

CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH
OA/310/01882/2017

Dated the Eleventh day of January, Two Thousand Nineteen [11.1.2019]

PRESENT

HON'BLE MR. P. MADHAVAN, Member (J)
&
HON'BLE MR. T. JACOB, Member (A)

K.U.Rajasekar (P.No.991662),
Presently working as Director,
Regional Controllerate of Safety
(Southern Region),
AVHQ Complex, Avadi,
Chennai 600054.

....Applicant

By Advocate M/s. B.Satish Sundar

Vs

1. Union of India, rep by its Secretary,
Ministry of Defence, North Block,
New Delhi 110001.
2. The Chairman, Ordnance Factory Board,
Ministry of Defence, Govt. of India,
OA, S.K.Bose Road, Kolkata 700001.
3. Director General of Ordnance Factories,
Government of India, Ministry of Defence,
Ordnance Factory Board, 10A, S.K.Bose Road,
Kolkata 700001.
4. Regional Director,
Regional Controllerate of Safety,
(Southern Region), AVHQ Complex, Avadi,
Chennai 600054. Tamil Nadu

....Respondents

By Advocate Mr. M. Kishore Kumar



O R D E R
(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard. The challenge in this case is against the order of compulsory retirement of the applicant under F.R. 56(j) and applicant has sought the following relief:

"To call for the records of the 3rd respondent in and connected with order No. 581/Review/Per./G/KUR dated 31.08.2017 and consequential order in case file No. 0204/AVHQ/A/G/RCS(KUR) dated 17.10.2017 of the 4th respondent and quash/set aside the same."

2. The applicant has also sought for an ad interim stay of the operation of the order No.581/Review/Per/G/KUR dated 31.8.2017 of the 3rd respondent and consequential order in Case File No. 0204/NVHQ/A/G (KUR) dated 17.10.2017 of the 4th Respondent and all further proceedings thereto. However, the prayer for ad interim relief was rejected vide proceedings dated 13.12.2017. As against the said order of the Tribunal, the applicant approached the Hon'ble High Court of Madras in W.P.32748 of 2017 and W.M.P.36087 of 2017 wherein the Hon'ble High Court by order dated 19.12.2017 has issued the following directions:-

"3. Upon hearing the parties for some time, we hereby direct the first respondent Tribunal to take up the applicant in OA.No.1882 of 2017 once and for all and dispose of the same in accordance with law, within a period of three months from the date of receipt of a copy of this order. Till such time., there shall be an order of status quo/not to take coercive steps against the petitioner, since the matter is pending for final adjudication before the Tribunal".



The applicant is thus continuing in service in pursuance of the above order of the Hon'ble High Court.

3. The brief facts of the case, as stated by the applicant, are as hereinafter narrated.

(a) The applicant selected and appointed as Assistant Works Manager at Ordnance Factory Staff College, Ambajhari, Nagpur on 14.9.1992 had the following career graph:-

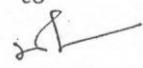
(i) He was promoted as Works Manager on 2.6.1997 and in that capacity served in the Ordnance Factory, Medak, Andhra Pradesh, Gun Carriage Factory, Jabalpur, Madhya Pradesh and HVF Avadi.

(ii) On 01-04-2005, he was promoted as Deputy General Manager on 1.4.2005;

(iii) promoted as Joint General Manager on 2.7.2007.

(iv) After a tenure of approximately four years as Joint General Manager at Gun Carriage Factory, Jabalpur, effective from 23-03-2012, he was posted as Director under the 4th Respondent i.e., Regional Director, office of the Regional Controllerate of Safety, Southern Region, Avadi from 23.3.2012.

(b) The applicant would submit that in spite of having a good track record, his Annual Confidential appraisals at the hands of the applicant's reporting, reviewing and accepting authorities have not been fair and he has to take judicial recourse successively to



vindicate his stand for re-appraisal of the APARs for upward revision of the grading. Thus, consequent to the orders passed by the Tribunal in OA No.458 of 2012, his numerical grading has been revised and he has been awarded Grade '6' which means his service record is 'Very Good'. Insofar as the directions given by the Tribunal in OA No.1653 of 2015 dated 5.8.2016 is concerned for consideration of his appeal in respect of the APAR for the year 2011-12, under Office Memorandum dated 20.12.2016, his appeal was rejected and for the period 2013-14 also, his numerical grading was not revised. In fact, challenging the aforesaid decision under Office Memorandum dated 20.12.2016, he had filed OA No.3 of 2017.

(c) The applicant further submits that his grading for the last five years from 2012-13 till 2016-17 have been over 6. While so, he was shocked and surprised to receive an order dated 31-08-2017 from the office of the 3rd respondent conveying the decision of the Government to invoke the powers of the President under F.R 56(j) and that that the applicant having attained the age of 50 years shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date of service of the said notice

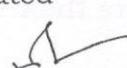
(d) Against the aforesaid order dated 31-08-2017, the applicant submitted a representation dated 25.09.2017 to the 2nd respondent. The said representation has not elicited any response but all of a sudden a consequential order in Case File No.



0204/AVHQ/A/G/RCS(KUR) dated 17.10.2017 has been passed stating that the applicant is to retire from Government service with effect from 17.12.2017.

(e) The applicant submitted, through proper channel, a representation/appeal dated against the orders dated 31.08.2017 and 17.10.2017 to the Hon'ble President of India. The said representation/ appeal has also been forwarded under communication dated 28.11.2017 by the 4th respondent. However, no decision has been taken on the appeal/representation. Hence he has filed the present OA, challenging the order dated 31.08.2017 and the consequential order dated 17.10.2017.

4. The grounds of challenge against the impugned orders include that applicant has been graded in the APAR periodically from time to time as 'Very Good' save for the period 2011-12 and 2013-14 where he had been purposely kept below the Benchmark '6' with respect to the said years. Further his representation against his grading for the said years had been rejected. The applicant thereafter filed a further appeal to the President of India but no orders were passed in the said appeal which constrained the applicant to come up by way of OA 1653/2015 before this Hon'ble Tribunal. The Hon'ble Tribunal vide order dated 5.8.2016 directed the concerned authority to pass appropriate orders on the applicant's grading in the APAR objectively. The competent authority rejected the applicant's representation on the ground of limitation without following the mandate of this Hon'ble Tribunal in the OAs. Therefore, it is submitted that the entire action of the respondents dated



31.08.2017 and the order dated 17.10-2017 is vitiated on account of legal malafides attributable to the respondents. The applicant would submit that he is a Group 'A' Officer. Therefore, in terms of OM No. 25013/1/2013-ESTD (A) dated 21.03.2014, his case for review in terms of FR 56(j) should have been taken up on his attaining 50 years of age. It is submitted that such a review was not done and therefore, the order dated 31.08.2017 and consequent order dated 17.10.2017 seeking to strike off the applicant from the rolls of the respondent is wholly without jurisdiction in as much as the applicant is now aged 58 years and is due for superannuation in the year 2019.

5. The respondents have contested the OA. They would submit that Government of India instructions exist on the need for periodical review of performance of Government servants for strengthening of administration with a view to ascertaining whether the Government servant should be retained in service or retired in public interest. Provisions in this regard are contained in FR 56(j), FR 56(l) and Rule 48(1)(b) of CCS (Pension) Rules, 1972. Under the circumstance, the Review Committee comprising of DGOF & Chairman, Member/Per and DDG/G & HRD of Ordnance Factory Board in pursuance of instructions issued by DOPT vide circular dated 11.09.2015, has reviewed the case of the applicant along with 300 other Group 'A' Officers of Ordnance Factory Board, Kolkata under FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972. Those officers who have attained age of 50 years or completed 30 years of qualifying service prior to April, 2016 and left with more than 1 year of service were considered for review on 29.08.2016 by

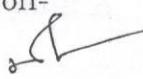


the Review Committee at Ordnance Factory Board under the subject rule. The Review Committee considered the service record for the entire service period including trend of the ACR/APARs in respect of the applicant. The Review Committee Meeting held on 7.4.2017 reviewed the overall grading in the ACRs of the applicant for the following periods:-

1995-96	-	Very Good
1996-97	-	Very Good
1997-98	-	Average
1998-99	-	Average
1999-2000	-	Average
2001-2002	-	Good
2002-2003	-	Very Good
01.4.08 to 31.7.08	-	Very Good
20.8.08 to 31.3.09	-	Very Good
2009-2010	-	Overall grading - 6
2010-2011	-	Overall grading - 6
2011-2012	-	Overall grading - 5.76
2012-2013	-	Overall grading - 6.05
2013-2014	-	Overall grading - 5.876
2014-2015	-	Overall grading - 6

(In 14 years, there were 6 below Benchmark)

6. After going through the entire service records of the applicant and his gradings for the entire period with adverse entries and shortcomings as recorded in the ACRs/APARs, the Committee came to the conclusion that the applicant lacked on all parts including work output, functional competence and personal attributes. The Committee also observed that there was no significant improvement in the performance of the applicant in spite of getting so much opportunity. The fact of rejection by the regular Screening Committee for grant of Non-functional Up-gradation to the level of Senior Administrative Grade with effect from 08.07.2013, 01.04.2014, 01.04.2015, 01.04.2016 and 01.04.2017 as the applicant was found 'Unfit' for grant of Non-



functional Up-gradation to the level of Senior Administrative Grade and was also kept in view while conducting the review. Thus, the Committee recommended that the applicant should be retired in public interest in terms of the provisions of FR 56(j). Based on the above recommendation, Annexure A12 order dated 31.8.2017 was passed compulsorily retiring the applicant from service as follows:-

"Whereas the President is of the opinion that it is in the public interest to do so:

NOW THEREFORE, in exercise of powers conferred by clause (j)(i) of Rule 56 of the Fundamental Rules, the President hereby gives notice to Shri K.U. Rajasekar (P.No.991662) Director/ RCSSR 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".

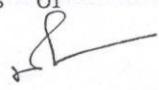
7. The respondents would further submit that the representation dated 27.11.2017 has been forwarded to the second respondent by the 4th respondent which in turn with comments of 2nd respondent was forwarded to the Ministry of Defence on 28.12.2017. It is also submitted that the order of premature retirement in public interest w.e.f. 17.12.2017 has no link with disposal of representation. The respondents also relied on the decision of the Hon'ble Supreme Court in the following cases:

- a. State of Gujarat Vs Umebhai M. Patel, 2001 (3) SCC 314
- b. S.Ramachandra Raju Vs St. of Orissa,1994 (3) SCC 424
- c. State of U.P. & Ors. Vs Vijay Kumar Jain, Appeal (Civil) 2083 of 2002.

Hence the respondents prayed for dismissal of the OA.

8. The applicant filed rejoinder in which he has contended that he was promoted in 2005 and 2007 to higher posts in which he has officiated and thus, the stigma attached to the adverse remarks for the period 1999-2000 and 2001-02 loses its sting. Further the non-consideration of the applicant for non-functional upgradation of officers to the level of Senior Administrative Grade (SAG) due to the gradation of 5.76 awarded is ex-facie wrong in light of the fact that the applicant's challenge to such gradation is still pending consideration before this Tribunal. The applicant would also submit that the representation of the applicant dated 25.09.2017 and subsequent appeal dated 27.11.2017 to the President of India are pending and without taking any considered decision on the same, the respondents cannot now turn around and say that the performance of the applicant over the years has been poor and he has not shown any improvement.

9. The respondents filed reply to the rejoinder and submitted that the entire service details in respect of the applicant was placed before the Review Committee which included his ACR for the year 1999-2000 and the Committee was also informed about the promotion and Non-functional upgradation (NFU) of the applicant. The Committee observed that even after adverse entries made in the ACR for the year 1999-2000, the assessment made by the Reporting, Reviewing and the Accepting Authorities on the performance of the applicant on subsequent years indicate that he has not improved his deficient attributes or performance to the desired level.



10. The learned counsel for the applicant contended that the Review Committee had gone by the APARs of the last five years and such an exercise is totally flawed inasmuch as the applicant had consistent gradings over the years of very good and numerical grading of 6 and above except for two years which grading was under challenge before this Tribunal. He also relied on the following case laws in support of his submission:

- a. (1973) SCC online Cal. Page 149 in the case of A.C. Bose Vs. Union of India and Others (Para 9,13,15,19 and 23)
- b. (1992) 2 SCC Page 299 in the case of Baikunthanath Das & Another Vs. CDMO and Others (Para 32,33 and 34)
- c. (1999) 3 SCC Page 396 in the case of Madan Mohan Choudhary Vs State of Bihar & Others (Para 36 to 41)
- d. (2001) 3 SCC Page 314 in the case of State of Gujarat Vs. Umedbhai N Patel (Para 11 and 12)
- e. (2003) 9 SCC Page 217 in the case of Union of India and Others Vs R.C.Mishra (Para 4 and 5).

11. Learned counsel for the respondents would submit that the respondents have reviewed the performance of the applicant under FR 56(j) of the F.R. and Rule 48 of CCS (Pension) Rules, as per the laid down guidelines of DOPT vide OM No. 25013/1/2013-Estt(A) dated 21.03.2014 and found the applicant not fit for retention in service. Accordingly the orders dated 31.08.2017 and 17.10.2017 were issued and action progressed.

12. We have carefully considered the relevant material and rival submissions. F.R. 56(j) reads as under:-



"56(j) Notwithstanding anything contained in this rule, the appropriate authority shall if it is of the opinion that it is in the public interest to do so 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 Class I or II service or post and had entered the DDA service before attaining the age of thirty five years after he has attained the age of fifty years....."

13. Certain decisions of the Apex Court on the subject matter would be of much relevance to discern the law laid down by the Apex Court in matters of compulsory retirement under the provisions of F.R. 56(j). The same are as hereunder:-

A. The precise purpose of FR 56(j)

The Apex Court in the case of **Baldev Raj Chadha v. Union of India, (1980) 4 SCC 321**, has succinctly manifested the purpose of the rule in the following terms:

The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. After all, Administration, to be efficient, must not be manned by drones, do nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation, in a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed but



paper-logged processes and callous cadres are the besetting sin of the Administration. It is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making. The appropriate authority, not the court, makes the decision, but, even so, a caveat is necessary to avoid misuse.

A symphonic note has been struck in a subsequent decision of the Apex Court in the case of *Brij Mohan Singh Chopra v. State of Punjab*, (1987) 2 SCC 188 wherein the Apex Court has held as under:-

4. The purpose and object of premature or compulsory retirement of government employee is to weed out the inefficient, corrupt, dishonest or deadwood from the government service. This right of the Government is well established which is generally exercised in accordance with relevant service rules.
14. In a number of decisions subsequently pronounced by the Apex Court, the above decisions have been endorsed, wherein the condition of public interest has been emphasized, as for example, in the case of *N.C. Dalwadi vs State of Gujarat* (1987) 3 SCC 611, the Apex Court has observed as under:-

"That power can be exercised subject to the conditions mentioned in the rules, one of which is that the concerned authority must be 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"

Thus, compulsory retirement should be in public interest and inter alia on grounds of limited efficiency and for weeding out the deadwood.

B. Prerogative of the Government:

In Union of India v. Dulal Dutt, (1993) 2 SCC 179, the Apex

Court has held as under:-

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

C. Manner in which the power shall be exercised

In the case of K. Kandaswamy v. Union of India, (1995) 6

SCC 162, the Apex Court expressed :

9. 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 energise 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. In *S. Ramachandra Raju v. State of Orissa*, a Bench of this Court to which one of us (K. Ramaswamy, J.) was a member, considered the entire case law and held that: (SCC pp. 430-31, para 9)

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“... the Government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood needs to be removed to augment efficiency. Integrity in public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. 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 service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the Government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer.”

D. Entire Service Records to be kept in view:

In the case of *State of UP vs Vijay Kumar Jain (2002) 3 SCC 641*, it has been held by the Apex Court that the authority has to take into consideration the entire service record of the officer concerned. Similar view has been taken by the Hon'ble Apex Court in *Rajendra Singh Verma (Dead) through LRs. & Others Vs. Lieutenant Governor (NCT of Delhi)* ✓

& Others reported in (2011) 10 SCC 1 which reads ad-infra:

"It is well settled by a catena of decisions of the Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account. While weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments etc.,"

E. Decision should be Bonafide and sans arbitrariness:

In *State of U.P. v. Bihari Lal*, 1994 Supp (3) SCC 593 the Supreme Court has held:

What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different

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conclusion would not be a ground for interference by the court/tribunal in exercise of its judicial review.

F. Adherence to Principles of natural justice not a pre-requisite:

It is also settled by the consistent view of the Hon'ble Apex Court that the order of compulsory retirement does not have adverse consequence and, therefore, the principles of natural justice has no role to play and even uncommunicated ACR(s) on record can be taken into consideration and an order of compulsory retirement cannot be set aside for the reason that such uncommunicated entries were taken into consideration or the officer has not been afforded an opportunity to represent before such uncommunicated entries were taken into consideration for passing the order of compulsory retirement, cannot vitiate the order of compulsory retirement. It has been held in the case of *Kailash Chandra Agarwal vs State of MP (1987) 3 SCC 513*, that non communication of adverse remarks is inconsequential.

G. Non punitive character:

In the case of *C.D. Ailawadi vs Union of India (1990) 2 SCC 328*,

the Apex Court has stated as under

Compulsory retirement under Rule 56(j) is not a punishment as it does not take away any of the past benefits. Chopping off the dead wood is one of the important considerations for invoking Rule 56(j) of the Fundamental Rules.

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A three Judges Bench of Apex Court in **Pyara Mohan Lal Vs. State of Jharkhand and Ors.**, reported in AIR 2010 SC 3753 observed ad infra:-

"Thus, the law on the point can be summarized to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the Statutory Rules."

G: Extent of Judicial Scrutiny:

The Apex Court has, in the case of **C.D. Ailawadi (supra)** has also held,

8. An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court: (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision. In *Union of India v. Col. J.N. Sinha*¹ this Court held that if the civil servant is able to establish that the order of compulsory retirement suffered from any of the above infirmities, the court has jurisdiction to quash the same.

Similar is the view which was further reiterated by the Apex Court in the case of **Posts & Telegraphs Board and Ors. Vs. C.S.N. Murthy** (AIR 1992 SC 1368) wherein the Apex Court has observed ad infra"-



"There was a very limited scope of judicial review in a case of compulsory retirement and it was permissible only on the grounds of non-application of mind, *mala fides*, or want of material particulars. Power to retire compulsorily a Government servant in terms of Service Rules is absolute, provided the authority concerned forms a *bona fide* opinion that compulsory retirement is in public interest."

H. Consolidated position:

The Hon'ble Apex Court in the case of Baikuntha Nath Das & Anr. Vs. Chief District Medical Officer, Baripada & Anr., reported in AIR 1992 SC 1020, has laid down certain guidelines and the scope of judicial review to be kept in mind by the Courts while examining the order of compulsory retirement and that include malafides, even if the order is based on no evidence or if the order is arbitrary in the sense that no reasonable person with ordinary prudence would form the requisite opinion on the given material, if it is found to be a perverse order. The Hon'ble Apex Court, thus, held ad infra:-

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

15. Earlier, it was considered that if certain adverse remarks in the ACR preceded subsequent promotion, the earlier adverse remarks gets washed off. However, later on, since decision to compulsorily retire a person under FR 56(j) shall have to be arrived at on a holistic basis of



performance, the washed off theory got etiolated. Thus, in the case of *Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219*, the Court has held as under:-

Washed-off theory

"19. In *State of Punjab v. Dewan Chuni Lal*¹⁰ a two-Judge Bench of this Court held that adverse entries regarding the dishonesty and inefficiency of the government employee in his ACRs have to be ignored if, subsequent to recording of the same, he had been allowed to cross the efficiency bar, as it would mean that while permitting him to cross the efficiency bar such entries had been considered and were not found of serious nature for the purpose of crossing the efficiency bar.

20. Similarly, a two-Judge Bench of this Court in *Baidyanath Mahapatra v. State of Orissa*¹¹ had taken a similar view on the issue observing that adverse entries awarded to the employee in the remote past lost significance in view of the fact that he had subsequently been promoted to the higher post, for the reason that while considering the case for promotion he had been found to possess eligibility and suitability and if such entry did not reflect deficiency in his work and conduct for the purpose of promotion, it would be difficult to comprehend how such an adverse entry could be pressed into service for retiring him compulsorily. When a government servant is promoted to higher post on the basis of merit and selection, adverse entries if any contained in his service record lose their significance and remain on record as part of past history. This view has been adopted by this Court in *Baikuntha Nath Das*.



21. However, a three-Judge Bench of this Court in State of

Orissa ¹² v. Ram Chandra Das had taken a different view as it had been held therein that such entries still remain part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. Therefore, such entries do not lose significance, even if the employee has subsequently been promoted. The Court held as under: (SCC pp. 333-34, para 7)

7. ... Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension.'

This judgment has been approved and followed by this Court in State of Gujarat v. Umedbhai M. Patel, emphasising that the 'entire record' of the government servant is to be examined.



22. In *Vijay Kumar Jain* this Court held that the vigour or sting of an entry does not get wiped out, particularly, while considering the case of employee for giving him compulsory retirement, as it requires the examination of the entire service records, including character rolls and confidential reports. 'Vigour or sting of an adverse entry is not wiped out', merely it relates to the remote past. There may be a single adverse entry of integrity which may be sufficient to compulsorily retire the government servant."

16. The above legal aspects are therefore to be telescoped upon the facts of this case to arrived at a conclusion whether the respondents are right in passing the order of compulsory retirement.

17. The respondents as per the laid down terms of DOPT's OM No. 25013/1/2013-Estt(A) dated 21.03.2014 on the periodical review under Fundamental Rule 56 and / or Rule 48 of CCS(Pension) Rules, reviewed the performance of the entire service period of the applicant as per the prescribed procedure in this regard issued from time to time. Accordingly, the decision for premature retirement in respect of the applicant was finalised and the same was intimated to the applicant. The rules give right to the competent authority to retire any Government servant who has completed 30 years of qualifying service or has attained the age of 50 years after recording subjective satisfaction of the authority forming opinion that it is in public interest to retire the Government servant prematurely from service.



18. Adverting to the question whether the compulsory retirement order suffers from any legal infirmity, we would consider it appropriate to refer to the report of the Review Committee constituted which examined the overall service records of the applicant in its meeting held on 7.4.2017. The Committee in its report observed :

"After going through the entire service records and gradings of his entire period with adverse entries and shortcomings as recorded in the ACRs/APARs as mentioned above, the committee is of the view that the officer lacks on all the parts including work out put, functional competence and personal attributes. The committee also observed that there is no significant improvement in the officer in spite of getting so much opportunity. Therefore the Committee decided that Shri. K. U. Rajasekar may be retired in public interest in terms of the provisions of F 56(j)."

19. In the instant case, the respondents have placed on record the complete service record of the officer which was examined by the Review Committee constituted in its meeting dated 7.4.2017 and after evaluation, arrived at the conclusion that the Officer has proved himself to be a liability upon the Department and recommended to compulsorily retire him in public interest. The recommendation of the Committee was placed before the Government and the Government took a decision after due deliberation and there hardly remains any chance of allegation of non-application of mind and there appears no malafide committed in the process which was adopted by the respondents in taking decision in regard to compulsorily retire the Officer. That apart, in the report the Committee took a serious note of his performance, of which a detailed



reference has been made on an overall assessment of the service record including personal and other files of the officer, finally recommended that the officer has become a liability upon the Department and in the public interest he may be compulsorily retired.

20. After examining the overall material which has come on record, we do not find any error being committed by the respondents in taking the impugned decision of compulsory retirement of the applicant which is based on record of service and further no stigma is attached to the order impugned.

21. Since the applicant is questioning the remarks recorded in his ACR of the year 2011-2012 and 2013-2014 in a separate OA filed in the year 2016, the Hon'ble CAT Madras vide order dated 5.8.16 has directed the respondents to undertake an objective review of the APARs for the years 2011-12 and 2013-14 so as to ensure that the applicant is given a just and proper grading which the respondents would consider commensurate with his performance during the relevant period. It has also been directed that while doing so, the respondents may take note of the observations contained in the orders of the Tribunal dated 26.08.2013 in OA No. 458 of 2012. In compliance of the said order dated 05.08.2016 the points raised in the Appeal were considered by the Competent Authority de-novo and the same was disposed by a reasoned and speaking order, vide Office of Respondent No. 2, OM No. 410/Per/G dated 20.12.2016. The applicant has further filed OA No.3/2017 before Hon'ble CAT, Madras on the same issue. As per the law laid down by the Hon'ble Apex Court while examining the record of



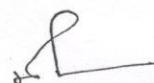
the Officer for compulsory retirement, even uncommunicated remarks can be taken into consideration, as it constitutes part of the service record for evaluating and taking final decision. Filing an OA to upgrade the overall grading of the applicant as 'Very Good' with numerical grading of 6 or above in the APAR 2011-12 and the APAR of 2013-14 by the Officer, in these facts and circumstances, at this belated stage in the year 2017 is not going to serve any purpose after he has been compulsorily retired.

22. The contentions of the applicant against the impugned orders are that the orders are vitiated on the ground –

- (i) that it was not passed when the applicant was fifty years;
- (ii) That his promotion has etiolated the adverse remarks awarded prior to the promotion and
- (iii) That his performance in the later part of his career has been consistently very good and touched the benchmark, and for a few years where it was less than the benchmark, his appeal is pending.

23. All the three could be easily met inasmuch as,

- (i) No grievance can legitimately be made by the respondent for not taking the impugned action earlier as he had not suffered adversely as a result of the delay.(see Haryana SEB vs K.C. Gambhir (1997) 7 SCC 85) and further FR 56(j) gives absolute right to the appropriate authority to retire any government servant who has entered the service before



attaining the age of 35 years, after he has attained the age of 50 years (Rajendra Singh Verma vs Lt. Governor(NCT of Delhi) (2011) 10 SCC 1;

(ii) the wash off theory is not applicable in case of compulsory retirement [Rajasthan SRTC vs Babu Lal Jangir (supra)] and
(iii) the below benchmark for a number of years as extracted in para 6 had been rightly taken into account and a holistic view taken by the Committee [Rajasthan SRTC (supra)].

24. Thus, in the conspectus of the above facts and circumstances of the case, it cannot be said that the order of compulsory retirement suffers from malafides or that it is based on no evidence or that it is arbitrary.

25. For the above reasons, the OA is dismissed. No costs.