

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

Reserved on: 08.03.2018

Pronounced on: 07.01.2019

+ **W.P.(C) 2735/2010, C.M. APPL.14149/2010, 5262/2011, 9937/2011, 10949/2012, 16523/2014, 20934/2015, 20936/2015, 22538/2015, 41873/2017, 41874/2017 & 45165/2017**

UNION OF INDIA AND ANR.

.....Petitioners

Through: Sh. P.S. Patwalia, Sr. Advocate with Sh. Sudhir Walia, Sh. Ajay Digpaul and Sh. Archit Upadhyaya, Advocates.

Versus

NISHA PRIYA BHATIA

.....Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT

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1. This judgment will dispose of a challenge to the order of the Central Administrative Tribunal (CAT), allowing an application by the applicant, Ms. Nisha Priya Bhatia (hereafter referred to as “the applicant”, “the officer” or “Ms. Bhatia” as the case may be) and quashing an order dated 18.12.2009. By that order, the Central Government voluntarily retired her by invoking Rule 135 of the Research and Analysis Wing (Recruitment Cadre and Services) Rules, 1975 (hereafter “the 1975 Rules”).

2. The officer was recruited in 1987 and deployed to the Research and Analysis Wing, (R&AW) a unit under the Cabinet Secretariat that deals with sensitive and highly classified issues concerning the national security. The petitioner (hereafter “Union” or “UOI”) explains that officers and employees of R&AW are expected to maintain a heightened sense of discipline as compared with other public employees who are not privy to secret and sensitive information concerning national security. It also highlights that after the 50th Amendment to the Indian Constitution and pursuant to Article 33, the Intelligence Organizations (Restriction of Rights) Act, 1985 was enacted that prohibited members of intelligence organizations from associating in any manner with political associations, trade union or public etc. It is further explained that the restrictions have assumed critical importance in view of the developments in and around the country and the organization has given special significance to insulate its personnel from the media because of potential irreparable damage to national security needs of the country.

3. The officer joined in 1987 as a directly recruited employee. After completion of initial training, she served in various capacities in organizations, including special assignment lasting till August 2003. In July 2004, she was posted and joined as Director, Training Institute, Gurgaon. She continued to be posted there till 2007. It is stated that thereafter, she requested for some specific postings in the organization and starting filing complaints against senior officers. It is stated that the officer continued to send abusive, vulgar and threatening messages (SMSs) repeatedly and also misbehaved with junior staff and their family members who were residing in

the campus of the Gurgaon training institute. In this background, she appears to have complained against sexual harassment by one Sh. Sunil Uke, Joint Secretary, her immediate superior. The concerned department-initiated enquiry by constituting a complaints committee in accordance with the then prevailing guidelines in the judgment in *Visakha v. Union of India* 1997 (6) SCC 241. One Ms. Shashi Prabha, a female officer in the department was nominated as Chairperson. Eventually, after a series of incidents, the UOI invoked its power under Rule 135 of the 1975 Rules. This became subject matter of challenge before the Central Administrative Tribunal, which quashed and set aside that order of compulsory retirement.

4. The order of compulsory retirement, under Rule 135, was impugned before CAT, in OA 50/2010 (“the application”). By its order dated 16.03.2010 the tribunal allowed the application and directed the officer’s reinstatement. The CAT’s findings, *inter alia*, are as follows:

“15. We had gone through the materials that had been placed by the parties. After hearing them, we are of the confirmed opinion that the applicant has been treated with a large doze of arbitrariness and her statutory as well as constitutional rights stand violated. Resort to Rule 135 (1)(a) could not have been supported. Resultantly, we are of the view that the applicant is entitled to the reliefs as might be admissible, namely, reinstatement. We may give below our reasons for coming to the said conclusion.”

16. The Research and Analysis Wing indeed is a specialized organization. An extraordinary amount of discipline is expected and required to be maintained by the inmates of the organization taking note of the nature of the multifarious pursuits and activities that might have been within their exclusive purview, especially pertaining to the security of the

Nation. However, the rigidity and outlook should not be static for all time to come. It is expected that they update their approach in tune with change in times. The Right to Information Act has percolated to every nook and corner of Governmental activities now. It may be difficult to accept now a proposition that rigid secrecy should be there shrouded in all the matters and transactions pertaining to the special service. For instance, it is possible to assume from materials produced here that anonymity of personnel of R&AW is more a myth than reality. Documents have been provided by the applicant, being excerpts and newspaper clippings, giving details of its officers. We may even take notice of an article published in a widely circulated English Weekly, The Week, dated 07.03.2010. It is captioned as Raw Deal rather pregnant with meaning. Two paragraphs from the article could be extracted below:

“The discontent started brewing when A.B. Mathur, a 1975-batch IPS officer from the Intelligence Bureau, was inducted into the agency on deputation and promoted as special secretary on August 6, 2009, superseding six additional secretaries P.N. Heblikar, C.K. Sinha, B.G. Rawal, A.K. Arni (1973 batch), and Sharad Kumar and Ashok Kapoor (1975 batch). Sources say the appointment committee of the Cabinet Secretariat promoted Mathur on the presumption that all senior officers had been promoted.....”

“Dissatisfaction among officers on promotions has always been an issue in secret service agencies. The most recent being K.C. Verma’s appointment as secretary after Ashok Chaturvedi retired in January 2009, even as three officers - P.V. Kumar (1971 batch direct recruit), Rana Bannerjee (1970 batch IAS officer) and S.K. Tripathi (1971 batch IPS officer) were in the queue.”

17. It cannot at all be the case of the respondents that all of them are likely to be disassociated from the R&AW for this

reason. The more acceptable version indeed comes from the pleadings in the OA, namely, that after about 10 to 12 years of assignments, around the world, any persons Indian or foreigner interested in the intelligence work come to know who is who, if they are worth their salt. Therefore, a summary discharge on such an empty plea really amounts to self denial. The provision may be remaining in the statute book rather as a relic of outdated theories.

18. The applicant is also justified in pointing out that the Right to Information Act has brought a sea change of the scene. Only such matters which are specifically classified are matters not to be disclosed on queries. Every other details, including the method of functioning of the Government, are required to be let known to public, if application forth comes. We are surprised to notice that the applicant was required to keep to herself the text of the Rule (Rule 135) when it had been supplied to her. This is the basic rule, which, according to the respondents, empowered them to take action against her. This is far too difficult to be countenanced. Transparency should have been there in respect of all other details as well as inputs, which led the competent authority to come to a decision that the applicant had to be separated from the organization. The discussions as above lead us to an assumption that the treatment meted out was arbitrary. Further, the expressions in the rule are loosely worded. `For reasons of Security is beyond definition, rather tricky, and capable of being put to surreptitious use.

19. Of course, in the counter reply filed, ancillary and supplemental circumstances which had prompted the competent authority to come to a decision for compulsorily retiring the applicant has been stated. But we find that it lacks conviction especially with reference to their chronological sequences. We are constrained to advert to a fact, which might be highly relevant in this context. As referred to earlier, the applicant had occasion to file applications before different fora. One such petition is OA 2687/2008. MA 1089/2009 had come to be

filed by the applicant in the said OA challenging her new posting, on the ground that she is shifted to a cadre inferior to the executive cadre to which she actually belongs. While disposing of an interlocutory application (MA 1089/2009), on 26.11.2009, the submission of the learned counsel for the respondents was specifically noticed that there was no move to change the cadre of the applicant (on a regular basis). Reference had been made by the Bench at that time to the specific admission made in paragraph 4 of the affidavit on record. The Bench at that time had further observed (Paragraph 3 of the order) as following:

The learned counsel has further stated that the Respondents would consider re-posting the Applicant back to the Executive Cadre after six months when the tempers have cooled down.”

Therefore, the MA filed was disposed of, the Bench observing as following:

“..we are of the view that there is no need for us to interfere in the posting of the Applicant made by the Competent Authority.”

But the impugned order has been issued a few days thereafter, namely, on 18.12.2009. It must be noticed that there was hardly time for making deliberations for coming to a conclusion that the applicant became unsuitable to continue in the organization. Even while making the submission before the Bench in MA 1089/2009, the incident as about the applicant exposing herself, during the year 2008-09, was very much there in the knowledge of the respondent. As on the hearing date at least there was no intention to retire her if we go by the submissions made before the Tribunal. But after making a concession before the judicial forum that appropriate posting will be given after few months, it cannot be recognized as in good taste to determine that

she was fit only to go for a compulsory retirement. No reference to any fresh materials which had cropped up between the brief period viz the date of the order of this Tribunal in MA 1089/2009 and the date when she was axed is given. This, we feel, will be a very crucial circumstance which cannot but be noticed about the working of the mind of the decision makers. The unceremonious manner in which the order was served on the applicant speaks for itself. It could never have been a bona fide decision as is attempted to be made out for securing the ends for which it has been avowedly made.

The respondent has not effectively met the contention of the applicant that it was not a bona fide exercise of power, to issue Annexure A-1. If that be so, it is arbitrariness personified, and for that reason it infringes the rights of the applicant envisaged under Part III of the Constitution of India.

20. Laws inconsistent with or in derogation of the fundamental rights are looked down upon by Article 13.

May be the impugned order has been issued by the Executive Head of the State. But Rule 135 (1)(a) of the R&AW (Recruitment, Cadre & Service) Rule is too loosely worded. Even if we give a margin and take note the background of the legislation, arbitrariness in exercising powers under the rules cannot be ruled out.

In spite of opportunity to defend, the Respondents have not come up with any definite or convincing reason for the turn of events as they appear. The Prime Minister obviously might have been acting on the basis of the reports presented before him. But it could have been only one sided, and reports have been prepared by persons who are not friendly with the applicant.

Opportunity for hearing any other version has been virtually denied. In this context, the too short interval as between the date of the order of the Tribunal, referred to earlier and the date of the impugned proceedings becomes significant. Nothing has been stated as to why

resort to Article 311 (c) has not been resorted to. If that was the case, the competent authority to pass an order would have been the President of India and none else. As a civil servant the applicant was entitled to the protection of Article 311 of the Constitution of India. This is because shortcomings of the applicant are shown as a reason for issuing the impugned order. A subsidiary rule, we feel, is insufficient to annihilate the guaranteed rights as are available to an officer, who had put in considerable years of service. As we have found that the applicant has been denied protection of law, which is a fundamental right under Article 14 of the Constitution, it may not be necessary for us to further deliberate on the constitutionality of Rule 135 (1)(a) of the R&AW (RCS) Rules or declare that the rule invoked is void, since it operates to contravene clause (2) of Article 311.

21. We are also of the view that in case the applicant had acted in an indisciplined manner, it would have been proper to invoke the conduct rules (CCS (CCA) Rules) for taking action against her. Merely because in matters of pension, a person who is eased out by invoking Rule 135 (1)(a) of the R&AW (Recruitment, Cadre & Service) Rules, comes to be given a fair deal, it can be of no real or lasting solace to him. As pointed out by the applicant, the stigma would have hurt and pinned her down for the rest of her life. Even if it may be possible to contend that technically the officer is not discharged for unsuitability, the impact the order that would have made on her practical life could well be imagined. The respondents have in effect snapped her right to life, again guaranteed by Article 21 of the Constitution.

22. Fundamental rights are too precious for a person to lose and law is clear that even on his consent, the rights cannot be permitted to be surrendered. State is not, therefore, empowered to deny it on a plea that it may affect the security of the State, of course, unless

specifically authorized by constitutional prescription. The circumstances highlighted by respondents for issuing Annexure A-1 order are hardly convincing. As we had referred to earlier, there is no casual connection with the mere exposure of identity of an officer and the security of the State as such. The international intercourse may be complex. By experience gained, code of conduct and norms should have been prescribed, discreet methods were required to be developed. Unaudited funds may be available for facilitating functioning of specialized organizations. It is to be ensured that they are put to appropriate use. In the present day world shift from information scarcity to surfeit has brought about changes in outlook all round. The technological advancement has been leading to information explosion. It is said that the decoding of human genome required collecting data relating to three billion base pairs, which work had taken about twelve years in the last decade, but now it could be done within less than a week. It is only an example. There can be nothing gained, by asking the officers of R&AW to keep to their shells. If espionage is a must, it needs to be carried out on the advice of the best brains. It could almost be reassured that the bio data of R&AW personnel lock, stock and barrel already would be with persons who need them. The Government like an ostrich is not expected to bury its head in sand and be complacent. Adversaries are to be met at their levels, and one may feel that the behavioral mechanism as of now is rather childish. There is already justifiable criticism in the air, that even democracies, globally, have abandoned or at least pushed back priorities in matters of human rights and are contended to highlight the subject only on occasional speeches or deliberations in conferences, where nothing happens. There has developed personnel contradiction between recognizing human rights and foreign policies of the State. But so long as we are expected to uphold constitutional rights of

an individual, we cannot be silent witness to at least such unpalatable happening brought to our notice. The right to life, and all fundamental rights requires to be zealously guarded and such rights of a citizen should not be permitted to be crushed by the onslaught of the State machinery. The administrative law is a part of public law. Every one is bound by the Constitution. Judicial review of the administrative action necessarily has to be rested on the totality of the situations presented with special reference to guaranteed and undeniable rights conferred on a civil servant.

23. *Indeed, we are not unmindful of the dictum of the Hon'ble Supreme Court, gatherable from LIC of India Vs. Escorts Ltd. (1986 (1) SCC 264). While construing statutes enacted in the National interest only the broad factual situations require to be emphasized in an effort to advance National interest proposed by the legislation. We find that this situation itself cannot authorize the Government to do away with the basic, statutory and constitutional rights of an individual, his dignity or sense of belonging to the society. We hold that even within the framework of the provision, which we consciously keep undisturbed, the applicant could not have been prejudiced as have been attempted. Indeed we found that the applicant, perhaps because of her family background, education and exposure was conducting herself very well in the Court, and normally would have been an asset to the organization. We, of course, feel that the alleged escapades of her superiors should not have bothered her unduly as she was well capable of looking after herself, as is evident, ignoring any such overtures with distain. We refrain from sermonizing. However, it is plain that respondents have resorted to use the weapon of the statute, which was exclusive to their armoury. This was unfair.*

24. *We, therefore, quash Annexure A-1 and direct that*

the applicant should be restored to her status as was existing on 17.12.2009. Follow up orders are to be issued within six weeks from today. The applicant will be entitled to consequential benefits of reinstatement with salary. However, she will have to remit back the compensation she might have received (if any) as might have been paid because of the working of Annexure A-1.”

Contentions and arguments by the Union

5. Mr. Patwalia, arguing for the UOI submitted that the applicant refused to cooperate with the sexual harassment committee, and withdrew her complaint in writing on 24.12.2017. Despite this, in the larger interest of justice, the Committee was requested to complete its proceedings and submit the report. It is alleged that the complaints committee report stated that the applicant had threatened to take her life and her allegations appear to indicate a disturbed state of mind.

6. The UOI then relies on what it terms the officers’ conduct to be “*indulging in erratic behaviour and indisciplined conduct*” – listed in para 24 of its petition, detailing messages from her mobile phone number, to the Joint Secretary and the Secretary’s office; uploading SMS to another Joint Secretary in the organization; and issuing a letter of 01.11.2007 announcing her resignation and a series of SMSs to the Additional Secretary and in November 2007 apologizing to him. It is also alleged that when the complaints committee was examining her case on 20.12.2007, the officer alleged that she would disrobe and stand naked in front of the official residence of Secretary on 20.12.2007. The Central Government alleges that in breach of the provisions of the Section 3(1)(c) of the Intelligence Organization (Restrictions of Rights) Act, 1985, she regularly interacted

with the media and even passed some secret confidential documents presumably relating to her case to one reporter of Indian Express on 15.07.2009 in violation of the Rules. The Union states that in the light of all these behavior, it sought the expert advice of one Dr. Rajat Ray, who wrote to it stating that his initial observation suggested presence of a psychiatric illness.

7. Mr. Patwalia argued that the incident whereby applicant attempted to commit suicide in front of the Prime Minister's residence on 19.08.2008 by consuming poison attracted electronic and print media and the incident was reported in the media. This exposed and compromised her as an intelligence officer. Accordingly, the UOI registered a criminal case [FIR 151 dated 19.08.2008 under Section 309 IPC] for an attempted suicide. She was rushed to Ram Manohar Lohia Hospital from where she subsequently absconded. It is stated that the PM's office had to issue a press release on 19.08.2008 according to procedure through the PIB. It is stated that the official deliberately exposed herself in the print and electronic media is clear on 27.07.2009 she came out of a court room and started abusing and showing and tearing off her clothes. She was taken away by security personnel. It is also alleged that on 17.04.2009, she crossed all limits by openly abusing all superior officers in the most vulgar and threatening language. Again on 26.11.2009, she continued her abusive tirade against the officers present in the court room in the CAT and tried to commit suicide by attempting to jump from the second floor.

8. It is submitted that keeping all these incidents in mind, the Central Government was actively considering – from the period September 2008 to December 2009, i.e. for more than one year, the proposal to compulsorily

retire her by invoking Rule 135. Eventually, the order of 18.12.2009 was issued.

9. It was argued that Rule 135 was specially designed to cater to the needs of the R&AW, keeping in mind its sensitive and security related activities. This organization deals with issues of National Security and its employees have to observe a very high sense of discipline and confidentiality, (unlike other Government employees, who are not privy to secret and sensitive information pertaining to the security of the State). Article 33 of the Constitution of India was amended by 50th Amendment and Parliament enacted *The Intelligence Organisations (Restriction of Rights) Act, 1985*, which prohibited the members of intelligence organisations from associating in any way with any Trade Union, Political Association, and from communicating with the Press or publishing any book or letter etc. The Act further prohibits members of an Intelligence Organization to contact or communicate with any person on any matter relating to functioning, structure, personnel or organizational affairs of the organization except for the purpose of official duty. It is also argued that the rule has significance to insulate R&AW personnel from media as any exposure can cause irreparable damage impacting the National Security and the officials who are employed in the organization and are discharging their duties on sensitive places. In case the identity of any official of the organization is exposed as an Intelligence Officer, or he/she becomes unemployable for the agency for reasons of security. To meet such a situation, there is 'exit policy' which has been incorporated under Rule 135. It is also submitted that under Rule 135, the Officer is granted 'pension based on emoluments, which the officer would have drawn, had he remained

in service till the age of superannuation and also earned promotions other than promotions by selection. The Officer is also entitled to emoluments which he would have drawn in the grade at the time of his retirement. It is important to mention that in case an officer retires on superannuation or on voluntary retirement, emoluments of that Officer are not built up for purposes of pension which is calculated on the basis of pay drawn and length of service on the date of retirement. The scheme of Rule 135 further provides that a compulsory retired Officer may also be paid resettlement grant equivalent to 12 times the monthly pay drawn by him immediately before his compulsory retirement, this benefit is not payable to other officers who retired on the age of superannuation. The Head of the organization may permit the officer to exchange the entire pension due to him for a lump sum amount which shall be equal to the commuted value of that amount admissible to a person retiring on attaining the age of superannuation. Even this benefit is not available to other employees.

10. It is argued further that under the scheme of Rule 135 the officer does not lose any of the benefits earned till the date of his compulsory retirement. It is therefore respectfully submitted that compulsory retirement under Rule 135 is not a punishment, but a means to meet a situation where an officer cannot be allowed to function in the organization for the reasons of the security of the State, or because his identity stands exposed as an officer of the Intelligence organization and therefore he becomes unemployable. It does not involve any penal consequences in as much as the officer is entitled to pension proportionate to the period of service standing to his credit.

11. Mr. Patwalia argued that Ms. Bhatia desirous of "specific posting" in the organization, had filed complaints of sexual harassment against her Jt.

Secretary and Secretary (R) of the Cabinet Secretariat, which were independently inquired into by two different committees constituted by the Government of India - (a) Shashi Prabha Committee, which inquired into the allegations made against Shri Sunil Uke (Jt. Secretary) and submitted its report on 19.05.2008. As per the report, there was lack of evidence to support the complaint and the complainant had refused to appear before the Committee despite several opportunities and (b) Rathi Vinay Jha Committee, which inquired into the allegations made against Shri Ashok Chaturvedi [Secretary (R)] and submitted its report on 23.01.2009. As per the report, on the basis of the documents and the depositions of the witnesses, the Committee found no evidence of sexual harassment as prevalent in R&AW. These two reports were placed before the Disciplinary Authority, Government of India, which approved them, and opined that there is not enough evidence to act against Shri Ashok Chaturvedi and Shri Sunil Uke and no further action is required to be taken against these two officers. In these circumstances, the applicant, in total breach of the provisions of Section 3(1)(c) of the Act of 1985, regularly interacted with the media and even passed some secret/confidential documents (presumably pertaining to her case) to Ms. Ritu Sarin of The Indian Express on 15.07.2008. She was also interacting with the Electronic and Print Media thereby disclosing her identity and position in the organization. In order to attract the attention of the media, the applicant attempted to commit suicide in front of Prime Minister's Office on 19.08.2008 by consuming rat poison, when she was not granted permission to meet the Prime Minister. This incident was widely covered by the Print and Electronic Media not only in India but also in Pakistan, Dubai and other countries and also on the internet. She also gave

interviews to CNN-IBN, Star News, Times Now, NDTV and IBN7. This incident exposed the identity of the applicant as an Officer of Intelligence organization (R&AW), besides disclosing other confidential transfer orders. Apparently, the PMO informed the Police and an FIR NO.151/2008 dated 19.08.2008 under Section 309 IPC was registered at PS Parliament Street, New Delhi. The applicant was rushed to Ram Manohar Lohia Hospital from where she absconded. According to information, the applicant was been acquitted in this case for lack of evidence and as per the report of the FSL regarding the substance consumed by her not being poison. In view of the wide publicity of this incident, the PMO had to issue a *"Press Note - Fact sheet on Suicide Attempt by Ms. Nisha Priya Bhatia"*. Later, on 17.04.2009, the applicant went to the room of Jt. Secretary (Trg.), abused and threatened him and also started tearing/ removing her clothes in the presence of the staff of the Training Institute. She repeated the same thing on 27.07.2009, when she came out of the Court room in the Supreme Court of India and started shouting, abusing and removed her clothes in the corridor, when she was immediately removed by the security staff. This incident was widely reported in the print media, again disclosing her identity as an officer of the Intelligence organization (R&AW). She again repeated the same thing in the Central Administrative Tribunal by removing her clothes and attempted to jump from the second floor, when she was prevented by the lawyers. Even this incident was covered in the print media giving the details of the applicant. That in view of the chain of events, a proposal to compulsory retire the applicant was under consideration with the Government from September, 2008 to December, 2009, during which period every aspect of the case was examined *"at the highest level in the Cabinet Secretariat"* and

after due deliberation and on subjective satisfaction of the appointing authority, an order under Rule 135 was passed by the Prime Minister of India on 18.12.2009.

12. It was argued by Mr. Patwalia that the applicant had sent abusive and bizarre SMSes (short message service texts) which harassed the Joint Secretary and the Additional Secretary. Her conduct in threatening to strip naked in front of her superior officers, of attempting suicide in front of the Prime Minister's Office (PMO) and further abnormal conduct in attempting to commit suicide by jumping from the CAT building, rendered her service in the R&AW untenable. It was submitted that the expression "expose" was not confined to exposure by the official, but also indulging in conduct that attracted unwanted media attention and coverage. As employees of R&AW, its officers had to display not only sacrifice and sensitivity about the information entrusted to them, but hold themselves out in the best interests of the organizations. This meant avoiding any controversy or staying away from potential public attention. In the applicant's case, her repeated outbursts, attempts to strip naked in public places and attempt to commit suicide meant that her continuance in R&AW was likely to endanger other officers.

13. It was argued that the applicant's complaint was made on 07.08.2017. Soon thereafter, Shashi Prabha Committee was constituted in September-October 2007. Initially, its composition was not in compliance with *Visakha* guidelines; however, another lady was appointed as member in April 2008. In the meanwhile, it appears that the applicant withdrew the complaint on 24.12.2007. The sexual harassment committee however did not close the matter but went into the merits of the controversy. The applicant, despite

being given sufficient opportunities to join the proceedings, did not do so. The Committee, faced with this constraint, noted that it could not consider the allegations against Sh. Chaturvedi. Learned counsel relied upon the extracts of the Committee's recommendations on 19.05.2008. It was next submitted that the independent enquiry by Sh. Chaturvedi was undertaken on 23.01.2009. The first recommendation of the Central Government, that the applicant should be retired under rule 135 was made on 22.09.2008; the second recommendation, having regard to her intervening conduct was made on 11.05.2008. In these circumstances, after a detailed note was elicited, the Cabinet Secretary wrote an elaborate letter outlining all the facts on 13.05.2009. Similarly, another detailed note containing the relevant recommendations and the options that were available with the Central Government were made. Finally, on 18.12.2009, the impugned order under rule 135 was made.

14. It is argued that the proposal to invoke Rule 135 against the applicant, was in consideration with the UOI from September 2008 to December, 2009, i.e for more than one year. In this duration of time, every aspect of the case was examined and re-examined; the authorities even explored alternatives to the option of invoking Rule 135. In fact, the concern shown by the PMO and the other high officials was to try avoid the impact of invocation of Rule 135. All materials including the relevant facts, which occurred between September 2008 and December 2009 were considered. These materials were not only facts in the form of press reports and account of the applicant's behavior, but also the SMS texts. Counsel relied on the file noting of the UOI in this regard.

15. The Union asserts that the validity or the *vires* of Rule 135 was never challenged before the CAT; since liberty was granted however to challenge before the Supreme Court, which directed this Court to consider it, it is urged that this debate has become necessary. It was argued that Rule 135 cannot be challenged by the present applicant as a secret provision. This was made known to her at the earliest opportunity when she joined the R&AW. Therefore, the argument with respect to publication of the Rule and its placing in the public domain are not relevant. Mr. Patwalia submitted that the furthermore sensitive nature of the organization is such that its activities are largely kept under wraps and are not publicised unlike in the case of other intelligence organization in the USA and UK. This heightened necessity for confidentiality is on account of peculiar problems which the country faces. In these circumstances, the conditions of service relating to R&AW officers; hierarchical structure; the duties assigned to each official etc. though prescribed and known by the concerned parties, are not made public. It was urged, therefore, that the need to publicize a norm or rule is to ensure that those governed by it are aware. In this case, the petitioner cannot claim that she was unaware of Rule 135 or other terms and conditions.

16. Learned counsel relied upon rules of 1975 to say that these were framed in exercise of powers under proviso to Article 309 of the Constitution of India. It was submitted that repeated judgments of the Supreme Court have emphasized that the exercise of such powers is essentially statutory. Given the peculiar and sensitive nature of working of R&AW, the UOI felt it essential to flag the issue of confidentiality as a matter of utmost importance. Consequently Rule 135 was framed. It was reiterated that invocation of the Rule does not mean that the concerned employee or officer is indulging in

misconduct. Mr. Patwalia submitted that there might be cases of misconduct; in such event, it is quite possible that UOI may choose to, depending upon the circumstances, conduct an enquiry and impose penalty. In other cases, from the nature of organisation and the work it does, ought to leave the executive the choice of letting go the employee; learned counsel relied upon the judgment of the Supreme Court, particularly *J.N. Sinha* to say that directing retirement of public employee on grounds of public interest, is always a option available to the UOI. It is submitted that to the extent Rule 135 is cast in wider terms and is not a precondition upon the considerations that can operate while invoking Rule 56(j) (it is available in respect of government service); it is not violative of Article 14. It is submitted that Rule 122 states an exception and overrides Rule 56(j). Furthermore, this rule in fact results in a no fault benefit to the employee who is retired inasmuch as she continues to draw salary as she would have been ordinarily entitled to with increments and attendant service benefits till the date of retirement as she would be notionally deemed to continue. Based upon such working of emoluments and salary, the employee's pension would be worked out as also the other benefits and an additional benefit in the form of one years' equivalent salary for a resettlement grant.

17. It was urged that since the invocation of Rule 135 does not result in any penal consequence nor does it amount to any stigma, attaching to the concerned employee, violation of Article 311 of the Constitution does not arise. Furthermore, it was urged by Mr. Patwalia that even Article 311 provides an exception in that in cases involving security of the State where the Central Government is of the opinion that it is inexpedient to hold an

enquiry, it can dispense with it. He relied upon clause (c) to the second proviso to Article 311(2) of the Constitution in this regard.

Challenge to Rule 135

18. The applicant had, during the pendency of the present writ proceedings (by the UOI) approached the Supreme Court under Article 32 of the Constitution by filing W.P(C) 32/2011. In those proceedings, on 25.11.2011, the Court noted that one of the relevant claims was a challenge to validity of Rule 135 of the R&AW (Recruitment, Cadre and Service) Rules. The Supreme Court granted liberty to the present petitioner to urge the issue of constitutional validity of the Rules before this Court in the present writ petition. That order is as follows:

“We find that the said prayer is basically on the issue of validity of Rule 135 of the R&AW (RC&S) Rules.

It is common ground that insofar as the present petitioner is concerned, an order for compulsory retirement in her case was passed. The same was challenged by her and her challenge was upheld by the Tribunal.

Challenging the said order of the Tribunal, the Government – Union of India has filed a writ petition and that writ petition is pending in the High Court. Petitioner in person is at liberty to raise issue of constitutional validity of the Rule before the High Court.”

19. This order was placed on the record of this Court by filing C.M. Nos 2000-2012 on 15.02.2012. The Court noted the reference to the order dated 25.11.2011 (of the Supreme Court) and took the same on record. The Union was permitted to file reply and the Court noted that the challenge would be

considered- as is evident from the order dated 15.02.2012. Rule 135 reads as follows:

*“135. **Terminal benefits on compulsory retirement:** (1) any officer of the Organization may be compulsorily retired on any of the following grounds namely:*

(a) his being exposed as an intelligence officer or his becoming unemployable in the Organization, for reasons of security, or

(b) disability or injuries received by him in the performance of his duties.

(2) On the retirement of an officer under sub-rule (1), he may be granted-

(i) pension based on the emoluments which he would have drawn had he remained in service until the normal age of superannuation and earned promotion, other than promotion by selection, due to him under these rules or the maximum emoluments he would have drawn in the grade in which he was permanent or regularly appointed at the time of his retirement had he continued to serve in that grade till the age of superannuation, provided that in no case such pension shall be less than twelve hundred and seventy-five rupees.

(ii) Family pension and death-cum-retirement gratuity admissible under the rules for the time being in force.

(3) In addition to the pension, death-cum-retirement gratuity and family pension admissible under Rule (2), the person concerned may also be paid a resettlement grant not exceeding twelve times the monthly pay drawn by him immediately before this compulsory retirement.

(4) The Head of Organization may at his discretion permit the officer concerned to exchange the entire pension due

to him under sub-rule (2) for a lump-sum which shall be equal to the commuted value of that amount admissible to a person retiring on attaining the normal age of superannuation.

Officer's argument, concerning validity of Rule 135

20. The officer disputes the UOI's claim that it derives the power to make Rule 135 from Articles 33 & 309 of the Constitution of India. In this regard, she argues that the issue of "*dismissal, removal or reduction in rank of persons employed in civil capacities under the Union of the State*" are matters dealt with under Article 311 of the Constitution of India. That provision constitutes a right of the public servant within the meaning of this term in Article 33 of the Constitution. Therefore, permitting UOI to modify that right by framing Rule 135 of the 1975 Rules is repugnant to the Constitution of India. It is argued, in this context that "*dismissal, removal or reduction in rank of persons employed in civil capacities under the Union of the State*" of civil employees is dealt with under Article 311; it differs in content from recruitment and conditions of service, of public servants, which are the subject matter of Article 309 of the Constitution of India. Therefore, the UOI by framing Rule 135 violated the Constitution of India.

21. It is submitted that Rule 135 runs afoul of the law on legality of enactments as held by the Supreme Court of India in *Kartar Singh v State of Punjab* 1994 (3) SCC 569 which ruled thus:

"130. It is the basic principle of legal jurisprudence that

an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasised that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to "steer far wider of the unlawful zone"... than if the boundaries of the forbidden areas were clearly marked. "

22. Ms. Bhatia argued that Rule 135 is so secret that officials to whom it applies may never even know of the factum of its existence - leave alone what it says. R&AW officials may not know what the rule prohibits even after they have been retired under it. This because the UOI admitted that the Rule lies behind lock and key. In this regard it is urged that the UOI's rejoinder affidavit of 29.05.10 submits that officials of R&AW can only "peruse" the Rule on "request." The question is how does an official "request" for even "perusal" of a rule unless he/she knows of its existence? It is urged that UOI framed the Rules in 1975 and locked them up. The applicant submits she has checked with senior officers in R&AW - both working and retired now; hardly anyone has knowledge of existence of Rule 135. It is urged that there is no reasonable opportunity for R&AW officials to know of the existence of Rule 135 which can take away their job - they do not know what it prohibits. There is no fair warning to them that a certain Rule 135 applies to them.

23. The officer cited instances of other officials whose RTI applications for text of this rule were refused, especially of those who made the application after invocation of Rule 135. Ms. Bhatia argues that she had to apply for a text of the Rule after her retirement. She points to the following portion of the impugned order:

"We are surprised to notice that the applicant was required to keep to herself the text of the Rule (Rule 135) when it had been supplied to her. This is the basic rule, which, according to the respondents, empowered them to take action against her. This is far too difficult to be countenanced. Transparency should have been there in respect of all other details as well as inputs, which led the competent authority to come to a decision that the applicant had to be separated from the organization. The discussions as above lead us to an assumption that the treatment meted out was arbitrary. Further, the expressions in the rule are loosely worded."

24. Terms "reasons of security", "intelligence officer" and "exposure" in Rule 135 are vague- it is urged that UOI do not know what they mean- as evident from its submissions "Reasons of Security". Referring to the impugned retirement order which cites that phrase, it is argued that "reasons of security" is a tricky term, beyond definition and capable of being put to surreptitious use. It is also submitted that there is no mention of national security, which leads one to the conclusion that the UOI did not feel that the matter of the applicant's alleged transgressions amounted to threat to national security. It is pointed out that rather, the security referred to is 'security and lives of officers and staff of the organization.' How the applicant was an alleged threat to security and lives of officers and staff

of R&AW is not elaborated. Ms. Bhatia alleged that the superior officers of R&AW started targeting her after she refused to join prostitution rackets which they were running from R&AW offices & safe houses. She had only complained to the competent authority (the then Prime Minister) and filed court cases thereafter against officers and staff of R&AW - to save her job. The filing of court cases against these officers and staff could not amount to being a threat to their security.

25. It is urged that the impugned order records the following from order dated 26.11.09 in MA No. 1089/09 in OA No. 2678/2008 before the CAT:

"The learned counsel has further stated that the Respondents (Petitioners in instant case) would consider re-posting the Applicant back to the Executive Cadre after six months when tempers have cooled down."

26. The UOI retired the applicant in less than a month after this assurance to CAT. She had delivered outstanding service to R&AW for 22 years. As on the date of issue of the order above - i.e. 26.11.09 –the UOI were still willing to keep her in office. The applicant could not suddenly have become a security threat within a short period of less than 30 days - so as to be eligible for retirement under Rule 135 on 18.12.09. The applicant relies on observations of the CAT on the assurance above and the subsequent decision to retire her from service in less than a month. This is also at variance with the UOI's stated position that the applicant's *"continuation could also be a cause of threat to security and lives of officers and staff of the Organization."*

27. It is submitted that the term 'exposure' in Rule 135 has no

meaning; it does not refer to whose exposure or to whom, or even the method and the place but the matter is left to presumption that such 'exposure' is that of an 'intelligence officer' of R&AW - before media. The applicant argues that the cases in the past indicate that R&AW is unsure about the meaning and content, because several officers' identities were, in the past, compromised in the media and yet they were not inflicted with the order of retirement under Rule 135. This includes the case of the applicant's batchmate (whose name she mentioned but is not disclosed in the judgment) being manhandled allegedly during his posting in Islamabad and subsequently expelled from Pakistan for being an R&AW officer. The episode was widely covered in media. Petitioners claim that this is not an 'exposure' because the allegations/ statements in media are *"Press statements issued in Islamabad end the Pakistan print media."* In that case too, rule 135 was not resorted to. Likewise, another officer of the applicant's batch was exposed for *"mishandling a sex scandal involving one of her juniors when she was posted in Beijing"*. It is submitted that the UOI disputes this and claims that this is not an 'exposure' because the *"newspaper report is also generated from outside India"*. This clearly implies that had the applicant's case been covered not by Indian but by media abroad, it would not have amounted to 'exposure'. Another instance is cited, as is the case of then R&AW chief Sanjeev Tripathi. When he was appointed to this post in December, 2010, it was two of the only appointments of a R&AW chief which were covered widely by media (loyal to him). Wikipedia carried it too. The exposure should, argues the applicant have then resulted in retirement under Rule 135, but it did not so result.

28. It is argued by Ms. Bhatia that in a career for 22 years of outstanding service and having served as a Class I Executive Cadre officer in R&AW before being retired, in the duration of her service saw her interacting with members of intelligence agencies of most major countries. They all knew her as a R&AW officer. She was already "exposed" as intelligence officer to the world that mattered. The UOI however reject this as "exposure" because these meetings were not covered by media. In this context, it is stated that many posts of R&AW in Embassies / High Commissions abroad are open posts - means the host country knows that officer posted there are from R&AW. The UOI does not consider even this as "exposure".

29. It is urged that the UOI's submission implies that the applicant went to the media and exposed herself. Ms. Bhatia disputes this and says that facts belie this allegation. A perfunctory glimpse of media clippings which the UOI placed on record show that their contents is the UOI's own version of events and not the applicant's- in fact if she had gone to the media, it is her version of events which media would have reported and not UOIs' version. Ms. Bhatia submits that she is too 'small' for media to deserve its attention. The entire action, alleges the applicant, is a cover up operation to mask its own activities. It is submitted that the UOI tried to do it, *inter alia*, through (I) Ritu Sarin of Indian Express; (II) by blowing out of proportion the incident at PMO on 19.08.09. An incident which happened behind 3 layers of security at the PMO got covered by media at the behest of the UOI; and (III) by organizing the applicant's heavily media publicized 'arrest' from her residence located on a 'Top Secret' campus of R&AW Training Institute. In both (II) & (III), the applicant

went into police custody immediately. Ms. Bhatia questions as to how the media got to know this and alleges that the UOI informed the press. There were many court orders in her favour which the media did not cover because UOI did not want them covered.

30. It is argued that the UOI could easily retire the applicant compulsorily because she was a direct recruit to R&AW. However, those who join the agency on deputation remain on deputation all through their career or join R&AW by getting absorbed. The question as to whether they are "intelligence officers" within the meaning of this term in Rule 135 is ambiguous. Such officers are from the Indian Police Service (IPS); the Indian Administrative Service (IAS) - both governed by All India Service Rules; or from revenue services, para-military forces and armed forces. They cannot lose their jobs without consultation with the respective State governments, the Home/ Defence Ministry and the UPSC. Rule 135 is inconsistent with the other rules which govern such employees' respective services in their parent departments; they cannot be removed by a stroke of a pen –in the way the applicant was. It is stressed that those officers are no less "intelligence officers" under Rule 135 as most of the officers work in high profile posts before joining R&AW. It is submitted that the word "officer" is ambiguous as it does not cover other employees such as cooks, *maalis*, drivers and other low-level employees of R&AW. The case of one Field Assistant a domestic worker who served at the residence of a former R&AW chief all through his career - highlights that Rule 135 has mostly been used against this category of R&AW officials -after they refused to oblige senior R&AW

officers with personal favours. It was an exception that Rule 135 was used against a Class I officer like the applicant.

31. Ms. Bhatia relied on provisions of the CCS(CCA) Rules and CCS(Pension) Rules, 1972 to show that members of All India Services who join the R&AW on deputation are not governed by them. She submits that if they are "intelligence officers" under Rule 135, again the applicability of that rule leaves more questions unanswered in regard to their respective rules of pension.

32. It was submitted that the power to compulsorily – or prematurely retire an officer of the UOI was in Rule 56(j) of the Fundamental and Supplemental Rules, which applied to all public employees of the Central Government, without exception. Ms. Bhatia argued that a blemishless order of premature retirement could be made only within the framework of that provision, which did not contemplate any contingency of the kind authorized by Rule 135. In support of her submission, Ms. Bhatia, relied on the Supreme Court ruling in *Union of India (UOI) vs. J.N. Sinha & Ors.* 1970 (2) SCC 458; the court had then ruled that:

“Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. 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.

The 1st respondent challenged the opinion formed by the government on the ground of mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement.

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 organizations and more so in government organizations, 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.

10. It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment."

33. Reliance was also placed on *Baikuntha Nath Das & Ors. vs. Chief District Medical Officer, Baripada & Ors.* 1992 (2) SCC 229, where it was held that the decision to compulsorily retire an employee requires following a detailed formal procedure, to assess the suitability of continuing such employee; crucially the past performance records of the officer have a vital bearing on the decision which the UOI has to take. If the records show that the official's profile is that of a generally capable and efficient officer, the order of compulsory retirement can be set aside; equally if there is no material to conclude that the officer has no utility or the decision is *mala fide*, the court can set aside the compulsory retirement order.

34. It was submitted that if one keeps in mind that Rule 56 (j) posits the following of a prescribed procedure, known to all, the considerations that weigh in Rule 135 nowhere are part of it and are in fact alien to those parameters. The question of someone getting "exposed" or being a threat to "security" are vague terms. If allowed to stand, they can cause incalculable

harm and prejudice to those covered by it. Besides other serious objections, the rule has the capability of causing great mischief, because it can be invoked at a very early stage in an official's career, with none of the safeguards applicable to her or him, as in the case of Rule 56 (j). It was submitted that therefore, Rule 135 is arbitrary and utterly unreasonable.

35. It was argued by Ms. Bhatia that the overall facts shown to CAT and this court reveal that the basis of the order of compulsory retirement in her case, were the attempt at self-immolation on 19 August 2008 and the consequent "exposure" in the press; the filing of a police complaint on 10 December, 2008; the incidents that occurred in court, revealing her alleged disturbed state of mind; her alleged attempt to commit suicide, by jumping off the CAT building. It is submitted that these are essentially disinformation and a clever ploy on the part of the UOI to ingeniously deflect the inquiry into its conduct. The applicant submitted that she was subjected to utterly unwarranted behavior and open sexual harassment by Mr. Uke. Her repeated attempts to have this investigated, through complaints to her superior officials and repeated efforts to secure justice at the departmental level met with deaf ears. In despair, she tried to commit suicide by self-immolation. Ms. Bhatia submitted that if one looks carefully at the facts, it is evident that the alleged "exposure" was not at her behest, but rather, that of the Central Government, which went so far as to issue a Press note in this regard, which was inevitably reported in the print media: she could not be held blameworthy given that she did not facilitate the reporting; her attempt was a desperate move to highlight willful inaction to the highest functionary in the government.

36. Ms. Bhatia submitted that despite receiving a complaint against sexual

harassment, R&AW did not take any step to move the erring official, Mr. Uke. Nor did it make any serious attempt to set up a properly constituted committee, *per* the decision in *Vishaka* (supra).

37. The applicant stressed upon the findings recorded by CAT to say that the compulsory retirement could be justified only on the existence of *mala fides*. It was submitted that the CAT had directed, in an application filed by Ms. Bhatia, regarding her posting (she had been given an inferior ranking position) that the Central Government should take necessary measures to restore her status, commensurate with her pay and rank, by its order of 26 November, 2009. However, barely 20 days later, the compulsory retirement order was made. This showed great haste and non-application of mind, with a desperation to overreach the judicial process.

38. Arguing that while her case for compulsory retirement was being discussed in the CAT, new facts emerged on reasons behind her compulsory retirement – other than the Applicant’s complaint on sexual harassment. It is again highlighted that the significant time gap between her first complaint in 2007, the incident of “exposure” and the ultimate order of retirement, has not been explained at all. Ms. Bhatia relies on an order dated 22.12.09 issued by the trial court in Dwarka on her criminal complaint case summoning Shri Ashok Chaturvedi – former Secretary (R&AW) – as accused for offences u/s 499/500 of the Indian Penal Code against her. Adverting to the press release dated 19.08.08 it is submitted that it contains defamatory allegations on the applicant. This Press Release was the first feedback from the UOI that the applicant saw on the outcome of her complaint on sexual harassment dated 26.10.07. Contesting the UOI’s claim that they conducted the enquiry into

the Applicant's complaint (referred to in this Press Release) despite the fact that she withdrew her complaint, it is argued that through this enquiry, the Union was actually trying to develop a case against her – to propagate that she had complained against of sexual harassment because she was a mentally unstable person. It is emphasized that this Press Release conveniently concealed the fact that the applicant had complained against the Chief of her department – Shri Ashok Chaturvedi.

39. Ms. Bhatia submitted that the basis for almost 50 odd press clippings filed in the writ petition and allegations against her by the UOI lay in this Press Release. The Applicant moved applications, under the RTI Act, 2005, with the R&AW and the AIIMS hospital to obtain documents on the basis of which the Petitioners had issued the said Press Release. The responses to these RTI applications indicated that barring the 3 descriptive statements in this Press Release, all other 6 statements were incorrect. Therefore, the applicant filed a Criminal Complaint Case (No.25/09) of defamation in the district court at Dwarka against the former Chief of R&AW, Shri Ashok Chaturvedi – one of the main accused in her representation on sexual harassment. On 22.12.09, an order summoning Shri Ashok Chaturvedi as accused was expected to be issued by the trial Court. It is urged that the UOI officials were desperate to somehow bring the Applicant down on her knees and push her into withdrawing this case. Her compulsory retirement was not the first step in this direction. What they tried to do first was to criminally intimidate her by getting her arrested from her government accommodation at the R&AW Training institute in Gurgaon in the early hours of 08.12.09 and confining her to Bhondsi Jail; Haryana. The arrest was organized to be widely publicised in the media through the propaganda/psychological wing

of the R&AW. The UOI it is alleged, was disappointed that the applicant, rather than falling at their feet, quietly went and sat in jail. Following her release on bail the next day, she resumed her responsibilities as Director (Language Training School) as if nothing had happened. It is submitted that having failed to bring the applicant down through criminal intimidation, the Union's hit at her financial support base by compulsorily retiring her from service on 18.12.09 – three days before the trial court was scheduled to issue its adverse order against Shri Ashok Chaturvedi.

40. The Applicant, argues that with her outstanding record of service stretching over 22 years, she was the senior most and gravest hurdle to the promotion of many officers belonging to the family of former Secretary (R&AW), Shri G.S. Bajpai. It is a routine in the R&AW that whenever officers cum relatives of Shri G.S. Bajpai are due for promotion, competent officers senior to them are deliberately punished OR involved in enquiries OR their ACRs are spoilt so that these relatives can get promotions easily and before time. This went on for too long and far too often. As the senior most eligible Class I officer due for promotion to the rank of Joint Secretary the applicant submits she was entitled to that post as of 2009. There were many officers junior to the applicant and were relatives of former Secretary (R), Shri G.S. Bajpai. One of these is Ms. Anjali Pandey of 1988 batch (followed, in a further junior batch, by Shri Anurag Goel). Ms. Anjali Pandey is a relative of Mr. Bajpai. The Applicant was compulsorily retired from service in December 2009 and in February/March 2010 – when her case against her compulsory retirement was still under consideration before the CAT. Ms. Anjali Pandey's case for promotion was taken up and cleared at a record pace- a whole one year before she was actually due for promotion

-as the R&AW promotion schedules would reveal. That it is notable that it is the same Ms. Anjali Pandey who repeatedly visited the matrimonial home of the Applicant's younger sister over the period of this crisis – a fact mentioned amply in her petitions before various courts. In her meetings with the applicant's sister and her in-laws, Ms. Pandey called the applicant a person in need of psychiatric opinion and a 'man hater' and threatened them with the high rank of Shri Ashok Chaturvedi.

41. By getting a super-speed promotion – before schedule – over the period of the applicant's compulsory retirement, Ms. Pandey has proved to be the direct beneficiary of her compulsory retirement and the crisis emanating from her complaint of sexual harassment. Relatives of Shri G.S. Bajpai were recruited in unprecedented large numbers through misuse of power and authority by him. Whenever these relatives are due for promotion, it is common that game plans were initiated months before – sometimes a couple of years before – for competent officers senior to these relatives to be removed from the promotion scene – through enquiries or spoiling of ACRs etc. That the department witnessed such incidents in the case of Shri G.S. Bajpai's son; who was forced to leave the R&AW in 2006 amidst allegations that he was involved in a spy scandal. Such manipulations also occurred when G.S. Bajpai's son-in-law, Shri S.K. Tripathi (IPS: 1972) was promoted to the rank of Joint Secretary in 1991. ACRs of many officers senior/more competent than him are believed to have been spoilt around that time to facilitate Shri Tripathi's promotion. It is because of such manoeuvrings that Shri Tripathi got his promotion to the rank of Joint Secretary in a record period of 19 years. In 2006, Shri Tripathi was in charge of Personnel Division when with the help of the then Director (Pers), Shri P.K. Mathur, he

changed the entire cadre structure of the R&AW so that he could get his promotion to the rank of Special Secretary. But for this massive and painstaking cadre review in the R&AW, Shri G.S. Bajpai's son-in-law, Shri S.K. Tripathi would not have got his promotion as the second most senior officer in the department. Other allegations of manipulations by serving and senior officials of the department have been made by the applicant.

Analysis and conclusions

42. During the course of hearing the UOI had produced all the relevant records, including the records of proceedings of the two committees inquiring into allegations of sexual harassment. For the sake of convenience, the following tabular statement would explain chronologically, the necessary facts:

26.10.2007	<i>Representation was made by Ms. Bhatia to the PMO on the subject "sexual exploitation of women employees in the R&AW – Indifference & Involvement of former secretary (R), Shri Ashok Chaturvedi")</i>
01-11-2007	<i>The Shashi Prabha Committee was constituted to consider the complaints against Mr. Uke</i>
19-05-2008	<i>The above committee made and submitted its report, stating that the applicant did not co-operate with it.</i>
19.08.2008	<i>Attempt of suicide in front of the PMO by the applicant (a charge sheet under section 309 IPC, FIR No. 151/08 was filed by the Delhi Police. She appeared on 04.07.09 for hearing before the court but created an unruly scene)</i>
22.09.2008	<i>Proposal for invoking the provision of Rule 135 of R&AW (RC&S) Rules, 1975 against the applicant by Ashok Chaturvedi, Secretary (R)</i>

30.09.2008	<i>Complaints Committee was constituted by the Central Government</i>
12.11.2008	<i>In CWP No. 7971/2008, a petition before this court by Ms. Bhatia making Secretary (Coord) Rashtrapati Bhawan, New Delhi as the respondent, she sought copies of the enquiry report conducted with R&AW which was completed on 19.05.2008 (Shashi Prabha Committee), and also enquiry report of the High-Level committee appointed by the Cabinet Secretariat (Main)</i>
15.12.2008	<i>An application was made by the applicant against the backdrop of alleged sexual harassment by the former Secretary and a JS requesting for</i> <i>a) Restoring post, salary and perks</i> <i>b) Allowing her entry into the office</i> <i>c) Releasing her belongings alleged to have been sealed</i>
30.01.2009	<i>The committee (the Rati Vinay Jha Committee) submitted its report in 23rd Jan 2009 and a submission note in this regard on 30.01.2009</i>
30.01.2009	<i>KM Chandashekhar, cabinet secretary submitted a note dated 30.01.2009 for the information of the PM following the submission of a report by the Jha committee on the allegations made by the applicant against Chaturvedi and Mr. Sunil Uke</i>
06.02.2009	<i>The PMO directed that the cabinet secretary may issue strict instructions to all ministries/ departments to ensure that the complaint mechanisms not just exist but are also functional to reach out to women who face harassment.</i>
04.04.2009	<i>Ms. Bhatia wrote a letter to the Ajit Seth [Secretary (PG & Coord)] with respect to her apprehension with regard to alleged recommendation by former secretary Ashok Chaturvedi to dismiss her without enquiry, under Article 311</i>

	<i>of the Constitution of India</i>
<i>18.04.2009</i>	<i>In Case no. 1/109/27/2009- TS, K S Achar (Director) sent a proposal for invoking Rule 135 against Ms.Bhatia</i>
<i>14.05.2009</i>	<i>Ms. Bhatia filed a contempt petition No. 449/2009 against secretary (PG and Coord) claiming that the High Court's directions were not complied with</i>
<i>11.05.2009</i>	<i>A request was made for expeditious decision on the proposal for compulsory retirement to Chandrashekar (cabinet Secretary)</i>
<i>13.05.2009</i>	<i>a Secret Note was sent to the PMO by the Cabinet Secretariat suggesting for compulsory retirement of Ms. Bhatia under Rule 135.</i>
<i>09.06.2009</i>	<i>Response to the clarification sought by the PMO vide letter dated 09.06.2009 was given by the department.</i>
<i>16.06.2009 and 04.08.2009</i>	<i>Opinion of Department of Legal Affairs, Ministry of Law and Justice was given, pursuant to query in this regard.</i>
<i>20.06.2009</i>	<i>A reply was sent to PMO stating that it would not be advisable to precipitate the action at this stage, lest it could be construed as overreach by the High Court/CAT</i>
<i>15.07.2009 and 21.07.2009</i>	<i>Opinion of the Solicitor General of India was given on 11.08.2009 to the ID Note of K M Chandrashekhar, Cabinet Secretary concurring with the proposed measure.</i>
<i>27.07.2009</i>	<i>Hearing in the Supreme Court on Ms. Bhatia's application before the Bench comprising Justices HS Bedi and JM Panchal. According to the file, she tore her clothes and was taken away by the police</i>
<i>11.08.2009</i>	<i>ID Note of K M Chandrashekhar, cabinet secretary</i>
<i>28.08.2009</i>	<i>KC Verma requested to renew the proposal (for compulsory retirement).</i>

03.10.2009 and 13.10.2009	<i>KC Verma by letters dated 03.10.2009 and 13.10.2009 addressed to the Chandrashekar requesting for early invoking Rule 135 of RAW (RC&S) against Ms. Bhatia in continuation of her erratic behaviour.</i>
18.10.2009	<i>A criminal complaint was filed by Ms Bhatia under section 306 of IPC for initiation of proceedings and penal action against Sh. SK Goel and Sh. Ashok Chaturvedi</i>
30.10.2009	<i>FIR was registered against Ms Bhatia for harassment of her colleagues, illegal trespass and damage to the government property in the training institute campus. (she was arrested by the police, after a medical examination, she was produced before the JM, Gurgaon and was sent to Judicial custody for 14 days and thereafter was transferred to Bhondsi Jail, Gurgaon)</i>
13.11.2009	<i>Letter sent by Mr. KC Verma to Mr. Chandrashekar informing that in addition to sending SMSs , the applicant had repeatedly trespassed the house of another Director in the training institute and vandalised a govt car.</i>
26.11.2009	<i>CAT case filed by Ms Bhatia was disposed of.</i>
27.11.2009	<i>After dismissal of the case by CAT, the applicant resumed her duties</i>
07.12.2009	<i>Letter by KC Verma to the PMO's office requesting for an early decision on the proposal of invoking provisions of Rule 135</i>
16.12.2009	<i>PMO communicated the approval by the Prime Minister to the recommendation for the compulsory retirement of Ms Bhatia under the provisions of Rule 135 as recommended by the cabinet secretariat in the note dated 13.05.2009</i>
18.12.2009	<i>Order issued by Cabinet Secretariat passed in the name of the President, signed by the Additional Secretary to the Government of India, compulsorily retiring her from government service with immediate effect</i>

Discussion about the file notings relied upon by the Union of India

43. The applicant made allegations of sexual harassment against one Sunil Uke who was posted on deputation as Joint Secretary in R&AW at the relevant point of time. She has made certain complaints against Shri Ashok Chaturvedi, who was the former Secretary of R&AW. This complaint was referred to a Complaints Committee constituted on 30.09.2008 by the Central Government, with approval of the PMO in the light of the judgement of the Supreme Court in the case of *Vishaka & Ors v. State of Rajasthan* AIR 1997 SC 3011. The Complaints Committee was initially headed by Ms. Shashi Prabha but since Shashi Prabha was not sufficiently empowered, a committee headed by Rathi Vinay Jha looked into the complaint. The committee submitted its report in 23rd Jan 2009 and a submission note in this regard on 30.01.2009. The said Complaints Committee concluded that the allegations made by the petitioner against Ashok Chaturvedi were unsubstantiated. However, the committee made certain observations about the lack of sensitivity on the part of the head of the department. The petitioner had filed a petition before this court on 15.10.2008, (WP (C) 7971/2008) in which an order dated 12th Nov 2008 was made, requiring the committee to conclude the matter as early as possible.

44. In the meanwhile, it appears that on 22.09.2008 a proposal was submitted, for invoking the provision of Rule 135 of R&AW (RC&S) Rules, 1975 against Nisha Priya Bhatia by Ashok Chaturvedi, Secretary (R) in the light of the suicide attempt by her, in August, 2008. The proposal sent by the former Secretary referred, *inter alia*, to:

- (i) The complaint of sexual harassment filed by Ms. Bhatia “against her Joint secretary, Shri Sunil Uke;
- (ii) The erratic behavior of the officer sending SMSs with sexual intonations, ventilating personal and administrative grievances and threatening to commit suicide with threats of destroying the organization and ruining the careers of officers
- (iii) Attempted suicide in front of the PMO on 19.08.2008 following which she was arrested, a criminal case filed against her, she was admitted to the hospital from where she absconded;
- (iv) Allegation that she had accessed the media in violation of departmental instructions and also the Intelligence Organizations (Restriction of Rights) Act, 1985.

45. The next relevant material is the proposal- dated 18.04.2009 for invoking the provision of Rule 135 against the applicant. With reference to the earlier proposal (dated 22.09.2008 to the Cabinet secretary recommending immediate retirement of Ms. Bhatia from the organization under Rule 135) this note relied on the report of the Jha committee, which found that:

- R&AW’s attempts at drawing authority from the AIIMS, in a PIB statement of 19.08.2008 was factually incorrect
- Even though there was a recommendation from an earlier committee, the Departmental committee headed by female Joint Secretary, that counselling may benefit her, there was no evidence of any action taken by R&AW for counselling of the officer as required by the *Vishakha* guidelines
- Para (h)(pg 27, of the report) observed of the adverse/ hostile work environment which Ms Bhatia was put to, and it was only the extreme step

taken by Ms Bhatia which led the government to set up an appropriate grievance redressal mechanism.

46. On its receipt the PMO sought clarification. By a secret note dated 11.05.2009, to the PMO by the Cabinet Secretariat on 13.05.2009 it was suggested that compulsory retirement of Ms. Bhatia under Rule 135 may be considered. In this regard, the PMO sought clarification on (a) procedure under the above rule (b) whether that has been followed (c) bearing on the various court cases on the suggested move of compulsory retirement. In this regard, a reply was sent to PMO on 20.06.2009 stating that it would not be advisable to precipitate the action at this stage, lest it could be construed as overreach by the High Court/CAT.

47. The next document on record is the opinion of the Solicitor General of India, whose views were elicited, by letter of 15.07.2009, by Mr. Chandrashekar Cabinet Secretary. The Solicitor General opined that a clear decision be taken by the disciplinary authority whether any action in the light of the report of the Jha committee is warranted. Further, he made it clear that this does not preclude any action which the government may consider under rule 135 against Ms. Bhatia, if necessary. By a letter dated 21.07.2009, the Solicitor General of India to Ajit Seth, Secretary (R), (in reference to the Contempt case No. 449/2009 in WP (C) 7971/ 2008, specially Mr. Justice Sanghi's order) it was suggested that the way forward is to take a decision in the matter in relation to the conduct of Ashok Chaturvedi in the light of the observations made by the Jha committee against Chaturvedi. The final view it was stated, must be incorporated in the form of an order of the government which should be communicated to the applicant; he also advised that before taking the hard

line, efforts to access her peacefully and bring her to state of calmness and dialogue should be attempted.

48. The opinion of the Department of Legal Affairs, Union Ministry of Law and Justice has relevance, next. Its note dated 16.06.2009, stated that though there does not appear to be any direction of the High Court or the CAT barring action against the officer as admissible under the service rules, it will not be advisable to precipitate the action at this stage, lest it could be construed as overreach by the High court/CAT. Further, the same department (Legal Affairs and Justice) by its note dated 04.08.2009, said that the report of the Jha committee (Complaints committee) contained certain observations that Shri Ashok Chaturvedi, as HOD should have taken serious and immediate note of the complaint of Ms Bhatia, the act of omission of Shri Chaturvedi being in gross violation of Vishaka guidelines and Chaturvedi lacked knowledge of requirements in the Vishaka guidelines. It was also stated that the disciplinary committee has to take a decision on the action to be taken on the basis of the report of the complaints committee. If the disciplinary authority decides to act against the officer, it would be required to issue show cause to the officer after providing him a copy of the complaints committee and then his response to the show cause had to be considered, since Chaturvedi had retired from service the proceedings against him shall be deemed to have continued post superannuation under Rule 9 of the CCS (pension) Rules, 1972.

49. The ID Note of K M Chandrashekhar, Cabinet secretary dated 11.08.2009, records that there was no ground to initiate disciplinary action against Chaturvedi after his retirement. It said that it could not be said that Chaturvedi, on receipt of the complaint, took no action at all. When the

complainant persisted, a Complaints committee was constituted. The committee went through the entire case and recorded its conclusion. It was noted that the main points made by the Complaints committee headed by Jha with regard to Ashok Chaturvedi, were: (a) he did not take immediate cognizance of the complaint made by complainant against Uke. Instead, he directed JS (SA) in his organization to call both the officers to sort out the problem. (b) he did not refer the case at once to the Complaints committee, which was done only in December 2007. Also, the Committee constituted for the purpose of looking into the allegations against Uke did not have a member from an NGO or other body. The Director, National Security Council Secretariat was appointed as a member. (c) The complaint was not brought to the notice of the Cabinet Secretariat in the year 2007 itself. The Cabinet Secretary also stated that three opportunities were given to Ms. Bhatia to appear before the Committee. However, she did not; the Committee after looking at all these records and hearing six witnesses concluded that there is lack of evidence to support Ms. Bhatia's complaint against Uke regarding sexual harassment. Therefore, the Cabinet Secretary concluded that there was not enough evidence to act against Uke. He submitted the report to PMO for consideration if action had to be taken against Uke or Chaturvedi.

50. On 28 August 2009, Mr. K.C. Verma , Secretary (R) requested that the proposal to invoke Rule 135 be renewed. In reference to his predecessor's letter dated 22.09.2008 forwarding a proposal for invoking Rule 135, it was stated that the decision was still awaited; he requested to renew the request to Chandrashekar (the Cabinet Secretary). He also mentioned the list of cases Ms Bhatia is involved in. The following cases she is involved in: WP No.

449/ 2009 – seeking copies of high-level committee report and Shashi Prabha enquiry report; OA No. 1687/2008 dated 15.12.2008 before CAT seeking restoration of the applicant's post, salary and perks etc. The case at the court of the magistrate at Dwarka Delhi(No. 25/09) alleging the press release dated 19.08.2008, allegedly issued the behest of Chaturvedi, former Secretary had harmed Ms. Bhatia's reputation. Furthermore, the note also mentioned the RTI application seeking documents from the R&AW through the CIC relating to her complaint of sexual harassment and the departmental committee reports.

51. In the meanwhile it appears that Shri KM Chandrashekhar, Cabinet Secretary submitted a note dated 30.01.2009 for the information of the PM following the submission of a report by the Jha committee on the allegations made by the applicant against Chaturvedi and Sunil Uke. This letter, stated:

- (i) As far as the allegation of sexual harassment is concerned, the committee has concluded that in the absence of any proof of such unwanted action or unwarranted comments amounting to unwelcome sexually determined behavior, it was not possible to establish a case of an act of sexual harassment by Chaturvedi against Ms. Bhatia
- (ii) The committee commented on the attitude of Chaturvedi in connection with the complaint, the committee recorded that Chaturvedi should have taken serious and immediate note of the complaint of Bhatia.
- (iii) The report further stated that the approach adopted by the officer concerned/ in charge led to series of avoidable circumstances which have caused immense stress to the complainant.
- (iv) The committee flagged that certain violations of the Vishaka guidelines had been noted.
- (v) R&AW was advised to take necessary steps to ensure strict compliance in future, of the guidelines in the Vishaka case.

52. The PMO had by ID No. G-3 (4)/2008 – NGO dated 6th Feb 2009, directed that the Cabinet Secretary may issue strict instructions to all ministries/ departments to ensure that the complaint mechanisms not just exist but are also functional to reach out to women who face harassment. Mr. Chandrasekhar, Cabinet Secretary's recommendation to the PMO dated 13.05.2009 suggested compulsory retirement of Ms. Bhatia under Rule 135. A meeting was held by NSA on 05.05.2009 to discuss the proposal of R&AW for compulsory retirement of Ms. Bhatia under Rule 135, after a letter dated 11.05.2009 was received sent by KC Verma (secretary, R&AW), wherein the Secretary stated that

- a) the proposal to retire is based on the fact the she has become unemployable in the organization. She had been sending messages since 2007 and making multiple phone calls to senior officers. SMS are reported to provocative and abusive.
- b) She had also alleged criminal intimidation by NK Sharma JS (training), R&AW who in turn has also sent several complaints regarding undesirable activities of Ms. Bhatia.
- c) She had stopped attending office since 19.08.2008 and was visiting the institute occasionally.
- d) She was involved in avoidable litigation against the R&AW in CAT, HC and Dwarka courts
- e) She alleged all actions taken against her were malafide.

53. It was stated in the note that the question for consideration was whether an intelligence organization could afford to retain an officer who stood exposed as an intelligence official. It was pointed that Complaint Committee in its report observed that Chaturvedi admitted to the fact that

repatriation of Uke to his parent dept was in the form of punitive action, which implies that the charge of sexual harassment made by Bhatia against Uke was perhaps correct, though not established by a proper and timely enquiry. Further, the Committee also noted that the department should have taken more serious and immediate note of the complaint by Bhatia. In the light of these, the suggestions given the Prime Minister were:

- a) Posting Ms. Bhatia with R&AW at that stage did not appear to be a viable option, in view of the Secretary (R)'s observation that she was exposed as an intelligence officer and would be a security risk apart from her erratic attitude towards officers in the department;
- b) She needed counselling and psychiatric help;
- c) Option of directing the applicant's mandatory appearance before medical board and further action (i.e. the possibility of her being directed to mandatorily undergo a medical examination and to proceed on leave forthwith pending such medical examination). It was submitted that this option appeared to be ruled out. There was a provision in rule 2 (i) of the CCS Rules, 1957 which enabled the competing authority to enforce such a course of action in the case of government servants suffering from (a) contagious disease (B) physical or mental disability which in its opinion interfered with the efficient discharge of his duties. However, an amendment was made in this Rule w.e.f. 27th July 2002 and condition were deleted from Rule 2.
- d) Compulsory retirement under Rule 135 was seen as the only option left. It was submitted that this was discussed on a meeting on 05.05.2009 at a meeting at NSA and Principal Secretary to PM and it was agreed that it was only way possible.

e) It was also stated that Ms. Bhatia's posting in another department or organization was an option; however this was ruled out by stating that it would not work because her disinclination to move out of R&AW and the fact the Union ought not attempt to solve a problem in one organization by creating it in another.

f) In reference to the note of the Cabinet Secretary dated 13.05.2009, PMO sought clarification on the option of compulsory retirement and the procedure involved in this case. The query also was whether there is anything which may potentially come in the way of taking a view on compulsory retirement in the background of court cases filed by Ms Bhatia. The response to this was given by Mr. KC Verma (secretary) in a letter dated 09.06.2009 to Dr. Sarangi, stating the following:

a) Rule 135 has not specified any procedure for invoking the provisions of this rule. It has however been the endeavor of the department to take recourse to rule 135 only when the head of the department is satisfied that the officer has become unemployable in the organization due to his being exposed as an intelligence officer and that disciplinary proceeding under the CCS (CCA) Rules cannot be initiated in the case due to practical difficulties and or likely to jeopardize national security and cause embarrassment to the organization.

b) The department's proposal for compulsorily retiring the officer under Rule 135 was based on the fact that she has been exposed as an intelligence officer and had therefore, become unemployable in the organization for reasons of security.

c) It was pointed that the officer had a number of cases filed against the R&AW and other in various courts. The nature of the action taken against

her, that is whether she is compulsorily retired or disciplinary action taken against her under the CCS Rules would in no way alter the officer's plea before the courts namely, that she was victimized by R&AW for daring to file a complaint against the former secretary, Chaturvedi.

54. It was further noted that courts consistently held that compulsory retirement cannot be termed as a punishment as it does not impose stigma or any suggestion of misbehavior. The opinion given by the Legal Affairs department on Rule 135 for premature retirement of officers in the R&AW, was found unfit for promotion by 3 successive DPCs, clearly brought out the salient features of the Rule, particularly the fact that it is not punitive. The law ministry further pointed out that since the order of compulsory retirement is not penal in nature, the principles of natural justice had no place in the context of such an order. Mr. KC Verma, Secretary (R), in a letter dated 11.05.2009 requested for an expeditious decision on the proposal for compulsory retirement under Rule 135 which was pending for over 7 months on the basis of the following: (a) information about the stream of SMS sent to various officers like former Secretary, Mr. Chaturvedi and other senior officers; (b) the meeting held by NSA on 05.05.2009 to discuss the proposal of R&AW for compulsory retirement of NPB under Rule 135, a letter dated 11.05.2009 was received sent by Secretary, R&AW; (c) the Secretary stated that the proposal to retire is based on the fact the she has become unemployable in the organization. She was sending messages since 2007 and making multiple phone calls to senior officers. The SMSes were reported to provocative and abusive; (d) she has also alleged criminal intimidation by NK Sharma Joint Secretary (Training) R&AW who in turn has also sent several complaints regarding undesirable activities of Bhatia. (e) She has

stopped attending office since 19.08.2008 and visited the institute occasionally. (f) Ms. Bhatia was involved in avoidable litigation against the R&AW in CAT, High Court and Dwarka Courts; she had alleged also that all actions taken against her were *malafide*; (g) the Delhi Police has filed a charge sheet against Ms. Bhatia on November 18, 2008 under Section 309 IPC for attempt to commit suicide on August 19, 2008 in front of the PMO; (h) it was queried whether an intelligence organization could afford to retain an officer who stood exposed as an intelligence official; (i) Ms. Bhatia divulged classified information before the courts including names and designations of R&AW officers, internal correspondence, notings and operational details regarding payments made to sources. Under normal circumstances, this would have warranted action against the officer under the Official Secrets Act and the Intelligence Organizations (Restriction of Rights) Act. The department did not take any action against the officer since it was awaiting the decision on its proposal under Rule 135 for her compulsory retirement.

55. On 31.08.2009- Dr. Sarangi, Additional secretary, in reference to Note No. G-3(4)/ 2008- NGO dated 22.05.2009 and 03.07.2009 informed that with respect to invocation of Rule 135 and its being followed in the present case, Secretary (R) has informed that there was no procedure prescribed in the following case. The rule could be invoked when the Head of the Department was satisfied that the officer became unemployable in the organization due to his being exposed as an intelligence officer, for reasons of security or disability or injuries received by him in the performance of his duties. It was also stated that keeping in view her unauthorized contacts with the media, sending abusive and threatening messages to R&AW officers,

attempt to suicide, her indisciplined behavior while seeking redressal of her alleged administrative problems, Secretary (R) satisfied himself that Ms. Bhatia has become unfit for serving in the organization and hence became unemployable in R&AW. On 07.12.2009 KC Verma wrote to the PMO's office requesting for an early decision on the proposal of invoking provisions of Rule 135. By this letter, he explained that the retirement is compulsory but it is not by way of a punishment. The retirement can be affected on the grounds that (a) an intelligence officer has been exposed or has become unemployable in the organization for reasons of security, or (b) due to disability or injuries received by the officer in the performance of his/her duties. It was noted that the provision of compulsory retirement, as a concept, is a fair settlement to provide adequately for an officer who is being compulsorily retired. The terminal benefits which accrue to an officer were:

- (i) Pension based on emoluments that he/she would have drawn had he/she superannuated at the normal age and earned all non-selection upgradation
- (ii) Family pension and DCRG as admissible under the prevailing rules
- (iii) In addition, the officer could be given Resettlement grant upto 12 times the monthly pay drawn by her immediately before her retirement
- (iv) The head of R&AW, at his discretion, could also permit the officer concerned to exchange the entire pension due to him/her for a lump sum equal to the commuted value of that amount admissible to a person retiring on attaining the normal age of superannuation.

Summary of the Sexual Harassment Committee Enquiry Report submitted on 19th May 2008.

56. The initial six member committee was constituted on 01.11.2007, headed by Smt. Shashi Prabha. Ms. Tara Kartha, Director, NSCS, was included as an additional member by memo dated 30.04.2008. The report records that the complaint was made by Ms. Bhatia against Sh. Sunil Uke, former JS and Sh. Ashok Chaturvedi, Secretary(R), and falls within the purview of the Supreme Court's definition as "a demand or request for sexual favours" and "any other unwelcome physical, verbal or non-verbal conduct of a sexual nature". However, as per para 12(2) of the SC guidelines, the Committee is not empowered to look into the complaint against Sh. Ashok Chaturvedi, since he was holding a position senior to that of the Chairperson of the Committee.

Proceedings of the Complaints Committee:

57.(1) On 18th Dec 2007, Ms. Bhatia was told to appear before the Committee on 20.12.2007. In response to this, a letter dated 19.12.2007 was received from Ms. Bhatia, wherein she alleged that the Complaints Committee received incomplete documents, and the same, along with her resignation letter, could be obtained from the JS (SA). On 20.12.2007, the Committee received Ms. Bhatia's resignation letter and her request dated 20.12.2007 to keep her resignation pending for one month, from the JS (SA)'s Office.

(2) The first meeting of the Committee was held on 19.12.2007, wherein a perusal of documents received from the JS(SA) revealed that Ms. Bhatia alleged the following incidents to have taken place with her immediate superior- Mr. Sunil Uke (repatriated on 30.08.2007 at Ms. Bhatia's request)

(3) According to Ms. Bhatia's complaint letter dated 07.08.2007, on 06.07.2008, in a conversation in Mr. Uke's office, he told Ms. Bhatia *"to have all the fun in 5 star hotels and that he will give her the money to enjoy"*. The amount, according to Ms. Bhatia, was drawn by Mr. Uke through the PR group (Operational Funds) on 06.08.2007. This statement of Ms. Bhatia's was unsubstantiated. Secondly, she alleged unparliamentary and sexually coloured conversation with Mr. Uke on 06.08.2007 and 07.08.2007.

(4) On 20.12.2007, the Committee decided to ask Ms. Bhatia to come on 26.12.2007. However, on 24.12.2007, the Committee received a letter from her stating that she was withdrawing her allegations of sexual harassment.

(5) On 31.12.2007, the Committee decided to meet and close the probe in view of Ms. Bhatia's letter dated 24.12.2007, and the same was communicated to the JS (SA).

(6). On 16.04.2008, the Chairperson of the Sexual Harassment Committee received a letter from the JS (SA)'s office stating that the Secretary (R) has requested a fresh probe as per Rule 15 of the CCS (CCA) Rules, 1965. In lieu of this direction, the Committee, on 17.04.2008, sent notices to Ms. Bhatia and Mr. Uke to appear on 22.04.2008 and 28.04.2008, respectively.

(7) On 21.04.2008, the Committee found it necessary to issue notices to the 6 officers posted with Mr. Uke, to appear before it on 22.04.2008. On 22.04.2008, all the 6 members of the staff recorded their written statements; however, Ms. Bhatia sent a letter expressing her inability to appear, stating

that the Cabinet Secretariat was also conducting an enquiry, and the Complaints Committee had not been constituted legally. After examining the matter, Ms. Bhatia was sent a notice to appear on 28.04.2008, stating that this would be the last chance for her to defend herself.

(8) Ms. Bhatia did not appear on 28.04.2008, citing that she was satisfied with the ongoing enquiry in the Cabinet Secretariat and had no faith in this departmental enquiry. This letter by Ms. Bhatia dated 25.04.2008 expressed no indication of her appearing before the Committee in the future, and therefore, the Committee decided to examine the contentions of her letter *ex parte*.

(9) Mr. Uke appeared before the Committee on 28.04.2008, and gave a CD and two written statements.

(10) On 02.05.2008, the Committee decided to give another opportunity to Ms. Bhatia, and sent her a notice to appear on 05.05.2008, also informing her of the induction of Ms Tara Katha. In response, Ms. Bhatia rang up the Chairperson and also sent a letter dated 05.05.2008, informing the Committee that she had no intention to appear on 05.05.2008, as the Committee did not include three members from NGOs/bodies outside of the department. On consideration of the letter, the Committee concluded that it had been constituted as per the Supreme Court guidelines, and could therefore continue with the brief.

(11) On 09.05.2008, the Committee was informed that Ms. Tara Kartha had also gone through the written statements and tapes on record. Ms. Kartha had also received a call and a text message from Ms. Bhatia on 05.05.2008. On 12.05.2008, the Committee decided to give Ms. Bhatia a

further chance to substantiate her charges, and she was asked to appear on 14.05.2008. Ms. Bhatia responded saying she was tied up on 14.05.2008, and when asked to appear on 19.05.2008, she said that "she will not come and they should not waste paper".

(12) Mr Uke denied any sexually coloured conversation with Ms. Bhatia or being alone with her in the room, in his deposition. The Committee found that the amount of Rs.30,000 in question was drawn by the PE on 06.07.2008 for a specific purpose and was kept in the custody of the concerned DS, and moreover it was returned unspent on 22.07.2008 as the meeting did not take place.

(13) The Committee concluded that there was lack of evidence to substantiate Ms. Bhatia's allegations, since she failed to appear on numerous occasions. However, it recorded that the statements of the 6 officers indicate strained relations between Ms. Bhatia and Mr. Uke, and by the latter's own submission, his bias against Ms. Bhatia based on hearsay about her reputation was clear. The Committee recorded that this prejudiced attitude itself was a violation of gender equality.

58. The second report on record is that of Ms. Rathi Vinay Jha Report of 23.01.2009. This Committee was constituted with the approval of the Prime Minister of India on 26.09.2008 to enquire into the complaints of sexual harassment made against the officers of the level of Secretary, Additional Secretary and equivalent in the Ministries. Though the findings with respect to various allegations were found to be unsubstantiated, interestingly, it

made certain adverse observations against the conduct of Shri Ashok Chaturvedi, Secretary (R) in the following terms :

“The Complaints Committee noted the remarks made on file by Shri Ashok Chaturvedi, Secretary (R) and therefore, looked into the enquiry report against Shri Sunil Uke. The following facts came to light from the report cited:-

(i) Ms. Nisha Priya Bhatia had complained about sexual harassment by Shri Sunil Uke in her letter dated 8th August, 2007. When this letter addressed to the JS(SA) was put up to Shri Ashok Chaturvedi, Special Secretary (R), the following comment was recorded by him. “Please call both the concerned officials and sort out the problem. I don’t wish to be disturbed on such issues”.

The said comments by Shri Ashok Chaturvedi do not reflect any concern or sensitiveness to the subject of sexual harassment in the work place by the Head of the Department. xxx xxx

xxx

xxx

xxx

(ii) The said complaint received in early August 2007 was not referred to the Committee on Sexual Harassment in the department immediately. There was a delay in referring it to the Committee till December, 2007.

(iii) The Departmental Committee on Sexual Harassment was also not properly constituted as per the Vishaka guidelines. As per this requirement, the Complaints Committee should “have had a third party as a representative of an NGO or other body who is familiar with the issue of sexual harassment”. While the Committee on Sexual Harassment was reconstituted on 1.11.2007, Ms Tara Kartha, Director, National Security Council Secretariat, was appointed as a Member of this Committee only in April, 2008. It is not clear in what manner Ms Tara Kartha qualified to represent an NGO or anybody familiar with the issue of sexual harassment. So even at this

stage, it was not a Committee constituted in accordance with the Vishaka guidelines.

(iv) The Complaints Committee noted that despite receiving many notices from the Departmental Committee, Ms Nisha Priya Bhatia did not appear before them citing the following grounds :-

- ❖ need to constitute the Departmental Committee as per Vishaka guidelines;*
- ❖ that her complaint of sexual harassment is also against Shri Ashok Chaturvedi, Secretary (R)*
- ❖ that the Chairperson of the Complaints Committee is not senior enough to inquire into allegations against Shri Sunil Uke, Joint Secretary and Shri Ashok Chaturvedi, Secretary (R).*

In April 2008, she sent two notes to indicate that since the Cabinet Secretariat was inquiring into the matter, she was satisfied with this action.

(v) The Complaints Committee also observed that the Departmental Committee on Sexual Harassment should have questioned the delay in the reference of the complaint of Ms Nisha Priya Bhatia to them. Ms Shashi Prabha stated that she did not know about the complaint till such time as it was referred to the Committee headed by her. However, as per the admission of one of its members, Ms Anjali Pandey, everyone in the office knew about this incident.

(vi) The Complaints Committee also considered that it was necessary for R&AW to have examined the allegation of sexual harassment by Ms Nisha Priya Bhatia against Shri Sunil Uke while he was still in the department. The statement by Shri Ashok Chaturvedi that repatriation of Shri Uke to his parent department was in the form of “punitive action” even before any enquiry was formally held to investigate the veracity of Ms Nisha Priya Bhatia’s allegations of sexual harassment reflects non-compliance with the Vishaka guidelines calling for proper formal procedure in enquiring into such cases. Transfer or

repatriation of an officer cannot be defined in any way punitive action, it implies that the charge of sexual harassment made by Ms Nisha Priya Bhatia was correct/established.

An examination of the Report of the Departmental Committee on Sexual Harassment submitted in May 2008 established that the complaint by Ms Nisha Priya Bhatia was not given timely attention or proper inquiry and redressal.

The written comments by Shri Ashok Chaturvedi on file reflect his lack of concern or respect for ensuring immediate attention to the complaint.

It also reflects Shri Ashok Chaturvedi's lack of knowledge of the requirements in the Vishaka guidelines.

Further even when the complaint was referred to the Departmental Committee on Sexual Harassment, the Secretary (R) did not pay heed to the constitution of the Committee as required in the Vishaka guidelines.

This act was, therefore, in gross violation of the Vishaka guidelines."

59. Likewise, with respect to the ninth complaint regarding not giving postings to Ms. Bhatia, the observations and findings were as follows :

"Finding

Ms Nisha Priya Bhatia was posted back to Gurgaon as Director (Trg) vide order No.4/SPS/2007(2)8657 dated 8.11.2007. This order also indicated that Shri S.S. Mahapatra, the Director (Trg) in Gurgaon would take charge as Director (PR) in Delhi. The order was revised vide order No. 4/SPS/2007(2)-884 dated 16th November 2007 to cancel the posting of Shri S.S. Mahapatra as Director (PR). So the exchange of charges, as envisaged in the first order dated 8.11.2007, was not effected.

Therefore, when Ms Nisha Priya Bhatia was posted back to the Training Institute, she was not able to take charge as Director (Trg) as directed in the order dated 8.11.2007. Shri Mahapatra continued as Director (Trg). She, therefore, became a second officer of Director level there. The situation must have been certainly awkward for her as she no longer had the powers and perquisites enjoyed by her in her earlier stint as Director (Trg). She proceeded on leave on 21st November, 2007. This situation was rectified only after Shri S.S. Mahapatra was posted out of the Training Institute and she resumed charge as Director (Trg) in Gurgaon on 17 December, 2007.

This entire situation did create a hostile environment at the work place at a point of time when the complaint of sexual harassment against Shri Ashok Chaturvedi and Shri Uke had not even been referred to the Departmental Complaints Committee. The department should have considered these aspects carefully and accorded Ms Nisha Priya Bhatia a proper environment to work in. The department should have ensured that the order of 8th November 2007 was complied with and that Ms Nisha Priya Bhatia was given the charge of the Training Institute as Director (Trg), as per this order.”

Validity of Rule 135

60. The first question which this court would address to and decide is whether Rule 135 is valid or is it unreasonable and arbitrary. The main grounds of attack, by the petitioner, were that it was not published; it is vague; that it is contrary to the established legal provision contained in Rule 56 (j) of the FR/SR; that it can be used to remove an official for ostensible misconduct, without an inquiry. As far as the first ground, i.e. lack of knowledge goes, the applicant had not urged before CAT that she had no knowledge of the rule. The averment in this regard is as follows:

“4.11 That the exposure clause in the Applicant’s RAS (RCS) Rules, 1975 is deliberately being used as an excuse by her seniors- involved in sex scandals within the department and occupying top positions in the department today- to remove the Applicant from out of their way after she refused to be part of their sex scandals, exposed their deeds and refused to be subdued either by subsequent unprecedented sexual harassment unleashed against her or by the gundagardi directed against her on the Training Institute campus.”

61. It is undoubtedly true that there are some authorities (*B.K. Srinivasan & Another v State of Karnataka* AIR 1987 SC 1054 being one such), which indicate that a norm should be published for it to operate. However, in the present case a peculiar situation has arisen, inasmuch as the organization-R&AW is involved in intelligence work; during arguments, its counsel preferred to refer it as a wing under the Cabinet Secretariat. Publication of the conditions of service, organizational structure and possibly letting out the work flow of different officers and employees, was perceived as a compromise of the confidentiality that the organization fights to maintain at all times. Given these compulsions, this court is of the opinion that the wide kind of publicity of R&AW’s cadre structure was not in public interest. What is apparent from the record, however is that the applicant was aware of the rule and did not state, in her application to CAT that she was kept in the dark; what is stated in the application made – challenging the rule is that for the first time, she became aware at the time of her compulsory retirement and that the rules were kept under lock and key. The UOI’s response is that

“Rules of 1975 are kept in all the offices of R&AW, all over the country and in different sections of the Head Quarters. All officials of R& AW have access to these Rules; however the

same are not available to the public in general as they are secret.”

62. It seems from the above facts that the petitioner was aware of the Rules, especially Rule 135. She chose to challenge it in a separate writ petition, much after the order of compulsory retirement. Though estoppel on this score cannot be invoked, the court is of the opinion that the lack of publicity to the rule cannot be a valid ground, given the character of R&AW and the compulsions that impelled it not to publish the said rule.

63. The next question is whether the rule is arbitrary as it has great potential for abuse and mischief, given that the terms “expose” and “security” are of wide nature. As far as the question of whether the expression “security” is a vague and open-ended term is concerned, the court here recollects that the expression- in the context of security of state, is well known to the Constitution. Article 311 (2), as amended by the Constitution (Fifteenth Amendment) Act, 1963, provides as follows :

"(2) No such persons aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) when the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing it is not practicable to hold such inquiry; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. "

64. Construing the term “security of state” the Supreme Court held, in *Union of India v Tulsiram Patel*, AIR 1985 SC 1416 that:

“Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations these which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or

public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or paramilitary Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows :

"33. Power to Parliament to modify the rights conferred by this Part in their application to Forces.

Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the member of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

By the Constitution (Fiftieth Amendment) Act, 1984, this Article was substituted. By the substituted Article the scope of the Parliament's power to so restrict or abrogate the application of any of the Fundamental Rights is made wider. The substituted Article 33 reads as follows :

"33. Power to Parliament to modify the rights conferred by this Part in their application to Forces, etc. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

(a) the members of the Armed Forces ; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred upon Parliament to restrict or abrogate to them.

The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 33. The satisfaction of the President or Governor must, therefore be with respect to the expediency or in expediency of holding an inquiry in the interest of the security of the State."

65. The applicant's arguments are that the expression "security" is a vague term and does not have any meaning. It is argued by her that the use of the term without the use of any other expression renders it vague and capable of misuse. In this context, the court would reiterate that the R&AW is an organization concededly engaged in intelligence activities that concern security interests of the nation. In the absence of any other expression, the

natural meaning of the expression “security” would be – in the context of Rule 135 if the activities of the employee or the officer are such that it is considered reasonably as a threat to the security of the organization or the country, the Rule can apply. In this context, the above observations in *Tulsi Ram Patel (supra)* are relevant. The court had underlined that it is difficult to enumerate the various ways in which the security of the State can be affected. The court had also highlighted that security of the State included the security of part of the State. If one sees these observations in the context of the fact that members of the R&AW are covered by Article 33 of the Constitution (as amended by the 50th Amendment Act, 1984), it is obvious to the court that any act, to fall within the mischief of Rule 135, should be of such nature as to pose a threat to the security of the nation or security of R&AW. Furthermore, the organization comprises of its members and personnel. Therefore, if in a given case, any member of R&AW indulges in behaviour that is likely to prejudice its overall morale or lead to dissatisfaction, it may well constitute a threat to its security.

66. As regards, the applicant’s objection to the term “exposure”, here again upon a plain interpretation, it is evident that if the identity of any member of R&AW, which ought not to be known widely, is so made known or publicised, and that incident or rationale is a cause of threat – real or apprehended, to its security or the security of its personnel or the security of the state, the rule can be attracted. It is difficult to visualize the various situations in which exposure of R&AW personnel might lead to a security threat. For instance, identity of someone, who is known to head a senior position, *per se*, may not pose a threat to the security or to R&AW. However, the disclosure of identity through any incident, of its officers who

are involved in sensitive functions or operations, in any manner whatsoever, can lead to compromise of the security of R&AW or the state. One of the ways this can happen is that if the truth of such an individual is known, he or she can be open to scrutiny by forces hostile and on occasions even subjected to threats which might lead to disclosures- voluntary or otherwise- with regard to the secrets of the organization which can be a threat to the security of the country. Therefore, the use of the expressions “security” and “exposure”, are not vague or arbitrary but, having regard to the context and the underlying objectives of the R&AW, mean security of the State or security of R&AW and exposure of the identity of the concerned individual.

67. As regards the argument that Rule 135 departs from the known standard of “public interest” spelt out in Rule 56 (j), because the Central Government can arbitrarily revoke it, despite inapplicability of the conditions in Rule 56 (j) (i.e. attainment of 50 years of age or 20 years’ service), the court is of opinion that once it is accepted that Rule 135 is framed under proviso to Article 309, its statutory status too is recognized. Therefore, it then becomes a special condition applicable to members of R&AW, having regard to the peculiarities of their service. The *rationale* for its invocation need not necessarily be any wrongdoing attributable to the public employee, but the fact that some circumstances exist which warrant exercise of power based on that norm (Rule 135). The UOI highlighted that unlike Rule 56 (j) of FR/SR, Rule 135 spells out certain benefits: pension based on the last salary that the employee would draw, had she continued in service till normal age of superannuation (inclusive of promotional rank pay, etc); terminal benefits and also 12 months rehabilitation grant. These benefits are not available to officers or employees who are compulsorily

retired under Rule 56 (j) FR/SR. In view of these it is held that invocation of Rule 135 entails pre-existence of entirely different set of facts, which compel the R&AW to let go of the services of an officer or employee. The court is also of the opinion that in the past, certain employees were not compulsorily retired despite their alleged “exposure” or that officials brought in from other departments are not covered by the rule, and cannot therefore be retired under it, are not relevant. A deputationist’s services stand on a footing unlike that of the official in a department, who is bound by its terms and conditions. In case a deputationist – hypothetically- is “exposed” or “exposes” himself and that constitutes a security threat, surely the Central Government can resort to other mechanisms: including compulsory retirement (provided the employee fulfils the conditions under Rule 56 (j)); it may also resort- if the employee is culpable for the “incident” and the facts so warrant, invocation of Article 311 (2) (c) and summary dismissal or penalty of similar nature. The possibility of other officers not being governed by the rule, or that in other cases it was not invoked, therefore, cannot be a ground to hold it arbitrary or invalid.

68. The further question is whether in the facts of the case, the applicant is justified in stating that her exposure in the media, was not on account of her own volition but rather engineered or orchestrated by the UOI. On this aspect, the court is of the opinion that there cannot be any unambiguous finding, either in affirmative or in negative. It is a fact that the applicant attempted suicide before the Prime Minister’s Office on 19.08.2008. This became an “incident” that was covered by the press. Undoubtedly, the Prime Minister’s Office put out a press statement. As far as other press articles are concerned, this court cannot hold conclusively that all of them were

published at the behest of the UOI – or that – at the behest of the applicant. The other instances – especially with respect to what occurred in the courts, within the court precincts, in the presence of several litigants, the public and the lawyers, including what occurred in the court (i.e. the applicant sought to strip herself of clothing) also drew unwanted attention and caused publicity in the press. At least, these incidents can be attributed to the actions of the applicant. Even though, one were to assume that the other press reports were not attributable to her, definitely, the incident of her attempting suicide and attempting stripping in the court, caused public attention as to attract press coverage. To that extent, this court is unpersuaded by the argument that the press coverage was neither on account of her nor attributable to her.

69. That brings the discussion to the real issue before the court – i.e. whether the applicant's compulsory retirement order was *mala fide* and the reasons for it, were arbitrary. As discussed in the previous section, dealing with the facts, the applicant had complained of sexual harassment against Mr. Uke for the first time on 26.10.2007. She even represented to the Prime Minister's Office on that day and levelled allegations against Shri Ashok Chaturvedi. Between this point of time and 19.08.2008, the authorities merely seem to have taken these allegations lightly: the Shashi Prabha Committee had furnished its report; but it was not made known to the applicant. She too had not participated in its proceedings. Her complaint against Mr. Chaturvedi had not been taken seriously at all.

70. The Shashi Prabha Committee was constituted to consider in this regard on 01.11.2007. However, its mandate did not cover the complaints against Mr. Ashok Chaturvedi, a Secretary level officer – instead it could consider the complaints against Mr. Uke. Its report was made on 19.05.2008

and that the applicant had not co-operated with it. Nevertheless, its reports were not given to the applicant. It was in these circumstances that on 19.08.2008, the applicant attempted suicide and was subsequently charged for committing the offence under Section 309 IPC. The Central Government constituted the Rathi Vinay Jha Committee to look into the allegations against the Additional Secretary/Secretary level officers on 30.09.2008, i.e. a month after 19.08.2008. Since the applicant was denied the copies of the Shashi Prabha Committee report, she applied to the court by filing a writ petition (i.e. W.P.(C)No.7971/2008).

71. The Rathi Vinay Jha Committee submitted its report on 30.01.2009. Even though it did not find evidence to implicate Mr. Ashok Chaturvedi or Mr. Sunil Uke, it made certain significant adverse comments against Mr. Chaturvedi for his inaction and lack of sensitivity reflected in his file notings. On the basis of the report of the Cabinet Secretary, the PMO directed that strict instructions should be issued to all Ministries to ensure that complaint mechanisms are real and functional.

72. In the meanwhile, the file reflects that on 22.09.2008, for the first time, the proposal to invoke Rule 135 was mooted; this was again done on 18.04.2009. Similar requests/reminders on this aspect exist on the file (dated 18.04.2009 and 11.05.2009). The note was sent to the PMO by the Cabinet Secretariat proposing invocation of Rule 135 on 13.05.2009. This set out four additional reasons for possible invocation of Rule 135 – (apart from previous grounds on the file) (i) that the applicant had become unemployable in the organization and had been sending SMSs and phone calls to the senior officers that were derogatory and abusive; (ii) she alleged criminal intimidation against one Shri N.K Sharma, who in turn also sent several

complaints regarding the same; (iii) she stopped attending office since 19.08.2008 and (iv) she was involved in avoidable litigation. At the same time, this note also sets out three alternative courses of action i.e. that she was a security risk and also behaving in erratic manner towards officers of R&AW; that she could be given counselling and psychiatric help or that she could be directed to mandatorily appear before a Medical Board for exploring further action and lastly, posting her in another department. The last option was ruled out by stating that the government ought not to attempt to solve the problem in any organization by creating another. However, invoking Rule 135 was seen as the only option.

73. On this note, the PMO sought clarification with respect to the possible impact of such an order. Subsequently, the view of both, the Law Department and the Solicitor General, were sought. The proposal was not acted upon for some time. On 31.08.2009, the Additional Secretary in reference to the previous notes informed that there was no procedure required to be followed as a pre-condition for invoking Rule 135. In this background, on 07.12.2009, the Secretary (R) wrote to the PMO requesting for an early decision. It was in these circumstances, that the decision was taken and the order of compulsory retirement made on 18.12.2009.

74. In the previous portions of this judgment, the brief summary of the Shashi Prabha Committee and the Rathi Vinay Jha Committee have been set out. Both the reports do not indict the officials against whom Ms Bhatia levelled the allegations, especially, Mr. Uke, given that she did not choose to appear in the hearings conducted by the Committee. At the same time, the court notices that both the committees made significant observations. The Shashi Prabha Committee in fact noted that the statements of six officers

recorded by it disclose strained relations between Ms. Bhatia and Mr. Uke and “in his own admission about bias against Ms. Bhatia based on hearsay about her reputation”. Likewise, the Rathi Vinay Jha Committee also made important significant adverse comments with respect to the inaction and complete indifference possibly by Sh. Ashok Chaturvedi, former Secretary of R&AW. Furthermore, the report also comments adversely on the failure, either deliberate or due to callousness, of the superior officers in ensuring that Ms. Bhatia’s posting to the Training Institute for over a month and a half (8 November 2007 to 17 December 2017) could not be made effective, because the incumbent Director was not relieved. Given the situation that she was in, the officer perhaps underwent trauma and agony.

75. These file notings and reports of the two committees do show two things: that though the applicant, for reasons best known to her, chose not to participate in the two inquiries, even though adequate opportunity was provided to her, the reports of these committees found sufficient material to indict the two officials against whom she had complained. Against the alleged perpetrator (Mr. Uke) the concerned committee did not discern evidence to support the allegations of sexual harassment levelled; yet it made a significant comment, i.e that his relationship with Ms. Bhatia was strained (based on independent testimony of other colleagues) and furthermore, the file notings by him showed some kind of bias which could amount to negating gender equality. These were of some seriousness. The court was not shown any material suggestive of any disciplinary action against the official. As against Mr. Chaturvedi too, the Rathi Vinay Jha committee made adverse comments on two aspects, which have been discussed earlier.

76. It is now well settled that an order of premature retirement from service, *ipso facto*, is not punitive and does not amount to termination of the services of an employee, even if it is based upon alleged questionable conduct. The considerations that weigh with the administration are entirely different. In *Baikuntha Nath Das* (supra), the Supreme Court had in the following passage spelt out the governing principles as follows:

“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 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 interfere. Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 32 to 33 above.”

77. These principles were uniformly followed in subsequent judgments including *Madan Mohan Chaudhary v. State of Bihar*, (1999) 3 SCC 396; *Nawal Singh v. State of U.P.*, (2003) 8 SCC 117 and *Nand Kumar Verma v. State of Jharkhand*, (2012) 3 SCC 580. These have now found universal acceptance.

78. Therefore, as long as a public employee's services are dispensed with prematurely for reasons which are germane to the concerned body's service rules and terms and conditions, and are not *mala fide* or do not suffer from any grave procedural impropriety, the courts would not interfere with the decision. Considering the circumstances of this case from this perspective, it is evident that at the higher levels of the UOI i.e. at the stage of Cabinet Secretary, the PMO and the Ministry of Law and Justice, various options were explored. It is not as if the option to invoke Rule 135 was the only choice pursued at the highest echelons of the government. The notings disclose that the Prime Minister had desired to consider the impact of the decision from all perspectives. Evidently, the concern was not only with respect to the impact upon the employee/officer i.e. the applicant but also

upon the service as a whole. Significantly, the Prime Minister also desired- after the adverse remarks were noticed, in the Shashi Prabha Committee's recommendations, that prompt triggering of complaint mechanisms should be ensured at all government levels. One of the notings of the Cabinet Secretary suggested the option of pursuing disciplinary proceedings under Rule 9 of the Central Civil Services (Pension) Rules, 1972 against the retired Secretary level R&AW Head, Mr. Tripathi. Given all these facts and materials on record, it cannot be held that the government acted in a *mala fide* manner, in choosing what it considered to be inevitable option i.e. invoking Rule 135.

79. Having held that, at the same time, this court has to weigh in and balance the facts as they seem to have occurred at the relevant stage. The inability of the Central Government – perhaps accounted mainly because of Mr. Chaturvedi's holding the position, of addressing the complaints made against him, seem to have triggered the extreme responses in the applicant who chose to go out in the public and attempt suicide. One or two of her other actions in public places such as courts did not help her cause. The court is not expressing any opinion on the allegations of abusive SMSes (which were not raised before the CAT), though it addressed arguments and produced two bound volumes containing copies. However, there is reference to such SMSes in the official files and that they were repeatedly addressed to various serving officers of RA&W. As middle to senior level public Central Government officer, who presumably work under extreme stressful conditions with issues of national security, all such behavior, even at the worst of times is not warranted. Equally, at the same time, the Central

Government's indifference and apparent insensitivity (one can use this term as it is a part of the record of the Rathi Vinay Jha Committee's report) in addressing the real issues, resulted in avoidable situations. Considering all these circumstances, the court is of the opinion that at this level of time, it would not be appropriate that the CAT's decision, which was to some extent based upon a perception of the Central Government's haste in deciding to invoke Rule 135 – on account of the statement made in November, 2008 by it, which was at variance with the alternative order of retirement cannot be upheld. At the same time, the peculiarities and circumstances of this case, warrant a measure of relief to the applicant, Ms. Bhatia as well. In the considered view of this court and for the foregoing reasons, the following conclusions and directions are issued:

- (i) Rule 135 is valid and constitutional.
- (ii) The invocation of Rule 135 by the Central Government is upheld. However, this court is of the opinion that the date of invocation should be postponed and is directed to be postponed to 31.12.2012.
- (iii) As a consequence of the above direction, the applicant Ms. Nisha Priya Bhatia would be entitled to the consequential difference between the pay she was entitled to and amounts paid as provisional pension, on the one hand, and the payment that she would be entitled to along with allowances as if she had continued in service up to 31.12.2012.
- (iv) The pension fixation date shall be in accordance with Rule 135 i.e. as if Ms. Bhatia had continued in service till the date of her normal retirement – some time in 2023 (since the date of birth in the record shown to the court is in 1963). Consequently, the benefits of higher pay on account of

implementation of 7th Central Pay Commission's recommendations along with all attendant and consequential benefits shall also inure to her together with increments up to the date of such notional superannuation.

(v) As a consequence of the above, Ms. Bhatia's entitlement to the promotion to the next position (Joint Secretary) shall be considered. For this purpose, the ACR gradings to be considered shall be as on the date till she was allowed to function in the R&AW and when they were recorded and the appropriate Rules shall be taken in account while considering her entitlement to promotion. In case, she is given that benefit, this too shall be considered while working out her pay fixation and consequently higher pension fixation for the purpose of working out the benefits of Rule 135.

(vi) Ms. Bhatia shall be entitled, additionally, to one-year Rehabilitation Grant, in terms of Rule 135.

(vii) The directions contained in the preceding paragraphs shall be appropriately calculated and given effect to at the earliest and preferably within eight weeks from today.

80. The writ petition is disposed of in the above terms.

भारतमेव जयते

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

JANUARY 07, 2019