

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No. O A /350/1055/2017
M.A.350/775/2017
M.A./350/743/2018
O.A./350/6/2018

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

ADESH KUMAR
VS.
UNION OF INDIA & ORS.(CPWD)

For the applicant : Mr. A. Chakraborty, counsel
Ms. P. Mondal, counsel

For the respondents : Mr. M.K. Ghara, counsel
Mr. P. Mukherjee, counsel

Heard on :04.02.2019

Order on : 31.5.19

ORDER

Bidisha Banerjee, Judicial Member

The O.A.1055 of 2017 has been filed to seek the following reliefs:-

"Office Order No.28018/5/2017-EW-1 dated 21.06.2017 issued by Under Secretary(EW-1) cannot be sustained as the same was not passed in public interest and as such the same may be quashed."

The O.A.350/6/2018 has been preferred to seek the following reliefs:-

"a) The office order dated 11.12.2017 issued by the respondent No.3 cannot be sustained in the eye of law and as such the same may be quashed;

b) Office Order no.28018/5/2017 -EW-1 dated 21.06.2017 issued by Under Secretary(EW-1) cannot be sustained as the same was not passed in public interest and as such the same may be quashed."

2. The Office order dated 21.06.2017, which is in essence a notice under Rule 56(J) of FR reads as under:-

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"WHEREAS, the Competent Authority is of the opinion that it is in the public interest to do so:

NOW THEREFORE, in exercise of the powers conferred by clause (j) of the Rule 56 of the Fundamental Rules, the President hereby gives notice to Shri Adesh Kumar, SE@ that he having already attained the age of fifty years, shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date following the date of service of this notice on him.

(By order and in the name of the President)

Madhavi Mohan
Under Secretary(EW.I)"

while the Office order dated 11.12.2017 which is a decision of the Review Committee, reads as under:-

"WHEREAS a review committee was constituted in this Ministry for conducting service review under FR56(J) of Gr. 'A' officers of Central Public Works Department(CPWD), an attached office under this Ministry.

2. WHEREAS the review committee in its meetings held on 29.3.2017 and 18.05.2017 considered the suitability of officers on the basis of available service records, vigilance/disciplinary clearance and ACR/APAR grading and decided that retention of Sh. Adesh Kumar, SE (C) in service is no longer desirable. Therefore, the Committee recommended that Sh. Adesh Kumar be compulsorily retired from service in the public interest under FR56(J).

3. WHEREAS as per recommendation of the above mentioned committee, this Ministry issued a 3 months' notice to Sh. Adesh Kumar for his pre-mature retirement under FR. 56(J) vide order of even number dated 21.06.2017, with the approval of competent authority.

4. WHEREAS aggrieved with the above said notice Sh. Adesh Kumar submitted his representation against the notice of pre-mature retirement served upon him.

5. WHEREAS the representation of Shri Adesh Kumar was placed before the Representation Committee constituted for considering the representations received against the notice issued under FR56(J) and Rule 48 of CCS(Pension) Rules, 1972. The composition of the Representation Committee constituted in terms of DoP&T O.M. No.25013/01/2013-Estt. A-IV dated 10.8.2017 is as under:

- i. Ms Aruan Sundarajan, Secretary, D/o Telecommunications;
- ii. Ms. Rachna Shah, Joint Secretary, Cabinet Secretariat; and
- iii. Shri Dharmendra, JS & CVO, MoHUA-Nominated member from Cadre Controlling Authority.

6. WHEREAS the meeting of the representation committee was held on 18.10.2017 and 27.10.2017. The representation committee in its minutes (received on 10.11.2017) has made the following observations:

"The Committee examined the representation submitted by Shri Adesh Kumar. In his representation, the officer has mentioned about his APAR gradings for the period April, 2010 to March, 2017 which forms only a small part of his service record. It is relevant to mention here that under Rule 56(J) FR, the entire service record and the overall performance of the officer is taken into consideration. The Committee observed that the Appellant officer in his

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representation has not raised any new point or a specific fact which require a fresh consideration.

After comprehensively examining all the facts on the record, the Committee is of the opinion that the decision taken by the Competent Authority to retire Shri Adesh Kumar from Government service under Rule 56(J) of Fundamental Rules, is appropriate and based on facts. The representation Committee upholds the earlier decision taken by the Competent Authority, the M/o Housing & Urban Affairs and the representation submitted by the appellant is rejected."

NOW THEREFORE, the above decision of the Representation Committee is hereby conveyed.

*(Madhavi Mohan)
Under Secretary to Govt. of India"*

3. The facts in a nutshell is as under :

The applicant who served in the office of the Respondent NO.4 as Director(Works-cum-TLQA)ER-I, belongs to Combined Engineering Service(Civil) Batch1981 was served with a compulsory retirement notice under Rule 56(J), vide office order dated 21.06.2017. He has assailed the Office Order dated 21.06.2017 in O.A.No.1055 of 2017.

The applicant has claimed that the power under FR 56 (J) is erroneously invoked inasmuch as when the compulsory retirement under FR 56(J) is sought to be made, the Government exercises the power only for public purpose namely, to augment efficiency in public service whereas the entire service records for the last 6 years prior to such notice indicate that applicant is a hard working, sincere, intelligent and dedicated officer. His overall performance is either 'very good' or 'outstanding'. Integrity is beyond doubt. It is settled law that when the Government resorts to compulsorily retire a Government servant, the entire record of service, particularly during the last period of service is required to be closely scrutinised and power should reasonably be exercised. The applicant has alleged that the authority concerned failed to reasonably scrutinize the entire

period of service and passed an order of compulsory retirement, that the conclusion reached is obviously incorrect and it is not in public interest.

Aggrieved by the non-consideration of his representation against the notice, the applicant preferred one original application numbered O.A.1055/2017, that was disposed of by this Tribunal on 21.07.2017 with a direction upon the respondents to consider his representation within 6 weeks from the date of communication of the order. As the said order was not complied with, the applicant preferred a Miscellaneous Application in connection with the said original application. This Tribunal on 21.09.2017, after hearing the counsels was pleased to direct the respondents to comply with the order dated 21.07.2017 maintaining status quo as on that day regarding continuance of service and till such time no coercive action to be taken against the applicant. Meanwhile the interim order was continued from time to time until his retirement. In compliance of the direction, an order was issued by the respondent No.3 vide Office Order dated 11.12.2017 that entire service records and overall performance of the officer was taken into consideration by a Committee which observed that Appellant Officer in his representation has not raised any new point or a specific fact which requires a fresh consideration and therefore, the decision taken by the competent authority to retire the applicant under Rule 56(J) is appropriate and based on facts and representation submitted by the applicant is rejected.

The applicant in O.A.6 of 2018 has assailed the office order dated 11.12.2017 as well, issued by the respondent No.3 as unsustainable in the eye of law since relevant rules clearly provide that on the ground of ineffectiveness, a Government employee can be sought to be retired, but the basic consideration in

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identifying such employees should be fitness to continue in the post. Applicant has contended that the ACR/APAR for the last 5 years will speak that he was always fit to continue in the post he was holding. His service was satisfactory. No adverse remark was ever communicated to him during his entire career and that rules provide that while the entire service record of an officer should be considered at the time of review, no employee shall ordinarily be retired on the ground of ineffectiveness if his service during the preceding 5 years has been found satisfactory. The applicant has claimed that last 5 years ACR/APARs will reveal that the service rendered by the applicant is either 'very good' or 'outstanding'.

4. Per contra the respondents would submit that a Representation Committee was constituted of three competent officers comprising of (1) Ms. Aruna Sundarajan, Secretary, Deptt. Of Telecommunications (2) Ms. Rachna Shah, Joint Secretary, Cabinet Secretariat and (2) Shri Dharmendra, JS&CVO, Ministry of Housing and Urban Affairs in terms of DOP&T O.M. No.25013/01/2013-Estt.-A-IV dated 10.8.2017. The Committee carefully considered the representation of the applicant and found the relevant service Rules have been scrupulously maintained while issuing order by the respondents. That the said Committee, constituted for considering the representations received the order issued under FR 56(I) and Rule 48 of the CCS(Pension) Rules, 1972, carefully and with proper application of mind considered the representation of Shri Adesh Kumar, the applicant herein. The Meeting of the Representation Committee was held on 18.10.2017 and 27.10.2017 and the Committee in its minutes (received on 10.11.2017) made the following observations:

"The Committee examined the representation submitted by Shri Adesh Kumar. In his representation, the officer has mentioned about his APAR gradings, for the period April,

2010 to March, 2017 which falls only a small part of his service record. It is relevant to mention here that under Rule 56(J) FR, the entire service record and the overall performance of the officer is taken into consideration. The Committee observed that the Appellant officer in his representation has not raised any new point or a specific fact which require a fresh consideration.

After comprehensively examining all the facts on the record, the Committee is of the opinion that the decision taken by the Competent Authority to retire Shri Adesh Kumar from Government service under Rule 56(J) of Fundamental Rules, is appropriate and based on facts. The Representation Committee upholds the earlier decision taken by the Competent Authority, the Ministry of Housing and Urban Affairs and the representation submitted by the appellant is rejected."

The respondents have averred that the well reasoned findings of the said committee through the minutes of its meeting dated 18.10.2017 and 27.10.2017 as already submitted before this Tribunal in a sealed cover in compliance with the order dated 19.01.2018, can hardly be interfered with and/or set aside, as otherwise, the applicant being ineligible to be retained in service any further, the respondents shall suffer irreparable loss and injury.

5. A vacating application was preferred by the respondents where no new facts, other than what has been in the reply to O.A., has been pleaded.

6. The applicant has responded to the vacating application by submitting the following:-

Reiterating the stipulation in DOPT's O.M. dated 21.03.2014 that :-

"2. As per these instructions the cases of Government servant covered by FR 56(j), 56(j) of Rule 48(1)(b) of CCS(Pension) Rules, 1972 should be reviewed six months before he/she attains the age of 50/55 years, in cases covered by FR 56(j) and on completion of 30 years of qualifying service under FR 56(j)/Rule 48 of CCS(Pension) Rules, 1972 as per the following time table:-

Sl. No.	Quarter in which review is to be made	Cases of employees who will be attaining the age of 50/55 years or will be completing 30 years of service qualifying for pension, as the case may be, in the quarter.
1.	January to March	July to September of the same year
2.	April to June	October to December of the same year
3.	July to September	January to March of the next year
4.	October to December	April to June of the next year

The applicant would contend that in terms of para 5 of the O.M., the criteria to be followed by the Committee in making their recommendation would be as follows:

- (a) *Government employee, 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 employees 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 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.*

The applicant would contend as follows:

That consideration is ordinarily to be confined to the preceding 5 years or to the period in the higher post. In case of promotion within the period of 5 years service in higher post ought to be satisfactory. There is no such stipulation where the employee is to be retired on grounds of doubtful integrity.

No employee should ordinarily be retired on the 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.

That the minutes of the review committee states that the committee observes that Sri Adesh Kumar's name is included in the D1 list for taking a bribe of Rs.10,000/- for issue of work order for construction of boundary wall at Dhanbad, CBI, Patna Branch registered a criminal case RC No.21(A)/2007 dated 26.9.2007. The prosecution sanction was issued by the competent authority on 10.06.2009 and the CBI had filed a charge sheet in the court of Special Judge, CBI Court, Patna. The case is under trial and the applicant is yet to be convicted. That the remarks made in the APR of the applicant during the period April 2010 to March 2017 are reflected in the Annexure A-3 of the Original Application. Overall

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grading was very good/outstanding and regarding integrity the competent Authority made a comment that the same is beyond doubt to the best of his knowledge. That the person compulsorily retired in public interest does not face any stigma nor does it entail any loss of retiral benefits so long as the opinion forming the basis of order of compulsory retirement is formed bonafide on the basis of rational material and in public interest, the same cannot be ordinarily interfered with by the court. It can only be interfered with if it is mala fide based on no material or on collateral grounds or having been passed by the authority not competent to do. So the object of compulsory retirement is only to weed out the dead wood, who have outlived their utility for the administration and or of persons of doubtful integrity, retention of whom is only the prejudice of efficient administration. Further, that the involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of Law and truth has to be find out by the Court where the prosecution is ultimately concluded but before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his apprehension. That there being no material before the review committee in as much as there were no adverse remarks in the character role entries, the integrity was not doubted at any time. Therefore, in the circumstances of the case, the order of compulsory retirement was punitive having been passed for the collateral purpose rather than in public interest.

7. In support Id. counsel for the applicant would advance the following arguments and cite the following decisions:-

- (i) In the case of **Nandakumar Verma vs. State of Jharkhand Civil appeal no.1458 of 2012**, the Hon'ble Apex Court had been pleased to hold that the

greater importance is to be given to the opinion or remarks made by the immediate superior officer as to the functioning of the Concerned Judicial Officer of the purpose of compulsory retirement. The immediate superior is better placed to observe, analyse, scrutinized from the close quarters and then to comment upon his working, overall efficiency and reputation.

Citing supra, ld. counsel would vociferously submit that here it is not evident that immediate superior had made a comment upon his working, overall efficiency. On the contrary from the APAR of last 10 years, it is evident that the performance of the applicants is above the bench mark.

(ii) That the Hon'ble Apex Court in the case of **Swami Saren Surena vs the State of U.P.(1980)1 SCC 12** had been pleased to quash the order of compulsory retirement of the appellant, therein, of the public interest which was found to sharp contradiction with his recent service performance.

(iii) Further, there is no evidence to show suddenly there was such a deterioration in the quality of the appellant's work or integrity that he deserved compulsory retirement.

8. Ld. counsels were heard and materials on record were perused.
9. The provision for compulsory retirement is a salutary safeguard in the armoury of the Government for maintenance of the services in trim and fitness. It is a constant reminder to the slacker, the sluggish and the inefficient, not to speak of those who may be dishonest or unscrupulous by reputation beyond redemption. At a reasonable point of service a stage is reached when the Government reserves its undoubted right to have a second look at the officers whether their retention in employment would be useful in the public interest.

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That is the role of Rule 56(j) like a warning poster for every Government servant to conduct himself properly, diligently and efficiently throughout his service career. There are now two stages in a service career, namely at the age of 50 and 55 for the Government to take a decision to refurbish, invigorate and stimulate the service and with that sole object a decision has to be fairly taken well in time ^{and} ~~under Rule 16(3)~~ in accordance with the published procedure.

10. The law relating to compulsory retirement is no longer res integra. An order of compulsory retirement inter alia can be passed when the officer concerned is found to be a dead wood (**M.P. State Co-op Dairy Fedn. Ltd. & Anr. v. Rajnesh Kumar Jamindar & Ors., 2009(6)SCALE 16**)

It is furthermore well-settled that when the State lays down the rule for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to scrupulously follow the same. Mr. Justice Frankfurter in *Vitarelli v. Seaton* [359 US 535] stated :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged....Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.....This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."
{H.V. Nirmala v. Karnakata State Financial Corporation (2008)7 SCC 639} : (2008 AIR SCW 3732).

It is well settled principle of law that an order of compulsory retirement would be held to be stigmatic inter alia, in the event the employer has lost confidence (**Chandu Lal v. Management of M/s. Pan American World Airways inc. (1985)2 SCC 727 at 730, para 8**) : (AIR 1985 SC 1128), or he has concealed his earlier record (**Jagdish Prasad v. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another (1986)2 SCC 338 at 342-343, para 9**) : (AIR 1986 SC 1108).

He can however, be subjected to compulsory retirement inter alia if he has outlived his utility [The State of Uttarpradesh v. Madan Mohan Nagar, AIR 1967 SC 1260 at 1262].

In Allahabad Bank Officers' Association and Another v. Allahabad Bank & Others[(1996)4 SCC 504] : (1996 AIR SCW2432) it was held :

".....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."

The question further came up for consideration before Hon'ble Apex Court in State of Gujarat v. Umedbhai M. Patel [(2001) 3 SCC 314] : (2001 AIR SCW 862)

wherein Balakrishnan J. summarised the law thus:

"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."*

In Swaran Singh Chand v. Punjab State Electricity Board & Ors.[AIR2010 SC 151]

"Allegation against the delinquent was not only that he lacked integrity but also unfit to be

retained in service." Hon'ble Court held "Those comments, in our opinion, are stigmatic in nature. It is also not a case where there had been a steady decline in the performance of the employee."

The Hon'ble Court further noted "The learned counsel appearing on behalf of the respondent would contend that in this case malice has neither been alleged nor been proved. In support of his contention reliance has been placed on **Purushottam Kumar Jha v. State of Jharkhand and Others [(2006) 9 SCC 458](2006 AIR SCW 2628)** wherein Thakker J. speaking for the Bench, stated the law thus:

"23. It is well settled that whenever allegations as to mala fides have been levelled, sufficient particulars and cogent materials making out prima facie cases must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough."

Hon'ble Court held :

"18. In a case of this nature the appellant has not alleged malice of fact. The requirements to comply with the directions contained in the said circular letter dated 14.08.1981 were necessary to be complied with in a case of this nature. Non-compliance whereof would amount to malice in law. [Manager, Government Branch Press and Another v. D.B. Belliappa (1979) 1 SCC 477 : (AIR 1979 SC 429), Smt. S.R. Venkataraman v. Union of India and Another (1979) 2 SCC 491 : (AIR 1979 SC 49) and P. Mohanan Pillai v. State of Kerala and Others (2007) 9 SCC 497 : (2007 AIR SCW 5157).

19. Thus, when an order suffers from malice in law, neither any averment as such is required to be made nor strict proof thereof is insisted upon. Such an order being illegal would be wholly unsustainable.

20. For the reasons aforementioned, the impugned order is set aside. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

(Emphasis added)

11. The legal provisions in FR 56(J) read as under:-

"Notwithstanding anything contained in this rule, 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:

- (i) **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;**
- (ii) **In any other case after he has attained the age of fifty-five years;**

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11. (a) What is 'public interest' was explained in **Union of India Vs. Col. J.N. Sinha & Anr.**, (1970)2 SCC 458 = AIR 1971 SC 40 = 1971(1) SCR 791. It was pointed out that *"the object of premature retirement of a Govt. servant was to weed out the inefficient, corrupt, dishonest employees from the Govt. service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead-wood, are to be dispensed with."*

Hon'ble court observed:

"Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the interests of the public. While a minimum service is guaranteed to the Government, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest....." It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment. In our opinion, the High Court erred in thinking that the compulsory retirement involves civil consequences."

(b) The same view was reiterated in **H.C. Gargi vs. State of Haryana** (1986)4 SCC 158 = AIR 1987 SC 64

(c) In **Baldeo Raj Chaddha vs. Union of India** (1980)4 SCC 321, it was held that *"although the purpose of FR 56 was to weed out worthless employees without*

punitive extremes, if, under the guise of "public interest" an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and "disguised dismissal".

(d) In Gian Singh Mann Vs. High Court of Punjab & Haryana & Anr. (1980)

4 SCC 266 = AIR 1980 SC 1894, it was pointed out that *"the expression 'public interest' in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competency and utility called for by the Government service to which he belongs.*

(e) In Kailash Chandra Agarwal vs. State of M.P. & Anr. (1987) 3 SCC 513 =

AIR 1987 SC 1871, it was held that *"the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment and that Article 311(2) of the Constitution could not be invoked, as the employee concerned was no longer fit in public interest to continue in service and, therefore, he was compulsorily retired".*

(f) In Union of India vs. M.E. Reddy & Anr. (1980) 2 SCC 15 = AIR 1980 SC

563, it was pointed out that *"the object of compulsory retirement was to weed out the dead-wood in order to maintain a high standard of efficiency and initiative in service".*

(g) A three Judge Bench of the Hon'ble Apex Court in **Baikuntha Nath Das & Anr. Vs. Chief District Medical Officer Saripada & Anr.**(1992)2 SCC 299, laid down the following five principles:

- (i) *An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior;*
- (ii) *The order has to be passed by the government of 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 of 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 favorable 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 also taken into consideration. That circumstance by itself cannot be a basis of interference.*

(Emphasis added)

(h) This view was reiterated by another three Judge Bench in **Posts & Telegraphs Board & Ors. Vs. C.S.N. Murthy** (1992) 2 SCC 317 wherein it was held that :-

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of

their period of service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify 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 record."

(i) In **Kandaswamy vs. Union of India, (1996) 6 SCC 162**, the Hon'ble Apex

Court observed that :-

"While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energies its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service. When the appropriate authority forms bona fide opinion that compulsory retirement of the government employee is in the public interest, court would not interfere with the order." and

".....that the opinion must be based on the material on record otherwise it would amount to arbitrary or colorable exercise of power. It was also held that the decision to compulsorily retire an employee can, therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.

(j) **Baikuntha Nath's case (supra)** was further considered in **M.S. Bindra**

vs. Union of India & Ors. JT 1998(6) SC 34 and it was laid down as

under :

"Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into."

It was further observed as under:

"While viewing this case from the next angle for judicial scrutiny, i.e.. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that form the available materials no reasonable man would reach such a conclusion."

Having considered the judgments supra, Hon'ble Apex Court in **State of Gujarat vs. Suryakant Chunilal Shah** held that:

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"In order, therefore, to find out whether any Govt. servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that Govt. servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with the services in public interest, by giving him three months' notice or pay in lieu thereof."

The performance of a Govt. servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty of integrity of a Govt. servant is to look to his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorization of the employee is poor and there is material also to cast doubts upon his integrity, such a Govt. servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "Integrity". If this is missing the whole bundle would disperse. A Govt. servant has, therefore, to keep his belt tight."

12. While applying the principles enumerated supra to consider^B the facts in the present case we would discern the following:-

(1) DOPT O.M. dated 21.03.2014 (referred to supra), on periodical review under FR56/Rule 48 of CCS(Pension) Rules enjoin the following:-

"2. As per these instructions the cases of Government servant covered by FR 56(j), 56(j) of Rule 48(1)(b) of CCS(Pension) Rules, 1972 should be reviewed six months before he/she attains the age of 50/55 years, in cases covered by FR 56(j) and on completion of 30 years of qualifying service under FR 56(j)/Rule 48 of CCS(Pension) Rules, 1972 as per the following time table:-

Sl. No.	Quarter in which review is to be made	Cases of employees who will be attaining the age of 50/55 years or will be completing 30 years of service qualifying for pension, as the case may be, in the quarter.
1.	January to March	July to September of the same year
2.	April to June	October to December of the same year
3.	July to September	January to March of the next year
4.	October to December	April to June of the next year

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

(a) Government employee, 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 employees should be the fitness/competence of the employee to continue in the post which he/she is holding.

Although it proceeds as under:

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- (c) While the entire service record of an officer should be considered at the time of review, no employee 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."

Consideration is ordinarily to be confined to the preceding 5 years or to 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 steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement.

It adds with sufficient clarity that

"The above instruction is relevant only when an employee is proposed to be retired on the ground of effectiveness, 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.

6. The Supreme Court had not only upheld the validity of FR 56(j) but also held that no show-cause notice need be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions. The appropriate authority defined in Note 1 below FR 56 should bonafide form an opinion that is in the public interest to retire the Government servant in exercise of the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collateral grounds. Accordingly, in every case where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the appropriate authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest. The order to be served of the Government servant would of course be on the form prescribed for the purpose."

The respondents have clearly established the fact that the applicant figured in the Doubtful Integrity list which was indeed a ground to compulsorily retire him. Thus sufficient materials exist to justify invoking F.R.56(j).

- (2) The APAR grades of the applicant from April 2010 to March 2017 were as under:-

Period	Reporting Officer		Reviewing Officer		Accepting Authority		Comment on Integrity
	Overall grade	Pen Picture	Overall grade	Pen Picture	Overall grade	Pen Picture	
02.09.2016 to 31.03.2017	9	He is very hard working, sincere, intelligent and dedicated officer. His performance during the above period has been outstanding	7	-----	7	-----	Beyond doubt.
01.04.2016 to 02.09.2016	8	The officer is very hard working and punctual. He has very sound technical knowledge of work and structural design	9	Outstanding Officer	No grade since retired	-----	Nothing adverse found in this period.
06.08.2015 to 31.01.2016	7	The officer is working as SE(planning) & I rate his performance as "very good"	7	The officer is industrious and technically sound	7	-----	Nothing adverse found in this period.
01.04.2015 to 05.08.2015	8.35	An intelligent and hard working officer. Overall performance is "Outstanding".	8	A technically sound officer	9	I agree with reporting/reviewing officer	Byond doubt to the best of my knowledge
01.04.2014 to 31.03.2015	7.55	A very good officer	7	Performance of the officer has been very good during the period.	7	-----	Byond doubt to the best of my knowledge
24.10.2013 to 31.03.2014	7.5	An intelligent officer who knows his job very well. His overall performance is "very good".	7.45	An intelligent and very good officer	7	-----	Byond doubt to the best of my knowledge
01.04.2013 to 23.10.2013	7.8	There is acute shortage of staff under him, however, he has performed very well. He organises his works meticulously.	7.8	I agree with the remarks of Reporting Officer	7	-----	Beyond doubt.
18.06.2012 to 31.03.2013	9	He has all the qualities which make him as an outstanding officer.	9	-----	No grade since retired	-----	Beyond doubt.
14.06.2011 to 31.03.2012	7.61	He is sincere, obedient and hardworking officer. With training he may develop leadership, interpersonal relation and motivational qualities.	8	-----	No grade since retired	-----	Nothing doubtful came to my notice so far.
01.04.2010 to 31.03.2011	7.196	A competent and sincere officer	7.2	Very good officer	7	-----	Heard nothing against the officer

The extract would demolish the argument advanced by the applicant that the integrity was "beyond doubt" all through.

(3) A note extracted from F.No.C-13015/21/2007-AVI reads as under:-

"(g) Finally acceptance or bribe has been fully established by successful trap leading in recovery of bribe money from the wash testing positive i.e. showing presence of phenolphthalein powder used for trap.

The documentary evidence culled out from the scrutiny of CPWD office files also brings out that the accused officials were sitting over the matter and had not awarded the work to the complainant party despite their being LI and sanction of additional funds having been received from the client department.

(h) It is not just and fair, in the absence of any concrete evidence of malafide to raise bogey of foul play in the instant trap merely on the basis that the trap laying officer(TLO) had himself been subsequently trapped in a CBI case. It may be mentioned that trap laying officer had a limited role to play as far as the final outcome of investigation of the case is concerned. As per the practice, investigation of the case was handed over to another officer, who collected necessary evidence and drew conclusion that case had adequate evidence against the accused officials for laying charge-sheet in the trial court.

(i) In view of the above, investigation of this trap case has brought out adequate clinching evidence to justify filing of charge sheet against both the accused officers. The Commission would, therefore, advise prosecution against S/Shri Hari Krishan Prasad, AE, CPWD and Adesh Kumar, SE, CPWD.

5. In view of the above, we may request CPWD to take necessary action against the concerned officers as per CVC advice at para (e) and (i) above, and also furnish requisite draft prosecution orders to this Ministry."

The aforesaid order would succinctly point towards the integrity of the applicant, as he was successfully trapped in a CBI case.

(4) The periodical review details as disclosed vide affidavit under 56(J)/Rule 48 of CCS(Pension) Rules 1965 in respect of Group A Officer in respect of Superintending Engineer (Civil) under Directorate General CPWD for the quarter January-March 2016 would reveal that the applicant figured in the DI(Doubtful Integrity) list since 2005(2):-

S.N o.	Name & designation of the officer	xx	xx	xx	xx	Date of grant NFU of the next Grade	Xx	Xx	Is there any reason to doubt integrity, if so the same may be furnished according to doubtful integrity list or agreed list	Xxxxx	Xxxx	xxxxx	xxxx	xxxx
1	2	xx	xx	xx	xx	7	Xx	Xx	10	Xxxxx	Xxxx	xxxxx	xxxx	xxxx
	Sp.DG(HQ)	xx	xx	xx	xx		Xx	Xx		Xxxxx	Xxxx	xxxxx	xxxx	xxxx
1	Mathura Prasad SE	xx	xx	xx	xx	01.07.2015	xx	xx	No	Xxxxx	xxxx	xxxxx	xxxx	xxxx

2	3	4	5	6	7	8	9	10	11	12	13	14	15
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Adesh Kumar	xxx	xx	xx	xx	03.01.06	Xx	Xx	Yes	Xx	Xx	01.04.09 to 31.03.10=7.00 01.04.10 to 31.03.11=7.00 01.04.11 to 31.03.12=NA 14.06.11 to 31.03.12=8.00 01.04.12 to 31.03.13=9.00 18.06.12 to 31.03.13=9.00 01.04.13 to 31.03.14=7.00 01.04.14 to 31.03.15=7.00	Xx	He is included in the DI list 2015(2) Prosecution sanction Issued by MoUD vide OM No.C-13015/21/2007 -AVI dated 10/06/2009
Spl.DG(WR)	Xxx	xx	xx	xx		Xx	Xx		Xx	Xx		Xx	
Banwarilal Meena	xxx	xx	xx	xx	01.07.06	xx	xx	No	xx	xx	01.04.10 to 31.03.11=9.00 01.04.11 to 31.03.12=8.90 01.04.12 to 31.03.13=9.00 01.04.13 to 18.06.13=Cert 19.06.13 to 31.03.14=7.00 01.04.14 to 31.03.15=7.00	xx	

13. In **State of Uttar Pradesh vs. Chandra Mohan Nigam and Others** reported in **1977 Supreme Court Cases (L&S)535** there was consideration of cases of the respondents therein for compulsory retirement at the age of 50 years and next consideration could have been only at the age of 55 years but in the said case an exception to this rule is carved out, namely, if material in regard to doubtful integrity of the officer comes to light, the authority need not wait till the officer attains the age of 55 years and action can be taken immediately.

14. In **Rajendra Singh Verma(Dead) Through L.Rs and others Vs. Lt. Governor(NCT of New Delhi)** reported in **(2011)10 Supreme Court Cases 1**, Hon'ble Apex Court having found in case of one appellant (Mr.Rohilla), a judicial officer *"for two years, that is, for the year 1993 and for the year 1994 he had suffered adverse ACR "C-integrity Doubtful" and that the representations made by him were rejected which were not challenged by him before higher forum, Hon'ble Court held "In any view of the matter, it is settled law that when power can be traced to a valid source, the fact that the power is purported to have been exercised under a wrong provision of law, would not invalidate exercise of power."*

Similarly While considering the case of another deceased Mr. Rajinder Singh Verma , whose grading was C(Integrity Doubtful) in 2000, and he had not challenged the decision and for a Judicial Officer Mr. P.D. Gupta *"that material was not supplied on the basis of which "C-Integrity Doubtful" was awarded, the Hon'ble Apex*

Court held that "Normally and contextually the word "material" means substance, matter, stuff, something, materiality, medium, data, facts, information, figures, notes etc. When this Court is examining as to whether there was any "material" before the High Court on the basis of which adverse remarks were recorded in the confidential reports of the appellants, this "material" relates to substance, matter, data, information etc. While considering the case of a judicial officer it is not necessary to limit the "material" only to written complaints or "tangible" evidence pointing finger at the integrity of the judicial officer. Such an evidence may not be forthcoming in such cases."

In the case of all three Judicial Officers Hon'ble Apex Court held that:-

"217. XXXXXXXXXXXXXXXXXXXX This Court finds that before passing the orders in question, whole service record of each of the officer was taken into consideration. Keeping in view the comprehensive assessment of service record, the Screening Committee rightly recommended that the three officers should be prematurely retired in public interest forthwith.

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218. On a careful consideration of the entire material, it must be held that the evaluation made by the Committee/Full Court, forming their unanimous opinion, is neither so arbitrary nor capricious nor can be said to be so irrational, so as to shock the conscience of this Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things, it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court to judicial review except in an extraordinary case when the Court is convinced that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee.


219. Viewed thus, and considered in the background of the factual details and materials on record, there is absolutely no need or justification for this Court to interfere with the impugned proceedings. Therefore, the three appeals fail and are dismissed."

15. Although it was argued in the present case, on the basis of records discussed above that other than the pendency of CBI case, there was no reason to keep the applicant in Doubtful Integrity List, we infer that the applicant failed to seek liberty to challenge his inclusion in Doubtful Integrity list. The pending CBI case is yet to be logically concluded with a conviction or exoneration, as the case may be. In view of his figuring in Doubtful Integrity list (DI list in short) we cannot question invoking FR 56(J) vide notice dated 21.06.2017 albeit with less

than 2 years to retire, to compulsorily retire the applicant. However, fact remains that on the strength of interim order he continued till his normal age of superannuation.

16. Therefore, although we are unable to hold that invoking of FR 56(J) was absolutely unjustified, having already allowed the applicant to continue on the strength of interim orders, we direct the respondents to treat the applicant as compulsorily retired and release the retirement dues in accordance with law, but not to recover salary for the period he served on the strength of such interim order. O.As and M.As accordingly stand disposed of. No costs.


(Dr. Nandita Chatterjee)
Administrative Member
sb


(Bidisha Banerjee)
Judicial Member