

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2225 of 2005**

P.C.Chaturvedi, S/o Late Shri S.N. Chaturvedi, Assistant Conservator of Forest, Posted as Deputy Manager-Zila Union, North Sarguja, Ambikapur

---- **Petitioner**

Versus

The State of Madhya Pradesh through its Secretary in the Forest Department of Government of Madhya Pradesh, Vallabh Bhawan, Bhopal

---- **Respondent**

For Petitioner	:	Mr. Azad Siddiqui, Advocate
For State	:	Mr. Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

01.11.2017

Heard.

1. The petitioner, by this petition, has assailed correctness and validity of order dated 13.02.1998, by which, he has been compulsorily retired from service invoking provision contained in Rule 42 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short "the Rules of 1976").
2. The petitioner filed an original application before the State Administrative Tribunal at Bhopal. After abolition of the Tribunal, the case was transferred to this Court and registered as writ petition.
3. The facts necessary for adjudication of controversy involved in this petition are that the petitioner at the relevant time was substantively holding the post of Assistant Conservator of Forest under the State of Madhya Pradesh. He was sent on deputation to work as Deputy Manager in the district level union of laghuvanopaj sangh (लघुवनोपज संघ). While he was working as Deputy Manager, impugned order came to be passed against the petitioner, by which, he was compulsorily retired. According to the petitioner, throughout, he had an excellent service record and except for

the year 1996-97, he was never communicated any adverse entries.

4. Learned counsel for the petitioner argued that the power of compulsory retirement available under Rule 42 of the Rules of 1976 has been invoked for ulterior motive of penalizing the petitioner. He would submit that the petitioner's service record was throughout excellent though he had suffered an adverse entry for the period ending March 1997, in respect of which, he had submitted representation, which remained undecided. Two departmental enquiries were initiated against the petitioner at different point of time which were pending till the date of issuance of impugned order. The first departmental enquiry was instituted vide charge-sheet dated 28.04.1994 and the second departmental enquiry was instituted by issuance of another charge sheet on 06.06.97. It is submitted that one solitary adverse remark could not be made a basis to compulsorily retire the petitioner and if that is excluded, the only operative reason for compulsory retiring the petitioner, would be to get rid of the petitioner on certain allegation of misconduct which were subject matter of enquiry pending on the date of consideration of the petitioner's case. Relying upon the decision of the Hon'ble Supreme Court in the case of **Union of India V. M.E. Reddy and another, AIR 1980 SC 563** and in the case of **Swaran Singh Chand Vs. Punjab State Electricity Board and others, 2009 (13) SCC 758**, it is contended that the object of compulsory retirement after completion of minimum period of service and age is intended only in the best interest of the administration to weed out inefficient employees who have become deadwood and power cannot be used as a device to impose penalty on certain allegation of misconduct without proving the charges in the departmental enquiry. According to him, there is no other material on record to justify that the petitioner was a person of doubtful integrity, lost efficiency or had become a deadwood and therefore, desirable in public interest to compulsory retire him. The decision, it is argued, is stigmatic and suffers from malice in law as the power has been used for ulterior purpose and not for the purpose for which it was conferred on the authority.
5. Per contra, learned counsel for the State supported the decision by submitting that the power of the Government to compulsory retire a Government servant by invoking Rule 42 of the Rules of 1976 to compulsory retire a Government servant is not a punishment. He submits that while a Government servant has right to continue in service till he attains 50 years of age or 25 years of service but his continuation

thereafter is subject to he being efficient, dedicated and devoted to service. Learned State counsel had taken a policy decision to examine cases of such employees who had completed minimum period of service and completed prescribed age and for that purpose, a committee was constituted to scrutinize the record with reference to the criteria stated in circular (Annexure A/2). A committee of high official of the Government was constituted. The committee scrutinized the record of service of number of employees including the petitioner and on subjective satisfaction, it was found that the petitioner has become inefficient, dead wood and it would, therefore, be in public interest to compulsory retire. Learned State counsel would further submit that as far as the allegation that he has been punished for the allegation of misconduct is concerned, the impugned order of compulsory retirement does not contain any stigma that the petitioner was being punished for certain allegation of misconduct. He submits that the order is innocuous and does not contain any specific allegation against him but only reference to Rule 42 of the Rule of 1976 and nothing more. Moreover, it is submitted, the petitioner would be getting all the benefits which a retired Government servant receives. He would submit that undisputedly when the records of the petitioner were scrutinized, two departmental enquiries were pending against him and there was one adverse remark. Therefore, this would constitute not only relevant but sufficient material to form an opinion that the petitioner has become inefficient and dead wood and that his integrity may also be doubtful. Lastly, it is submitted that the policy also gave a right of representation and the representation of the petitioner was duly examined and rejected. Therefore, in the absence of there being any defect in the decision making process, the order of compulsory retirement may not warrant any interference by this Court.

6. Before advertng to the peculiar facts and circumstances of the present case, I consider it apposite to refer to some of the celebrated decision of the Hon'ble Supreme Court dealing with the aspect of compulsory retirement, object of such power of compulsory retirement, simpliciter, nature of action and the scope of judicial review which were noted by this Court in a recent decision in the case of **S.R. Upadhyaya Vs. State in WPS No.2488 of 2005, decided on 02.03.2017** as below :

“6.The object behind compulsory retirement of those government servants, who have outlived their utility and have become

deadwood was comprehensively dealt with in the case of **Baikunth Nath Das vs. Chief District Medical Officer, (1992) 2 SCC 299**. While explaining the legal position with regard to object of compulsory retirement and scope of judicial review in the case of **Madhya Pradesh State Cooperative Dairy Federation Limited** (supra), the decision in the case of **Baikunth Nath Das** (supra) was also taken into consideration. The decision subsequent thereto in the case of **State of Gujarat vs. Umedbhai M. Patel, (2001) 3 SCC 314** and **Pritam Singh vs. Union of India, (2005) 9 SCC 748** and many other decisions were referred to and relied upon which I deem it appropriate to reproduce hereinbelow:-

36. In Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another [(1992) 2 SCC 299], this Court held:

"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 [(2001) 3 SCC 314], 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 & Ors. [(2005) 9 SCC 748], this Court held:

"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.

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16. This Court in the case of Union of India v. G. Ganayutham, (1997) 7 SCC 463, 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."

42. The broad criteria, which are not only applicable generally for the aforementioned purpose, were required to be followed but there cannot be any doubt or dispute that the criteria laid down by the State was imperative in character. Thus, the Federation adopted the rules and circulars made or issued by the State Government. The Federation itself having formulated the criteria required to be applied for passing orders of compulsory retirement was, thus, bound thereby.

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 M/s. Pan American World Airways Inc.(1985) 2 SCC 727 at 730, para 8], or he has concealed his earlier record [See Jagdish Parsad v. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another (1986) 2 SCC 338 at 342-343, para 9]. 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, AIR 1967 SC 1260 at 1262].

46. In Allahabad Bank Officers' Association and Another v. Allahabad Bank and Others [(1996) 4 SCC 504], 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) 3 SCC 314]** 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 shortcut 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."

7. The two decisions which have been cited by learned counsel for the petitioner, one in the case of M.E. Reddy (supra), decided way back in the year 1979 by the Hon'ble Supreme Court and the other decision in the case of State of Gujarat and another Vs. Suryakant Chunilal Shah, 1999 (1) SCC 529, decided in the year 1998 have declared the settled legal position applicable in the case of compulsory retirement. In the case of M.E. Reddy (supra), their Lordships in the Supreme Court examined the object behind the Rule of compulsory retirement simpliciter as below :

"11. It seems to us that the main object of this Rule is to instil a spirit of dedication and dynamism in the working of the State Services so as to ensure purity and cleanliness in the administration which is the paramount need of the hour as the Services are one of the pillars of our great democracy. Any element or constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has outlived his utility has to be weeded out. Rule 16 (3) provides the methodology for achieving this object. We must, however, hasten to add that before the Central Government invokes the power under Rule 16 (3), it must take particular care that the rule is not used as a ruse for victimisation by getting rid of honest and unobliging officers in order to make way for incompetent favourites of the Government which is bound to lead to serious demoralisation in the Service and defeat the laudable object which the rule seeks to subserve. If any such case comes to the notice of the Government the officer responsible for advising the Government must be strictly dealt with. Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative and

inertia (sic) energieia) so that it is made poignant and piquant, specious and subtle so as to meet the expanding needs of the nation which require exploration of "fields and pastures now". Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of the administration.

12. An order of compulsory retirement on one hand causes no prejudice to the Government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the Services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the Service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country for every good cause claims its martyr.

13. These principles are clearly enunciated by a series of decisions of this Court starting from Shyam Lal's case (1955) 1 SCR 26 to Nigam's (1978) 1 SCR 521 which will be referred to hereafter.

14. In the case of [Shyam Lal v. The State](#) of Uttar Pradesh (1955) 1 SCR 26 this Court clearly held that compulsory retirement does not amount to removal or termination nor does it involve any stigma. In this connection, a Bench of 5 Hon'ble Judges of this Court observed as follows:-

"There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twenty five years' service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to [Article 465-A](#) make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity".

"The more important thing is to see whether by compulsory retirement the officer loses the benefit he has earned as he does by dismissal or removal. The answer is clearly in the negative. The second element or determining whether a termination of service amounts to dismissal or removal is, therefore, also absent in the case of termination of service brought about by compulsory retirement.

The foregoing discussion necessarily leads us to the conclusion that a compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of [Article 311](#) of the Constitution or of Rule 55".

15. The same principle was reiterated by another Bench of 5 Hon'ble Judges of this Court in the case of [Shivacharana Singh v. The State of Mysore](#), AIR 1965 SC 280. In this case, the Court was considering the scope of Rule 285 which was almost in the same terms as Rule 16 (3) and provided that a Government servant could

be retired, after completing qualifying service of 30 years or on attaining the age of 50 years if such retirement was considered in public interest. In this connection, the Court observed as follows:-

"It would thus be clear that though the normal age of retirement under R. 95 (a) is 55 years, under R. 285 it is competent to the Government to retire compulsorily a government servant prematurely if it is thought that such premature retirement is necessary in the public interest Mr. Venkataranga Iyengar contends that this Rule is invalid, because it contravenes [Art. 14](#) as well as [Art. 16 \(1\)](#) of the Constitution. In our opinion this contention can no longer be entertained, because it is concluded by a long series of decisions of this Court".

Even the constitutionality of the provisions concerned was upheld by this Court.

16. The leading case on the subject which has been decided some years before and has been consistently followed by latter decisions of this Court is the case of [Union of India v. Col. J. N. Sinha](#) (1971) 1 SCR 791. This Court was considering the scope and ambit of Rule 56 (j) which is also worded in the same terms as Rule 16 (3). Rule 56 (j) runs thus:-

"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 the age for the purpose of direct recruitment to which is below 35 years, after he has attained the age of 50 years.

(ii) In any other case after he has attained the age of 55 years.

Provided that nothing in this clause shall supply to a Government servant referred to in clause (e) who entered Government service on or before 23rd July 1966 and to a Government servant referred to in clause (f)".

After considering the various shades, aspects, purpose and object of such provision this Court observed as follows:-

"But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice".

"The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision..... Compulsory retirement involves no civil consequences. The aforementioned Rule 56 (j) is not intended for taking any penal action against the Government servants. That rule

merely embodies one of the facets of the pleasure doctrine embodied in [Article 310](#) of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest".

The observations made above clearly reveal the object of this rule and lay down that where an officer concerned is of doubtful integrity he can be compulsorily retired under this rule.

8. In the other case of **State of Gujarat and another Vs. Suryakant Chunilal Shah, 1999 (1) SCC 529**, also earlier decision were surveyed and following principles were propounded by the Hon'ble Supreme Court :

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

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

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

25. Purpose of adverse entries is primarily to forewarn the

Govt. servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the Govt. servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance.”

Keeping in forefront the aforesaid settled principal, I shall now examine the material on record.

9. The petitioner has categorically pleaded that his service record was excellent. However, from the pleadings of the parties and the documents which have been placed on record, following material is discerned (a) a departmental enquiry instituted by issuing charge-sheet on 28.04.94 (b) another departmental enquiry instituted vide charge-sheet on 06.06.97 (c) adverse remarks for the period ending 31st of March, 1997. The State in their reply have not come out as to how the case of the petitioner was considered. In the decisions which have been referred to above, the Hon'ble Supreme Court has clearly mandated that in order to come to the conclusion that a Government servant has outlived his utility and has become deadwood, entire service record would be required to be considered. Except performing the ritual of denial in the return, no material has been placed before the Court by the State to satisfy that the decision was taken after consideration of the entire service record and not confined to any stray matter here and there. The order-sheets of this case shows that at one point of time, this Court had noticed the State of Madhya Pradesh also requiring them to produce before the Court, relevant records and the material which formed basis for taking impugned decision. However, no material has been placed before this Court. The decision to compulsory retire Government servant would be susceptible to challenge and liable to be interfered with by this Court when it finds that the decision suffers from serious procedural impropriety. The respondents have failed to establish before this Court that entire service record of the petitioner was taken into consideration which is the first requirement of consideration of case for compulsory retirement under Rule 42 of the Pension Rules, 1976.
10. In the decisions which have been referred to above, it has been reiterated more than once that the object of compulsory retirement in public interest is to weed out those employees whose integrity has become doubtful, who have become inefficient, outlived their utility and became deadwood. That

is what has been held by the Supreme Court in series of decisions. It is on these considerations that it has become settled legal position that compulsory retirement in public interest is not punishment but a mere condition of service. Therefore, the power could be exercised only when upon consideration of entire service record, a bonafide opinion is formed regarding the employee having become a deadwood. If such a power is used for on extraneous consideration and with ulterior motive to otherwise get rid of employee because he has become a sore in the eyes of the officer, the exercise of power would be liable to be interfered with as being infected by malice in law. What was the deleterious effect of the so called adverse remark for the period ending 31st of March, 1997 has not been stated anywhere in the return nor reflected from any records attached along with the return. In any case, the solitary adverse remark may pale into insignificance if it is preceded and succeeded by better remarks. The respondents have failed to establish that not only remarks ending March, 1997 but previous remarks of the recent past reflected that the petitioner has outlived his utility, has become deadwood, inefficient or that there are discreet materials to form a bonafide material regarding petitioner's integrity. The decisions which have been referred to above, emphasize that while considering individual cases, the entire records are required to be scrutinized though with more advertence to the record of recent past. The respondents have failed to demonstrate before this Court that the decision was taken in this manner by specific reference to various annual confidential report entries in the case of the petitioner.

11. An adverse inference should be drawn on account of non-production of record as also failure to explain non-production, that the only operative reason for compulsory retirement of the petitioner were the allegation of misconduct and departmental enquiry against the petitioner. Therefore, the impugned order of compulsory retirement of the petitioner, upon lifting the veil, emerges to be punitive in nature and no simpliciter.
12. Learned State counsel stressed upon the fact that those two departmental enquiries continued even after compulsory retirement of the petitioner and in one enquiry, the charges were found proved and penalty of punishment was imposed whereas other enquiry was closed taking into consideration that the petitioner has been compulsory retired. The decision taken by the department, apart from its legality, it cannot be allowed to be relied upon to

support the decision taken much prior to these orders of punishment. The exercise of power of compulsory retirement being statutory in nature, the validity will have to be judged on the basis of reasons assigned in the order impugned and the material in support of such decision existing on the date of passing of the order and not on the basis of orders which were passed later on. This Court can only observe that the penalty orders were passed without involving any pecuniary loss caused to the Government which alone could be a ground to continue an enquiry that too under Rule 9 of the Pension Rules of 1976, after the retirement of the petitioner, that being a settled legal position.

13. As an upshot of the above discussion, this Court has no hesitation to hold that the impugned order of compulsory retirement was punitive in nature and the power was exercised for ulterior motive and on extraneous consideration. The impugned order, therefore, has to be set aside and is accordingly set aside. The petitioner having attained the age of superannuation during the pendency of this petition, he having already received retiral dues and getting pension ever since 1998 i.e. for the last 19 years, this Court is inclined to direct that the salary which would have been payable to the petitioner had he continued in service, shall be paid to him after adjusting the monthly pension received by him after his compulsory retirement till the date he attained the age of superannuation.

14. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge