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

% **Date of decision: 28.08.2019**

+ **W.P.(C) 9339/2019 AND CM APPL. 38521/2019 & 38522/2019**

SHRI ASHOK KUMAR AGGARWAL Petitioner

Through Mr. Vikas Singh, Sr. Advocate with
Mr. Raktim Gogoi, Mr. Varun
Singh, Mr. Kartikeya Singh,
Mr. Sarvasa Chhajer, Mr. Ashutosh
Dubey and Mr. S.K. Gupta, Advs.

versus

UNION OF INDIA AND ORS. Respondents

Through Ms. Maninder Acharya, ASG with
Mr. Ravi Prakash, CGSC, Mr. Zoheb
Hossain, Mr. Shahanulla, Mr. Vivek
Gurnani and Mr. Harshal
Chowdhary, Advs.

CORAM:
HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

A.K. CHAWLA, J.

By the instant petition preferred under Article 226 of the Constitution of India, the petitioner has made two fold prayers. By the

first prayer, the petitioner seeks quashing of the order dated 10.06.2019 passed by the respondents in exercise of the powers conferred by clause (j) of Rule 56 of the Fundamental Rules, whereby, he has been retired from service with immediate effect from the afternoon of 11.06.2019 on completing 50 years of age. The other prayer is to seek damages to the tune of Rupees One Crore towards the alleged violation of his fundamental rights, harassment, mental agony, damage to the social reputation etc.

2. At the onset, Ms. Acharya, Id. Addl. Solicitor General has raised the objection of maintainability of the writ petition inasmuch as the petitioner assails the order dated 10.06.2019, whereby, he has come to be retired in exercise of powers conferred in the President by clause (j) of Rule 56 of the Fundamental Rules.

3. As far as prayer (i) of the writ petition is concerned, the petitioner being an IRS Officer, any challenge extended to the order dated 10.06.2019 - whereby, he was compulsorily retired, being a subject pertaining to his service, squarely falls within the domain of Central Administrative Tribunal. Mr. Vikas Singh, Id. Senior Counsel, does not dispute. In his submissions however, the instant writ petition deserves to be entertained in exercise of the extraordinary jurisdiction of the High Court invoking Article 226 of the Constitution of India. In support of such submissions, he strenuously contends that there were proven facts on record to show that for over the years the respondents had acted against him with malice, though, he have had an outstanding track record from the time he came to be appointed as an Officer of Indian Revenue Service, in

December, 1985. According to him, during the course of his such service, on his being appointed as Dy. Director of Enforcement (Delhi Zone) in November, 1996, he had supervised the investigations of sensitive cases involving top politicians, highly influential bureaucrats and businessmen alike, and, on account of deep rooted conspiracy, he was falsely implicated in a CBI case being RC No. S-18/E00011999. As a consequence, a departmental inquiry is also said to have been initiated against him. Diverse litigations ensued thereon and it is the contention of Mr. Vikas Singh, Id. Senior Counsel that any of the actions initiated against the petitioner by the respondents were depreciated by the High Court and the Supreme Court in the strongest words and thereby, it was well proven on record that any of the actions including the issuance of the impugned order dated 10.06.2019, which, according to the petitioner, was a stigmatic compulsory retirement, was an act of malice and thus, malafide. In that regard, Mr. Singh, Id. Senior Counsel for the petitioner has taken the court to the various observations made by the High Court as also the Supreme Court to contend that the observations made in the diverse judgments of the courts leave no doubt that the acts of the respondents were whimsical, malicious and utterly violative of his fundamental rights. In his submissions therefore, the claim of damages made by the petitioner was maintainable. Consequentially, in his submissions, the petitioner was within his right to assail the order dated 10.06.2019 passed under Section 56(f) of the Fundamental Rules alongwith the claim of damages on account of harassment, mental agony etc. In support of such submissions, Mr. Singh, Id. Senior Counsel places reliance upon ***Brij Mohan vs. Central Administrative Tribunal, New***

Delhi & Ors. 2003 SCC OnLine All 230 and ***A.S. Bhatti vs. Union of India, Ministry of Home Affairs (represented by its Secretary for Home), New Delhi & Ors.*** 1992 SCC OnLine AP 208.

4. During the course of hearing, Mr. Singh, Id. Senior Counsel was queried as to whether the petitioner would desire to maintain the writ petition only as regards the relief of damages prayed for, and, to that, Mr. Singh, categorically responded in the negative. In his submissions, the petition for the claim of damages was maintainable, and, therefore, joining of another cause of action did not suffer from any infirmity.

5. Constitution does not place any fetter on the exercise of extraordinary jurisdiction of the High Court as enshrined under Article 226 and it is left to the discretion of the High Court to exercise such jurisdiction and the power, as and when a situation so warrants. Exercise of such jurisdiction is thus discretionary. Suffice it would be to say, it is exercised to enforce the rule of law. Seen in that context, does the subject matter invite invocation of the extraordinary jurisdiction by this court, when, for both the reliefs prayed for, alternative remedies under law are available to the petitioner, gets the moot question to ponder upon. More so, when the petitioner insists to maintain the petition in toto and is not prepared to sever one relief from the other.

6. Without advertng to the serious adverse observations made by the courts against the various actions taken by the respondents against the petitioner, last of which is of 13.01.2016, when, the Division Bench of this court decided WP(Crl.) 1401/2002 Ashok Kumar Aggarwal vs. CBI

& Ors. etc. and quashed the sanction orders dated 21.06.2002 and 26.11.2002 and the ensuing criminal proceedings etc. against the petitioner, pertinently and, in effect, the instant petition is the outcome of the impugned order dated 10.06.2019 passed under Section 56(j) of the Fundamental Rules. Challenge to this order, undisputedly, lies before Central Administrative Tribunal. In other words, to assail such order, a statutory remedy is available to the petitioner. Similarly, for any claim of damages, a civil action by way of suit is available to the petitioner under Section 9 of the Code of Civil Procedure. In the given situation, when alternative remedies under law are available to the petitioner for both the reliefs, what is so extraordinary in the claim for damages to maintain the instant petition and thereby, attract challenge to the orders passed under Rule 56(j) of Fundamental Rules, cannot be understood. More so, when, nothing has come to be pointed out that the order passed under Rule 56(j) was so patently erroneous or perverse, which invites interference by this court. Needless to say, the order passed under Rule 56(j) of Fundamental Rules cannot be adjudicated on the premise of inferences. In view of the foregoing, because the writ jurisdiction is unfettered, it does not invest a legal right in anyone to maintain it for all purposes. None of the judgments relied upon by the ld. Senior Counsel for the petitioner are of any avail to the petitioner. **Brij Mohan's** case (supra) was a case where the Division Bench of the Allahabad High Court had entertained the writ petition against a verbal order passed by the Registrar, Central Administrative Tribunal, Allahabad. In other words, in that case, the writ petition came to be entertained by the High Court against a proceeding filed/maintained before Central Administrative Tribunal. In **A.S. Bhatti's**

case (supra), a Single Judge of Allahabad High Court did entertain a writ petition directly against an order passed under Rule 56(j) of Fundamental Rules in the given facts and circumstances of that case. Judgment in **A.S. Bhatti's** case, which relates to the case of a Asstt. Commandant, CISF however does not persuade me to apply the same principle in the case of the petitioner as a binding precedent.

7. For the foregoing reasons, the writ petition is dismissed being not maintainable.

A.K. CHAWLA, J.

AUGUST 28, 2019

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