken into account for determining his suitability for being retained in service on his attaining the age of 50/55 years as provided in the statutory rules governing his service.

13. There is no dispute to the proposition of law that overall record of the case is to be seen before passing an order of compulsory retirement. But the recent conduct of a Public servant is more relevant than the old adverse entries.

14. We are of the view that the law as laid down by I. S. Tiwana, J. in *Shri Sat Pal Singh's case* (supra) does not lay down good law and overrule the ratio thereof.

15. In view of the foregoing discussion, we allow the writ petitions (Nos. 3854 of 1986 and 430 of 1987) and quash the impugned orders therein. There will be no order as to costs.

S.C.K.

Before : S. S. Sodhi, J.

MANJIT KAUR ETC.—Appellants.

versus

DEOL BUS SERVICE LTD. ETC.—Respondents.

Civil Misc. No. 4905-CII of 1988

in FAO No. 494 of 1980.

September 29, 1988.

Duty of counsel towards client—Liability for negligence—Code of Civil Procedure (V of 1908)—Order 9—Appeal filed through