



2025:DHC:4466-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 22 November 2024*

*Pronounced on: 28 May 2025*

+ WP (C) 1823/2021

AJAY KUMAR SHARMA ....Petitioner  
Through: Mr. Mohinder J S Rupal,  
Advocate

versus

THE COMMISSIONER, SOUTH DELHI  
MUNICIPAL CORPORATION & ANR ....Respondents  
Through: Ms. Sriparna Chatterjee,  
Standing Counsel for MCD

+ WP (C) 6590/2021 & CM APPL. 20657/2021

S.K. CHAUHAN ... Petitioner  
Through: Mr. Sanjiv K. Jha & Mr. Sachin  
Bhatt, Advs

versus

NORTH DELHI MUNICIPAL CORPORATION...Respondents  
Through: Ms. Sriparna Chatterjee,  
Standing Counsel for MCD

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**  
**HON'BLE MR. JUSTICE AMIT SHARMA**

**JUDGMENT**  
**28.05.2025**

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**C. HARI SHANKAR, J.**

1. These writ petitions involve a similar challenge, and were argued together. They are, therefore, being decided by this common judgment.

**WP (C) 1823/2021 [Ajay Kumar Sharma v Commissioner, SDMC & anr]**

**The lis**

2. The petitioner Ajay Kumar Sharma approached the Central Administrative Tribunal<sup>1</sup> by way of OA 238/2020, challenging Office Orders dated 13 September 2019 and 13 December 2019 issued by the office of the Additional Commissioner (Engg.), South Delhi Municipal Corporation<sup>2</sup>. By the first Office Order dated 13 September 2019, the petitioner was compulsorily retired from service under FR 56(j)<sup>3</sup> read with Rule 48(1)(b)<sup>4</sup> of the Central Civil Services (Pension) Rules, 1972<sup>5</sup>. The representation preferred by the petitioner seeking review of the said decision was rejected by the second Office Order

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<sup>1</sup> “the Tribunal”, hereinafter

<sup>2</sup> “the SDMC”, hereinafter

<sup>3</sup> (j) The Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months’ pay and allowances in lieu of such notice:-

(a) if he is in Group ‘A’ or Group ‘B’ service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(b) in any other case after he has attained the age of 55 years.

<sup>4</sup> 48. **Retirement on completion of 30 years’ qualifying service –**

(1) Any time after a Government servant has completed thirty years’ qualifying service –

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(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:

<sup>5</sup> “CCS(Pension) Rules”, hereinafter



dated 13 December 2019.

3. The petitioner, therefore, prayed that the aforesaid Office Orders compulsorily retiring him from service and rejecting the representation preferred by him thereagainst be set aside and he be reinstated in service with all consequential benefits.

4. Case of petitioner before the Tribunal in the OA

4.1 Before the Tribunal, the petitioner contended thus.

4.2 Having joined the services of the Municipal Corporation of Delhi<sup>6</sup> prior to its trifurcation in 1993, the petitioner was promoted as Assistant Engineer<sup>7</sup> on *ad hoc* basis on 23 July 2009. Consequent on trifurcation of the MCD in 2012, the services of the petitioner were assigned to the SDMC. The petitioner had therefore completed 26 years of service. The overall grading assigned to the petitioner in his Annual Confidential Reports throughout the 26 years of his service were either ‘very good’ or ‘outstanding’.

4.3 During the course of his service career, the petitioner was visited with two charge-sheets which culminated in punishment orders of stoppage of two increments for two years with future effect, issued on 8 June 2007, and reduction to lower scale in the time scale of pay by one stage for a period of two years with cumulative effect, issued on 11 June 2019. An appeal against the latter punishment had been

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<sup>6</sup> “the MCD”, hereinafter

<sup>7</sup> “AE” hereinafter



preferred by the petitioner before the Hon'ble Lieutenant Governor<sup>8</sup> as the appellate authority.

**4.4** On 3 July 2019, the Hon'ble LG wrote to the Commissioner, SDMC, with respect to removal of corruption in Government functioning. Following this, the Central Establishment Department in the SDMC issued Circular dated 26 July 2019. The said circular noted the importance of FR 56(j) and Rule 48 of the CCS (Pension) Rules as important administrative tools to weed out the “dead wood” and “dark sheep”. All Supervisory Officers in the SDMC, including Additional Commissioners, Deputy Commissioners, Heads of Departments and Cadre Controlling Authorities were requested to take requisite steps under FR 56(j) and Rule 48 of the CCS (Pension) Rules and to send an Action Taken Report within a month. The officers were directed to review the cases of the officers who had joined service before the age of 35 years and had attained the age of 50 years in the case of Category A and B officers and 55 years in the case of Category C and D officers and, in terms of Rule 48(i)(b) of the CCS (Pension) Rules, to review the cases of all categories of Government servants, who had completed 30 years of qualifying service. Para 2 of the Circular noted that if the contract of a Government employee became unbecoming to public interest or obstructed efficiency in public service, the Government had an absolute right to compulsorily retire such an employee in public interest. The circular also sets out the criteria to be followed by the Committee while considering the case of such officers, thus :

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<sup>8</sup> “the Hon'ble LG”, hereinafter



“5. The criteria to be followed by the Committee in asking their recommendations would be as follows:

(a) Government employees whose integrity is doubtful will be retired.

(b) Government employees who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he/she is holding.

(c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post has been found satisfactory. Consideration is ordinarily to be confined to the preceding 5 years or the period in the higher post, in case of promotion within the period of 5 years, only when retirement is sought to be made on grounds of ineffectiveness. There is no such stipulation, however, where the employee is to be retired on grounds of doubtful integrity.

(d) No employee should ordinarily be retired on ground of ineffectiveness if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. Ordinarily no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. It is clarified that in a case where there is a sudden and step fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement. The above instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest could be marginal if an old employee, in the last year of service is found ineffective, but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.”

Additionally, para 7 of the Circular noted the guidelines to be



followed while exercising jurisdiction under FR 56(j) or Rule 48 of the CCS (Pension) Rules, as per Office Memoranda<sup>9</sup> dated 21 March 2014 and 11 September 2015 issued by the Department of Personnel & Training<sup>10</sup> :

“7. As per DoPT OM dated 11.09.2015 the Cadre Controlling Authority will constitute Review Committee consisting of two members at appropriate level in terms of DOPT OMs dated 21.03.2014 and 11.09.2015 on periodical review under FR 56 or Rule 48 of CCS (Pensions) Rules, review of officers is broadly covered under the following guidelines:

- a) If service of an officer in not useful one can be compulsorily retired in public.
- b) Review in after having de regard to the entire service record of the officers vz. ACR/PAR dossier, personal file work and performance of the officer in files/reports prepared.
- c) Adverse entries including un-communicated entries in CRs should be taken note of and give due weightage.
- d) Integrity: Actions/decisions which do not appear to be above board, complaints received suspicious property transactions not sufficient evidence to initiate departmental proceedings.
- e) Conduct unbecoming to the public interest or obstructs efficiency in public services.
- f) Not a short cut to avoid disciplinary proceedings and should not be resorted to as a punitive measure.
- g) Promotion despite adverse entries in ACRs is a fact in favour of the Officer.
- h) In cases of officers promoted during the last 5 years, the previous entries in ACRs may be taken into account if the officer was promoted on non-selection and not on selection.

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<sup>9</sup> “OMs” hereinafter

<sup>10</sup> “DOPT” hereinafter



- i) While considering integrity, action and decisions of the officer which do not appear above board, complaints received against him suspicious property transactions for which there may not be sufficient evidence to initiate disciplinary proceedings may be taken into account.
- j) Reports of conduct unbecoming of a Govt. servant may also form a basis for compulsory retirement.”

**4.5** The Committee constituted by the aforesaid Circular dated 26 July 2019 apparently considered the case of the petitioner for compulsorily retirement under FR 56(j) read with Rule 48 of the CCS (Pension) Rules, which resulted in the passing of the following Office Order dated 13 September 2019, compulsorily retiring the petitioner from service:

“SOUTH DELHI MUNICIPAL CORPORATION  
OFFICE OF THE ADDITIONAL COMMISSIONER  
6TH FLOOR, DR. S.P. MUKHERJEE CIVIC CENTRE  
J.L. NEHRU MARG, MINTO ROAD, NEW DELHI - 110002.

No. D-179/ADDL. COM/SDMC/2019

dated: 13.09.2019.

#### OFFICE ORDER

Whereas a Committee has been constituted to ensure probity of Government Servants and strengthening of Administration by undertaking periodic review of all categories of Govt. servants under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972 as applicable to the employees of a Corporation.

And whereas the Committee constituted for the above purpose has recommended Shri Ajay Kumar Sharma S/o Shri J.P. Sharma, Assistant Engineer (Civil) to consider his compulsory retirement under provisions contained in FR 56 (j) and Rule 48 of CCS Pension Rules, 1972.

And whereas the Competent Authority has considered all the facts and circumstances in its entirety and satisfied with the recommendation of the Committee. And is of the opinion that it is in the public interest not to retain Shri Ajay Kumar Sharma in Municipal Services and retire him compulsorily with immediate



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effect under Fundamental Rule 56 (j) and Rule 48 0 (b) of CCS Pension Rules 1972.

Now, therefore, in exercise of powers conferred under provisions contained in FR 56 (j) and Rule 48 of CCS Pension Rules 1972, Shri Ajay Kumar Sharma is compulsorily retired from Municipal Services with immediate effect and order that three months' pay and allowances shall be paid in lieu thereof three months notice period.

Sd/-  
(Ramesh Verma)  
Additional Commissioner (Engineering)

Distribution

Shri Ajay Kumar Sharma S/o Shri J.P. Sharma, Assistant Engineer  
(Civil)”

**4.6** The petitioner represented against the Office Order dated 13 September 2019 to the Competent Authority to re-examine/review his case. The request was rejected by the Competent Authority in the SDMC and communicated *vide* Office Order dated 13 December 2019, passed by the Additional Commissioner, SDMC, which read as under :

“SOUTH DELHI MUNICIPAL CORPORATION  
OFFICE OF THE ADDITIONAL COMMISSIONER  
6TH FLOOR, DR. S.P. MUKHERJEE CIVIC CENTRE  
J.L. NEHRU MARG, MINTO ROAD, NEW DELHI - 110002.

No. South DMC/Addl. Cm. (AAT)/SDMC/2019/227

dated: 13.12.2019.

#### OFFICE ORDER

Whereas a Committee was constituted for the purpose to ensue probity Government Servants and strengthening of Administration by undertaking periodic review of all categories of Government servants under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972 as applicable to the employees of a Corporation.



And whereas the Competent Authority had considered all the facts and circumstances in its entirety and satisfied with the recommendation of the Committee. And was of opinion that it was in the public interest not to retain Shri Ajay Kumar Sharma in Municipal Services and retired him compulsorily with immediate effect under Fundamental Rules 56 (j) and Rule 48 (i) (b) of CCS Pension Rules, 1972.

And whereas aggrieved by the said penalty order, Shri Ajay Kumar Sharma, AE (C) has made representation before Competent Authority to re-examine/review his case of compulsory retirement.

And whereas a Representation Committee has been constituted for consideration of representation of Ajay Kumar Sharma, AE Compulsorily Retired under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972.

And whereas representation Committee is of the opinion that neither any new material fact nor any point of law was brought before the Committee by the appellant Shri Ajay Kumar Sharma for consideration of representation as per instructions and that the representation is liable to be dismissed.

Now, therefore, the Competent Authority, SDMC has considered the submissions made by the appellant, all other records relevant of the case & recommendation of Representation Committee and reject the representation and uphold the order dated 13.09.2019.

This issues with the approval of Competent Authority.

Sd/Addl.  
Commissioner (AAT)

To

Shri Ajay Kumar Sharma, Retired AE (C) through AO (Engg.)/HQ”

**4.7** Before the Tribunal, the petitioner submitted that the respondents were required to consider the entire service record of an officer while assessing whether he was required to be compulsorily retired under FR 56(j). The petitioner also relied on OM dated 11 September 2015 issued by the DOPT which envisaged periodical



review of cases of compulsory retirement under FR 56(j) and Rule 48 of the CCS (Pension) Rules, of which paras 1 to 6 may be reproduced thus :

“The undersigned is directed to refer to this Department's OM NO. 25013/1/2013-Estt.(A) dated 21/03/2014 on the periodical review under Fundamental Rule 56 or Rule 48 of CCS (Pension) Rules.

2. Various instructions issued on the subject deal with compulsory retirement under the above mentioned provisions. The Supreme Court has observed in *State of Gujarat v Umedbhai M. Patel*<sup>11</sup>, as follows:

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) "For better administration, it is necessary to chop off dead wood but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer".
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even un-communicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.

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<sup>11</sup> 2001 (3) SCC 314



3. In every review, the entire service records should be considered. The expression 'service record' will take in all relevant records and hence the review should not be confined to the consideration of the ACR/APAR dossier'. The personal file of the officer may contain valuable material. Similarly, the work and performance of the officer could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the Ministry/Department puts together all the data available about the officers and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration.

4. In the case of those officers who have been promoted during the last five years, the previous entries in the ACRs may be taken into account if the officer was promoted on the basis of seniority-cum-fitness, and not on the basis of merit.

5. As far as integrity is concerned, the following observations of the Hon'ble Supreme Court may, while upholding compulsory retirement in a case, may be kept in view:

“The officer would live by reputation built around him in an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public servant and injurious to public interest.

***S. Ramachandra Raju v State of Orissa***<sup>12</sup>

Thus while considering integrity of an employee, actions or decisions taken by the employee which do not appear to be above board, complaints received against him, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings may be taken into account. Judgement of the Apex Court in the case of Shri K. Kandaswamy, LP.S. (TN.1966) in ***K. Kandaswamy v Union of India & Anr***<sup>13</sup>. is relevant here. There were persistent reports of Shri Kandaswamy acquiring large assets and of his getting money from his subordinates. He also indulged in property transactions which gave rise to suspicion about his bonafides. The Hon'ble Supreme Court upheld his compulsory retirement under provisions of the relevant Rules.

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<sup>12</sup> 1994 Supp (3) SCC 424

<sup>13</sup> 1996 AIR 277



6. Similarly, reports of conduct unbecoming of a Government servant may also form basis for compulsory retirement. As per the Hon'ble Supreme Court *in State of U.P. And Others v Vijay Kumar Jain*, Appeal (Civil) 2083 of 2002<sup>14</sup>.

If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest.”

**4.8** The petitioner contended that the eight considerations enumerated in para 2 of the aforesaid OM dated 11 September 2015, extracted *supra*, had not been borne in mind, while issuing the order compulsorily retiring him from service.

**4.9** It was submitted that the orders dated 13 September 2019 and 13 December 2019 did not cite any specific reason for holding that the petitioner's integrity was doubtful or that he was fit for compulsory retirement.

**4.10** The Minutes of the Review Committee, which convened on 13 September 2019, and on the basis of the recommendations of which, the decision to compulsorily retire the petitioner was taken, recorded thus :

1	Father's Name	: Shri J.P. Sharma
2.	Designation	: Assistant Engineer (Civil)
3.	Group	: 'B'
4.	BMID No.	: 10040474
5.	Category	: General
6.	Date of Birth	: 24.02.1996
7.	Date of Appointment	: 04.05.1993
8.	Age as on	: 53 years.

<sup>14</sup> (2002) 3 SCC 641



	01.07.2019		
9.	Date of retirement	: 28.02.2026	
10.	Present place of posting	: EE (M)-IV/CNZ	
11.	Penalty imposed	:	
	1	RDA No. 1/53/2012. Charge sheet issued on 05.04.2016	Reduction to a lower stage in the time scale of pay by one stage for a period of two years with cumulative effect vide OO No.1/53/2012/Vig/P/2019/479 dated 11.06.2019.
	2.	RDA No. 1/409/2006 Charge sheet issued on 23.08.2016	Stoppage of two increments with future effect vide office order No. 1/409/06/ Vg./P/NK/2007/2739 dated 08.06.2007.
	3.	RDA No. 1/14/2004 (CVC case) Charge sheet not issued.	Pending
	4.	RDA No. Pending 1/27/2018 (CVC case) Charge sheet not issued.	Pending
12.	Recommendations of Review Committee		: The Service record of the official has been reviewed. He has entered in the Municipal Service prior to attaining the age of 35 years and has completed 50 years of mandatory age for review as per provisions of FR 56 (j). As per entries recorded in his service book & Personal File, aforesaid penalties have been imposed during his service. In view of aforesaid penalties, his integrity is indeed doubtful and, therefore, he is a fit case for premature retirement and, therefore, the Committee recommends that the official be retired prematurely as per F 56 (j) with immediate effect by giving



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		three months pay and allowances in lieu of three months notice.
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Thus, the only basis for compulsorily retiring the petitioner from service were the two punishments awarded to him consequent on charge-sheets dated 5 April 2016 and 23 August 2006. It was submitted that both the charge-sheets had culminated in orders of punishment, one of which had been passed as far back as on 8 June 2007. Even though compulsorily retirement itself could have been awarded as punishment, the authorities issuing the charge-sheets did not deem it appropriate to do so. In these circumstances, the petitioner contended that the decision to compulsorily retire him from service was vitiated by non-application of mind and unjustified in the facts and circumstances of the case.

## **5. Stand of respondents in counter-affidavit before the Tribunal**

**5.1** The respondents filed a counter affidavit before the Tribunal, by way of response to the OA.

**5.2** It was submitted in the counter affidavit, that the decision to compulsorily retire the petitioner from service was taken pursuant to directions issued by the Hon'ble LG, on the basis of which a Review Committee, consisting of five Members headed by the Additional Commissioner (Estt.) had been convened to examine the cases of all officers working under their administrative control, for compulsory retirement. Consequent to the deliberations of the Review Committee, eight officers, of which the petitioner was one, were found fit for



compulsory retirement in accordance with FR 56(j) and Rule 48(1)(b) of the CCS (Pension) Rules. Para (iv) of the preliminary submissions in the counter affidavit is relevant and may be reproduced thus :

“(iv) That the case of the applicant was considered by the Committee. *It was found that following punishments were imposed upon him:-*

(a) RDA No. 1/53/2012, Charge sheet issued on 05.04.2016. Reduction to a lower stage in the time scale of pay by one stage for a period of two years with cumulative effect, vide OO No. 1/ 53/2012/Vig./P/Vig./2019 /479 dt. 11.06.2019.

(b) RDA No. 1/409/2006, Charge sheet issued on 23.08.2006. Stoppage of two increments with future effect, vide OO No.1/409/2006/Vig/P/NK/2007/2739 dt. 08.06.2007.

(c) RDA No. 1/14/2004 (CVC Case), Charge sheet not issued. Pending

(d) RDA No. 1/27/2018 (CVC Case), Charge sheet not issued. Pending.”

(Emphasis supplied)

According to the averments in the counter affidavit, the decision to compulsorily retire the petitioner from service was based *on the afore-noted four punishments imposed upon him*. The application submitted by the petitioner for re-examination/review of the order of compulsorily retirement had also been examined and found to be bereft of merit. The respondents placed reliance on the judgments of the Supreme Court in *Posts and Telegraphs Board v C.S.N. Murthy*<sup>15</sup>, which relied on *Baikuntha Nath Das v Chief District Medical Officer*<sup>16</sup>.

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<sup>15</sup> (1992) 2 SCC 317

<sup>16</sup> (1992) 2 SCC 299



5.3 The respondents contended that in view of the fact that the petitioner had been punished consequent to the charge-sheets issued to him, it could not be said the decision to compulsorily retire him from service was without justification. Nor could it be said that the Review Committee had acted on impermissible or irrelevant considerations.

5.4 In view of these submissions, the respondents prayed that the OA be dismissed.

## 6. Rejoinder by petitioner before the Tribunal

The petitioner filed a rejoinder before the Tribunal, in which it was contended that a conclusion regarding doubtful integrity could not be lightly arrived at. The doubt had to be of such a nature as would reasonably and conclusively be entertained by a reasonable man on the available material. It was submitted that the Review Committee had entirely ignored the fact that, in all the ACRs of the petitioner, he had been graded either 'very good' or 'outstanding'. The petitioner placed reliance on the judgments of the Supreme Court in *Baldev Raj Chadha v UOI*<sup>17</sup>, *O.P. Gupta v UOI*<sup>18</sup>, *H.C. Gargi v State of Haryana*<sup>19</sup>, *N.C. Dalwadi v State of Gujarat*<sup>20</sup> and *M.S. Bindra v UOI*<sup>21</sup>.

## The Impugned judgment

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<sup>17</sup> (1980) 4 SCC 321

<sup>18</sup> (1987) 4 SCC 328

<sup>19</sup> (1986) 4 SCC 158

<sup>20</sup> (1987) 3 SCC 611

<sup>21</sup> (1998) 7 SCC 310



7. The Tribunal has, by Order dated 22 October 2020, dismissed the petitioner's OA. The findings of the Tribunal read thus :

"6. The applicant was subjected to compulsory retirement through order dt. 13.09.2019. FR 56 (J) and the Rule 48 of CCS (Pension) Rules, 1972 were invoked. The impugned order was passed on the basis of recommendation made by the Committee constituted for that purpose. The Committee comprised of senior most officers of the Corporation. Certain parameters were also fixed for that purpose. For invoking FR 56 (J), it was decided to apply to such of those officers in Group -A' & -B', who have entered the service before 35 years of age and have attained the age of 50 years. As regards, Rule 48(1) (b) of CCS (Pension) Rules, the requirement is that the officer must have completed 30 years of qualifying service. The exercise done in respect of the applicant was mentioned in the reply in paras (iii) (iv) & (v) of Preliminary Submissions, which read as under:

"iii. That after collecting all the data from respected Cadre Controller and HoDs, a meeting was convened in the office of the Chairman Review Committee i.e. Additional Commissioner (Estt.) on 13.09.2019 (Annexed herewith as Ann. R-2), in which 08 Officers/ Officials out of 19, were found fit for compulsory retirement, as per the provisions contained under FR 56(J) and Rule 48(I)(b) of CCS (Pension) Rules, 1972. The name of the applicant was also in the list.

iv. That the case of the applicant was considered by the Committee. It was found that following punishments were imposed upon him:-

(a) RDA No. 1/53/2012, Charge sheet issued on 05.04.2016. Reduction to a lower stage in the time scale of pay by one stage for a period of two years with cumulative effect, vide oo. No. 1/53/2006/2012/Vig./P/Vig./2019/479, dt. 11.06.2019.

(b) RDA No. 1/409/2006, Charge sheet issued on 23.08.2006. Stoppage of two increments with future effect, vide oo. No.1/409/2006/Vig/P/NK.2007/2739 dt. 08.06.2007.



(c) RDA No. 1/14/2004 (CVC Case), Charge sheet not issued. Pending

(d) RDA No. 1/27/2018 (CVC Case), Charge sheet not issued. Pending.

v. That after considering the above, the Committee recommended as follows:-

Recommendation of Review Committee:-

“The Service record of the official has been reviewed. He has entered in the Municipal Service prior to attaining the age of 35 years and has completed 50 years of mandatory age for review as per provisions of FR (j).

As per entries recorded in his service book & Personal File, aforesaid penalties have been imposed during his service. In view of aforesaid penalties, his integrity is indeed doubtful and therefore, he is a fit case for premature retirement and therefore the Committee recommends that the official be retired prematurely as per FR 56(j) with immediate effect by giving three months pay and allowances in lieu of three months notice.”

7. The principles, with reference to which the cases of compulsory retirement are to be decided, were enunciated by the Hon'ble Supreme Court in *Baikuntha Nath Das v Chief District Medical Officer, Baripada*. Their Lordships have summarised the manner in which the cases of compulsory retirement are to be examined. It was observed that an order of compulsory retirement is not one of punishment and it is not liable to be quashed simply on the ground that uncommunicated adverse remarks were taken into consideration. At the same time, a note of caution was also added that the provisions cannot be pressed into service, indiscriminately.

8. An order of compulsory retirement cannot be justified solely on the ground that an employee was imposed the penalty or punishment at some stage or the other. However, the instances of imposition of punishment in the years immediately preceding the review would certainly constitute the basis. In addition to that, even if no disciplinary proceedings are pending as such, the existence of material sufficient for initiation of such proceedings can also be treated as a factor. In the instant case, even if we ignore the punishment that was imposed upon the applicant in the year 2007 with reference to the charge sheet dt. 23.08.2006, the one imposed through order dt. 11.06.2019 with reference to the charge



sheet dt. 05.04.2016, cannot be disregarded. It was a major penalty imposed after the applicant was promoted to the post of Assistant Engineer. Though the applicant filed OA challenging the order of punishment, it hardly constitutes a circumstance to interdict the invocation of FR 56(J). In addition to that, two CVC cases were pending against the applicant. Though they did not lead to issuance of charge memo, the factors would certainly tell upon the functioning of the applicant.”

8. Aggrieved thereby, the petitioner is before us.

9. We have heard Mr. Mohinder J S Rupal, learned counsel for the petitioner and Ms. Sriparna Chatterjee, learned Standing Counsel for the MCD.

### **Rival Contentions**

#### **10. Submissions of Mr. Rupal**

Besides reiterating the contentions advanced by the petitioner in the OA and in the pleadings before the Tribunal, Mr. Rupal submits that the petitioner had not only been promoted as AE on 23 July 2009 but had been graded ‘very good’ or ‘outstanding’ in all his ACRs with the accompanying remarks that his integrity was beyond doubt. He submits that both the Office Orders dated 13 September 2019 and 13 December 2019, whereby the petitioner was compulsorily retired from service and whereby the appeal of the petitioner against the order of compulsorily retirement was dismissed, were cryptic and non-speaking. Mr. Rupal has placed reliance on the judgments of the Supreme Court in *Pramod Kumar Bajaj v UOI*<sup>22</sup> and *Kranti*

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<sup>22</sup> (2023) 11 SCC 466



*Associates (P) Ltd v Masood Ahmed Khan*<sup>23</sup>.

**11. Submissions of Ms. Chatterjee**

**11.1** Responding to the submissions of Mr. Rupal, Ms. Chatterjee, appearing for the MCD, submits that the judgment in *Pramod Kumar Bajaj* was expressly rendered “in the facts and circumstances of the case” and was therefore limited to its own facts. In so far as the emphasis placed by Mr. Rupal on the gradings in the ACRs is concerned, Ms. Chatterjee places reliance on the following paragraph from DOPT OM dated 28 August 2020 under the subject “Periodic review of Central Government Employees for strengthening of administration under FR 56 (j)/(l) and Rule 48 of the CCS (Pension) Rules, 1972”:

“10. Broad Criteria to be followed by the Review Committee:-  
The broad criteria to be followed by the Review Committee while making the recommendations are as follows:-

- (i) Government servants whose integrity is doubtful, shall be retired.
- (ii) Government servants found to be ineffective shall also be retired. The basic consideration in identifying such Government servants should be their fitness/competence to continue in the post held.
- (iii) No Government servant should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. However, in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of a Government servant. It would be open to review such a case also for premature retirement. The said instruction of not retiring the

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<sup>23</sup> (2010) 9 SCC 496



Government servant within one year on the ground of ineffectiveness except in case of sudden and steep fail in his performance is relevant only when he is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity.

(iv) No Government servant should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory. There is no such stipulation, however, where the Government servant is to be retired on grounds of doubtful integrity. In case of those Government servants who have been promoted during the last 5 years, the previous entries in the ACRs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.

(v) The entire service record of a Government servant should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the ACR/APAR dossier. The personal file of the Government servant may contain valuable material. Similarly, his work and performance could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the Ministry / Department/Cadre puts together all the data available about the Government servant and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration.”

**11.2** She further places reliance on para 8 of the judgment of the Supreme Court in *UOI v Col. J.N. Sinha*<sup>24</sup> and *State of Orissa v Ram Chandra Das*<sup>25</sup>.

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<sup>24</sup> (1970) 2 SCC 458

<sup>25</sup> (1996) 5 SCC 331



## **The *lis***

**12.** The petitioner moved the Tribunal by way of OA 1974/2020<sup>26</sup>, challenging order dated 31 October 2019, issued by the Commissioner, North DMC under FR 56(j) read with Rule 48 of the CCS (Pension) Rules, whereby he was compulsorily retired from service. The Tribunal has, by judgment dated 9 April 2021, dismissed the OA. Aggrieved thereby, the petitioner has approached this Court under Article 226 of the Constitution of India.

## **13. Case of petitioner in the OA**

**13.1** The case set up by the petitioner, before the Tribunal in the OA, was as under.

**13.2** The petitioner was directly recruited as AE in the MCD on 17 September 1998. During the period 30 June 2003 to 31 December 2005, the petitioner was posted as AE (Building) in Karol Bagh and Rohini. In connection with the duties performed by him during the said period, two charge-sheets, dated 30 and 31 August 2006 were issued to the petitioner, proposing institution of disciplinary proceedings against him. These charge-sheets culminated in Office Order dated 23 April 2007, in respect of the chargesheet dated 31 August 2006, imposing, on the petitioner, the penalty of “reduction in the present time scale of pay by one stage for a period of one year with cumulative effect” and Office Order dated 18 November 2008 in

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<sup>26</sup> **S.K. Chauhan v North DMC**



respect of the charge-sheet dated 30 August 2006, imposing, on the petitioner, the penalty of “withholding of two increments for two years without cumulative effect”. Admittedly, the first penalty was a major penalty, as it was awarded with cumulative effect, whereas the second penalty was a minor penalty.

**13.3** Five other chargesheets were also issued to the petitioner, which were dropped on 20 December 2007, 14 August 2008, 27 May 2009, 16 November 2011 and 13 January 2012. Yet another chargesheet, dated 20 September 2019, issued to the petitioner, was challenged by him in OA 152/2020. By order dated 12 October 2020, this Tribunal directed that the enquiry, following the said chargesheet, be deferred till further orders. The said OA is still pending.

**13.4** Ergo, as on the date of the passing of the order dated 31 October 2019, whereby the petitioner was compulsorily retired from service, the only blots on his escutcheon, if one may call them that, were the penalty of reduction in the present time scale of pay by one stage for a period of one year with cumulative effect awarded on 23 April 2007 and of withholding of two increments for two years without cumulative effect, awarded on 18 November 2008.

**13.5** On 24 August 2009, the petitioner was promoted as Executive Engineer<sup>27</sup> (Civil) on *ad hoc* basis, and was thereafter promoted as regular EE (Civil), following the recommendations of a duly constituted Departmental Promotion Committee held by the Union

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<sup>27</sup> “EE” hereinafter



Public Service Commission, on 12 January 2017.

**13.6** The petitioner also provided, in the OA, a tabular statement of the gradings given to him in his Annual Confidential Reports<sup>28</sup> for the years 2014-2015 till 2018-2019, as well as the remarks regarding integrity contained in the said ACRs, thus:

S.No	Year	Grading	Integrity
1.	2018-2019	Very Good	Beyond Doubt
2	01.04.2017-06.11.2017	Outstanding	Beyond Doubt
3	07.11.2017-31.03.2018	Outstanding	Beyond Doubt
4	01.04.2016-30.08.2016	Very Good	Beyond Doubt
5	31.08.2016-15.11.2016	CR not recorded as the tenure was for less than three months	
6	16.11.2016-31.03.2017	Outstanding	Beyond Doubt
7	01.04.2015-20.10.2015	Outstanding	Beyond Doubt
8	21.10.2015-31.03.2016	Very Good	Beyond Doubt
9	2014-2015	Very Good	Beyond Doubt

**13.7** Despite such an enviable ACR record, the petitioner was, by order dated 31 October 2019, compulsorily retired from service, purportedly under FR 56(j) and Rule 48 of the CCS (Pension) Rules. The petitioner contended that, in any event, Rule 48 of the CCS (Pension) Rules would not apply to him, as he had completed only 21 years of service on the date of passing of the order of compulsory retirement, whereas Rule 48 applied only to officers who had

<sup>28</sup> "ACRs" hereinafter



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completed 30 years of qualifying service. The order of compulsory retirement read thus:

“NORTH DELHI MUNICIPAL CORPORATION  
OFFICE OF THE COMMISSIONER  
4TH FLOOR, Dr. SP Mukherjee Civic Centre,  
Pt. J.L.N. Marg, New Delhi-110002

No.: CMR/NDMC/2019/ D-460

Dated: 31 October 2019

### OFFICE ORDER

Whereas Committee(s) have been constituted to ensure probity of Government Servants and strengthening of Administration by undertaking periodic review of all categories of Government servants under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972 as applicable to the employees of the Corporation.

And Whereas, the final Review Committee so constituted for the above purpose has recommended Sh. S.K. Chauhan S/o Sh. Mangu Singh Chauhan, Executive Engineer (Civil) to be considered for compulsory retirement under the provision contained in FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972.

And Whereas, the undersigned has considered the recommendation of the said Review Committee and all the facts and circumstances of the case in its entirety and being personally satisfied with the case, is of the considered opinion that it is indeed in public interest not to retain Sh. S.K Chauhan S/o Sh. Mangu Singh Chauhan, E.E.(Civil) any further in Municipal Services and to retire him compulsorily with immediate effect under Fundamental Rule 56 (j) and Rule 48(1)(b) of CCS Pension Rule, 1972.

Now, therefore, in exercise of powers conferred under provision contained in FR 56 (j) and Rule 48 of the CCS Pension Rule 1972, Sh. S.K. Chauhan S/o Sh. Mangu Singh Chauhan, E.E.(Civil) is compulsorily retired from Municipal Services with immediate effect and further order that three months pay and allowances shall be paid to him immediately in lieu of three months' notice period thereof.

Sd/-  
Varsha Joshi  
Commissioner



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North D.M.C”

**13.8** The petitioner submitted a representation, dated 21 November 2019, seeking review of the order dated 31 August 2019, whereby he was compulsorily retired from service. The representation was rejected by the respondent *vide* the following Office Order dated 17 February 2020:

“No.CMR/NDMC/2020/D-33

Dated 17<sup>th</sup> February, 2020

#### OFFICE ORDER

Whereas, Internal as well as Joint Review Committee/s were constituted for the purpose to ensure probity of Government Servants and strengthening of Administration by undertaking periodic review of all categories of Government Servants under FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972, as applicable to the employees of the Corporation.

And Whereas, the Competent Authority had considered the recommendations of the said Internal as well as Review Committee/s and all the facts and circumstances of the case in its entirety and satisfied with the case, was of the considered opinion that, it is indeed in the public interest not to retain Shri S K Chauhan, Executive Engineer ( Civil) ( EE) in Municipal Services and to retire him compulsorily with immediate effect under Fundamental Rule 56 (j) and Rule 48 (I) of CCS Pension Rules, 1972. Accordingly, Shri S K Chauhan was compulsorily retired from Municipal Services with immediate effect *vide* Competent Authority's order number CMR/NDMC/2019/D-460 dated 31<sup>st</sup> October, 2019.

And Whereas, aggrieved by the said order, Shri S K Chauhan, Retd. EE (Civil) has made representation before the Competent Authority to re-examine/review his case of compulsory retirement.

And, Whereas earlier a Representation Committee was constituted to consider all such representations against the compulsory retirement under FR 56 (j) and Rule 48 of CCS ( Pension) Rules, 1972.

And, Whereas, it was felt appropriate to reconstitute the



said Representation Committee.

And Whereas, the Representation Committee so reconstituted for consideration of the representation of Shri S K Chauhan, EE ( Civil), compulsory retired under Fundamental Rule 56 (j) and Rule 48 (1) of CCS Pension Rules, 1972 has given a personal hearing to Shri S K Chauhan, Retd EE ( Civil) on 13/2/2020.

And, Whereas, the said Representation Committee after considering the submissions made by Shri SK Chauhan and also hearing him in person has submitted its recommendation that neither any new facts nor any new aspect of a fact already known but which was not taken into account at the time of issue of notice /order of premature retirement was brought before the Committee by Sh. S K Chauhan for consideration of said representation as per extant instructions.

And, Whereas, the Representation Committee is of the opinion that there is no merit in the said representation and the same is liable to be rejected.

Now, therefore, after considering the submissions made by Shri S K Chauhan, and all other records of the case in his entirety and the recommendations of the Representation Committee, the representation of Shri S K Chauhan is hereby rejected.

Sd/-  
Varsha Joshi  
Commissioner  
North DMC”

**13.9** Aggrieved thereby, the petitioner approached the Tribunal by way of OA 1974/2020, seeking quashing of the order dated 31 October 2019, whereby he was compulsorily retired from service, with consequent reinstatement with effect from the date when the order was passed.

#### **14. Respondent’s stand in reply**

**14.1** The respondent, in its counter-affidavit before the Tribunal,



submitted that the order of compulsory retirement of the petitioner, having been passed after following due process and procedure, did not justify interference. It was submitted that the appropriate authority had absolute rights to retire a public servant under FR 56(j) in public interest, and the government servant who is so retired has no enforceable right to claim to continue in service. It was pointed out that the petitioner had not alleged any *mala fides* or bias against the respondents. In fact, the OA was effectively calling upon the Tribunal to sit in appeal over the decision of the appropriate authority to compulsorily retire the petitioner, which was impermissible. Reliance was placed on letter dated 3 July 2019, from the Hon'ble LG, requiring measures to be taken to remove corruption from government functioning, which would include compulsorily retirement under FR 56(j). As in the case of Ajay Kumar Sharma, the respondent, in this case, too, pointed out that the decision to compulsorily retire the petitioner had been taken by a duly constituted Review Committee, chaired by the Additional Commissioner.

**14.2** Emphasis was laid, in the counter-affidavit, on the fact that the penalty of reduction to a lower time scale, with cumulative effect, is a major penalty. On an overall assessment of the petitioner's service record, the Review Committee came to a decision that his integrity was doubtful and that, therefore, he was required to be compulsorily retired. The representation made by the petitioner was also considered by the Representation Committee on 13 February 2020, which also afforded the petitioner an opportunity of personal hearing.

**14.3** According to the averments in the counter-affidavit filed before



the Tribunal, the case of the petitioner had been examined on the touchstone of doubtful integrity, and not ineffectiveness. In so considering the case of the petitioner, the number of instances of disciplinary proceedings initiated against him, the gravity of charges levelled in the said proceedings and the final nature of the penalty imposed on him during his entire service record, were kept in mind. Inasmuch as the Review Committee had correctly considered all these relevant factors, the Representation Committee did not find any cause to interfere with its decision.

**14.4** In these circumstances, the respondents contended, in the counter-affidavit, that no case for reconsideration of the decision to compulsorily retire the petitioner was made out.

## **15. The impugned judgment**

**15.1** The Tribunal has, by judgment dated 9 April 2021, dismissed OA 1974/2020. The reasoning of the Tribunal is contained in the following paragraphs from the impugned judgment:

“17. The accepted and established position under law is that cases relating to various officers have to be evaluated on the basis of their own merits. It is evident that comparative evaluation is not contemplated and, as such, has nowhere been provided for. The applicant has failed to demonstrate, even remotely, that this could be a consideration in the legal and procedural framework created for the purpose of compulsory retirement. This contention, relating to the service records of other officers and comparison with that of the applicant, therefore, merits no further discussion.

18. It has been contended that the applicant was promoted in the year 2017 and this establishes and underscores the fitness of the applicant to be continued in service. As has been stated in the DoPT OM referred above, the entire service record has to be taken



into consideration while assessing the case of an officer, though greater reliance may be attached to the recent past 5 years. This, however, comes with the rider that it is only when ineffectiveness is the issue and does not extend to cases relating to integrity.

19. It has been forcefully contended on behalf of the respondents that the applicant's case was of doubtful integrity. To elucidate, the record of the applicant relating to departmental proceeding is reproduced as below:

Pending RDA case	1/48/2019	Charge sheet issued on 20.09.2019 Penalty in RDA case
Penalty	1/130/2006	Drop vide OO No.1/130/206 /Vig./P/AM/2008/231 dt. 14.5.2008
Penalty	1/361/2006	Reduction in the present time scale of pay by one stage for a period of one year with cumulative effect vide OO No.1/361/2006/Vig./P/NK/2007/4082 dt. 10.12.2007
Penalty	1/385/2006	Withholding of two increments for two years without cumulative effect vide OO No.1/385/2006/Vig./P/NK/2008/789 dt. 18.11.2008
Penalty	1/11/2007	The Commissioner has ordered to drop the RDA No.1/11/2007 pending against Sh. S.K. Chauhan, AE vide OO No.1/11/2007 & 1 / 385/2006/Vig./P/NK/2007/4131 dt. 20.12.2007
Penalty	1/36/2008	Dropped vide OO No.1/36/2008/Vig./P/RBS/2009/91 dt. 27.5.2009
Penalty	1/118/2011	Dropped vide OO No.1/118/2011 ADOV-1/Vig./2012/322 dt. 13.1.12
Penalty	2/112/2011	Dropped vide OO No.2/112/2011/Vig./P/SM/2011/176 dt. 16.11.2011

20. As argued on behalf of the respondents, and borne out by facts on record, in a career spanning about twenty one years, eight departmental actions have been initiated against the applicant resulting in imposition of major penalty in one matter and minor penalty in another. Five cases were dropped, and one case is pending. Most of these cases, if not all, related to integrity issues. We make it clear that we are not indicating our opinion regarding the integrity of the officer. Any reference made in this regard is for the Sole purpose of negating, on the basis of facts on record, any



argument that the competent authority was not justified in coming to the conclusion that the applicant had doubtful integrity. The decision cannot be faulted on the ground of absence or inadequacy of basis.

21. The argument relating to benchmarks or the nature of penalties and their numbers in the context of action of compulsory retirement is also of little significance. Action under Rule 56(j) of Fundamental Rules cannot be a mechanical exercise. Various factors have to be taken into account and it is for this purpose that safeguards like having Committees, and, at different levels, have been inbuilt into the system. The affected officer has the right to represent too. The concept is clearly, to prevent misuse or arbitrariness. There could be guidelines, and safeguards, but no system of decision making in the field of human resources can entirely be algorithm driven.

22. Our attention has also been drawn to the ACRs of the applicant for the last five years and the fact that the ratings are 'outstanding' or 'very good' and integrity has been certified as 'beyond doubt'. It has been informed by the respondents that they had other negative inputs about the applicant. Though ACRs serve as useful input in relation to the evaluation of performance of an officer, they cannot be held as the be all and end all for his overall assessment. The comments in the ACRs naturally, cannot be exhaustive though they may be useful indicators. Hence, if the competent authority had inputs about the concerned officer which went beyond what was recorded in the ACRs by officers restricted by the limited knowledge under their command, the same cannot be ignored. Further, the decision making is not confined to a single authority and there are several inbuilt safeguards. For these reasons, contention to such effect too, does not find favour with us.

23. In such matters, the scope of judicial review is somewhat limited as has been held in a series of pronouncements by the Hon'ble Apex Court, Hon'ble High Courts and this Tribunal. The main test is, that the order of compulsory retirement should not suffer from *mala fide*, of no evidence or arbitrariness. No such aspect exists in the present case.

24. Having examined the present case in the light of these broader principles, we are of the view that the record of the applicant was duly examined by the Committees constituted for the purpose and a conclusion was reached that the applicant requires to be compulsorily retired. He was given the opportunity to make a representation, which after due examination was rejected. There are, thus, no factors in the present case which would merit our intervention.”



16. Aggrieved by the decision of the Tribunal, the petitioner has approached this Court by means of the present writ petition under Article 226 of the Constitution of India.

17. We have heard Mr. Sanjiv K. Jha for the petitioner and Ms. Sriparana Chatterjee for the Respondent-MCD.

### **Rival Contentions**

#### **18. Submissions of Mr. Jha**

18.1 Mr. Jha 1<sup>st</sup> places reliance on paras 5 and 7 of Circular dated 25<sup>th</sup> July 2019 issued by the North DMC with its subject titled “Review of mechanism to ensure probity of Government Servants – strengthening of administration – periodical review under FR 56(j) and Rule 48 of CCS (Pension) Rule 1972”, which read thus:

“5. The criteria to be followed by the Committee in making the recommendations would be as follows:-

(a) Government employees whose integrity is doubtful will be retired.

(b) Government employees who are found to be ineffective with also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he/she is holding.

(c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or away he has been promoted to a higher post during that 5 year period, his



service in the higher post has been found to be satisfactory stop consideration is ordinarily to be confined to the preceding 5 years of the period in the higher post, in case of promotion within the period of 5 years, only when retirement is sought to be made on grounds of ineffectiveness. There is no such stipulation, however by the employee is to be retired on grounds of doubtful integrity.

(d) No employee should ordinarily be retired on grounds of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. Ordinarily no employee should be retired on the ground of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. It is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement. The above instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest would be marginal old employee, in the last year of service, is found ineffective; but the damage may be incalculable if he's found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty-bound to perform.

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7. As per DOPT ON dated 11.09.2015 the Cadre Controlling Authority will constitute Review Committees consisting of 2 members at appropriate level. In terms of DOPT OMs dated 21.03.2014 and 11.09.2015 on periodical review under FR 56 or Rule 48 of CCS (Pension) Rules, review of officers is broadly covered under the following guidelines:

- a) If service of an officer was not useful one can be compulsorily retired in public:
- b) Review in after having due regard to the entire service record of the officers viz. ACR/PAR dossier, personal file work and performance of the officer in files/reports prepared;
- c) Adverse entries including uncommunicated entries in CRs should be taken note of given due weightage.



- d) Integrity: Actions/decisions which do not appear to be above board; complaints received suspicious property transactions – not sufficient evidence to initiate disciplinary proceedings.
- e) Conduct unbecoming to the public interest or obstructs efficiency in public services.
- f) Not a shortcut to avoid the disciplinary proceedings and should not be resorted to as a punitive measure;
- g) Promotion despite adverse increase in ACRs is a fact in favour of the Officer.
- h) In cases of officers promoted during the last 5 years, the previous increase in ACRs may be taken into account if the officer was promoted on non-selection and not on selection.
- i) While considering integrity, action and decisions of the officer which do not appear above board, complaints received against him suspicious property transactions for which there may not be sufficient evidence to initiate disciplinary proceedings may be taken into account;
- j) Reports of conduct unbecoming of a Govt. servant may also form the basis for compulsory retirement.”

Mr. Jha contends that the petitioner’s case does not attract any of the criteria envisaged by of the North DMC Circular dated 25 July 2019.

**18.2** Mr. Jha submits that, in terms of paragraph 14 of the North DMC Circular dated 25 July 2019, the pro forma for review of the petitioner’s case for considering whether he was fit for compulsory retirement, was prepared. A copy thereof has been placed on record as Annexure P-22 to the writ petition. All entries in the pro forma are blank, except for Entries 1, 3, 4, 10, 11, 12 and 13:



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**PROFORMA TO REVIEW THE PERFORMANCE OF OFFICER**

S. No.	Particulars	
1.	Name and designation of the officer	Sh. S.K. Chauhan, S/o Sh. Mangu Singh Chauhan, EE(Civil)
2	Grade/ Pay Band/ Grade Pay	
3	Date of birth (age as on 01.07.2009) D.O.B-	09.09.1966 54
4	Date of joining in Govt. Office	18.09.1998
5	Leave availed during the past five years (from the service book) (Please provide break up as well as the total period)	
6	State of Health	
7	Whether the health of the officer/officials has a bearing on discharge of his duties (Yes/No) (If yes, please elaborate)	
8	Whether services of the officer are considered useful to the Govt. (Yes/No)	
9	Whether the officer/officials is competent and effective and fit to continue to hold the post occupied by him or to continue in cadre (Yes/No) (If no, please provide reason)	
10	Status of integrity	Doubtful
11	Is there any reasons to doubt the integrity viz. complaint of suspicious transaction in property,	Yes, as per RDA Status/Police case CBI/ACB report as mentioned at point no.12 below



	corruption, information feedback etc. (Yes/No) (If yes please specify)			
12	Details of penalties, if any, imposed on the officers/officials during the entire career	RDA Status		Police case CBI/A CB reports
		Pending	Final	
		1/48/2019-C/Sheet issued on 20.09.2009	<p>1/130/2006- Drop Vide OO No. 1/130/2006/Vig./P/A M/2008/231 dt. 14.05.2008</p> <p>1/136/2006- Reduction in the present time scale of pay by one stage for a period of one year with cumulative effect Vide OO No. 1/361/2006/Vig./P/N K/2007 /4082 dt. 10.12.2007</p> <p>1/385/2006- withholding of two increments for two years without cumulative effect vide OO No. 1/385/2006/Vig./P/N K/2008/789 dt. 18.11.2008</p> <p>1/11/2007- The Commissioner has ordered to drop the RDA no. 1/11/2007 pending against Sh. S.K. Chauhan, AE vide OO No.1/11/2007 &amp; 1/385/2006 Vig./P/NK/2007/413 1 dt.20.12.2007.</p> <p>1/36/2008-Dropped vide OO No. 1/36/2008/Vig./P/RBS/2009/91 dt.</p>	



			27.05.2009. 1/118/2011-Dropped vide OO No.1/118/2011 /AdOV- 1/Vig./2012/232 dt.13.1.12.  2/112/2011- dropped Vide OO No. 2/112/ 2011/Vig./P/SM/201 1/176 dt. 16.11.2011.	
13		ACR/APAR grading during the last 5 years. If there is any adverse entry, please specify		
S. No.	Year	ACR/APAR grading	Remarks, if any.	
1	2014-15	Outstanding		
2.	01.04.2015 to 20.11.2015	Outstanding		
3	21.10.2015 to 31.03.2016	Very Good		
4	01.04.2016 to 30.08.2016	Not filed		
5	31.08.2016 to 15.11.2016	Non recording certificate		
6	16.11.2016 to 31.03.2017	Outstanding		
7	2017-2018	Outstanding		
8	2018-2019	Very Good		

Mr. Jha draws attention to the fact that the petitioner was in fact promoted as EE on 12 January 2017 and that this fact was not placed before the Review Committee. Mr Jha submits that there is, in fact,



nothing on record on the basis of which the integrity of his client be said to be doubtful. The sole disciplinary proceeding, in which his client was visited with a major penalty was a charge-sheet dated 31.08.2006, issued to the petitioner, in which the Statement of Charges read thus:

“Shri S.K.Chauhan was working as AE in Bldg. Deptt., Rohini Zone and remained in charge of Ward No. 29, 30 and 99 with effect from 12.8.2004 to 30.12.2005. He committed lapses on the following counts:-

1. He in connivance with the owners/builders allowed them to carry out and complete the unauthorised construction in properties indicated in the Annexure ‘A’ forming part of the Statement of allegation and failed to get stopped/demolished the same initial/ongoing stage.
2. He also failed to get booked the unauthorised construction carried out in the properties for taking action u/s 343/344 of DMC Act.
3. He failed to get initiated action for sealing the unauthorised construction u/s 345-A of DMC Act.
4. He also failed to get initiated action for prosecution against the order/builder u/s 332/461 or complaint u/s 466-A of DMC Act.
5. He also failed to get initiated action for disconnection of electricity and water supply to prevent the unauthorised construction.
6. He also failed to exercise proper supervision and control over the functioning of his subordinates who did not take proper and timely action against the aforesaid properties.

He, thereby, contravened Rule 3(1)(i) (ii) (iii) & 3(2) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD.”

Though this charge sheet culminated in the imposition, on the



petitioner, of penalty of reduction in the time scale of pay by one stage for one year with cumulative effect, it was significant that, though the Disciplinary Authority, while imposing the above penalty, recommended that further action would be taken by the Vigilance Department, no such action was taken. This itself indicated that the allegations against the petitioner in the chargesheet dated 31.08.2006 did not involve any vigilance angle. Mr. Jha points out that the Inquiry Officer<sup>29</sup> had specifically found the charge of connivance between the petitioner and the builders/owners not to be proved. In the circumstances, the finding of the Tribunal that the charge-sheets which had resulted in imposition of penalty on the petitioner involved integrity issues was factually incorrect.

**18.3** Mr. Jha further faults the Tribunal with respect to its observation, in para 22 of the impugned judgment, that the Respondents had informed the Tribunal “that they had other negative inputs about” the petitioner. The details of the “inputs”, he submits, are not forthcoming anywhere on the record, and do not find mention in the impugned order either. This, therefore, according to Mr. Jha, is an observation which is totally bereft of application of mind.

**18.4** Mr. Jha further submits that the Tribunal has accorded no relevance, whatsoever, to the fact that, in the ACRs of the petitioner for the past 6 years prior to the passing of the impugned order of compulsory retirement, it had been specifically noted that his integrity was beyond doubt. In all these years, the petitioner was graded either

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<sup>29</sup> "the IO" hereinafter



“outstanding” or “very good”. This, according to Mr. Jha, is a pre-eminent circumstance which has been completely ignored by the Tribunal and serves by itself to vitiate the decision to compulsorily retire the petitioner.

**19. Submissions of Ms. Chatterjee**

Ms. Chatterjee, in response, broadly reiterated the grounds advanced by her in her response in the writ petition filed by Ajay Kumar Sharma, which have already been noted earlier in this judgment. Besides, she refutes the contention of Mr. Jha that the case of the petitioner did not fall within any of the criteria enumerating in para 7 of the North DMC circular dated 25 July 2019. She submits that one of the criteria is “conduct unbecoming of a government servant” and, given the facts of the case, the respondents were right in arriving at the conclusion that the conduct of the petitioner was unbecoming of a government servant. She further submits that, even if there was only one major penalty imposed on the petitioner, that, by itself, was sufficient to justify the decision to compulsorily retire him. So long as the decision is not vitiated by arbitrariness or *mala fides*, and is founded on some material, Ms. Chatterjee submits that the Court should refrain from interfering therewith. She submits that the onus to demonstrate that the decision to compulsorily retire the petitioner was arbitrary lies on the petitioner himself, and that this onus has not been discharged.

**20.** Mr. Jha, by way of rejoinder, merely responds to this last contention of Ms. Chatterjee, by submitting that, as the order of



compulsory retirement was unreasoned, there was no way in which the petitioner would positively demonstrate arbitrariness. The conclusion of arbitrariness has, therefore, to follow from the fact that there was no justification for passing the said order, and no justification finds place in the order itself.

## **Analysis**

### **21. The impugned judgments**

**21.1** At a bare glance, it is apparent that neither of the impugned judgments passed by the Tribunal, forming subject matter of challenge in these writ petitions, can sustain in law. They are cryptic and do not take into account all relevant factors, including the contentions advanced by the petitioners before them.

### **21.2 The decision in Ajay Kumar Sharma's case**

**21.2.1** In the decision in the case of Ajay Kumar Sharma, the entire reasoning is contained in para 8 of the judgment of the Tribunal. In the said paragraph, the Tribunal has merely referred to the punishment imposed on the petitioner on 11 June 2019, following the charge-sheet on 5 April 2016. Apart from this, the Tribunal has referred to the fact that two CVC cases were pending against the petitioner.

**21.2.2** The Tribunal has completely ignored the service record of the petitioner, especially the gradings given to him in his ACRs, which vouchsafe the fact that his integrity was beyond doubt. A judgment



which eschews from consideration relevant factors, or takes into consideration irrelevant material, is perverse, as held by the Supreme Court in *S.R. Tewari v UOI*<sup>30</sup>:

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (*vide Rajinder Kumar Kindra v Delhi Administration*<sup>31</sup>, *Gamini Bala Koteswara Rao v State of A.P.*<sup>32</sup> and *Babu v State of Kerala*<sup>33</sup>.)"

Applying this test, the judgment of the Tribunal in the case of Ajay Kumar Sharma is unquestionably perverse as it ignores the service record of the petitioner, including his performance, as reflected in his ACRs and takes into account the two CVC cases pending against the petitioner. There is no reference in the order to the nature of the two CVC cases. One of those cases pertinently was of 15 years' vintage before the date of the order of compulsory retirement. Besides, neither of the cases had resulted even in the issuance of a charge-sheet to the petitioner. It is difficult to understand, therefore, how the CVC cases could be treated as "pending". Disciplinary proceedings, it is well settled, commence only from the issuance of a charge-sheet. Prior thereto, any allegations against an officer are merely in the realm of unsubstantiated doubts. Reliance on the said "CVC cases" without

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<sup>30</sup> (2013) 6 SCC 602

<sup>31</sup> (1984) 4 SCC 635

<sup>32</sup> (2009) 10 SCC 636

<sup>33</sup> (2010) 9 SCC 189



even referring to the nature of the cases or the allegations therein, amounts, therefore, to reliance on inadmissible and irrelevant material. The judgment of the Tribunal, therefore, suffers from perversity.

### **21.3 The decision in S.K. Chauhan's case**

**21.3.1** The same infirmity, in our view, plagues the judgment dated 9 April 2021 passed by the Tribunal in the case of S K Chauhan. Here too, the Tribunal has relied on entirely irrelevant material and has, in fact, gone to the extent of relying on material which does not even form part of the record, the nature of which remains undisclosed to anyone. The reasoning of the Tribunal, in its order in the case of S K Chauhan, is contained in paras 20 to 23 of the impugned order. The Tribunal first relies on the fact that eight departmental actions had been initiated against the petitioner, merely glossing over the fact that of eight cases, five were dropped and in the sixth, the proceedings stand stayed by the Tribunal itself. The remaining two cases, culminated in orders of penalty issued 13 years prior to the decision to compulsorily retire the petitioner. Even of these two, only one involved imposition of major penalty, which, too, was of reduction in the scale of pay by one stage for one year with cumulative effect. That penalty would also have been minor, but for the fact it was awarded with cumulative effect.

**21.3.2** The cases which were dropped can obviously have no value or relevance while considering the case of the officer of the compulsory retirement. A case which is dropped is dropped. It is as though the



proceedings never commenced. Rather, subsection in a given case of an officer to charge-sheet after charge-sheet, which do not result in any punishment may, in a given case, even amount to harassment.

**21.3.3** Even more astonishing is the very next observation in para 20 of the impugned order of the Tribunal to the effect that “most of these cases if not all, related to integrity issues”. The source of this finding, on the part of the Tribunal, is entirely unknown and the findings itself must, therefore, be treated as vitiated by complete non-application of mind. There is nothing to indicate that any of the charge-sheets issued to the petitioner, except the charge-sheet dated 31.08.2006 which culminated in the imposition of penalty of a punishment of reduction of pay by one stage for a period of one year with cumulative effect, involved any allegation of corruption or lack of integrity. Even in this isolated charge-sheet, the finding of connivance between the petitioner and the builders/owners was held by the IO not to have been proved and the decision of the IO in that regard was affirmed by the DA. There is, therefore, no allegation, in any of the disciplinary proceedings of want of integrity. The finding in para 20 of the impugned judgment, that there was material to indicate that the integrity of the petitioner was doubtful is, therefore, unsustainable in law and on facts.

**21.3.4** The concluding observation of the Tribunal, in the said paragraph, is also legally unsound. The Tribunal observes that the “decision cannot be faulted on the ground of absence or inadequacy of basis”. This observation is unsustainable in law and reflects an incorrect understanding of the legal position. Any decision for which



there is absence of any basis can always be faulted on that ground, as it is thereby rendered arbitrary and violative of Article 14 of the Constitution of India. This has been the law since the broadening of the frontiers of Article 14 by the Supreme Court in *E.P. Royappa v State of Tamil Nadu*<sup>34</sup>. The observation of the Tribunal that the decision could not be faulted on the ground of absence of basis is, therefore, legally untenable.

**21.3.5** Proceeding to para 22 of the impugned order of the Tribunal, while dealing with the petitioners contention that he had been graded either “outstanding” or “very good” in all his ACRs, which have uniformly certified his integrity as “beyond doubt”. The Tribunal again surprisingly, observes that it was “informed by the respondents that they had other credible inputs” about the applicant. The nature of this information is not disclosed. The nature of the “inputs” is not disclosed. The source of the “inputs” is also not forthcoming. Strangely, the Tribunal goes on to reject the petitioner’s contentions with respect to his ACRs by observing that “*if the Competent Authority had inputs about the concerned officer* which went beyond what was recorded in the ACRs by the officers restricted by the limited knowledge under their command, the same cannot be ignored.” There is no reference to any such inputs, beyond the ACRs, which were available with the Competent Authority, except for the punishment awarded to the petitioner by order dated 10 December 2007. The Tribunal too has apparently not found it necessary to disclose the nature of the “inputs” concerned, or even to call upon the

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<sup>34</sup> (1974) 4 SCC 3



respondents to place those “inputs” on record.

**21.3.6** It is obvious, therefore, that the decision of the Tribunal in the case of S K Chauhan is even more arbitrary than the decision in the case of Ajay Kumar Sharma.

**21.4** Both the impugned judgments are, therefore, unsustainable in law and on facts, being vitiated by perversity in law. They have relied on unknown and undisclosed material and even returned erroneous findings of fact. They have eschewed from consideration relevant material cited by the petitioners. They, therefore, cannot sustain and are in any event liable to be set aside.

**21.5** We are, however, not inclined to remand these matters for reconsideration to the Tribunal as, in our view, requisite material on the basis of which the claims of the petitioners could be decided is available on record and the law in that regard is fairly well settled.

## **22. The legal position regarding compulsory retirement**

**22.1** Following the well known decision of the Supreme Court in *Baikuntha Nath Das*, there is a veritable plethora of judgments of the Supreme Court, which have considered these principles. As earlier decisions stand noted in later decisions, it is not necessary to refer to all the decisions on the point. We, therefore, propose to refer to the decisions, proceeding chronologically, in *Rajesh Gupta v State of J &*



*K*<sup>35</sup>, *Nisha Priya Bhatia v UOI*<sup>36</sup>, *CISF v Om Prakash*<sup>37</sup> and *Pramod Kumar Bajaj*. These decisions more or less consider all the earlier law on point including the judgment in *Baikuntha Nath Das*.

## 22.2 *Rajesh Gupta v State of J & K*

**22.2.1** While he was posted as Assistant Executive Engineer in the Rural Engineering Wing in the Department of Agricultural Production, Jammu and Kashmir<sup>38</sup>, three criminal cases were registered against Rajesh Gupta, following three FIRs of 1991, 1994 and 1995. Investigations followed and the allegations in all the FIRs were found not to be proved. In FIR 11/1995, however, there was a recommendation to initiate departmental action against Rajesh Gupta. No departmental action was, however, initiated. Rather, Rajesh Gupta was promoted as Executive Engineer<sup>39</sup> on 15 February 1996 after completion of investigation in FIR 11/1995. He joined as EE on 6 February 2003 and worked as such till 8 May 2003.

**22.2.2** During this period, the General Administration Department of the Government of J & K constituted a Committee to consider the cases for premature retirement in terms of Articles 226(2) and 226(3) of the J & K Civil Services Regulations 1956. In the meanwhile, an enquiry was going on against Rajesh Gupta on certain allegations, resulting in the submission of an Inquiry Report on 22 July 2003 with respect to suspected irregularities in the execution of Rural

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<sup>35</sup> (2013) 3 SCC 514

<sup>36</sup> (2020) 13 SCC 56

<sup>37</sup> (2022) 5 SCC 100

<sup>38</sup> “J & K” hereinafter

<sup>39</sup> “EE”, hereinafter



Development Work in eleven blocks of J & K. The findings of the IO in that regard stand thus noted in paras 6 and 7 of the judgment of the Supreme court:

“6. As noticed earlier, the appellant was working as the Executive Engineer at Jammu at the relevant time. Therefore, during the performance of his official duty, he was required to issue technical sanctions, approve estimates and allot work to mates as well as conduct test checks of the works allotted by the Block Development Officer. The conclusion recorded by the inquiry officer is as under:

“The Executive Engineer, Rural Engineering Wing, Jammu has also confessed having accorded such sanctions on the spot. All this clearly indicates that no proper records have been maintained by that office and some sanctions have been issued out of record. No record/register of bills/test checks has been maintained.

Regarding accord of backdated technical sanctions and delays, it could not be established with evidence that there existed some backdated technical sanctions or there were delays in accord of technical sanctions and clearance of bills. However, the casual and haphazard manner of maintenance of records could be a probable pointer towards the direction.”

7. The inquiry officer further records that the Block Development Officers have taken up a number of works without technical sanctions which was contrary to the standing rules governing execution of work. The inquiry officer further observed that the Executive Engineer, REW, Jammu i.e., the appellant, has not maintained the proper record of technical sanctions and test checks. Non-maintenance of the important records has resulted in mismanagement owing to the issue of technical sanctions not adopting a proper procedure for the execution of works and test checks, etc. It is a matter of record that even though this report was submitted on 22-7-2003, no action was taken on the basis thereof.

**22.2.3** The Supreme Court noted that Rajesh Gupta had 24 years of spotless service to his credit. For the year 1997-1998, he was graded as a very good officer and his integrity was graded as “excellent”.



Similar gradings were granted to Rajesh Gupta regarding his performance and integrity for the years 1998-1999, 1999-2000. In 2000-2001, he was graded as a “good officer” with “good integrity”. Even in future years, he was graded as a “good” or a “very good officer” and it was specifically noted that nothing adverse regarding his integrity had come to notice. These points have been thus noted in para 8 of its judgment :

“8. We may also notice at this stage that the appellant had a spotless service record throughout 24 years of service. In the annual performance report for the period 1-4-1997 till 31-3-1998, his work has been assessed as “Good”. The reviewing authority has graded the appellant as a “Very Good Officer”. Against the column of integrity, the remark is “Excellent”. Similarly, for the year 1998-1999, he was assessed as “Good Officer” and having “Excellent” integrity. In the annual performance report for the year 1999-2000 again his integrity is said to be “Excellent”. He has been assessed as a very capable and efficient officer. The overall assessment given by the reviewing authority is “A very good officer”. For the year 2000-2001, the annual performance report again records that the appellant is “A good officer” with good integrity. A separate assessment was given on 12-3-2005 for the period 27-10-2001 to 29-7-2002 and thereafter from 23-10-2002 till 23-12-2002. This annual performance report was recorded by the Deputy Commissioner, Jammu for the period of 11 months. In the aforesaid two tenures, the work and conduct of the appellant was found to be good. It is also recorded that no complaint was brought to the notice of the reporting officer. For the year 2003-2004 against the column integrity, it is mentioned that “nothing against came in notice”. The reporting officer has said “he is a very good field officer”. The reviewing officer assessed the appellant as “An outstanding officer”.”

**22.2.4** By order dated 26 April 2005, following recommendations of a High Powered Review Committee constituted for the purpose, Rajesh Gupta was prematurely retired. The basis for this decision was to be found in para 5 of the recommendations of the Review Committee. It was alleged by the Rural Development Department that



the officer was suspected of having issued back dated sanctions for execution of departmental works and of passing of bills and estimates, in connection with which a Departmental Enquiry had been ordered on 22 May 2003. It was based on these recommendations that the order of compulsory retirement was passed against Rajesh Gupta.

**22.2.5** Rajesh Gupta challenged the decision to compulsorily retire him from service before the High Court of Jammu & Kashmir. The writ petition was dismissed by a learned Single Judge and the appeal, against the decision, was also dismissed by the Division Bench. Rajesh Gupta, therefore, appealed to the Supreme Court.

**22.2.6** The findings of the Supreme Court are contained in the following paragraphs from the judgment, in which the earlier decisions in *Baikuntha Nath Das, Nand Kumar Verma v State of Jharkhand*<sup>40</sup>, *State of Gujarat v Umed Bhai M Patel, Jugal Chander Setia v State of Assam*<sup>41</sup> and *Officers Association v Allahabad Bank*<sup>42</sup>: were noted:

“20. The principles on which a government servant can be ordered to be compulsorily retired were authoritatively laid down by this Court in *Baikuntha Nath Das* in para 34, the principles have been summed up as follows:

“34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

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<sup>40</sup> (2012) 3 SCC 580

<sup>41</sup> (2003) 4 SCC 59

<sup>42</sup> (1996) 4 SCC 504



(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary—in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter—of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.”

21. The aforesaid principles have been re-examined and reiterated by this Court in *Nand Kumar Verma*. The principles have been restated as follows:

“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the



administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

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36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service.”

22. In *State of Gujarat v Umedbhai M. Patel*: the same principles were reiterated in the following words:

“11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.



(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

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24. In *Jugal Chandra Saikia* : this Court reiterated the principles in the following words:

“6. ... It cannot be disputed that the passing of an order of compulsory retirement depends on the subjective satisfaction of the competent authority, of course on objective consideration. Unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that such formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the court cannot interfere.”

Examining the record of the appellant therein and the material that was placed before the Screening Committee, the High Court as well as this Court in *Jugal Chandra case* came to the conclusion that on an objective consideration of the material on the record it was not possible to accept the argument that the Screening Committee had acted only on the basis of the report of the Rao Committee. It was found that the recommendations of the Screening Committee were based on relevant material.

25. In *Allahabad Bank case* this Court examined whether the order of compulsory retirement, passed in that case, cast a stigma on Appellant 2. The impugned order therein had recited that there was “want of application to the bank's work and lack of potential” and “he has also been found not dependable”. It was the case of



Appellant 2 that the aforesaid expressions were stigmatic as they cast aspersions on his conduct, character and integrity. The High Court rejected the plea of Appellant 2 on the ground that the recitals do not cast any stigma but only assess the work of Appellant 2 for determining the issue of his compulsory retirement. In these circumstances, it was observed that the object of compulsory retirement is to weed out the dead wood in order to maintain efficiency in the service and also to dispense with the services of those whose integrity is doubtful, so as to preserve purity in the administration. The order of compulsory retirement was distinguished from the order of dismissal and removal, as it does not inflict any punishment on the government servant. It only deprives the government servant of the opportunity to remain in service till the age of superannuation. Therefore, the order of compulsory retirement differs from an order of dismissal or removal both in its nature and consequence. However, in case it is found that the order is stigmatic it would be treated as an order of punishment, which cannot be passed without complying with the provisions of Article 311(2) and the rules of natural justice. Upon examination of a large body of case law, it was observed that the order of compulsory retirement does not cast a stigma on the government servant. But if the order contains a statement casting aspersion on his conduct or character, then the court will treat the order as an order of punishment, attracting the provisions of Article 311(2) of the Constitution. In the facts of that case, it was concluded that the two recitals contained in the order of premature retirement had been made in relation to the work of Appellant 2 and not for any other purpose. Therefore, the court declined to interfere with the order of the High Court.

26. Examining the fact situation in this case on the basis of the aforesaid principles, it becomes evident that the recommendation made by the High-Powered Committee was indubitably arbitrary.

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28. During the course of the submissions before us, the learned counsel for the State of Jammu and Kashmir accepted that there was no material with regard to properties at Sl. Nos. 1 to 5. Therefore, we shall say no more about the same. With regard to the properties at Sl. Nos. 6 and 7, Mr Garg, learned counsel for the appellant pointed out that during the pendency of the letters patent appeal in the High Court, the respondents were directed to place on record the findings recorded by the Special Investigation Team which was constituted for carrying detailed investigation into the question as to whether the petitioner was in possession of the assets mentioned in the report of the Additional DGP dated 19-10-2004. The report dated 1-7-2010 submitted by the Joint Director



(Prosecution) was placed on record of the High Court along with an affidavit. The report with regard to the aforesaid two properties is as under:

“3. *Two kanals of land at Trikuta Nagar Extension, Jammu:*

The land/plots were found purchased by Shri Devi Dutt Mal Gupta (father-in-law of the subject officer), who subsequently gifted it to his grandson Rahul Gupta, who happens to be the son of Rajesh Gupta (subject officer) in the year 2003.

4. *Three kanals of land at Greater Kailash, Jammu:*

This piece of land along with 1 kanal and 6 marlas have been purchased by one Shri Vijay Kumar from the actual owners and stands mutated since in the name of purchaser. This asset as per revenue records was found not attributable to the subject officer.”

29. The report also does not indicate that there is any irregularity in the bank accounts maintained by the appellant. The affidavit filed on behalf of the State of Jammu and Kashmir clearly shows that according to the Vigilance Organisation, three first information reports bearing Nos. 49 of 1991, 11 of 1995 and 63 of 1994 were registered by the State Vigilance Organisation against the appellant when he was posted as Executive Engineer (REW, Kathua). Upon investigation, all the FIRs were found to be “not proved”. However, recommendation was made to initiate departmental action against the officer. In spite of the aforesaid recommendation, it has not been disputed before us, that no departmental action was ever initiated against the appellant. In fact, after the completion of the investigation into the FIRs, the appellant was promoted to the post of Executive Engineer on 15-12-1996. Therefore, it can be safely concluded that there were no material before the High-Powered Committee to conclude that the officer possessed assets beyond his known source of income.

30. This now takes us to the other material on the basis of which the recommendation has been made by the High-Powered Committee. It has been noticed by us earlier that the appellant was required, in the performance of his official duties, to recommend the sanctioning of technical approval to the construction of works of various projects. The allegation with regard to issuing backdated technical sanctions was duly inquired into. The conclusion ultimately reached by the inquiry officer noticed in the earlier part of the order indicates that at best the appellant acted in a casual and haphazard manner in the maintenance of records. Such negligence



on the part of the appellant cannot per se lead to the conclusion that the appellant was acting in such a manner with an ulterior motive. The conclusions reached by the High-Powered Committee also do not co-relate to the assessment of work and integrity of the appellant in the annual performance report. As noticed earlier, in all the annual performance reports, the officer has been rated “Very Good”, “Excellent” and even “Outstanding”

31. In view of the aforesaid, the conclusion is inescapable, that the order passed by the State Government suffers from the vice of arbitrariness. The High Court erred in arriving at conclusions which were not borne out by the record produced before the High Court. In view of the settled law, it is not possible for us to uphold the judgments of the Single Judge as also of the Division Bench.

32. Consequently, the appeal is allowed, the impugned order of premature retirement of the appellant dated 26-4-2005 is quashed and set aside. It is brought to our notice that the appellant has still not reached the age of superannuation. He is, therefore, directed to be reinstated in service. In view of the fact that the appellant has not challenged the order of premature retirement on the ground that the action taken by the Government was mala fide, it would not be appropriate in this case, to follow the normal rule of grant of full back wages on reinstatement. We, however, direct that the appellant shall be paid 30% of the back wages from the date of order of premature retirement till reinstatement. He shall not be entitled to any interest on the back wages.”

**22.2.7** The Supreme Court, thus, held that there was no sufficient material to justify the decision to compulsorily retire Rajesh Gupta and therefore, allowed the appeal.

### **22.3 *CISF v Om Prakash***

**22.3.1** Head Constable Om Prakash was compulsorily retired under FR 56(j) read with Rule 48(1)(b) of the CCS (Pension) Rules 1972, after completion of 33 years of service. He challenged the said decision by way of a writ petition to this Court which was allowed by



a Division Bench by judgment dated 14 October 2011 (*Om Prakash v CISF*<sup>43</sup>).

**22.3.2** Aggrieved thereby, the CISF appealed to the Supreme Court.

**22.3.3** This Court proceeded on the premises that the decision to compulsorily retire Om Prakash was based on certain penalties awarded to him in 2000, whereafter he had been promoted as Head Constable. Penalties imposed prior to the promotion of Om Prakash, according to the Division Bench of this Court, could not be taken into account as the basis to compulsorily retire him from service. The ACRs of Om Prakash were of greater significance. This Court held that the authorities ought to have concentrated on Om Prakash's ACRs for the preceding five years. The ACRs from 1990 till 2009 were all graded either "good" or "very good". Though the ACR for the year 2010 was graded "average", it was not communicated to Om Prakash. The Division Bench, therefore, held that the 2010 ACR could not be taken into consideration to hold that Om Prakash was dead wood.

**22.3.4** The Supreme Court held, in appeal, thus:

"4. This Court approved the earlier judgment of this Court in *Union of India v M.E. Reddy*<sup>44</sup> wherein it was held as under:

"12. An order of compulsory retirement on one hand causes no prejudice to the government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the services. The employees should try to understand the true

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<sup>43</sup> 2011 SCC Online Del 4388

<sup>44</sup> (1980) 2 SCC 15



spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country, for every good cause claims its martyr.”

5. We find that the High Court has completely misdirected itself while setting aside the order of premature retirement of the writ petitioner. The writ petitioner has been awarded number of punishments prior to his promotion including receiving illegal gratification from a transporter while on duty in the year 1993. There are also allegations of absence from duty and overstaying of leave. After promotion, a punishment of four days fine was imposed on the charge of sleeping on duty and two days' fine was imposed for overstayed from joining time. Apart from the said punishments, the writ petitioner has a mixed bag of ACRs such as average, below average, satisfactory good and very good. In the last 5 years, he has been graded average for the period 1-1-2010 to 31-12-2010.

6. After the judgment in *Baikuntha Nath Das*, a three-Judge Bench in a judgment reported as *Posts and Telegraphs Board v C.S.N. Murthy* : held that the courts would not interfere with the exercise of the power of compulsory retirement if arrived at bona fide and on the basis of material available on record. The Court held as under:

“5. ... Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. No mala fides have been urged in the present case. The only suggestion of the High Court is that the record discloses no material which would justify the action taken against the respondent. We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable.”



7. A three-Judge Bench of this Court reported as *Union of India v Dulal Dutt*<sup>45</sup>, examined the order of compulsory retirement of a Controller of Stores in Indian Railways. It was held that an order of compulsory retirement is not an order of punishment. It is a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government and that it is not required to be a speaking order. This Court held as under:

“18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from *R.L. Butail v Union of India*<sup>46</sup>, and *Union of India v J.N. Sinha*, that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law.”

8. In another judgment reported as *Harijan and Tribal Welfare Deptt. V Nityananda Pati*<sup>47</sup>, the order of the High Court setting aside the compulsory retirement for the reason that certain uncommunicated adverse remarks were taken into consideration was set aside by this Court

9. In *Union of India v V.P. Seth*<sup>48</sup>, relying upon *Baikuntha Nath Das* and other judgments, it was held as under:

“3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the rule of audi alteram partem has no application since the order of compulsory retirement in

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<sup>45</sup> (1993) 2 SCC 179

<sup>46</sup> (1970) 2 SCC 876

<sup>47</sup> 1993 Supp (2) SCC 391

<sup>48</sup> 1994 SCC (L&S) 1052



such a situation is not penal in nature. The position of law having thus been settled by two decisions of this Court, we are afraid that the order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said two decisions.”

10. A three-Judge Bench of this Court in a judgment reported as *State of Punjab v Gurdas Singh*<sup>49</sup>, considered the argument that the order of compulsory retirement was based on material which was non-existent inasmuch as there were no adverse remarks against him and if there were any such remarks, it should have been communicated to him. This Court held as under:

“11. ... Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well.”

11. In *State of U.P. v Raj Kishore Goel*<sup>50</sup>, the order of the High Court setting aside the order of compulsory retirement was set aside when the order of compulsory retirement was on account of uncommunicated ACR.

12. In the judgment reported as *Rajasthan SRTC v Babu Lal Jangir*<sup>51</sup>, the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that *Brij Mohan Singh Chopra v State of Punjab*<sup>52</sup>, was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the “washed-off theory” i.e., the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three-Judge Bench judgment of this Court reported as *Pyare Mohan Lal v State of Jharkhand*<sup>53</sup>, and it was observed that: *Rajasthan SRTC v Babu Lal Jangir*<sup>54</sup>;

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<sup>49</sup> (1998) 4 SCC 92

<sup>50</sup> (2001) 10 SCC 183

<sup>51</sup> (2013) 10 SCC 551

<sup>52</sup> (1987) 2 SCC 188

<sup>53</sup> (2010) 10 SCC 693

<sup>54</sup> (2013) 10 SCC 551



“22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in *Badrinath*<sup>55</sup> : is not correct and the observations of this Court in *Gurdas Singh*<sup>56</sup>: to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in *Pyare Mohan Lal v State of Jharkhand* is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this “washed-off theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.”

13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in *Ram Murti Yadav v State of U.P.*<sup>57</sup> held as under:

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<sup>55</sup> *Badrinath v State of T.N.*, (2000) 8 SCC 395

<sup>56</sup> *State of Punjab v Gurdas Singh*, (1998) 4 SCC 92

<sup>57</sup> (2020) 1 SCC 801



“6. ... The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.”

14. Thus, we find that the High Court has not only misread the judgment of this Court in *Baikuntha Nath Das* but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned above. There is also a factual error in the order of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

15. The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight.”

## **22.4 Pramod Kumar Bajaj**

**22.4.1** We may observe, here, that *Pramod Kumar Bajaj* represents the latest exposition of law, by the Supreme Court, on the issue of compulsory retirement, from what we could glean from our study.

**22.4.2** Pramod Kumar Bajaj<sup>58</sup> was a Permanent Commissioned Officer inducted in 1980. Consequent on his qualifying the civil services examination in 1989, Bajaj was allocated to the 1990 Batch of the Indian Revenue Service. He earned successive promotions till,

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<sup>58</sup> “Bajaj” hereinafter



in 2012, he joined as Commissioner in the Department of Income Tax.

**22.4.3** On 29 November 2017, a vigilance inspection was carried out in the office of Bajaj. This resulted in the issuance, to him, of a show cause notice dated 31 January 2018. Prior thereto, on 21 January 2018, vigilance clearance, earlier granted to Bajaj, was withheld by the department.

**22.4.4** Bajaj challenged these decisions by way of two OAs filed before the Tribunal. The Tribunal, by two interim orders, directed that the show cause notices issued to Bajaj, and the withholding of his vigilance clearance, would not impede his consideration for appointment as Member, Income Tax Appellate Tribunal<sup>59</sup>. This decision was challenged before the Supreme Court, by the UOI unsuccessfully.

**22.4.5** In the meanwhile, Bajaj was placed on the “agreed list” on 11 April 2018. The “agreed list” is a list of gazetted officers of suspect integrity. Aggrieved thereby, Bajaj re-approached the Tribunal.

**22.4.6** By a common judgment dated 6 March 2019, the Tribunal allowed the OAs filed by Bajaj and quashed the inclusion of his name in the agreed list and consequential proceedings as well as the decision to deny him vigilance clearance. The Tribunal also directed that his name be forwarded for selection/appointment to the post of Member, ITAT. The judgment of the Tribunal was challenged before

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<sup>59</sup> “ITAT” hereinafter



the High Court by the Union of India by way of a writ petition. Though no interim order was passed by the High Court, the Union of India did not implement the judgment of the Tribunal.

**22.4.7** In the meanwhile, Bajaj was issued a charge-sheet on 13 June 2019 as a result, his case for consideration for promotion to the post of Principal Commissioner was placed in a sealed cover by a DPC, which convened for the purpose, in July 2019. Bajaj challenged the disciplinary proceedings by way of a writ petition before the High Court, which passed certain orders of stay.

**22.4.8** While the proceedings were thus pending, Bajaj was compulsorily retired from service on 27 September 2019, around three months short of his superannuation in January 2020. Bajaj represented against the said order. His representation was also rejected by the Representation Committee by order dated 2 January 2020.

**22.4.9** Bajaj challenged the order of compulsory retirement and the rejection of his representation, thereagainst, by the Representation Committee, before the Tribunal. The challenge was dismissed by the Tribunal vide judgment dated 9 December 2020. The decision of the Tribunal was upheld by the High Court<sup>60</sup>.

**22.4.10** Aggrieved thereby, Bajaj approached the Supreme Court.

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<sup>60</sup> **Pramod Kumar Bajaj v UOI**



**22.4.11** The Supreme Court exhaustively referred to all the earlier decisions on the point. We may reproduce the following passages from the judgment:

“19. The object of compulsory retirement of a government servant was highlighted by this Court in *Officers' Assn. v Allahabad Bank* in the following words:

“5. *The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration.* Generally speaking, Service Rules provide for compulsory retirement of a government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held — and there is no duty to hold an enquiry — is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in *Shyam Lal v State of U.P.*<sup>61</sup> and *State of Bombay v Saubhagchand M. Doshi*<sup>62</sup>. Thus, by its very nature the power to compulsorily retire a government servant is distinct and separate from the power to punish him by way of removal, dismissal, etc. for misconduct. A government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences.

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<sup>61</sup> (1954) 1 SCC 572

<sup>62</sup> AIR 1957 SC 892



17. The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it.”

(emphasis supplied)

20. In *Union of India v J.N. Sinha* it has been observed that: Fundamental Rule 56(j) does not in terms require that any opportunity should be given to the government servant concerned to show cause against his compulsory retirement. It says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. If that authority *bona fide* forms that opinion the correctness of that opinion cannot be challenged before courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.

21. On similar lines were the observations made by this Court in *Swami Saran Saksena v State of U.P.*<sup>63</sup>:

“3. Several contentions have been raised in this appeal by the appellant, who appears in person. In our judgment, one of them suffices to dispose of the appeal. The

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<sup>63</sup> (1980) 1 SCC 12



contention which has found favour with us is that on a perusal of the material on the record and having regard to the entries in the personal file and character roll of the appellant, it is not possible reasonably to come to the conclusion that the compulsory retirement of the appellant was called for. This conclusion follows inevitably from the particular circumstances, among others, that the appellant was found worthy of being permitted to cross the second efficiency bar only a few months before. Ordinarily, the court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a government servant. And we would have been even more reluctant to reach the conclusion we have, when the impugned order of compulsory retirement was made on the recommendation of the High Court itself. But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second efficiency bar the appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement. The entries in between in the records pertaining to the appellant need to be examined and appraised in that context. There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed. The appellant will be deemed to have continued in service on the date of the impugned order.”

22. In *Baldev Raj Chadha v Union of India*, emphasising the fact that exercise of powers under Fundamental Rule 56(j) must be bona fide and promote public interest, this Court observed that:

“The whole purpose of Fundamental Rule 56(j) is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. But under the guise of “public interest” if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. The exercise of power must be bona fide and promote public interest.

An officer in continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years



immediately before the compulsory retirement cannot be compulsorily retired on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms.”

23. In *Ram Ekbal Sharma v State of Bihar*<sup>64</sup> it was observed that in order to find out whether an order of compulsory retirement is based on any misconduct of the government servant or the said order has been made bona fide, without any oblique or extraneous purpose, the veil can be lifted. Following are the pertinent observations made in the said decision:

“32. On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the court from delving into the basis of the order if the order in question is challenged by the government servant concerned as has been held by this Court in *Anoop Jaiswal case*<sup>65</sup>. This being the position the respondent State cannot defend the order of compulsory retirement of the appellant in the instant case on the mere plea that the order has been made in accordance with the provisions of Rule 74(b)(ii) of the Bihar Service Code which prima facie does not make any imputation or does not cast any stigma on the service career of the appellant. But in view of the clear and specific averments made by the respondent State that the impugned order has been made to compulsorily retire the appellant from service under the aforesaid rule as the appellant was found to have committed grave financial irregularities leading to financial loss to the State, the impugned order cannot but be said to have been made by way of punishment. As such, such an order is in contravention of Article 311 of the Constitution of India as well as it is arbitrary as it violates principles of natural justice and the same has not been made bona fide.”

(emphasis supplied)

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<sup>64</sup> (1990) 3 SCC 504

<sup>65</sup> *Anoop Jaiswal v Union of India*, (1984) 2 SCC 369



24. In *State of Orissa v Ram Chandra Das* this Court observed as follows:

“3.... It is needless to reiterate that the settled legal position is that the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or who are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking the decision to retire a government employee compulsorily from service, has to consider the entire record of the government servant including the latest reports.”

25. In *State of Gujarat v Suryakant Chunilal Shah*<sup>66</sup>, a case where the State Government had challenged the judgment of the Division Bench of the High Court of Gujarat that had held that the order of compulsory retirement passed against the respondent therein was bad, as there were no adverse entries in his Confidential Report and his integrity was not doubtful at any stage, this Court held thus:

“28. There being no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries, the integrity was not doubted at any time, the character roll entries subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) were not available, it could not come to the conclusion that the respondent was a man of doubtful integrity nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily from service. The order, in the circumstances of the case, was punitive having been passed for the collateral purpose of his immediate removal, rather than in public interest.”

26. In *State of Gujarat v Umedbhai M. Patel*, this Court has delineated the following broad principles that ought to be followed in matters relating to compulsory retirement:

“11. The law relating to compulsory retirement has now crystallised into a definite principle, which could be broadly summarised thus:

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<sup>66</sup> (1999) 1 SCC 529



- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.”

27. In **Nand Kumar Verma v State of Jharkhand** this Court has once again highlighted the permissibility of ascertaining the existence of valid material by a court for the authorities to pass an order of compulsory retirement and observed thus:

*“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy.”*

(emphasis supplied)



28. In a recent judgment in *Nisha Priya Bhatia v Union of India*, confronted with the question as to whether action taken under Rule 135 of the Research and Analysis Wing (Recruitment Cadre and Service) Rules, 1975 is in the nature of “a penalty or a dismissal clothed as compulsory retirement” so as to attract Article 311 of the Constitution of India, this Court has held that “*the real test for this examination is to see whether the order of compulsory retirement is occasioned by the concern of unsuitability or as a punishment for misconduct*”. For drawing this distinction, reliance has been placed on the judgment in *State of Bombay v Saubhagchand M. Doshi*<sup>67</sup>, where a distinction was made between an order of dismissal and order of compulsory retirement in the following words:

“9. ... Under the rules, an order of dismissal is a punishment laid on a government servant, when it is found that he has been guilty of misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the rules would have accrued in respect of the service already put in.

An order of removal also stands on the same footing as an order of dismissal, and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment, one who is removed is. *An order of retirement differs both from an order of dismissal and an order of removal, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit.*”

(emphasis supplied)

### ***Examination and analysis of the case on hand***

29. We may now proceed to examine the facts of the case in hand in the light of the case laws discussed above in order to find out as to whether the order of compulsory retirement passed by the respondents in respect of the appellant was based on valid material and was in public interest. First, we propose to examine the personal file and character roll of the appellant. As per the material placed on record, the APARs of the appellant reflect that over the past several years, his integrity was being regularly assessed as “*Beyond doubt*” and this remained the position till as late as 31-7-2019, when his work performance was assessed for the period from

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<sup>67</sup> AIR 1957 SC 892



1-4-2018 to 31-3-2019 and found to be up to the mark. In his APARs for the past one decade, till the period just prior to the order of his premature retirement, the respondents were consistently grading the appellant as “*Outstanding*”. No adverse entries were made by his superiors in the APARs of the appellant insofar as his work performance was concerned. No aspersion was cast either on his conduct or character during all this period. As per the service records, his efficiency and integrity remained unimpeachable throughout his career. The inference drawn from the above is that the appellant's service record being impeccable could not have been a factor that went against him for the respondents to have compulsorily retired him.

30. Coming next to the stand taken by the respondents that several complaints were received against the appellant that had cast a cloud on his integrity, it is noteworthy that the respondents have referred to nine complaints against the appellant, stated to be pending in the Vigilance Directorate that have been pithily summarised by the Tribunal in a tabulated format in para 30 of its judgment dated 6-3-2019 [*Pramod Kumar Bajaj v Union of India*]. Juxtaposed against the said tabulated statement of complaints listed by the respondents, is a separate tabulation of the response of the appellant to each of the said complaints. For ready reference, the two tables of contents are extracted below:

Sl. Nos.	Name of officer		Status
1	Shri P.K. Bajaj, Addl. CIT, Range 6(2), Mumbai	Shri O.P. Jangre	Charges of harassment and interference in work by subordinate officer Shri Jangre on Shri P.K. Bajaj—under examination.
2.	Shri P.K. Bajaj, CIT (E), Lucknow		Closed dated 3-5-2018
3.	Shri P.K. Bajaj, CIT (E), Lucknow	Complaint made by Driving Training and Scientific Research Lucknow in January 2016	Under examination
4.	Shri P.K. Bajaj, CIT (E), Lucknow	Shri Dharam Veer Kapil, IFS (Retd.), dated 17-10-2017	ID issued dated 13-11-2017. ID responded dated 18-11-2017—under examination
5.	Shri P.K. Bajaj, CIT (E), Lucknow	Shri Balesh Singh, through PMOPG/E2017/059 7 795 dated 17-11-2017	ID issued dated 27-12-2017
6.	Shri P.K. Bajaj, CIT (Exemption), Lucknow	Shri Ashok Verma, Lucknow	ID issued dated 8-4-2016. Reminder dated 11-5-2016. ID neither responded nor received back date. Closed dated 19-7-2016
7.	Shri P.K. Bajaj, CIT (E), Lucknow	Shri Jagat Pandey, 28/42, Civil Lines, Bareilly, U.P., dated 29-6-2016	ID issued dated 3-8-2016. Reminder dated 9-9-2016 letter received back undelivered till date. Closed dated 7-10-2016.
8.	Shri Pramod Bajaj, CIT (Exemption), Lucknow	Shri Ashish Rastogi, A 70, Gandhi Nagar, Prince Road Moradabad, U.P.	ID issued dated 25-2-2016. Reminder dated 11-5-2016. ID neither received back nor responded. Closed dated 29-8-2016.
9.	Capt. P.K. Bajaj, Addl. CIT	Smt Renu Bajaj w/o Capt. P.K.	Letter dated 28-1-2015 to CIT, Ajmer for providing information on case in



		Bajaj	court matter. A letter to Pr. CCIT, Jaipur for status report dated 20-1-2016 & reminder dated 28-9-2016 sent.
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Response of the appellant

Sl. Nos	Name of officer		Status	5. Facts as per petitioner
1.	Shri P.K. Bajaj, Addl. CIT,	Shri O.P. Jangre		No explanation ever called for from petitioner in last 13 years in this regard. Shri S.K. Jangre was arrested by ACB/CBI on 12-12-2015, and is under suspension. (Annexure A-1).
2.	Shri P.K. Bajaj, CIT (E), Lucknow	Blank/	Closed dated 3-5-2018	No details mentioned.
3.	Shri P.K. Bajaj, CIT (E), Lucknow	Complaint made by Driving Training and Scientific Research, Lucknow in January 2016	Under examination	File taken for inspection on 3-2-2016 returned after 17 months on 9-8-2017 with the remarks that this record is no longer required and matter closed by ADG(VIG)NZ on 10-2-2016. (Annexure A-2) (ii) NBW issued by the learned CJM, Lucknow against complainant (Annexure A-3).
4.	Shri P.K. Bajaj, CIT (E), Lucknow	Shri Dharam Veer Kapil, IFS (Retd.), dated 17-10-2017	ID issued dated 13-11-2017, ID responded dated 18-11-2017. under examination	Father-in-law of Mrs Naina Kapil So in, IRS posted earlier in DG(V) office Delhi. (ii) Application rejected because even PAN was not provided in spite of two opportunities given (copy of order as Annexure A-4)
5.	Shri P.K. Bajaj, CIT (E), Lucknow	Shri Balesh Singh, through PMOPG/E20 17/059779 5 dated 17-11-2017	ID issued dated 27-12-2017	No details provided by the respondents. No query ever raised till date.

6.	Shri P.K. Bajaj, CIT (Exemption), Lucknow	Shri Ashok Verma, Lucknow	ID issued dated 8-4-2016. Reminder dated 11-5-2016 ID neither responded nor received back undelivered till dated. Closed dated/19-7-2016.	Fictitious/pseudo anonymous complaint. Still connected files taken during inspection on 29-11-2017.
7.	Shri P.K. Bajaj, CIT (Exemption), Lucknow	Shri Jagat Pandey, 28/42, Civil Lines, Bareilly, U.P. Dated 29-6-2016	ID issued dated 3-8-2016. Reminder dated 9-9-2016. ID letter received back undelivered. Closed /dated 7-10-2016.	Fictitious/pseudo anonymous complaint still connected files taken during inspection on 29-11-2017
8.	Shri P.K. Bajaj, CIT (Exemption), Lucknow	Shri Ashish Rastogi, A 70, Gandhi Nagar, Prince Road, Moradabad, U.P.	ID issued dated 25-2-2016. Reminder dated 11-5-2016. ID neither received back nor responded. Closed Dt/29-8-2016	Fictitious/pseudo anonymous complaint still connected files taken during inspection on 29-11-2017.
9.	Shri P.K. Bajaj, Addl. CIT	Smt Renu Bajaj w/o Capt. P.K. Bajaj	Letter dated 28-1-2015 to CIT, Ajmer for providing information on case in court	Divorced on 31-5-2008. No query ever raised by DGIT (V) till date but copies of Hon'ble SC/HC orders handed over to DGIT (V) on



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			matter. A letter to Pr. CCIT Jaipur for status report dated 20-1-2016 & reminder dated 28-9-2016 sent.	21-3-2018 (old settled matrimonial dispute), but still kept pending by DGIT (V) (copy as Annexure A-5).
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31. As can be seen from the above, out of the aforesaid nine complaints, four complaints mentioned at Sl. Nos. 2, 6, 7 and 8 had already been closed by the department in the year 2016-2017. With regard to the complaint listed at Sl. No. 1, is stated to have been levelled by another officer of the department against the appellant, relating to harassment and interference in work. The Tribunal has noted the submission of the appellant, which has gone unrefuted that the Anti-Corruption Bureau of the Central Bureau of Investigation (for short "CBI") had at a later date, arrested the said officer on charges of corruption. The appellant has also stated in the remarks column that no explanation had ever been called for from him on the said complaint, status whereof is shown as "Under examination". In respect of the complaints at Sl. Nos. 3 and 4, the respondents have stated that they are "Under examination". In reply, the appellant has stated that the complaint at Sl. No. 3, of the year 2016 was closed by the ADG (Vigilance) (NZ) on 10-2-2016 and the complaint at Sl. No. 4, made by a relative of an officer within the Department, was rejected because the complainant did not provide his PAN number despite being afforded two opportunities. There is no rebuttal to the said assertions. Coming to the complaint at Sl. No. 5, the Review Committee constituted by the respondents has recorded the status of the said complaint as having been closed on 22-1-2019. This is apparent from a perusal of para 26 of the judgment dated 9-12-2020, passed by the Tribunal. Now remains the complaint at Sl. No. 9, which was made by the appellant's ex-wife alleging bigamy, moral turpitude, etc. against the appellant. In the remarks column, the respondents have stated that necessary information in respect of the said court proceedings between the parties was sought by the department. The appellant has clarified that a decree of divorce was granted to the parties by the court concerned and a copy of the said order was duly supplied to the department against receipt on 21-3-2018.

32. Insofar as the matrimonial dispute of the appellant is concerned, the material placed on record reveals that the same had attained quietus by virtue of a settlement arrived at between him and his estranged wife, vide settlement agreement dated 18-6-2016 recorded by the learned Mediator appointed by the Delhi High Court Mediation and Conciliation Centre. The said settlement agreement was duly taken on record by the Division Bench of the High Court of Delhi vide order dated 14-7-2016 passed in MAT. APP. (FC) Nos. 148 of 2014, 34 and 36 of 2016. Both the parties had agreed that they would take joint steps to get their marriage



dissolved by filing a petition before the Family Court concerned. One of the terms and conditions of the settlement was that the appellant would arrange a residential flat for his wife, which his brother had agreed to purchase in her name, as a one-time settlement towards all her claims of maintenance, alimony, stridhan, etc. This condition was subsequently complied with and is borne out from the sale document of the flat dated 3-10-2016 that records the fact that a sum of Rs 6,00,000 (Rupees six lakhs) was paid by the appellant's brother to the seller towards the sale price of the flat.

33. Once the parties had arrived at a settlement and a decree of divorce by mutual consent was passed by the Court concerned, the allegations of bigamy, etc. levelled by the appellant's wife lose significance since the case was never taken to trial for any findings to be returned by the Court on this aspect. In the above backdrop, there appears no justification for the respondents to have raised the spectre of a series of complaints received against the appellant during the course of his service that had weighed against him for compulsorily retiring him, more so, when these complaints were to the knowledge of the respondents and yet, his service record remained unblemished throughout. Nothing has been placed on record to show a sudden decline in the work conduct of the appellant so as to have compulsorily retired him.

34. We may now proceed to examine the background in which vigilance clearances were initially given to the appellant and subsequently withheld by the respondents. It is not in dispute that in the year 2013, the appellant had applied for the post of Member, ITAT and in the year 2014, the Selection Committee had placed him on the top of the list of 48 selected candidates. Based on the vigilance clearance issued by the department in August 2013 and once again on 15-7-2015, the appellant was recommended by the respondents to the ACC for his appointment to the subject post.

35. However, sometime later, the respondents withheld the vigilance clearance given earlier on the ground that there was an adverse IB report against the appellant. It is not out of place to mention here that the aforesaid adverse IB report had also arisen from the complaint received from the appellant's wife during the very same matrimonial dispute which had already been amicably settled in court. The factum of the said settlement was well within the knowledge of the respondents, who had stated in OM dated 15-7-2015 that "*the alleged acts of bigamy against Shri Bajaj emanating from matrimonial dispute is not established*". Aggrieved by the withholding of his vigilance report, the appellant had approached the Tribunal for relief in OA No. 95 of 2016. Vide interim order dated 10-2-2017, the Tribunal directed the



respondents to resubmit the adverse IB report in respect of the appellant before the Selection Committee within one month for the said Committee to take a view in the matter. As noted earlier, the aforesaid order dated 10-2-2017, passed by the Tribunal was upheld by the High Court, on 30-5-2017 and affirmed by this Court, vide order dated 15-11-2017.

36. Undeterred by the aforesaid judicial orders, the respondents continued to withhold the vigilance clearance of the appellant, this time claiming that there were some adverse findings against him in an Inspection Report dated 20-4-2018 stated to have been prepared on the basis of an inspection of the office of the appellant conducted on 29-11-2017 and 30-11-2017 which was done within a few days of this Court upholding the order dated 10-2-2017 passed by the Tribunal, calling upon the respondents to place his adverse IB report before the Selection Committee, for it to take a view in the matter. It is rather ironical that the irregularities noticed by the respondents in the Inspection Report dated 20-4-2018, that made them withhold the vigilance clearance of the appellant were to their knowledge ten days before and yet they had issued a letter dated 11-4-2018, giving him vigilance clearance.

37. It is noteworthy that the appellant had challenged the proceedings initiated against him by the respondents on the basis of the inspections conducted on 29-11-2017 and 30-11-2017 in OA No. 77 of 2018. In the said proceedings, the Tribunal had passed an interim order on 2-2-2018 directing that the said proceedings will not come in the way of promotion, appointment and deputation prospects of the appellant. Regardless of the above directions, the respondents not only denied vigilance clearance to the appellant on 20-4-2018 they went a step ahead and proceeded to place his name in the "Agreed List" i.e. the list of suspected officers. This act of the respondents was also assailed by the appellant before the Tribunal in OA No. 279 of 2018. Ultimately, both the captioned original applications were collectively decided by the Tribunal in favour of the appellant by a detailed judgment dated 6-3-2019, which has not been stayed by any superior court.

38. Aggrieved by a separate memo dated 30-1-2018 issued by the respondents on the basis of the aforesaid inspection of his office conducted on 29-11-2017 and 30-11-2017 calling for his explanation in respect of some orders passed by him in his judicial/quasi-judicial capacity as Commissioner of Income Tax (Exemption), the appellant had to file OA No. 332 of 2018 that was decided by the Tribunal in his favour vide judgment dated 28-5-2019. In its judgment, the Tribunal relied on the order dated 15-5-2018, passed by the High Court in WP No. 13390 of 2018 (SB), declaring that the inspection conducted by the Department was



without jurisdiction and that there was no justification for withholding the vigilance clearance of the appellant on the basis of the said inspection. Noting that the memo dated 30-1-2018 issued by the respondents calling for an explanation from the appellant was premised on the very same inspection conducted by the Department, the Tribunal reiterated the string of findings returned by it in favour of the appellant in its earlier common judgment dated 6-3-2019 (passed in OAs Nos. 137 and 279 of 2018) and proceeded to quash the memo dated 30-1-2018 issued by the respondents. It was further held that the said order will not adversely impact forwarding of the name of the appellant as Member, ITAT, in terms of the recommendations made by the Selection Committee in its meeting held on 26-8-2018.

39. In the teeth of the series of orders passed by the Tribunal and the High Court in favour of the appellant, the respondents elected to withhold his vigilance clearance, thereby compelling the appellant to file contempt petitions against the officers concerned for non-compliance of the orders passed. Both, the High Court as well as the Tribunal, issued notices for wilful disobedience of the orders passed. In the proceedings before the High Court, on the one hand, the respondents kept seeking adjournments on the ground that steps were being taken to forward the appellant's name to the ACC for being processed for his appointment as Member, ITAT, till as late as on 31-5-2019 on which date they were granted one last opportunity for making compliances and at their request, the matter was adjourned to 9-7-2019 and on the other hand, the respondents slapped the appellant with a charge memorandum dated 17-6-2019 and suspended him on 1-7-2019.

40. Having regard to the fact that the respondents did not take the disciplinary proceedings initiated against the appellant to its logical conclusion and instead issued an order compulsorily retiring him, this Court does not deem it expedient to delve into the allegations levelled in the said charge memorandum; all the same, we have cursorily gone through the charge memorandum that mentions three charges — one alleging that the appellant failed to seek permission from the department to purchase a flat in relation to the matrimonial dispute between him and his estranged wife and the second one is in respect of the allegation of bigamy levelled against him by his estranged wife. We have already noted earlier that during the course of the matrimonial dispute, the parties had arrived at a settlement and the flat that was agreed to be given to the wife, was not purchased by the appellant but by his brother, which fact is amply borne out from the documents placed on record. The matrimonial dispute between the parties stood closed on a decree of divorce being granted on the basis of mutual consent. That the respondents were also cognizant of the said fact,



is apparent from the contents of OM dated 15-7-2015 which records inter alia that the said allegations levelled by the wife had not been established. The third charge was relating to the appellant having attended court hearings without sanctioned leave. However, the disciplinary proceedings initiated against the appellant on 17-7-2019 were abandoned by the respondents on the order of compulsory retirement being passed against him in less than three months reckoned therefrom, on 27-9-2019.”

41. The appellant has made allegations of institutional bias and malice against the respondents on the plea that the Chairman, CBDT who was a Member of the Review Committee, was facing three contempt proceedings relating to the appellant's service dispute, wherein notices had been issued by the High Court as well as the Tribunal. There is no doubt that rule of law is the very foundation of a well-governed society and the presence of bias or mala fides in the system of governance would strike at the very foundation of the values of a regulated social order. The law relating to mala fide exercise of power has been the subject-matter of a catena of decisions [refer: *Pratap Singh v State of Punjab*<sup>68</sup>; *Jaichand Lal Sethia v State of W.B.*<sup>69</sup>; *J.D. Srivastava v State of M.P.*<sup>70</sup>; and *Express Newspapers (P) Ltd. v Union of India*<sup>71</sup>. It has been repeatedly held that any exercise of power that exceeds the parameters prescribed by law or is motivated on account of extraneous or irrelevant factors or is driven by malicious intent or is on the face of it, so patently arbitrary that it cannot withstand judicial scrutiny, must be struck down. In the instant case, though the appellant has levelled allegations of institutional bias and prejudice against the respondents, particularly against the then Chairman, CBDT who was a Member of the Review Committee, the said officer was not joined by the appellant as a party before the Tribunal or the High Court, for him to have had an opportunity to clarify his stand by filing a counter-affidavit. Hence, these allegations cannot be looked into by this Court.

42. Dehors the aforesaid allegations of institutional bias and malice, having perused the material placed on record, we find merit in the other grounds taken by the appellant. It is noticed that though FR 56(j) contemplates that the respondents have an absolute right to retire a government servant in public interest and such an order could have been passed against the appellant any time after he had attained the age of fifty years, the respondents did not take any such decision till the very fag end of his career. The

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<sup>68</sup> AIR 1964 SC 72

<sup>69</sup> AIR 1967 SC 483

<sup>70</sup> (1984) 2 SCC 8

<sup>71</sup> (1986) 1 SCC 133



impugned order of compulsory retirement was passed in this case on 27-9-2019 whereas the appellant was to superannuate in ordinary course in January 2020. There appears an apparent contradiction in the approach of the respondents who had till as late as in July 2019 continued to grade the appellant as “Outstanding” and had assessed his integrity as “Beyond doubt”. But in less than three months reckoned therefrom, the respondents had turned turtle to arrive at the conclusion that he deserved to be compulsorily retired. If the appellant was worthy of being continued in service for little short of a decade after he had attained the age of 50 years and of being granted an overall grade of 9 on the scale of 1-10 on 31-7-2019 it has not been shown as to what had transpired thereafter that made the respondents resort to FR 56(j) and invoke the public interest doctrine to compulsorily retire him with just three months of service left for his retirement, in routine. In such a case, this Court is inclined to pierce the smokescreen and on doing so, we are of the firm view that the order of compulsory retirement in the given facts and circumstances of the case cannot be sustained. The said order is punitive in nature and was passed to short-circuit the disciplinary proceedings pending against the appellant and ensure his immediate removal. The impugned order passed by the respondents does not pass muster as it fails to satisfy the underlying test of serving the interest of the public.

43. In view of the above discussion, it is deemed appropriate to reverse the impugned judgment dated 31-5-2022 and quash and set aside the Order dated 27-9-2019 passed by the respondents, compulsorily retiring the appellant. Resultantly, the adverse consequences if any, flowing from the said order of compulsory retirement imposed on the appellant, are also set aside. The appeal is allowed and disposed of on the aforesaid terms while leaving the parties to bear their own costs.”

## **22.5 The Takeaway**

From the above judgments, the following principles emerge, in the matter of compulsory retirement, where it is not awarded as a punishment:

- (i) The scope of judicial review, in matters of compulsory retirement, is fairly limited.



- (ii) Compulsory retirement involves no penal consequences.
- (iii) At the same time, if unlimited discretion is permitted to the administration in the matter of passing orders of compulsory retirement, it would be the surest menace to public interest and must fail for unreasonable, arbitrariness and disguised dismissal.
- (iv) The exercise of power to compulsory retire an officer must be *bona fide* and to promote public interest.
- (v) It is permissible to lift the veil in order to ascertain whether an order of compulsory retirement is based on any misconduct of the government servant and whether the order has been made *bona fide* without any oblique and extraneous purpose.
- (vi) A *bona fide* order of compulsory retirement can be challenged only on the ground that the requisite opinion has not been informed, the decision is based on collateral factors or is arbitrary.
- (vii) The court cannot sit in appeal over an order of compulsory retirement, but can interfere if it is satisfied that the order is passed *mala fide*, or is based on no evidence, or is arbitrary, in the sense that no reasonable person would form the requisite opinion in the given material.



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(viii) The object of compulsory retirement, where it is not awarded as a punishment, aims at weeding out dead wood to maintain efficiency and initiative in the service, and dispensing with the services of those whose integrity is doubtful so as to preserve purity in the administration.

(ix) If the order of compulsory retirement casts a stigma on the government servant or contains any statement casting aspersion on his conduct or character, it would be treated as an order of punishment, attracting Article 311(2) of the Constitution of India. If, however, the order of compulsory retirement refers only to an assessment of his work and does not cast an aspersion on his conduct or character, the order of compulsory retirement cannot be treated as an order of punishment. The test would be the manner in which a reasonable person would read or understand the order of compulsory retirement.

(x) FR 56(j) does not require any opportunity to show cause to be provided before an order of compulsory retirement is passed.

(xi) Before passing an order of compulsory retirement, the entire service record of the officer has to be taken into account.

(xii) The gradings in the ACRs of the officer are relevant. The performance of the officer in later years, including the gradings granted in later years, would be of greater relevance than those



in earlier years. Where the ACRs continuously record the integrity of the officer as being “beyond doubt”, or grade him “outstanding” or “very good”, it is an important factor in favour of the officer, and would, in a given case, vitiate the order of compulsory retirement, unless it is shown that, between the last such entry and the passing of the order of compulsory retirement, there was sudden and unexplained deterioration in the performance of the officer.

(xiii) Uncommunicated adverse entries in the ACRs of the officer can also be taken into account before passing an order of compulsory retirement.

(xiv) Grant of promotion to an officer despite adverse entries in his confidential record is a factor operating in favour of the officer. Promotion to a higher post notwithstanding adverse remarks result in the adverse remarks losing their sting.

(xv) The fact that the officer was allowed to cross the efficiency bar, or was granted promotion after the events which formed the basis of the order of compulsory retirement, is also a relevant consideration.

(xvi) The subjective satisfaction of the authority passing an order of compulsory retirement must be based on valid material.

(xvii) Compulsory retirement is not required to be by a speaking order.



(xviii) The principle of *audi alteram partem* has no application in the case of compulsory retirement.

## **22.6** How these principles apply

**22.6.1** The manner in which these principles are to be applied would become apparent if one briefly glances at the facts in the cases cited *supra*.

**22.6.2** In *Swami Saran Saksena*, the Supreme Court observed that, where the employee was found worthy of being permitted to cross the second efficiency bar, a few months before passing the order of compulsory retirement, for which purpose he was considered to have worked with distinct ability and his integrity was found to be beyond question, the order of compulsory retirement was vitiated. The Supreme Court observed that it could not be believed that, within a few months of being permitted to cross the second efficiency bar, the employee had become so unfit so as to deserve compulsory retirement. There was no evidence of sudden deterioration in the quality of employee's work.

**22.6.3** In *Baldev Raj Chadha*, it was held that the officer who was in continuous service for 14 years, who crossed the efficiency bar and reached the maximum salary in the scale, with no adverse entries at least five years immediately prior to the order of compulsory retirement, could not have been compulsorily retired on the ground that many years earlier, his performance was poor.



**22.6.4** In *Ram Ekbal Sharma*, the Supreme Court observed that, where the order of compulsory retirement alleged that the officer had committed grave financial irregularities, leading to financial loss to the State, the order was one of punishment and Article 311 of the Constitution would apply.

**22.6.5** In *State of Gujarat v Suryakant Chunnilal Shah*, there were no adverse remarks in the character roll in the ACRs of the officer, his integrity was never doubted at any time, and his ACRs subsequent to his promotion to the next grade were not available. The Supreme Court held that, in such circumstances, the review committee could not be said to have been in possession of any such material as would indicate that the officer was a man of doubtful integrity or fit to be compulsorily retired from service.

**22.6.6** In *Pramod Kumar Bajaj*, the ACRs of the officer reflected that, over the past several years, his integrity was regularly assessed as “beyond doubt”. He was also graded as an “outstanding” officer for the past one decade, till the period just prior to the passing of the order of compulsory retirement. There were no adverse entries in his ACRs insofar as his work performance was concerned. Nor was any aspersion cast on his conduct or character during the said period. His efficiency and integrity remained unimpeachable through his career. In such circumstances, the mere fact that there may have been complaints pending against him in the vigilance directorate was held to be insufficient as a ground to compulsorily retire him from service. The Supreme Court, in that case, also went into the specifics of the complaints.



**22.6.7** In *CISF v Om Prakash*, the Supreme Court held that, though the officer had been promoted, he had, prior thereto, been awarded a number of punishments, which included receipt of illegal gratification. It was noted that there were also allegations of absence from duty and overstaying of leave and that four days' fine had also been imposed on him as punishment for sleeping on duty. His ACRs were also found to be varying, with overall gradings of "average", "below average", "satisfactory" and "very good". For one year of the five years immediately preceding his compulsory retirement, he had been graded "average". In such circumstances, the Supreme Court held that the High Court was in error in setting aside the order of compulsory retirement.

**22.6.8** In *Post and Telegraphs Board v C S N Murthy*, it was held that, if the officer was earlier a very good officer, but his performance was found to be slackening in the last two years of the period under review, the decision to compulsorily retire him could not be held to be illegal.

**22.6.9** In *Pyare Mohan Lal v State of Jharkhand*, while the immediate past record of the employee, prior to the passing of the order of compulsory retirement, showed that his performance was exemplary, the authorities were not justified in compulsorily retiring him from service on the basis of some very old adverse entries. Such exercise of power was held to be arbitrary. Even so, it was observed that if the old record pertained to the integrity of the officer, the order of compulsory retirement might have been justified.



**22.6.10** In *Rajesh Gupta*, the Supreme Court noted that the officer had a spotless service record throughout 24 years of his service and that

- (i) in his ACR for the period 1997-1998, he had been assessed as a “very good officer” with “excellent integrity”,
- (ii) for the year 1998-1999, he was assessed as a “good officer” with “excellent” integrity,
- (iii) for the year 1999-2000, his integrity was again graded as “excellent” and he was graded as a “very good officer”,
- (iv) for the year 2000-2001, he was graded as a “good officer” with “good integrity”,
- (v) for the periods 27 October 2001 to 29 July 2002 and 23 October 2002 to 23 December 2002, his work and conduct was found to be good and it was recorded that no complaint was brought to the notice of the Reporting Officer regarding integrity, and
- (vi) for the year 2003-2004, he was assessed as an “outstanding officer” and that nothing adverse regarding integrity had come to notice.

Despite this, he was compulsorily retired from service. The Supreme Court went into the grounds on which he was compulsorily retired and found them to be insubstantial.

## **23** Applying the law to the facts before us

### **23.1** Re. Ajay Kumar Sharma



**23.1.1** In the case of Ajay Kumar Sharma, the ACRs of the petitioner from the year 2000-2001 until the years 2018-2019 have uniformly been either 'very good' or outstanding' In the years 2002-2003, 2003-2004, 2004-2005 and 2008-2009, he was graded as 'outstanding' and deserving of promotion. In the year 2009-2010, it was noted that the petitioner was always ready to assume responsibility and was devoted to work, that he was technically sound and displayed positive approach towards timely completion of work, and he was given an excellent overall grading. In the year 2010-2011, it was noted that he was a very intelligent, laborious and devoted officer and was always ready to take on any work assigned to him on priority and complete it well within time. For the year 2011-2012, it was noted that he was a hard worker, took pains to learn new work and was ready to complete work assigned to him. For the years 2016-2017, it was noted that he was intelligent and hard working. For the years 2017-2018, it was observed that he was wholly capable to take prompt decisions to achieve his target.

**23.1.2** At a bare glance, the decision to compulsorily retire such an officer is *ex facie* incongruous.

**23.1.3** The order of compulsory retirement and the order dismissing the representation filed by the petitioner against his compulsory retirement are both non-speaking. The only reasoning is to be found in the entry by the Review Committee in its minutes dated 13 September 2019 against S. No.12. That entry only refers to two penalties having been awarded to him in the past. Of these, one penalty was by order dated 11 June 2019 and the other was by order dated 8 June 2007,



more than 12 years prior to the passing of the order of compulsory retirement. In so far as the penalty order dated 11 June 2019 was concerned, though the Inquiry Officer with whose decision the DA concurred, specifically found that there was no substance in the allegation. The Review Committee has merely held that in view of the penalties imposed on the petitioner, his integrity was doubtful. This is in stark contradiction to the entries contained in the petitioner's ACRs, specifically with respect to his integrity. Besides, the penalty awarded in 2007 was 12 years prior to the passing of the order of compulsory retirement.

### **23.2 Re. S.K. Chauhan**

**23.2.1** In the case of S K Chauhan, the material is even more scanty than was available in the case of Ajay Kumar Sharma. The integrity of the petitioner was continuously certified as beyond doubt in his ACRs from the years 2014-2015 to 2018-2019. The decision to compulsorily retire him from service was sought to be justified on the basis of two penalties awarded to him in 2007-2008, 11 and 12 years prior to the order of compulsory retirement. The order of penalty dated 18 November 2008 was only minor and did not involve any aspect of integrity. In so far as the order of penalty dated 10 December 2007 was concerned, though it was facially a major penalty, that was only because the punishment awarded was with cumulative effect, it would have been a minor penalty. Moreover, though there was a specific allegation of connivance between the petitioner and builders/owners in the charge-sheet, the IO found that the allegations were unsubstantiated, and the DA agreed with him.



**23.2.2** Besides, as already noted, there is not a single complaint against the petitioner for 12 years after the imposition of the punishment on 10 December 2007. During these years, his integrity has uniformly been certified as beyond doubt.

**23.2.3** Moreover, the proforma, which was placed before the Review Committee, as annexed to the writ petition, reveals that the only ground on which the Review Committee proceeded were the afore-noted two punishments awarded to the petitioner. The entries relating to the number of promotions obtained by him, whether he got timely promotions and overall conduct were all blank. The ACR entries as entered in the said proforma reflect that the petitioner was always graded as either “very good” or “outstanding”.

**23.2.4** As a result, in this case too, the decision to compulsorily retire the petitioner cannot be said to have been justified on the facts and in the light of the law on the subject as set out hereinbelow.

**23.3** Clearly, therefore, the respondents did not properly appreciate the entire service record of the petitioners, or apply their mind properly while deciding to compulsorily retire the petitioners. The decisions are not supported by the material on record. The Tribunal, for its part, with greatest respect, has proceeded cursorily, without a holistic appreciation of the facts.

**23.4** Though, facially, an order of compulsorily retirement may not be “stigmatic” or punitive, it prematurely brings the service career of



the officer to an ignominiously grinding halt. It has far reaching repercussions on the officer, personally, professionally and socially. When it is made subject to judicial review, the Court is duty bound to holistically examine all the facts of the case, the reasoning which prevailed with the authorities in compulsorily retiring the officer, and whether the reasoning can sustain on the basis of the facts, applying the law that has developed in that regard.

**23.5** Nothing less would suffice.

### **Conclusion**

**24.** We have already found that the impugned judgments/orders passed by the Tribunal are unreasoned and proceed on extraneous and, in certain cases, even on erroneous factual considerations. We have also ourselves objectively examined the decisions to compulsory retire the petitioners in the backdrop of the law that has developed in that regard. We do not find the decisions to be sustainable on facts or in law.

**25.** In that view of the matter, the impugned orders passed by the Tribunal are quashed and set aside. The orders of compulsory retirement of the petitioners are also quashed and set aside. The petitioners would be entitled to consequential reliefs in accordance with law. In case they have yet to cross the age of superannuation, they will be entitled to reinstatement with effect from the date of their compulsory retirement, with the benefit of notional fixation of pay and other consequential benefits, but without any arrears. In case they



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have crossed the age of superannuation, they would be entitled similarly to notional fixation of pay and computation of their retiral benefits on that basis.

**26.** Let the benefits, in that regard, be disbursed to the petitioners within four weeks of uploading of this judgment on the website of this Court.

**27.** The writ petitions are accordingly allowed with no orders as to costs.

**C. HARI SHANKAR, J.**

**AMIT SHARMA, J.**

**MAY 28, 2025/yg/dsn**

*[Click here to check corrigendum, if any](#)*