

Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI
+WP(C) Nos2157/2002, 1965/2002, 2362/2002 &
2780/2002

Date of Decision: 02.05.2008

#Sh.Rajinder Singh Verma
Sh.Mahendra Singh Rohilla
Sh.Purshottam Das Gupta
Sh.Vijay Kumar Malhotra

....Petitioner in WP(C) No.2157/02
....Petitioner in WP(C) No.1965/02
....Petitioner in WP(C) No.2362/02
....Petitioner in WP(C) No.2780/02

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Through: Mr.Sanjay Parikh with
Mr.Vishal Verma for the petitioner
in WP(C) No.2157/02.
Mr.V. Shekhar, Senior Advocate
with Mr.S. Ganesh,
Mr.Durgesh Nandini, Mr.P.K.Dubey
Mr.Zangpo Sherpa and Mr.Abhigya
for the petitioner in WP(C) Nos.
1965/02 & 2780/02.
Mr.G.D. Gupta, Senior Advocate
with Mr.S.K. Sinha for the petitioner
in WP(C) No.2362/02.

Versus

\$The Lt. Governor (Administrator)
NCT of Delhi and Ors.

.....Respondents

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Through Ms.Avnish Ahlawat with
Ms.Latika Chaudhary for the
respondent No.1/NCT of Delhi.
Mr.Viraj R. Datar for the
respondent No.2/DHC.

CORAM :-
***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

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1. These are four petitions filed by four petitioners, who were the members of Delhi Higher Judicial Service (in short the 'DHJS'). All of them have been compulsorily retired from service invoking the provisions of Rule 56(j) of the Fundamental Rules, albeit on different dates. All have challenged orders of their compulsory retirement from service. Though result of each case would depend on its own facts, in view of commonality of submissions on legal aspects, we bunched these cases and heard together, one after the other and therefore, propose to deal with them by this common judgment for the sake of avoiding repetitiveness of legal principles. However, we propose to consider each case on its own merits. With these introductory remarks, we start with the first writ petition.

WP(C) No.2157/2002

2. Shri Rajinder Singh Verma, who is the petitioner in this petition, started legal practice, after completing his graduation in Law, in the year 1980 after enrolling himself as an advocate. In the

year 1994, when applications were invited from practicing advocates for direct recruitment to the DHJS, the petitioner also applied. After his interview, he was selected and was offered appointment to DHJS. He joined the service on 9.3.1995 and was 45 years of age at that time. First posting of the petitioner as Additional Sessions Judge was at Karkardooma Courts, Shahdara, Delhi. With effect from 1.4.1999, he was given charge of a Sessions Court in Tis Hazari. By the year 2000, he had rendered five years of service. He was also attaining the age of 50 years in that year. Rule 56(j) of the Fundamental Rules provides for premature retirement in public interest on attaining the age of 50/55 years.

3. Rule 56(j) of the Fundamental Rules, Sub-Rule (3) of Rule 16 of All-India Service (Death-cum-Retirement Benefits) Rules, 1958 and Rule 27 of the Delhi Higher Judicial Service Rules which are relevant for this purpose read as under:-

"FR-56(j)

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 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 month's 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;

Sub-Rule (3) of Rule 16 of the All India Service (Death cum Retirement) Benefits Rules, 1958

16(3) The Central Government may, in consultation with the State Government concerned and after giving a member of the Service at least three months previous notice in writing, or three months' pay and allowances in lieu of such notice require that member to retire in public interest from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

Rule 27 of the Delhi Higher Judicial Service Rules, 1970

27. A member of the service may be required to work as a Subordinate Judge or as Judicial Magistrate or as Subordinate-Judge-cum-Judicial Magistrate.

Explanation – For the purpose of this rule the expression "Subordinate Judge" includes the Senior Subordinate Judge and Additional Senior Subordinate Judge, the Judge Small Cause Court and the Additional Judge Small Cause Court. The expression "Judicial Magistrate" includes the Chief Judicial Magistrate and the Additional Chief Judicial Magistrate."

4. Under the aforesaid Rules, case of the petitioner was reviewed by a Committee of two Judges of this Court in July, 2000 but was deferred.
5. Vide orders dated 7.12.2000 served upon the petitioner on 8.12.2000, judicial work entrusted to the petitioner was withdrawn from him with immediate effect. He was made in-charge of all the record rooms in Tis Hazari Courts, Delhi. Thus, he was assigned only the administrative work. On 8.1.2001, the petitioner received a communication dated 5.1.2001 along with letter dated 3.1.2001 of the High Court intimating that he had been given 'C' remarks for the years 1997, 1998 and 1999. He sent his representation against the aforesaid entries stating that there was no material proof/shortcomings, which were pointed out to him. This representation was still pending consideration. In the meantime, the Screening Committee, which met on 21.9.2001 to consider the case of the petitioner along with some other Officers for premature retirement under Rule 56(j) recommended that he be prematurely retired. On the same day, his ACR for the year 2000 was recorded as "C Integrity Doubtful". Full Court meeting held on the following day, i.e. 22.9.2001 accepted the recommendation of the

Screening Committee as a result whereof, vide order dated 24.9.2001 sent to him by the Registrar (Vigilance), all judicial works and other works were withdrawn from him. It was followed by order of retirement dated 27.9.2001 retiring him compulsorily from service. In the meantime, he was also informed vide letter dated 21.9.2001 about his ACR for the year 2000.

6. The representation of the petitioner against the ACRs for the years 1997, 1998 and 1999 was considered and rejected on 8.10.2001. The petitioner made representation against his ACR for the year 2000 on 13.10.2001, which was also rejected on 30.11.2001.

7. In this factual background, the petitioner has filed the writ petition with the following prayers:-

- i. Issue a Writ of Certiorari for calling of the Respondents and their records;
- ii. Declare that Delhi Higher Judicial Service Rules, 1970 in so far as it is regulated by reference to Rule 16 of All India Services (Death-cum-Retirement Benefits) Rules, 1958 read with Rule 27 of the Delhi Higher Judicial Service Rules, 1970, in the absence of any Rules or Instructions regarding the recording of Confidential Reports of Officers of Delhi Higher Judicial Services, is ultra vires of Articles 14, 16, 21 and 311 of the Constitution of India;
- iii. Declare the order dated 27th September 2001 of the Respondent No.1 whereby the Petitioner was

compulsorily retired under the aforesaid Rule, as innocuous, illegal and mala fide as it is in fact an order of termination of service under the garb of compulsorily retiring the Petitioner in alleged public interest;

- iv. To issue a Writ of Mandamus directing the Respondents to reinstate the Petitioner to his office and position in the Delhi Higher Judicial Service with continuity in service and with all consequential benefits.
- v. To quash the order/adverse entry dated 3.1.2001 of the respondent No.2 whereby Remark "C" was recorded at one go about the judicial work and conduct of the petitioner for the years 1997, 1998 and 1999 as arbitrary, illegal and passed on non-existing material.
- vi. To quash order/entry dated 21.9.2001 of the respondent No.2 whereby Remark "C" Integrity Doubtful was recorded for the judicial work and conduct of the petitioner for the year 2000 it being mala fide and not supported by any material."

8. The aforesaid prayers made by the petitioner in the writ petition are predicated on the following submissions:-

- 1) ACRs for the year 1997, 1998 and 1999 were not recorded as and when they fell due. They were all recorded in one go on 3.1.2001 and were served upon the petitioner on 8.1.2001. It is also submitted that since the ACRs were not recorded or communicated to the petitioner for the years 1997 1998 and 1999 when they fell due and, therefore, he

has good reason to believe that nothing adverse was found against his judicial work and conduct.

2) There was no inspection by the Hon'ble Inspecting Judge for the years 1997, 1998, 1999 and 2000. The Inspection for the relevant year 1997 was done in the year 1998 which cannot be said to be inspection for the relevant year in accordance with law. In fact, there was no inspection even for the years 1995 and 1996.

3) In July 2000, when the Screening Committee of two Hon'ble Judges had reviewed the case of various officers of DHJS including the Petitioner for premature retirement in public interest, no such recommendation was made.

4) There was no material to retire the petitioner prematurely. Even in reply to grounds at page 103 of the Paper Book, the respondent No.2 admitted that it was done not because of complaints but on "the bona fide impression and opinion formed by the High Court."

5) Adverse entry for the year 2000 was given on 25.9.2001 (vide letter dated 21.9.2001) from the

Registrar, Vigilance, the date when the Screening Committee took a decision to retire the petitioner prematurely. This was accepted by Full Court in its meeting held on 22.9.2001 and the order of retirement dated 27.9.2001 was communicated to the petitioner on 28.9.2001 thereby depriving him from making any meaningful representation. His representation against the entries for the years 1997, 1998 and 1999 was rejected vide letter dated 5.10.2001 (received on 8.10.2001) and his representation dated 13.10.2001 against the entry for the year 2000 was decided on 5th April, 2002 after filing the Writ Petition.

6) Moreover, decision was taken to prematurely retire him by the Full Court on 22.9.2001 without giving him opportunity to make representation against the ACR of the year 2000 inasmuch as on 21.9.2001, while recording his ACR, he was allowed six weeks' time to make a representation. But before he could make such representation, on the very next day, i.e. 22.9.2001 the decision to retire him was taken

7) According to the petitioner, in these circumstances, the order becomes punitive, arbitrary, mala fide and is in violation of principles of natural justice. It is also submitted that ACRs are based on surmises and against the advice of the Supreme Court given time and again that rumour mongering is to be avoided at all costs as it seriously jeopardises efficient working of the Subordinate Courts. The object of retirement of the public servant in public interest is to chop the deadwood and inefficient persons in government service.

9. The petitioner, therefore, argues that since there is no material on the basis of which the impugned ACRs could be recorded or order of compulsory retirement could be passed, if the veil is lifted, the nature of the impugned order would be apparent. In support of the aforesaid submission, learned counsel for the petitioner, at the time of arguments, placed reliance on a number of judgments. Since these very judgments are cited by the other petitioners in their petitions, we take note of all these judgments at this stage itself.

(i) Baikuntnath Das Vs. Chief District Medical Officer,

(1992) 2 SCC 299. In this judgment the Supreme made the following observations:-

"31. Another factor to be borne in mind is this: most often, the authority which made the adverse remarks and the authority competent to retire him compulsorily are not the same. There is no reason to presume that the authority competent to retire him will not act bona fide or will not consider the entire record dispassionately. As the decided cases show, very often, a Review Committee consisting of more than one responsible official is constituted to examine the cases and make their recommendation to the government. The Review Committee, or the government, would not naturally be swayed by one or two remarks, favourable or adverse. They would form an opinion on a totality of consideration of the entire record – including representations, if any, made by the government servant against the above remarks – of course attaching more importance to later period of his service. Another circumstance to be borne in mind is the unlikelihood of succession of officers making unfounded remarks against a government servant.

32. It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided by Article 226 of the Constitution is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action."

(ii) Madan Mohan Chowdhary Vs. State of Bihar, (1999) 3

SCC 396. Relying on this judgment it was argued that in the absence of material, order of compulsory retirement would be bad in law as no reasonable man would reach such a conclusion. In that case, the entries for 3 years were communicated in one go so the order of compulsory retirement was found to be arbitrary and was quashed. It was also held in this case that it is unlikely that adverse remarks over a number of years remained uncommunicated and yet they are made the primary basis of action; in such an unlikely situation, if indeed present, may be indicative of malice in law and the remedy provided under Article 226 of the Constitution is an effective check against mala fide, perverse or arbitrary action even with its well known constraints.

(iii) High Court of Punjab & Haryana Vs. I.C. Jain, (1994) 4 SCC 579. This judgment which deals with the need and mode of inspection of the work of judicial officers and writing of their ACRs. In this case, it was observed that inspection helps in pointing out mistakes which can be avoided and deficiencies can be removed. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become the part of ACRs and are

foundations on which the career of a Judicial Officer is made or marred so it has to be both effective and productive. The order of compulsory retirement was quashed on the basis of principle (iii) laid down in *Baikuntanath Das* case (supra). The emphasis has been laid on as to how inspection should be done emphasising that proper uniform system of inspection of subordinate courts should be advised by the High Courts.

iv) *High Court of Judicature at Allahabad Vs. Sarnam Singh & Anr.*, (2000) 2 SCC 339. The Court emphasised the duties of the Inspecting Judge and for that purpose relied on the *I.C. Jain's and Rajaiah's* cases and held that the Inspecting Judge should objectively consider the work and conduct of judicial officers who sometimes have to work under difficult and trying circumstances and also held in this case that the Adverse Remarks suffered from inconsistency and lack of bona fides and the appeal filed by Allahabad high Court was dismissed.

v) *Bishwanath Prasad Singh Vs. State of Bihar*, (2001) 2 SCC 305. In this case, there was no inspection from May 1989 to January 1996 and even no timely entry was made in the Confidential Rolls between 1997-2000 and no

regular periodical inspections were carried out. The Court relied upon the judgment in *Baikuntanath Das* case, *Sarnam Singh's* case, *R. Rajaiah's* case and directed as to how the service reports of judicial officers should be dealt with. In para 34, it was observed that entries in the confidential records should be made soon following the end of the period under review, generally within three months from the end of the year and that the delay in carrying out the inspection or making entries frustrates the very purpose sought to be achieved. The Court further pointed out the adverse consequences emerging if the entries are not written time and promptly.

vi) *State of U.P. Vs. Yamuna Shankar*, (1997) 4 SCC 7. It was held in this case that object of writing confidential reports is to give an opportunity to a public servant to improve excellence. It is only after the opportunity is given and still he fails to improve, that adverse remarks can be made against him.

vii) *The Registrar, High Court of Madras Vs. R. Rajaiah*, (1988) 3 SCC 211. It was held in this case that it is true that High Court in its administrative jurisdiction has power to compulsorily retire a Member of the Judicial Service but

the conclusion that a Member of Subordinate Judicial Service should be compulsorily retired must be based on materials and if there be no material to justify the conclusion, in that case, it will be an arbitrary exercise of power by the High Court. (Para 21).

viii) M.S. Bindra Vs. Union of India & Ors., (1998) 7 SCC 310. This judgment holds that the want of materials cannot justify the conclusion. The Court observed that the judicial officer cannot be condemned of "doubtful integrity" on mere hunch; the doubt should be of such a nature which reasonably and consciously entertainable by a reasonable person on the given material and only then there is justification to ram an officer with the label "Doubtful Integrity" and that no one becomes dishonest all of a sudden.

ix) Ram Ekbal Sharma Vs. State of Bihar & Anr., (1990) 3 SCC 504; Anup Jaiswal Vs. Govt. of India: (1984) 2 SCC 369. In these judgments, it has been held that where 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/where the form of order is merely a

camouflage, it is always open to the Court to lift the veil to ascertain the true character of the order.

x) Padam Singh Vs. Union of India & Ors., 2000 (III) AD (Delhi) 430 (DB). This Court decided a similar case where adverse entry of "Doubtful Integrity" was given against another member of the DHJS in the absence of any complaint. This Court relying upon M.S. Bindra's case (supra) held that the lack of material clearly points at the situation that no reasonable man would reach to such a conclusion on the given material.

10. These are, in nutshell, the submission of the petitioner on factual and legal aspects. The respondent No.1, namely, the Lt. Governor (Administrator, Govt. of NCT of Delhi) and the respondent No.2, namely, the High Court of Delhi, have filed their separate counter affidavits opposing the writ petition. It is, *inter alia*, explained in the affidavit of the High Court that the petitioner's date of birth is 13.4.1950 and as such on 21.9.2001, he was 51 years of age. The case of the petitioner was, therefore, reviewed by the Committee on 21.9.2001 and the Committee recommended that he be compulsorily retired keeping in view his over all record and performance, which was

accepted by the Full Court on 22.9.2001. It is stated that such decision was just and reasonable having regard to the ACRs of the petitioner. In the counter affidavit the respondent No.2 has explained the circumstances in which ACRs for the years 1997, 1998 and 1999 were recorded in one go to which we shall advert to afterwards.

11. We had summoned the record wherein the case of the petitioner for his compulsory retirement was considered. We also summoned the records of his ACR. These records have been perused by us.

12. In so far as the exercise done in July 2000 is concerned, the case of the petitioner was at that time deferred as ACRs for the years 1997, 1998 and 1999 were not available. Therefore, the petitioner is not right when he contends that he was allowed to continue in July 2000 and one year thereafter, i.e. September 2001, a decision was taken to compulsorily retire him from service. In fact, there was no consideration on merits before 21.9.2001.

13. The petitioner was appointed in the year 1995 and, therefore, as on 21.9.2001 his ACRs for six years, i.e. From 1995 to 2000 were available at that time. The grading given to him for these years is as follows:-

<u>"Year</u>	<u>Grading</u>
1995	'B' (Average)
1996	'B' (Average)
1997	'C' (Below Average)
1998	'C' (Below Average)
1999	'C' (Below Average)
2000	'C'(Integrity Doubtful)"

14.The report dated 21.9.2001 of the Screening Committee further reveals that the Screening Committee considered the entire record on work and conduct of the petitioner and found that throughout his career he had been assessed and graded as either "B" or "C "C Integrity Doubtful". The Screening Committee also found following further material from record:-

(a) For the year 1998, the Inspecting Judge of the petitioner had endorsed a remark that the judgments and orders written by him were just average.

(b) The Inspecting Judges for the years 1996 to 2000, i.e. in the ACRs for the said five years, did not record any remarks concerning his judicial reputation for honesty and impartiality. Moreover, under the column 'Net Result', the Inspecting Judges had observed that remarks be recorded by the Full Court.

(c) Judicial work was withdrawn from the petitioner with effect from 8.12.2000 upon a recommendation of a

Committee of Judges in its report dated 6.12.2000.

(d) Pursuant to the decision taken by Full Court in its meeting held on 21.4.2001, referring the matter to a Committee of Judges to make inquiries into his work and conduct, the Committee had submitted its report dated 8.9.2001 in which it was observed and recorded that the petitioner did not enjoy good reputation and integrity.

15. The mere glance at the aforesaid ACRs and other record, as noted above, is so glaring that on the basis thereof the decision to compulsorily retire the petitioner would clearly be without blemish and is to be treated as well-founded. In Baikunt Nath Das (supra), the Supreme Court had occasion to explain the genesis of compulsory retirement of a Government employee under the provisions of Rule 56(j) of the FR. After screening through and analysing the case law on the subject and its detailed discussion on various aspects, the Supreme Court culled out the following principles in para 34 of the judgment:-

“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.

(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 circumstances by itself cannot be a basis for interference."

16.The Court, in no uncertain terms, made it obvious that interference was permissible only on the grounds mentioned in

three above. That aspect is discussed in paras 30 to 32 of the judgment, which read as under:-

“30. On the above premises, it follows, in our respectful opinion that the view taken in *J.N. Sinha* is the one viz., principles of natural justice are not attracted in a case of compulsory retirement under F.R. 56(j) or a rule corresponding to it. In this context, we may point out a practical difficulty arising from the simultaneous operation of two rules enunciated in *Brij Mohan Singh Chopra*. On one hand, it is stated that only the entries of last ten years should be seen and on the other hand, it is stated if there are any adverse remarks therein, they must not only be communicated but the representations made against him should be considered and disposed of before they can be taken into consideration. Where do we draw the line in the matter of disposal of representation? Does it mean, disposal by the appropriate authority alone or does it include appeal as well? Even if the appeal is dismissed, the government servant may file a revision or make a representation to a still higher authority. He may also approach a court or tribunal for expunging those remarks. Should the government wait until all these stages are over? All that would naturally take a long time by which time, these reports would also have become stale. A government servant so minded can adopt one or the other proceeding to keep the matter alive. This is an additional reason for holding that the principle of *M.E. Reddy* should be preferred over *Brij Mohan Singh Chopra* and *Baidyanath Mahapatra*, on the question of taking into consideration uncommunicated adverse remarks.

31. Another factor to be borne in mind is this: most often, the authority which made the adverse remarks and the authority competent to

retire him compulsorily are not the same. There is no reason to presume that the authority competent to retire him will not act bona fide or will not consider the entire record dispassionately. As the decided cases show, very often, a Review Committee consisting of more than one responsible official is constituted to examine the cases and make their recommendation to the government. The Review Committee, or the government, would not naturally be swayed by one or two remarks, favourable or adverse. They would form an opinion on a totality of consideration of the entire record-including representations, if any, made by the government servant against the above remarks-of course attaching more importance to later period of his service. Another circumstances to be borne in mind is the unlikelihood of succession of officers making unfounded remarks against a government servant.

32. We may not be understood as saying either that adverse remarks need not be communicated or that the representations, if any, submitted by the government servant (against such remarks) need not be considered or disposed of. The adverse remarks out to be communicated in the normal course, as required by the rules/orders in that behalf. Any representations made against them would and should also be dealt with in the normal course, with reasonable promptitude. All that we are saying is that the action under F.R. 56(j) (or the rule corresponding to it) need not await the disposal or final disposal of such representation or representations, as the case may be. In some cases, it may happen that some adverse remarks of the recent years are not communicated or if communicated, the representation received in that behalf are pending consideration. On this account alone, the action under F.R. 56(j) need not be held

back. There is no reason to presume that the Review Committee or the government, if it chooses to take into consideration such uncommunicated remarks, would not be conscious or cognizant of the fact that they are not communicated to the government servant and that he was not given an opportunity to explain or rebut the same. Similarly, if any representation made by the government servant is there, it shall also be taken into consideration. We may reiterate that not only the Review Committee is generally composed of high and responsible officers, the power is vested in government alone and not in a minor official. It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided by Article 226 of the Constitution is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action."

17. Conscious of the fact that the aforesaid material, if remains on record, is enough to justify the action, attempt of the petitioner is to knock down the basis of very ACRs. Submission was, as recorded above, ACRs for the years 1997, 1998 and 1999 could not be recorded at one point of time. He also submitted that there was no material to justify these ACRs. In so far as ACRs for the year 2000 is concerned, his submission was that it was recorded on the same day on which the case was considered by the Screening Committee and recommendation made for his

compulsory retirement. Such an exercise, it was argued, could not be justified and sustenance was sought to be drawn from the observations made in para 32 of the judgment in Baikunth Nath's case (supra). Argument went to the extent that such an action should be treated as indicative of malice in law.

18.No doubt, in normal course, it would not be proper to record the ACRs of number of years in one go. The relevant Rules stipulate recording of ACRs for each year by a specified date and if that is not done, there may be an inference drawn that such an exercise is not proper in law [See Barkha Gupta v. High Court of Delhi, **13 (2007) DLT 119 (DB)**]. At the same time it cannot be treated as an absolute proposition of law that recording of ACRs in this manner would be per se illegal. Where cogent reasons are given because of which the ACR was not recorded by stipulated date and the matter had to be deferred for valid reasons, the recording of ACRs of few years in one go would not render it illegal [See High Court of Delhi Vs. P.D. Gupta, **90 (2001) DLT 203 (DB)**].

19.This leads us to the question as to how in the present case ACRs for the years 1997 and 1998 were not recorded in time and were recorded only on 13.12.2000 along with the ACR of the year 1999. We find from the record that ACR forms for the

years 1997, 1998 and 1999 were filled by the Inspecting Judges respectively in time for all these years. Therefore, in so far as the Inspecting Judges are concerned, they had filled the ACRs formats well in time. However, the problem arose as the Inspecting Judges did not record any remarks concerning the judicial reputation for honesty and impartiality. Column regarding "Net Result" for these years were also left blank. Instead, the Judges observed that these remarks be recorded by the Full Court. Whenever such a course of action is adopted, the reason is obvious. There is something amiss in the estimation of the Inspecting Judge which he wants entire Full Court to consider and therefore, refrains from making his observations. This normally happens when the Inspecting Judge receives certain complaints but has no means to verify the same. In such circumstances, normally Full Court appoints a Committee to go into these aspects. This is what precisely happened in the present case as well. Not that the matter did not come before the Full Court on earlier occasions. However, because of the aforesaid course adopted by the Inspecting Judges, the consideration of recording the ACR was deferred by the Full Court. Ultimately, in its meeting held on 21.4.2000, in respect of the petitioner, the Full Court decided as under:

“Deferred. Refer to the Committee constituted to look into the allegations against the Judicial Officers”.

20.The matter was, thus, examined by the Committee of two Judges of this Court constituted for such a purpose. This Committee made certain discreet inquiries. The concerned Inspecting Judge(s) were also associated. The Committee gave its report dated 6.12.2000 as per which, information gathered by the Committee from various sources confirmed the allegation of doubtful integrity against the petitioner. The matter was thereafter placed before the Full Court and the ACRs of the petitioner were recorded for the years 1997, 1998 and 1999 on 13.12.2000. There is, thus, sufficient explanation for recording the ACRs of three years at one time. Similar exercise conducted in the case of another judicial officer was upheld by the Division Bench of this Court in *P.D. Gupta's* case (supra).

21.We are, thus, of the opinion that facts and circumstances of this case justify the recording of ACRs for three years simultaneously.

22.From what is narrated above, the argument of the learned counsel for the petitioner that there was no material justifying

recording such ACRs is also misconceived. There was sufficient material in the form of report dated 6.12.2000 of the Committee. We have perused the report which clearly demonstrates that from the cross section, inquiries were made and information gathered about the conduct and integrity of the petitioner. The persons included some prominent members of the Bar Council of Delhi. Even ex-office bearers of these Bar Associations and Bar Council were called to give information and individual opinions of various members of the Bar were also ascertained. All such persons were unanimous in their opinion about the reputation of the petitioner. In view of the law laid down in the case of P.D. Gupta (supra), it will constitute 'sufficient material' for forming an opinion. It was observed in that case:-

“27. In the instant case itself, there was first a report of the Inspecting Judge to the effect that he had received complaints against the respondent No.1. It cannot be said that the Inspecting Judge had written those remarks in a casual or whimsical manner. It has to be legitimately presumed that the Inspecting Judge, by making such remarks of serious nature, acted responsibly. Thereafter Full Court considered the entire issue and endorsed the view of the Inspecting Judge while recording the ACR of respondent No.1 for the years 1994 and 1995. Had matter rested here probably one could have still

argued that the making of remarks only on the basis that the Inspecting Judge had received some complaints, would not constitute 'material' or 'sufficient material'. However, on the representation made by the respondent No.1 for expunging the adverse remarks third time exercise is done by constituting Four Member Committee. The Four Member Committee does not do routine or casual exercise. It not only calls for relevant files but also makes enquiries. The application of mind while doing this exercise is also writ large inasmuch as in the report submitted by the Four Member Committee in respect of 18 judicial officers, representation of some of the judicial officers are in fact accepted. Nobody can dispute, nor it is disputed in the instant case, that Committee acted impartially, without any oblique motive, ill-will or bias against respondent No.1. It consisted of senior Judges. There are no allegations of *mala fides* also. This report was again considered by the Full Court which is the exercise done fourth time. What is stated about the Committee equally applies to Full Court. Therefore, in our opinion all this including the report of the Committee on the basis of records and enquiries mentioned therein, would constitute 'material' which could become the basis of sustaining adverse Confidential Reports of the respondent No.1 for the years 1994 and 1995.

28. It is a matter of common knowledge that the complaints which are made against a judicial officer, orally or in writing dealt with by the Inspecting Judge or the High Court with great caution. Knowing that most of such complaints are frivolous and by disgruntled elements, there is

generally a tendency to discard them. However, when the suspicion arises regarding the integrity of a judicial officer, whether on the basis of complaints or information received from other sources and a Committee is formed to look into the same, as in the instant case, and the Committee undertakes the task, by gathering information from various sources perception about the concerned judicial officer is formed. The sporadic, malicious or vague complaints are to be distinguished from the series of instances/complaints from cross-section which lead to formation of general impression about a person. Such an opinion and impression formed consciously and rationally, after the inquiries of the nature mentioned above, would definitely constitute 'material' for recording adverse report in respect of an officer. Such an impression is not readily formed but after great circumspection, deliberation and prudence. It is a case of preponderance of probability for nurturing such a doubt about respondent No.1 which is based upon substance, matter, information etc.”

Special Leave Petition against the said judgment was dismissed by the Supreme Court.

23. We may also note that in the case of High Court of Punjab & Haryana Vs. I.C. Jain (supra), the Supreme Court opined that in a particular case, the opinion as to the integrity of the judicial officer can be based on the collective wisdom of the Full Court since it is unlikely that in all cases persons would come forward to make complainants and give details in such cases.

24.The petitioner was appointed as a direct recruit in the Delhi Higher Judicial Service in the year 1995. When his case for compulsory retirement came up for consideration, he had put in six years of service. We have already disclosed the grading given to the petitioner. When we look into the entire service record from 1995 to 2000, it is clear that the petitioner has not earned 'Above Average' even for one year. The work and conduct, in fact, kept on deteriorating as there is a downward slide. The grading which started from 'Average' went down to 'Below Average-Integrity Doubtful'. The exercise done by the scrutiny committee and the recommendation to compulsorily retire him from service was, therefore, perfectly justified. The decision of the Full Court in such a case to retire him was proper and justified.

25.We, therefore, do not find merit in this petition, which is accordingly dismissed.

WP(C) No.1965/2002

26.The petitioner, Sh. M.S. Rohilla, was appointed as a member of Delhi Judicial Service on 3.5.1972. After more than 17 years of service in DJS, he was appointed/promoted to Delhi Higher Judicial Service (DJHS) with effect from 1.11.1989. He assumed charge as the Additional District and Sessions Judge in DHJS

from 29.11.1989. However, he was reverted back to the Delhi Judicial Service by orders dated 15.2.1995. Against reversion he made a representation and during the pendency of that representation, which was subsequently turned down, he filed the writ petition. While this writ petition was pending, the petitioner attained the age of 50 years on 7.5.1997.

27. In July 2000 when the petitioner was 53 years of age, the Screening Committee of the High Court reviewed his case under Rule 56(j) of the Fundamental Rules but no decision was taken in that meeting.

28. It may be noted that for the years 1997-99, ACRs of the petitioner, as recorded by the High Court, show that his performance was either 'Average' or 'Satisfactory'. The petitioner had preferred representation against the remark contained in the ACR which did not find favour with the High Court and were rejected. However, in the ACR for the year 2000, recorded by the Full Court on 24.5.2001, the petitioner was graded 'C-Integrity Doubtful'. The petitioner was supplied with the said ACR and was asked to give his representation and was given six weeks' time to make a representation. However, within three days thereafter, i.e. on 27.9.2001 decision was taken to compulsorily retire the petitioner. The

petitioner made representation against this action of the High Court and thereafter filed the instant petition challenging the order of compulsory retirement.

29. Before we proceed further, we may point out that earlier WP(C) No.4589/1995 filed by the petitioner against his reversion was heard by a Full Bench of this Court which allowed that petition vide judgment dated 29.5.2006. The reversion was set aside primarily on the ground that the petitioner was appointed to the Delhi Higher Judicial Service on substantive basis and competent authority to pass the order was the Lt. Governor only and not the High Court.

30. The challenge of the petitioner to the order dated 27.9.2001 compulsorily retiring him from service proceeds as follows:-

“1. The order of compulsory retirement ought to have been passed on the basis of all the material prior to the order. Admittedly, with regard to the said material, which was relied, representation of the petitioner is either pending to be replied by the respondents or the petitioner was still required to submit his representation due to time granted by the respondent. Thus, the so called material relied as indicated in the impugned order was only a one sided view and was not wholesome, in as much as the version of the petitioner who was being compulsorily retired was neither replied or it is yet to be considered. Thus, it is not to be considered. Thus, it is not known as to what was the material which was placed by the High Court; before the petitioner was compulsorily

retired. In any case, the impugned order could not have been passed without the representation which was called for or without causing reply to the representation.

2. The petitioner could have been considered for the purpose of compulsory retirement in the year 2001. The consideration is to take place when the officer is about to attain 50 years or 55 years. The petitioner completed his 50 years on 07.05.1997. Admittedly, the ACR of the petitioner for the year 1997, 1998, 1999 showed the work of the petitioner to be satisfactory. No doubt, the said remark was challenged by the petitioner but there is nothing to indicate from the said remark that the petitioner was required to be retired compulsory. Nor did the above ACR for the year 1997-1999 indicated that the petitioner is of a doubtful integrity. It is only on 24.09.2001 the petitioner was told that the petitioner was graded 'C' with the integrity doubtful for the year 2000. The petitioner had six weeks time to cause representation, but before it could be caused, i.e. after 3 days i.e. on 27.09.2001 received a letter from the first respondent that he stands compulsory retired on the basis of the material available and considered. It is still a mystery as to which is that material which was available but not communicated to the petitioner which went into the decision making process to compulsory retire the petitioner. There is no question of any material being considered because the earlier representation of the petitioner was yet to be replied by the respondents and the last ACR indicating doubtful integrity which was a solitary case in the entire career or recording the ACR which was yet to be replied by the petitioner.

3. In the changed scenario, the impugned order of the respondent No.1 retiring the petitioner under 56(j) of Fundamental Rules

read with Rule 33 of the Delhi Judicial Rules of 1971 are not available to the respondents to retire the petitioner compulsory on 27.09.2001, since pursuant to the decision of the Full Bench dated 29.05.2006, the petitioner stood restored to the cadre of Delhi Higher Judicial Services. In view of this, neither the Fundamental Rules or the Rules under Delhi Judicial Services Rules are applicable. The petitioner would be governed under Rule 27 of the Delhi Higher Judicial Services which rule is same and similar to the officer of comparable status in Indian Administrative Services and serving in connection with the affairs of the Union of India.”

31.We may state at the outset that argument mentioned at serial No.3 above was not pressed at the time of hearing and, therefore, we have to deal with the first two arguments only.

32.The respondents, namely, the Lt. Governor as well as the Delhi High Court have filed their separate counter affidavits. It is emphasized in the counter affidavit filed on behalf of the High Court that the petition proceeds on a mistaken assumption and incorrect presumption that he was retired from service only upon consideration of adverse remarks ‘C-Integrity Doubtful’ recorded in the year 2000. It is stated that the Full Court as also the Screening Committee of the two Judges considered the entire service record of the petitioner which revealed that the petitioner had, in fact, been graded as ‘Below Average’ as well as ‘Integrity Doubtful’ on number of occasions and despite the

passage of time, the doubt to his integrity has not been cleared.

33.The manner in which the case of the petitioner for compulsory retirement was considered is also stated in detail, which shall be taken note of hereinafter.

34.On 17.1.1998 the Full Court constituted a Screening Committee of two Judges for considering the cases of officers in Delhi Judicial Service for their continuance in service or retirement in public interest in terms of Rule 56(j) of the Fundamental Rules read with Rule 33 of the DJS Rules 1970. This Committee considered the case of all Judicial Officers, including the petitioner who had completed the age of 50/55 years and submitted its report dated 21.9.2001 for consideration by the Full Court. In so far as the case of the petitioner is concerned, in its report dated 21.9.2001, the Screening Committee, *iner alia*, recorded as under:-

“The officer has earned throughout his career 'B' (Average) or C (Below Average) or 'C' (Below Average-Integrity doubtful) reports except for three years i.e. 1979-80, 1981-82 and 1988 when he could earn only B+ (Good) and for the years 1997, 1998 and 1999 when he could earn 'B' reports. In the Inspection note dated 29th March 1973, the concerned Hon'ble Inspecting Judge observed that he needed to be watched so far as his efficiency as a Judicial Officer was concerned. The District & Sessions

Judge, Delhi, in his report dated 31.5.1973 for the year 1972-73, mentioned that "a complaint was pending against him in the High Court about the return of ornaments in a theft case to a party which was not entitled". Further, as directed by a Single Bench of this Court by its order dated 24.7.1973 passed in Criminal Revision No.428/72 in re: Ramavtar Vs. State, the finding of the District & Sessions Judge, Delhi, regarding the conduct of Mr.M.S. Rohilla, then working as Judicial Magistrate, First Class, were placed on his personal file. It had been noted in the aforesaid findings of the District & Sessions Judge, that Mr. M.S. Rohilla should not have shown so much indecent haste in passing the order for handing over the ornaments to Jawahar Lal Gupta. Though, the District & Sessions Judge, Delhi, did not find any malafide on the part of Mr.M.S. Rohilla, still according to him, he acted in a most injudicious manner due to his inexperience and suppression of the material facts by the S.H.O. while sending the report in the above noted case. The Full Court recorded 'C' (Below Average) remarks for the year 1972-73).

In the Inspection Report dated 29.4.1978 for the year 1977-78, the District & Sessions Judge, Delhi, observed regarding the reputation for honesty and impartiality of the officer that there were complaints of which the High Court was seized then. In the Inspection Report dated 7.12.1985, for the year 1983-84, his efficiency as Judicial Officer was termed as a mediocre. As regards his reputation for honesty and impartiality, the District & Sessions Judge observed that he must improve his reputation

which suffered a set back when he was Additional Rent Controller. In Inspection Report for the same year, the District & Sessions Judge, Delhi, reported that he did not enjoy good reputation for honesty among lawyers and general public and that he was in the habit of drinking and gambling almost daily. In the Inspection Report dated 7.12.1985 for the year 1984-85, the concerned Hon'ble Inspecting Judge had observed that his reputation was under cloud although no specific instance of corruption had come to his notice, but watch was called for.

Following adverse remarks were recorded on the work and conduct of Sh. M.S. Rohilla for the years mentioned against each:-

<u>Years</u>	<u>Adverse Remarks</u>
1972-73	'C' (Below Average)
1993	'C' (Below Average) (Integrity doubtful)
1994	'C' (Below Average) (Integrity doubtful)
1994	'C' (Below Average) (Integrity doubtful)
1995	'C' (Below Average)
1996	'C' (Below Average)
2000	(Integrity doubtful)

Keeping in view the over all record of the officer, we recommend that Mr.M.S. Rohilla be prematurely retired in public interest forthwith."

35.It was on this basis that the case of the petitioner was recommended for premature retirement in public interest, which recommendation was accepted by the Full Court.

36.We had also called for the entire record wherein the case of the petitioner was considered. When we take holistic view of the matter in the manner projected in the counter affidavit, the conclusion is irresistible, namely, the petitioner was rightly retired compulsorily under FR 56(j) as the service record of the petitioner warranted taking such a course of action. It is totally misconceived and untenable on the part of the petitioner to argue that the so-called material relied, as noted in the impugned order, was only a one-sided view or it is not known what was the material placed before the High Court before the petitioner was retired. It is also totally untenable on the part of the petitioner to contend that he could have been considered for the purpose of compulsory retirement in the year 2001 when he was about to attain the age of 55 years in the year 2002. It is also a wrong premise adopted by the petitioner that the High Court based its decision solely on the basis of his ACR for the year 2000 wherein it was recorded that his integrity is doubtful. The exercise undertaken clearly reveals that entire

service record of the petitioner was taken into consideration.

37.The purpose of compulsory retirement under FR 56(j) is to remove the deadwood as well. When substantial service record of the petitioner is either 'Average' or 'Below Average', he could have been retired in public interest. As pointed out above, except for three years, i.e. 1979-80, 1981-82 and 1987-88 when the petitioner earned B+ (Good) ACR, throughout his career his other ACRs are 'Average', 'Below Average' or 'Below Average (Integrity Doubtful)'. Even for the years 1997, 1998 and 1999, i.e. immediately preceding the years the ACRs of the petitioner are 'Average' only. There were complaints received against the petitioner from time to time in the past as well.

38.In so far as ACR for the year 2000 is concerned, we find from the record that similar exercise was undertaken as was done in the case of Mr.R.S. Verma discussed above, namely, appointment of a Committee to look into the allegations against the petitioner and the exercise done by the Committee. Same kind of report was given by the Committee in the case of the petitioner as well. In view of the law discussed on this aspect while considering the case of Mr.R.S. Verma, we are of the opinion that there was no procedural or legal impropriety in recording the ACR for the year 2000. No doubt, the petitioner

was given six weeks' time to file the representation against the ACR for the year 2000 and before the expiry of this period, decision was taken to compulsorily retire him from service, fact remains that ACR of the year 2000 was not the sole basis for the decision but the entire service record.

39. It is also significant to mention here that even for the year 1993-94 his ACR was 'Below Average-Integrity Doubtful'. For 1995-96, it remained as 'Below Average'. Therefore, even if the decision was taken by the petitioner to represent against his ACR for the year 2000, that would not invalidate the action. We may quote the following observations of the Supreme Court in Baikunth Nath (supra) in this behalf:-

"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.

(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 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.”

40. We, therefore, are of the opinion that the order of compulsory retirement in the case of this petitioner as well is proper and does not call for any interference. The writ petition is

accordingly dismissed.

WP(C) No.2362/02

41.The case of Sh. P.D. Gupta hardly poses any challenge in view of earlier litigation initiated by him in which he could not succeed. For the years 1994 and 1995 in his ACR he was given the grading of 'C', i.e. 'Below Average-Integrity Doubtful' because of which he was denied appointment/promotion to Delhi Higher Judicial Service as well. He had filed WP(C) No.4334/1997, which was allowed by the learned Single Judge. However, LPA No.329/1999 preferred there against, the said judgment of the learned Single Judge was reserved and the writ petition of the petitioner dismissed. The SLP against that judgment was also dismissed by the Supreme Court. In his service record, thus, the ACRs for the year 1994 and 1995 recording 'C-Integrity Doubtful' unquestionably remained.

42.The petitioner was given adverse remark 'C' for the year 1999 and adverse remark 'C (Integrity Doubtful)' for the year 2000. Thereafter when his case was considered under FR 56(j), the Screening Committee recommended that he be compulsorily retired from service and Full Court accepted the said recommendation culminating into order of compulsory retirement dated 27.9.2001.

43.The petitioner in this writ petition challenging the said order of compulsory retirement has prayed for the following reliefs:-

“1. Rule FR 56(J) read with rule 33 of DJS Rules is not applicable after introduction of Rule 31A in the said Rules w.e.f. 4.1.1996.

2. Adverse remarks 'C' in the ACR for 1999 are unsustainable as per own criteria/procedure laid down by the High Court.

3. Adverse remarks 'C' (integrity doubtful) for the year 2000 are unsustainable, as are arbitrary, mala fide and not supported by any material, which too are against the criteria/procedure laid down by the High Court.

4. Order dated 27.9.2001 passed under FR 56(J) read with Rule 33 of DJS Rules is illegal, arbitrary and mala fide as in fact this is an order of dismissal or removal from service under the garb of compulsory retirement in violation of Articles 14 and 311(2) of the Constitution.”

44.It is the submission of the learned counsel for the petitioner that the Inspecting Judge for the year 1999 did not inspect the Court of the petitioner during the year 1999 and he was given remarks “C” by the High Court in July, 2000. This adverse remarks were given after the writ petition was allowed, without any material on record, without any inspection of the Inspecting Judge and against the criteria/procedure laid down by the High Court. The petitioner filed his representation against this adverse ACR on 9.8.2000, which was deliberately not decided

and was kept pending. On 9.2.2001 the LPA filed by the High Court was allowed by the Division Bench holding that there was a material, although not in black and white on the record, but by way of discreet enquiry in the mind of the Judges. After decision of the LPA representation of the petitioner dated 8.9.2000 for the ACR of the year 1999 was rejected by one word on 1.6.2001, which was deliberately kept pending even without considering the contents of the same. The petitioner completed his 50 years of age in December, 1999. In July, 2000, the Screening Committee of the High Court gave its report in respect of officers who had completed 50 years of their age after reviewing their cases for pre-mature retirement. Case of the petitioner was considered by this Committee but did not find the petitioner liable for premature retirement. For the year 2000, Hon'ble Mr. Justice M.S.A. Siddiqui was appointed Inspecting Judge of the petitioner as per the intimation received by the petitioner. He did not inspect his Court but as per his requisition vide letter dated 16.5.2001, the petitioner sent copies of five judgments delivered by him during the year 2000. But said Hon'ble Judge did not give his report and retired. On 7.9.2001 another Judge Hon'ble Mr. Justice K.S. Gupta visited the Court of the petitioner for few minutes and directed him to

send copies of three judgments delivered by the petitioner during the year 2000, which he sent. The Full Court recorded remarks 'C-Integrity Doubtful' for the year 2000, which were communicated to him by letter dated 22.9.2001 when he was asked to file his representation against these remarks within six weeks. But without waiting for the filing of the representation within the aforesaid time, the High Court upon the adverse remarks of 2000 recommended his premature retirement to the Lt. Governor under FR 56(J) read with Rule 33 of the DJS Rules. On the basis of the aforesaid, it is alleged that the impugned order is biased and mala fide.

45. We may also mention that though the petitioner had taken the plea in the writ petition that FR 56(j) read with Rule 33 of the DJS Rules is not applicable after the introduction of Rule 33-A of the DJS Rules, at the time of argument learned counsel for the petitioner dropped this plea conceding that the orders could have been passed under the aforesaid provision. This is because of the reason that the position in law is clear in view of the principles of law laid down by the Supreme Court in various judgments subsequent to the direction to raise the age of retirement in the case of All India Judges Association v. Union of India, (2002) 4 SCC 247. These judgments are Nawal Singh v.

State of U.P., (2003) 8 SCC 117; High Court of Judicature at Bombay v. Brij Mohan Gupta, (2003) 2 SCC 390 and Chander Singh v. State of Rajasthan, (2003) 6 SCC 545. Since counsel for the petitioner conceded the aforesaid position, it is not necessary to dilate much on this aspect.

46. In the counter affidavit filed on behalf of the High Court it is explained that the Screening Committee of two Judges considered the overall service record of the petitioner and found that his work and conduct was recorded as average in the years 1979-80, 1980-81, 1996, 1997 and 1998. In the report of the year 1995 the inspecting judge has recorded that he had heard complaints on the integrity of the petitioner. Again in the inspection report for the year 1999-2000, the Inspecting Judge, in respect of his judicial reputation and in respect of his impartiality and integrity recorded that the petitioner does not hold good reputation and for 1999 he was not considered an efficient officer. As per records he was also considered for promotion on 18th May 1996 but was found not fit. Even in the subsequent selections he was not found fit and was thus not promoted. For the year 1994-95, he was granted 'C-Integrity Doubtful'. For the year 1999 he was graded 'C' (Below Average) and for the year 2000 he was granted 'C-Integrity Doubtful'. As

such, keeping in view the overall assessment of service record the Screening Committee recommended that the petitioner be prematurely retired in public interest forthwith. It is further explained that the report of the Screening Committee with respect to number of Judicial Officers was placed before the Full Court of the High Court and the Full Court after considering the report of the Screening Committee and also after taking into consideration the record of work and conduct, general reputation and service record of the officers resolved that it be recommended to the Administrator, Govt. of NCT of Delhi to retire the Judicial Officers forthwith in public interest. The Lt. Governor accepted the recommendations of the High Court and vide its order dated 27.9.2001, the petitioner was compulsorily retired in public interest with immediate effect. The petitioner preferred a representation before the Lt. Governor. After going through his service records, assessments made by the Inspecting Judge along with the recommendations of the Screening Committee and then of the Full Court of the High Court who have come to the conclusion that the petitioner is not fit to continue in service and thus, his representation was rejected vide order dated 13.9.2002 by the Lt. Governor, which was communicated to him vide letter dated 27.9.2002.

47. In so far as the ACR for the year 1999-2000 is concerned, there is hardly any reason to interfere with the same. We have already exhaustively quoted from the judgment in *P.D. Gupta's* case (supra) which was the case of the petitioner himself. The ACR for the year 1994-95 recording 'C-Integrity Doubtful' were upheld on the ground that there was sufficient 'material' to record the said ACR. This judgment was upheld by the Supreme Court. Thus, it operates as *res judicata* qua the petitioner. Only on this basis alone, action of the High Court to compulsorily retiring the petitioner would be sustainable as easing out a person with integrity doubtful is nothing but in public interest. This principle will have to be applied with greater force when we deal with the case of judicial officers.

48. In so far as the ACR for the year 1999 is concerned, he was given 'C' grading, i.e. 'Below Average'. He had made representation thereagainst which was rejected by the Full Court in its meeting held on 19.5.2001. Likewise, for the year 2000 when he is given the grading 'C-Integrity Doubtful', we find from the record that it was on the basis of 'material' which surfaced as a result of similar exercise undertaken by the Committee, which was done on earlier occasion and upheld by this Court. We, therefore, do not find any merit in the

contention that ACRs for the years 1999-2000 were not properly recorded.

49. We also find that the overall career profile of the petitioner, which was taken into consideration and it is totally untenable to allege that there was any bias or mala fide against the petitioner. The Full Court in its corrective wisdom took the decision on the basis of the profile of the petitioner.

WP(C) No.2780/2002

50. Having regard to the principles of law mentioned while considering the aforesaid cases, when we apply those principles to the facts of this case, our opinion is that the order of compulsory retirement passed in the case of the petitioner is unsustainable and needs interference. The petitioner, Shri. V.K. Malhotra, was appointed as a Member of the Delhi Judicial Service on 4.10.1974. He was promoted as a Member of the Delhi Higher Judicial Service with effect from 25.2.1995 in which position he was confirmed with effect from 26.9.1997. He was compulsorily retired from service vide orders dated 27.9.2001. We note that for the year 2000 the petitioner was given the grading of 'C-Integrity Doubtful'. This was recorded on 22.9.2001 and the petitioner was communicated the same. He was given opportunity to make his representation within six

weeks. Before he could make this representation, on 24.9.2001, i.e. within two days of communication of the said ACR, decision was taken to compulsorily retire him from service. In this case we find that the sole basis for arriving at this decision is the ACR of 2000. But for this ACR the petitioner has positive and laudatory service record, which is clear from the following grading given to him in his ACRs:-

“1989	A
1990	A
1991	A
1992	A
1993	+ A
1994	A
1995	A
1996	+ B
1997	+ B
1998	+ B
1999	+ B”

51.The gradings, thus, vary from 'Good' to 'Very Good' and even 'Outstanding'. At no stage it fell below 'B+' (Good). Another distinguishing and discernible feature which needs to be mentioned here is that the Screening Committee had

considered his case under FR 56(j) in July 2000. After reviewing his work, conduct and service record as well as ACR dossiers, a report was given by the Screening Committee to the effect that there was no reason for retiring him prematurely in public interest. Thus, there was nothing adverse against him upto July 2000. He was 55 years and 6 months of age at that time. Prior to that when he had attained the age of 50 years in the year 1994, his case was considered by the Screening Committee, which found him suitable to continue in service. Thus, there was a consideration of his case under FR 56(j) at the age of 50 years and thereafter 55 years. On both the occasions, nothing adverse was found against him. The exercise conducted in July 2000 amply demonstrates that as on that date the petitioner was found unblemish. The petitioner has also stated that on 30.11.2000 he was transferred to Tis Hazari Courts as Additional District Judge after his conduct and integrity was examined by the High Court and from this one would infer that there was nothing adverse against him even upto November 2000.

52. It so happened that the orders were passed by the High Court on 7.12.2000 withdrawing judicial work of the petitioner with immediate effect. The petitioner was thereafter assigned

administrative work. Thereafter, as aforesaid, on 22.9.2001 his ACR for the year 2000 was recorded with adverse remarks as 'C-Integrity Doubtful' and within two days thereafter decision was taken to compulsorily retire him. In the aforesaid backdrop, when we attempt to find the material on the basis of ACR of the petitioner herein was recorded, we find hardly any justification for recording the said adverse remarks. We have gone through the records of the petitioner and are unable to find any 'material' on the basis of which the opinion was formed in this case. This case is, therefore, akin to the factual position in the case of Barkha Gupta's (supra).

53. When the ACR of the year 2000 is the sole basis of retiring the petitioner compulsorily, not giving him an opportunity to make representation without waiting for even the representation of the petitioner against the said adverse remark and taking a decision on this basis, in our mind, would negate the principles of justice in this case. We, therefore, are of the opinion that the order of compulsory retirement dated 27.9.2001 in the case of this petitioner is to be set aside. We order accordingly.

54. Since the petitioner has already attained the normal age of superannuation, order of reinstatement cannot be passed. However, the petitioner shall be entitled to salary and

allowances till he attained the age of 58 years. His case shall also be reviewed for extension from 58 to 60 years in accordance with law within a period of four months.

55.All the aforesaid petitions are disposed of. Parties are left to bear their respective costs in all these petitions.

(A.K. SIKRI)
JUDGE

May 02, 2008
HP.

(ARUNA SURESH)
JUDGE