

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

Date of decision: 23rd March, 2011

+ **WP (C) No.12820/2009**

SHRI BALWINDER SINGH Petitioner
Through Ms. Rekha Palli, Adv. with
Ms. Punam Singh, Adv. &
Ms. Amrita Prakash, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Sachin Datta, Adv. with
Ms. Manikya Khanna, Adv. &
Ms. Gayatri Verma, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

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

GITA MITTAL, J

1. The present writ petition has been filed by the petitioner praying for issuance of a writ of certiorari quashing the order dated 6th October, 2009 retiring the petitioner from service as well as the order dated 21st/22nd May, 2009 passed by the respondent no.1 rejecting the petitioner's representation against his premature retirement. The petitioner also prays for issuance of a writ of mandamus directing the respondents to reinstate the petitioner with all consequential benefits.
2. So far as the basic facts are concerned, there is no dispute. To the extent necessary, the same are briefly noticed hereafter. On 28th June, 1982, the petitioner was appointed as an Assistant Sub-Inspector

(Executive) in the Central Industrial Security Force ('CISF' hereafter). On 7th July, 1984, the petitioner was promoted as sub-inspector in the service. Further promotion was earned by the petitioner on 25th May, 1990 as an inspector.

3. The respondents have further pointed out that on 8th May, 2006, the petitioner was promoted as an Assistant Commandant and had assumed the charge of DSP, Durgapur.

4. The petitioner points out that after his promotion as Assistant Commandant, he had earned an 'average' ACR for the period from 8th May, 2006 to 31st March, 2007 and a 'good' ACR for the period from 1st April, 2007 to 31st March, 2008. The petitioner had completed his probation period as Assistant Commandant during this period. An order dated 2nd September, 2008 was passed by the respondent no.3 – the Deputy Inspector General (Pers), Central Industrial Security Force, New Delhi, whereby the petitioner's satisfactory completion of probation period on 7th May, 2008 was declared. The petitioner was thereafter transferred as Assistant Commandant to the 4th Battalion which he had joined on 24th April, 2009.

5. The respondents have placed a statement of the Annual Confidential Reports which were earned by the petitioner for the entire period of 27 years of the petitioner's service. The same shows that out of these 44 ACRs, only seven were 'average' while all other ACRs were either 'good' or 'very good'. The respondents have asserted that adverse remarks were recorded in the ACRs of the petitioner for the period of 1st January, 1996 to 31st December, 1996 and 1st January, 1998 to 23rd June, 1998.

6. The record placed before this court by the respondents would show that in the service career of the petitioner spanning 27 years, the following penalties have been imposed upon the petitioner:-

- (i) Five penalties within a span of one month in June, 1998.
- (ii) Two censures; one in 1986 and the other in 1996.

The petitioner has pointed out that the punishment no.7 in the statement of punishment filed by the respondents on record, was reduced by the order dated 16th May, 2000 passed by the Appellate Authority.

- (iii) On 24th September, 2001, a minor penalty of fine equivalent to three days pay was imposed upon the petitioner.

7. In this behalf, the petitioner has pointed out that for the period from 1st January, 1998 to 23rd June, 1998 when the petitioner was posted at ONGC, Nazira, his the then Commandant Lt. Col. R.N. Mann had a biased and vindictive attitude against him. This is manifested from the fact that in one single month of June, 1998, nine punishments were awarded to the petitioner out of which five punishments were awarded by the Commandant himself and the other four punishments were awarded by the Assistant Commandant working under the directions of the Commandant. The fifth punishment is stated to have been awarded by the DIG. It is pointed out that the petitioner was unable to challenge this punishment for the reason that he was posted in different units and that in the period immediately thereafter from 24th June, 1998 to 30th December, 1998, the petitioner had earned a very good report.

8. It is noteworthy that even assuming that such remarks and punishment had been correctly given, the same did not impact the service profile of the petitioner in any manner.

9. Even for the period from 1st April, 2007 to 31st March, 2008, the petitioner has a 'good' ACR. The petitioner has earned due promotions on time. The respondents have also pointed out that on 7th May, 2008, the petitioner promoted as Assistant Commandant in 2006, long after the afore-noticed adverse ACRs and punishments and had even successfully completed his probation.

10. It is submitted by learned counsel for the petitioner that the petitioner has never been superseded or overlooked for any promotion and all promotions have been earned by him on time for the purposes of his service record. The only punishment adverted to by the respondents after 1998 was a three day pay fine given to the petitioner on 24th September, 2001. This punishment also did not mar either the petitioner's punishment or his service profile for the reason that he received all timely promotions thereafter. Even this minor punishment was imposed eight years prior to the consideration of the petitioner's case under Rule 56(j).

11. In view of the stand taken by the respondents, this court had passed an order dated 13th April, 2010 in which this court had noted the submission on behalf of the petitioner that despite repeated requests by the petitioner for furnishing copies of the ACRs especially having regard to the impugned orders, the same had not been furnished to the petitioner. We had also noted that though the respondents had placed a statement of punishments awarded to the petitioner but copies of the orders of punishments which were passed

against the petitioner had not been placed on record. In this background, the respondents were directed to file an affidavit placing the ACRs of the petitioner as well as the copies of the orders imposing punishments upon the petitioner.

12. In purported compliance of these orders, the respondents have filed an affidavit dated 16th July, 2010, submitting that the order of punishment dated 10th December, 1986 is not available and the only record available is the entry in the service book of the petitioner. It is submitted that the record was old and there was difficulty in tracing it out. Even the complete record with regard to the orders of 1998 could not also be placed for the reason that an order dated 22nd June, 1998 was in a wretched and torn condition. So far as the ACRs are concerned, the respondents have set up a plea that they were confidential documents and consequently were not filed on record.

13. The affidavit dated 16th July, 2010 filed by the respondents manifests the plea of the petitioner that the punishments as well as adverse entries relating to the years 1986, 1996 & 1998 which were a decade prior to the passing of the impugned order, have not adversely affected his service career. The last adverse remarks in the ACRs were in the year 1998 while the punishment lastly imposed upon him in 2001 was minor punishment.

14. The petitioner has submitted that he completed 50 years of age on 11th May, 2009. After he had joined the posting at 4th Battalion, CISF on 24th April, 2009, he received the impugned order dated 22nd May, 2009 thereafter informing him that he was being retired with immediate effect under Rule 56 (j) of the Fundamental Rules.

15. Aggrieved thereby, the petitioner made a representation dated 9th June, 2009 to the respondent no.2 – Director General, CISF, New Delhi which was returned to him under cover of a letter dated 21st July, 2009 informing him that he was required to make a representation to the President of India. The petitioner thereafter made a representation dated 27th July, 2009 to the President of India which was rejected by an order passed on 6th October, 2009. The present writ petition has been filed in these circumstances.

16. The primary ground of challenge to the impugned action is premised on the petitioner's contention that he had rendered 'good' service for a long period of 27 years which was manifested by not only his ACR record but the fact that he was given due promotion as late as in May, 2006 and had also successfully completed his probation period in May, 2008. It is urged that there is no element of public interest in the premature retirement of the petitioner by the impugned order dated 21st/22nd May, 2009 by invocation of Rule 56(j) of the Fundamental Rules.

17. So far as Rule 56 (j) of the Fundamental Rules is concerned, the same reads as follows:-

“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 months' pay and allowances in lieu of such notice:

(i) if he is in Class I or Class II service or post and had entered government service before attaining the age of thirty-five years, after he has attained the age of fifty years;

(ii) in any other case after he has attained the age of fifty-five years.

Provided that nothing in this clause shall apply to a government servant referred to in clause (e) who entered government service on or before 23-7-1966."

18. The respondents have placed reliance on the instructions contained in the Office Memorandum E-25013/14/7 Estt.(A) dated 5th January, 1978 issued by the Department of Personnel & Administrative Reforms in the Ministry of Home Affairs. According to these Government instructions, the cases of Class I & II Officers are required to be reviewed by the appropriate review committee for further retention in service beyond 50 years of age if a person entered in service before attaining the age of 35 years and in all other cases, after attaining the age of 55 years.

19. The respondents have urged that inasmuch as the petitioner joined the Government service before attaining the age of 35 years, his case was required to be reviewed when he attained the age of 50 years. Accordingly, an internal screening committee consisting of Director General of the CISF as Chairman; Inspector General (NS), DIG (Pers.) and DIG (Administration) as members was constituted at the CISF Headquarters, New Delhi. This screening committee met on 26th February, 2009 at the CISF Headquarters, New Delhi to screen cases which were covered under FR 56(J) of the Fundamental Rules. This committee took into consideration the overall performance of the officer; ACRs; gist of adverse/advisory remarks recorded therein; punishments; details of departmental inquiries; vigilance and service records of the petitioner. The committee made the following observations while recommending the petitioner's premature retirement:-

- “(i) The integrity of the officer was not certified on one occasion.
- (ii) He was found to be ineffective and has been identified as “Unfit” to continue in the post of Assistant Commandant which he was holding.
- (iii) At the time of review, the entire service record of the officer was considered and during the preceding five years of service the performance of the officer was not found satisfactory, viz., he has earned three Good and two Average grading.”

20. The case of the petitioner is stated to have been placed thereafter before the review committee in the Ministry of Home Affairs. This review committee comprised of Joint Secretary (Department of IPP) and the Special Secretary (Internal Security) and it approved the recommendations of the afore-noticed internal screening committee. In this background, the petitioner was retired prematurely on 22nd May, 2009 with the approval of the Home Ministry.

21. So far as adverse remarks in his ACRs of the petitioner are concerned, the petitioner contends that he was given adverse remarks only in the ACRs for the two periods in 1996 & 1998. Such remarks were found in the ACRs for the period 1st January, 1998 to 23rd June, 1998. We find that despite the adverse remarks for the period 1st January, 1996 to 31st December, 1996, the petitioner had been assessed as ‘good’ in the ACR for the year 1996. Further for the period 1st January, 1998 to 23rd June, 1998, despite the adverse remarks, the petitioner’s work has been assessed as ‘good’ in the first ACR and ‘average’ in the second ACR.

22. The petitioner has assailed the impugned orders inter alia on the ground that the same are based on irrelevant material and reflect no application of mind. It needs no elaboration that an order is required to be passed on relevant material in order to be sustainable in law.

23. We find that there is no allegation that any disciplinary inquiry or vigilance inquiry was pending against the petitioner.

24. So far as the Annual Confidential Reports of the Adverse/advisory remarks are concerned, such remarks were made only on three occasions relating to the years 1986, 1996 & 1998. The last punishment against the petitioner was also a minor penalty in the year 2001.

25. The service profile of the petitioner reflects that out of these 44 ACRs, only seven were 'average' while all other ACRs were either 'good' or 'very good'. It is submitted that the petitioner had successfully completed the period of probation after his promotion as Assistant Commandant on the 7th May, 2008.

26. The respondents have also highlighted the petitioner's ACRs for the six months period between 1st January, 1998 to 23rd June, 1998 when the Commandant had recorded that the petitioner's integrity was doubtful. Despite this comment, for the same period, the petitioner was given an 'average' ACR. The petitioner has pleaded mala fide and vindictiveness on the part of the Commandant while referring to the fact that in the month of June, 1998, alone nine punishments were imposed upon him, out of which five punishments were awarded by this very commandant. The submission on behalf of the petitioner in this behalf is also supported by the fact that for the twelve months period immediately from 1st January, 1997 to 31st December, 1997, the petitioner had a 'good' ACR while for the succeeding period from 24th June, 1998 to 31st December, 1998, the petitioner had a 'very good' ACR.

27. The adverse comments in the ACRs even for the period from 1st January, 1996 to 31st December, 1996 did not impact the assessment of work which had been assessed as 'good'.

28. The adverse remarks in the ACRs for the period from 1st January to 31st December, 1996 as well as the six months period from January, 1998 to June, 1998 had not impacted the petitioner's career at all. In this behalf, it is pointed out that on 8th May, 2006, the petitioner was duly promoted to the rank of Assistant Commandant after scrutiny and consideration by the Union Public Service Commission which had considered the entire service career of the petitioner.

29. In support of the contention that the adverse remarks which according to the respondents are the basis of the impugned order, were too remote in time and cannot justify the impugned order, reliance has been placed on the judgment reported at **112 (2004)**

DLT 150 V.K. Issar Vs. UOI wherein the court held as follows:-

“5. In the instant case, we are concerned with the question as to whether the petitioner could have been compulsorily retired on the consideration of his remote alleged adverse entries for the period 1976, 1977, 1989-90 and 1992-1993 in view of the fact that the respondents themselves have promoted the petitioner as Deputy Commandant in the year 1992. If the respondents have promoted the petitioner in the year 1992 to the post of Deputy Commandant and the adverse entry in the subsequent period 1996-97 have been expunged by the respondents, the respondents cannot be permitted to compulsorily retire the petitioner on the basis of remote ACRs when nothing adverse come to the notice of the authorities after 1992 till the order of compulsory retirement was made. Even in the counter affidavit filed by the respondents, the stand of the respondent is not that the order of compulsory retirement was passed on account of petitioner's integrity being doubtful or his work and conduct was unsatisfactory. In paragraph 9 of the counter affidavit, respondents have stated that petitioner was retired as he was an average officer. Rule 56(j) of the Fundamental Rules cannot be used

to get rid of an officer who is average. It may be invoked to get the dead wood out. Nothing to that effect has been stated in the counter affidavit nor any material has been placed before us to justify the stand of the respondent.”

30. Our attention has also been drawn to the pronouncement of the Supreme Court reported at **(2002) 3 SCC 641 State of U.P. & Others Vs. Vijay Kumar Jain**. In this case, the court was concerned with similar power to compulsory retire a government servant which is provided in Rule 56 of the U.P. Fundamental Rules which is similar to the Rule 56 (j) of the Fundamental Rules under which the respondents have proceeded against the petitioner. So far as the object and intendment of this Rule is concerned, in para 15 of the judgment, the Supreme Court had observed as follows:-

“15. The aforesaid decisions unmistakably lay down that the entire service record of a government servant could be considered by the Government while exercising the power under FR 56(c) of the Rules with emphasis on the later entries. FR 56(c) of the Rules read with Explanation (2), empowers the State Government with an absolute right to retire an employee on attaining the age of 50 years. It cannot be disputed that the dead wood need to be removed to maintain efficiency in the service. Integrity of a government employee is foremost consideration in public service. If a conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the Government has an absolute right to compulsorily retire such an employee in public interest. The Government's right to compulsorily retire an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to the Screening Committee or the State Government, as the case may be, to find out whether a government servant has outlives his utility in

service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll, the Government is expected to form its opinion whether an employee is to be compulsorily retired or not.”

31. On the question of adverse entries which could be looked at by the authorities concerned, the respondents have placed reliance on the following:-

“16. Withholding of integrity of a government employee is a serious matter. In the present case, what we find is that the integrity of the respondent was withheld by an order dated 13-6-1997 and the said entry in the character roll of the respondent was well within ten years of passing of the order of compulsory retirement. During pendency of the writ petition in the High Court, the U.P. Services Tribunal on a claim petition filed by the respondent, shifted the entry from 1997-98 to 1983-84. Shifting of the said entry to a different period or entry going beyond ten years of passing of the order of compulsory retirement does not mean that vigour and sting of the adverse entry is lost. Vigour or sting of an adverse entry is not wiped out, merely it is relatable to 11th or 12th year of passing of the order of compulsory retirement. The aforesaid adverse entry which could have been taken into account while considering the case of the respondent for his compulsory retirement from service, was duly considered by the State Government and the said single adverse entry in itself was sufficient to compulsorily retire the respondent from service. We are, therefore, of the view that entire service record or confidential report with emphasis on the later entries in the character roll can be taken into account by the Government while considering a case for compulsory retirement of a government servant.

17. It was not urged before us that the order compulsorily retiring the respondent was mala fide or was not in the public interest, and in the absence of such a case, we do not find any infirmity in the order compulsorily retiring the respondent from service.”

In this pronouncement, the Supreme Court had categorically laid down the principle that the respondents have to examine the relevant

materials in order to arrive at a conclusion that an employee had outlived his utility in service and take into account the entire service record, character as well as the annual confidential reports with emphasis on the later entries in the character roll of the employee. Before us, it is an admitted position that there is nothing adverse in the service profile of the petitioner after June, 1998 and that he has received due promotions as well as satisfactorily completed the probation period.

32. The respondents have also placed reliance on the pronouncement of the Apex Court reported at **(1996) 3 SCC 672 *Union of India Vs. P.S. Dhillon*** to contend that even though the petitioner may have successfully completed his period of probation at the promoted post, the respondents were justified in looking at the confirming the adverse material. In this case, the court was concerned with the exercise of power under Rule 56 (j) by the respondents. So far as the respondent who had been appointed as the Member of the Income Tax Appellate Tribunal was concerned, the factual narration which was noticed in para 15 sets out the circumstances in which the material against the respondents which weigh with the court deserves to be considered in extenso and reads as follows:-

“15. Keeping in view the circumstances attendant to his confirmation as member of the ITAT with effect from 1-4-1985, we are unable to agree with the Tribunal that after such confirmation the adverse material on the record for the period prior to 1.4.1985 should be disregarded. In our opinion, the entire service record of the respondent including the record for the period prior to 1-4-1985 had to be taken into consideration by the appropriate authority. The service record of the respondent shows:

(i) There were complaints about his behaviour from the members of the Bar and his colleagues and the staff in the

ITAT and his confirmation as member was delayed till 1-4-1985 and he was given six extensions in the period of probation.

(ii) The remarks in the ACR for the year ending 31-12-1985 show that there was no improvement in his behaviour as well as his performance.

(iii) There was complaint about his conduct by his wife that he was living with another lady which fact was not disputed by him when he was given a hearing by the Law Minister on 5-11-1986."

33. In para 16 of the said pronouncement in ***UOI Vs. P.S. Dhillon (supra)***, the Supreme Court had categorically stated that having regard to the circumstances noticed above, it was not possible to say that there was no sufficient material for the appropriate authority to form the requisite opinion that further retention of the respondent in service was not in public interest. In the instant case, no complaints or allegations with regard to the record of the petitioner in the instant case have been pointed out by the respondent's conduct. On the contrary, the petitioner's last ACR preceding his premature retirement was a 'good' ACR.

34. Learned counsel for the petitioner has placed before this court the pronouncement of the Supreme Court reported at ***(2009) 15 SCC 221 M.P. State Cooperative Dairy Federation Vs. Rajnesh Kumar Jamindar***. In this judgment, the Supreme Court placed reliance on several previous pronouncements laying down the binding principles on which the power of compulsory retirement in public interest could be validly exercised. The principles extracted by the Supreme Court from the prior judicial precedents may be usefully considered in extenso and reads as follows:-

“35. The law relating to compulsory retirement in public interest is no longer res integra. The provisions had been made principally for weeding out dead wood. An order of compulsory retirement being not penal in nature can be subject to judicial review inter alia:

- (i) When it is based on no material;
- (ii) When it is arbitrary;
- (iii) When it is without application of mind; and
- (iv) When there is no evidence in support of the case.

36. In *Baikuntha Nath Das and Anr. v. Chief District Medical Officer*, this Court held: ([SCC Public Premises \(Eviction of Unauthorised Occupants\) Act, 1971.315-16, para 34](#)):

“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 circumstance by itself cannot be a basis for interference.”

37. In State of Gujarat v. Umedbhai M. Patel, this Court held:

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

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

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

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

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

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

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

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

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

38. In Pritam Singh v. Union of India and Ors., this Court held (SCC p.753, paras 13 & 16):

“13. In our opinion, the High Court has committed an error in not interfering with the punishment of compulsory retirement even though the appellant submitted that the misconduct alleged against him was not at all an offence or even a serious mistake. The act of misconduct alleged against him was that he supplied a list of absentee details to one of the employees, who was fighting a case before the Tribunal against the Railways. This list contained the ticket numbers of the workers of a shop, who were absent on that date. This was neither a confidential document nor a privileged document. It contained details to which the employee concerned had a right of information. The appellant being a Superintendent Grade II and in charge of the information acted bona fide in good faith while supplying the information. In our opinion, this kind of an act was neither a misconduct nor a serious mistake. When the charges were found proved against the appellant, the appellant admitted that he had supplied the absentee details.

16. This Court in the case of Union of India v. G. Ganayutham, [MANU/SC/0834/1997](#) while examining the scope of judicial review held that "reasonableness", "rationality" and "proportionality" are the grounds on the basis of which judicial review of the administrative order can be undertaken. Considering the facts extracted hereinbefore, we find that the exercise of power by the respondent falls in the category of arbitrary exercise of power.”

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43. It is now a well-settled principle of law that the employer would be bound by the rule of game. It must follow the standard laid down by itself. If procedures have been laid down for arriving at some kinds of decisions, the same should substantially be complied with even if the same are directory in nature. This rule was enunciated by Mr. Justice Frankfurter in Vitarelli v. Seaton 359 US 535, wherein the learned Judge said:

“An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.”

(See also H.V. Nirmala v. Karnataka State Financial Corpn., at SCC p.645, para 14)

44. The power of judicial review of a superior court although a restricted one, has many facets. Its jurisdiction is not only limited in the cases where the administrative orders are perverse or arbitrary but also in the cases where a statutory authority has failed to perform its statutory duty in accordance with law. An order which is passed for unauthorized purpose would attract the principles of malice in law. [See Govt. Branch Press v. D.B. Belliappa, S.R. Venkataraman v. Union of India and P. Mohanan Pillai v. State of Kerala]

45. It is a well-settled principle of law that an order of compulsory retirement is found to be stigmatic inter alia, in the event the employer has lost confidence [See Chandu Lal v. Management of Pan American World Airways Inc., SCC at p.730, para 8), or he has concealed his earlier record [See Jagdish Parsad v. Sachiv, Zila Ganna Committee, Muzaffarnagar and Anr. (1986)ILLJ513SC]. He can, however, be subjected to compulsory retirement inter alia if he has outlived his utility [The State of Uttar Pradesh v. Madan Mohan Nagar (1967)ILLJ63SC].

46. In Allahabad Bank Officers' Association and Anr. v. Allahabad Bank and Ors. MANU/SC/0503/1996 : (1996)ILLJ519SC , it was held:

“17. The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer

therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it.”

47. The question came up for consideration before a Division Bench of this Court in State of Gujarat v. Umedbhai M. Patel (2001)11LLJ1140SC wherein Balakrishnan, J., as the learned Chief Justice then was, summarized the law, thus:

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

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

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

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

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

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

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

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

35. The adverse remarks had been given more than 10 years before the consideration. Furthermore, despite the adverse remarks which are relied upon by the respondents, the petitioner was promoted to the rank of Assistant Commandant and had also satisfactorily completed his probation on 7th May, 2008 which was barely a few weeks before the passing of the impugned order. So far as the consideration in 2009 of the petitioner's record for the purposes of Rule 56 (j) is concerned, we find merit in the submission that the said adverse entries of 1996 were too remote to influence the impugned decision.

36. As noted above, the last punishment against the petitioner was more than eight years old and he has been promoted in 2006 and confirmed in the promoted post in 2008. There is nothing adverse in the ACRs of the petitioner for almost eleven years prior to the passing of the impugned order. No major punishment has been imposed upon the petitioner and there is not even a minor punishment for the last almost more than eight years.

37. The adverse entries in the years 1986, 1996 & 1998 were certainly too remote to result in the impugned order and could not have been the basis for adverse action against the petitioner especially keeping in view the service profile of the petitioner.

38. The comments of the internal screening committee show that the fact that the petitioner has been promoted and successfully

completed his probation has not even been considered by the committee. There is nothing at all placed before this court which would enable this court to hold as has been held by the Supreme Court in the case of **State of U.P. & Ors. Vs. Vijay Kumar Jain (supra)**, that the petitioner has outlived his utility or that his compulsory retirement was necessary to ensure efficiency in service when the petitioner was deadwood to maintain efficiency in service. There is no issue at all with regard to the integrity of the petitioner or that his conduct is unbecoming to public interest or is an obstruction to efficiency in public service. There is also nothing to show that the petitioner has outlived his utility in service. No element of public interest has been pointed out by the respondents as even suggested either in the consideration by the internal screening committee of the CISF or by the review committee in the Ministry of Home Affairs which has simply endorsed the recommendations.

39. It needs no elaboration that the conclusions and orders of the respondents have to be premised on consideration of all relevant factors and cannot be based on either circumstances or occurrences which are very remote to the conclusions which are arrived at. Certainly, the impugned order cannot be premised on adverse entries which relate to more than 11 years ago while good entries of the recent past are ignored. Such conduct clearly suggests that an effort has been made to delve into remote past of an employee to get some kind of material in order to terminate the services of the employee. Such an effort was deprecated by the Supreme Court in the pronouncement reported at **(2000) 8 SCC 395 Badrinath Vs. Govt. of Tamil Nadu & Ors.** In this case, the Supreme Court relied on its

earlier judgment in **112 (2004) DLT 150 V.K. Issar Vs. UOI** wherein the court held as follows:-

“4. Too our mind, the approach of the respondents is totally contrary to the law laid down in *Badrinath v. Government of Tamil Nadu and Others* VII (2000) SLT 572 = (2000) 8 SCC 395. Relying upon the judgment of three Judges Bench in *Baikuntha Nath Das v. Chief District Medical Officer*, (1992) 2 SCC 299, the Supreme Court held that “(1) it would not be reasonable and just to consider adverse entries of remote past and to ignore good entries of recent past. If entries for a period of more than 10 years past are taken into account it would be an act of digging out past to get some material to make an order against the employee. (2) It was held that unless an adverse report is communicated and representation, if any, made by the employee is considered, it may not be acted upon to deny the promotion. The same consideration applies where the adverse entries are taken into account in retiring an employee prematurely from service.”

40. The petitioner urges that he was a member of the scheduled caste and had diligently and favourably served the CISF for 27 years.

41. The respondents do not even advert to the 45 cash rewards earned by the petitioner in his entire service career which also manifest that the petitioner was rendering satisfactory service in the counter affidavit.

42. In the instant case, the counter affidavit painstakingly has stated that the petitioner did not earn any “outstanding” ACR. This position may be factually correct. However, we find that in all fairness, the respondents were bound to have also pointed out that out of a total of 44 ACRs, the petitioner earned several ‘good’ and ‘very good’ ACRs and that only seven out of the 44 ACRs were ‘average’ while two remote ACRs contained adverse remarks.

43. The instant case in fact manifests the unfortunate stand which was taken by the authorities to defend and defeat a writ petition. The respondents were possessed of the entire record of service of a person who has served under them. We find that instead of taking a fair stand and placing both good and the bad points in a person's profile before the court, the respondents have painstakingly extracted all that is negative in the service record of the petitioner and placed only such negative information. A completely distorted picture of the profile of the employee is thereby made out.

44. Such pleadings, in our view, clearly tantamount to an attempt to deliberately mislead the court. To say the least, the same is not only unfair but is impropriety of the highest kind. An employer, especially when it is the State or a statutory authority, is expected to act with complete candour and is required to place not only the negative points in the service record of its employee but also all the positive aspects of the service progression of an employee. The purpose of this exercise is to enable the court to arrive at a just conclusion. The respondent cannot merely defend or shield its actions as an employer.

45. In view of the above, the impugned orders which place reliance on an entry which was more than 11 years before the termination of the petitioner's service, ignoring his good reports, cash rewards thereafter or during his service as well his promotions cannot be sustained. The petitioner has pointed out that 15 of the said cash rewards were earned by him while serving on deputation with the police service while 30 were earned when serving in CISF in different positions.

46. We, accordingly, hold that the impugned orders are based on no relevant material, arbitrary and are clearly in violation of the well settled principles noticed hereinabove.

The impugned orders dated 6th October, 2009 as well as the order dated 21/22nd May, 2009 are hereby set aside and quashed. The respondents shall forthwith reinstate the petitioner in service with all consequential benefits.

47. The petitioner shall be entitled to costs of the present litigation which are assessed at Rs.25,000/- which shall be paid with his salary immediately after his reinstatement or within six weeks, whichever is prior.

This writ petition is allowed in the above terms.

GITA MITTAL, J

J.R. MIDHA, J

March 23rd , 2011
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