

\$~

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

+ **W.P.(C) 11177/2020 & CM APPL.34872/2020 (stay)**

% **Reserved on: 13th September, 2021.**
Decided on: 22nd September, 2021.

ASHOK KUMAR AGGARWAL Petitioner

Through: Mr. Vikas Singh, Senior Advocate
with Mr. Varun Singh, Ms. Deepeika Kalia,
Mr. Kapish Seth, Mr. Mrityunjay Singh,
Mr. Akshay Dev, Ms. Alankriti Dwivedi and
Ms. Samruddhi Bendbhar, Advocates

Versus

UNION OF INDIA AND ANOTHER Respondents

Through: Mr. Tushar Mehta, Solicitor General
of India with Mr. Zoheb Hossain, Senior Standing
Counsel, Mr. Ravi Prakash, Central Government
Standing Counsel and Mr. Farman Ali, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT

: **Per D. N. PATEL, Chief Justice**

1. Being aggrieved and feeling dissatisfied by the judgment and order of **Central Administrative Tribunal, Principal Bench, New Delhi** (hereinafter referred to as '**the Tribunal**') in **O.A. No.1835/2020** dated **18.12.2020** (**Annexure P-1** to the memo of this petition), the present petition has been preferred by the Original Applicant. The learned **Tribunal dismissed O.A.No.1835/2020** whereby **order dated 10.06.2019** (**Annexure P-2** to the memo of this petition) passed by the Respondents of **compulsorily retiring the petitioner was not interfered with**. Similarly,

W.P.(C) 11177/2020

Page 1 of 49

order dated **19.08.2019** (**Annexure P-3** to the memo of this petition) passed by the Respondents **rejecting the representation** of the Petitioner was also **not interfered with** by the Tribunal. Thus, the order passed by the Respondents under **Rule 56(j) of Fundamental Rules** of retiring the Petitioner **with immediate effect from 10.06.2019** was not interfered with and **since then the Petitioner already stands retired from services of the Respondents.**

FACTUAL MATRIX

2. The factual matrix of the case is as follows:-
 - 2.1 Petitioner is an officer of Indian Revenue Services ('IRS') of 1985 batch.
 - 2.2 On 06.11.1996, the Petitioner was appointed as Deputy Director of Enforcement (Delhi Zone) where he supervised the investigation of cases pertaining to Foreign Exchange Regulation Act (FERA).
 - 2.3 On 01.01.1998, search was conducted by Enforcement Directorate officers at the business and residential premises of one hawala dealer, namely, Subhash Barjatya. Incriminating materials were seized including several documents and, thereafter Mr. Barjatya was arrested.
 - 2.4 It is alleged by the Petitioner that he faced severe pressure from certain higher authorities of Enforcement Directorate in relation to the said case and, therefore, he made a representation in July 1998 to the Revenue Secretary in this regard.
 - 2.5 Central Vigilance Commissioner ordered a CBI inquiry on 28.12.1998. The Petitioner was transferred from the post of Deputy Director of Enforcement (Delhi Zone) and he was kept on

“compulsory wait”.

- 2.6 It is alleged by the Petitioner that he has outstanding Annual Confidential Reports (hereinafter referred to as ‘ACR’) from 1991 to 1996. Three ACRs from 1999 onwards were not given any gradation. There were allegations against the Petitioner and, therefore, the Petitioner was placed under suspension w.e.f. 28.12.1999.
- 2.7 In a criminal case registered against the Petitioner by CBI, the charge sheet was filed on 28.06.2020.
- 2.8 One more criminal case was registered against the Petitioner of disproportionate assets of about Rs.12 crores on 26.11.2020.
- 2.9 The Petitioner preferred O.A. No.783/2000 challenging the order of suspension and the O.A. was allowed.
- 2.10 Another order of suspension was issued on 25.04.2003. The competent authority granted sanction for prosecution of the Petitioner in Criminal Case on 28.07.2007.
- 2.11 A criminal revision petition was preferred by the Petitioner before Delhi High Court and the Criminal Revision was allowed and the order for sanction of prosecution was set aside.
- 2.12 Special Leave Petition has been preferred by the Respondents before Hon’ble the Supreme Court being SLP (Crl.) No. 10112/2016, which is still pending.
- 2.13 The Petitioner filed one more O.A. No.495/2012 challenging the second order of suspension which was dated 25.04.2003. This OA was allowed against which writ petition preferred by the Respondents was dismissed by the High Court and Hon’ble Supreme Court also dismissed the SLP preferred by the Respondents.

- 2.14** The suspension was revoked on 06.01.2014 immediately after the order of Hon'ble the Supreme Court. The Petitioner was transferred to Kolkata
- 2.15** One more O.A.No.3971/2015 was preferred by the Petitioner claiming promotions at par with his juniors as no promotion was given to the Petitioner during suspension. Suspension continued from 1999 to 2014.
- 2.16** The petitioner was posted as Senior Departmental Representative at ITAT, New Delhi.
- 2.17** Thereafter, representations were made by the Petitioner for his posting under Senior Officer.
- 2.18** The Petitioner preferred one more litigation being W.P.(Crl.) No.1401/2012 for quashing both the criminal cases. This petition was allowed.
- 2.19** Two charge sheets were issued to the Petitioner on 14.03.2014 & 20.03.2014 under Rule 14 of CCS(CCA) Rules. Against the same, O.As. were preferred by the Petitioner and they were allowed vide order dated 12.02.2016 by the Central Administrative Tribunal, Principal Bench, New Delhi. The Writ petitions preferred by the Respondents were dismissed by the High Court. Thereafter, Special Leave Petitions preferred by the Respondents were also dismissed.
- 2.20** "Sealed cover" procedure was adopted in the case of the Petitioner was opened on 26.03.2019 and it was found out that Departmental Promotion Committee found him unfit for promotion.
- 2.21** In a matter pending before the High Court being C.M.No.11272/2019 in W.P.(C) 9230/2016, the Respondents assured that the case of the

Petitioner would be examined in the light of the adjudication that has taken place in various cases. An order was passed by this Court on 27.05.2019 for consideration of the Petitioner's promotion in the light of the various decisions passed by the competent courts and the matter was adjourned on 08.07.2019.

- 2.22** In the meanwhile, the Petitioner was compulsorily retired by the Respondents by invoking Rule 56(j) of Fundamental Rules vide order dated 10.06.2019.
- 2.23** This order of compulsory retirement was challenged in O.A.No.1835/2020 and also thereafter representation was rejected by the Respondents vide further order dated 19.08.2019 and the same was challenged.
- 2.24** O.A. preferred by the Petitioner was dismissed by the Tribunal vide judgment and order dated 18.12.2020, hence the present petition has been preferred by the Original Applicant in O.A. No.1835/2020.

ARGUMENTS OF THE PETITIONER

- 3.1** Mr. Vikas Singh, learned Senior Counsel appearing for the Petitioner submitted that the order of compulsory retirement dated 10.06.2019 (Annexure P-2) is arbitrary, illegal and passed with *malafide* and hence, the same deserves to be quashed and set aside.
- 3.2** It is further submitted by the learned Senior Counsel that looking to the various orders passed in not less than one and half dozen matters, the order of compulsory retirement is absolutely *malafide*.
- 3.3** It is further submitted by learned Senior Counsel that the impugned order dated 10.06.2019 of compulsory retiring the Petitioner was

issued in violation of guidelines issued by the Respondents as regards timing for exercise of powers under Rule 56(j) of Fundamental Rules. The date of birth of the Petitioner is 11.12.1962 and on 10.06.2019, i.e., on the date of passing of the order of compulsory retirement, the Petitioner was 56 years and six months of age. Thus, the order of compulsory retirement was in violation of OM No.25013/1/2013-Estt(A) dated 21.03.2014. In fact the action should have been initiated prior to six months of attaining the age of 50 years of the Petitioner.

- 3.4** It is also submitted by Mr. Vikas Singh that legal malice on the part of the Respondents have not been properly appreciated by the Tribunal while deciding O.A.No.1835/2020 vide judgment and order dated 18.12.2020. Hence, the impugned judgment deserves to be quashed and set aside.
- 3.5** Learned Senior Counsel read out several orders passed in different O.As., Writ petitions and SLPs and submitted that the order of compulsory retirement is in violation of the assurance given by the learned Additional Solicitor General in C.M.No.11272/2019 and C.M.No.19013/2019 in W.P.(C) No.9230/2016. He pointed out the orders dated 06.05.2019 and 27.05.2019 passed in the aforesaid applications.
- 3.6** Learned Senior Counsel in support of the present petition, relied on the following decisions:
- i) ***Swaran Singh Chand vs Punjab State Electricity (2009) 13 SCC 758;***
 - ii) ***S.R. Venkataraman v. Union of India 1979 (2) SCC 491***

- iii) *Bihar State Govt. Sec. Sci. Teachers Assn. v. Ashok Kumar Sinha & Ors* (2014) 7 SCC 416
- iv) *Yogesh M Vyas v. Registrar, High Court of Gujarat*, Civil Appeal No.4514/2010 decided on 03.09.2019 by Hon'ble Supreme Court
- v) *Ram Lakhan Singh vs. State of Uttar Pradesh*, (2015) 6 SCC 715
- vi) *State of Orissa vs. Debendra Nath Padhi* (2007) 14 SCC 568
- vii) (1992) SCC Online AP (High Court of Andhra Pradesh)
- viii) *Gujarat and Another vs State of Chunilal Shah* (1999) 1 SCC 529
- ix) *Baikuntha Nath Das v. Chief District Medical Officer* (1992) 2 SCC 299
- x) *Rajesh Gupta v. State of J&K* (2013) 3 SCC 514
- xi) *State of Gujarat v. Umed Bhai M. Patel* (2001) 3 SCC 314
- xii) *Hawa Singh Bhambhu vs. State of Haryana*, MANU/PH/0958/2020.

3.7 On the basis of the aforesaid decisions, it is submitted by learned Senior Counsel at length that before the Review Committee all material was not placed. The Review Committee must have sufficient material to pass the order of compulsory retirement which is lacking in the present case.

3.8 It has also been submitted by learned Senior Counsel that the Tribunal has appreciated two criminal cases which were registered against the Petitioner but has failed to appreciate that both the criminal cases were quashed. The Review Committee has also not appreciated this

aspect of the matter.

- 3.9** It is also submitted by the learned Senior Counsel that the Tribunal has not appreciated the fact that there was no criminal case which was at all pending against the Petitioner as on the date of compulsory retirement nor there was any departmental inquiry pending against the Petitioner as on the date of compulsory retirement order passed by the Respondents. Hence, the order of compulsory retirement dated 10.06.2019 deserves to be quashed and set aside and the order passed by the Tribunal in O.A.No.1835/2020 dated 18.12.2020 also deserves to be quashed and set aside. The Respondents have also not appreciated the aforesaid aspect of the matter while deciding the representation of the Petitioner and hence the order passed by the Respondent rejecting the representation dated 19.08.2019 also deserves to be quashed and set aside.

ARGUMENTS BY THE RESPONDENTS

- 4.1** It is submitted by learned Counsel for the Respondents that no error has been committed by the Tribunal in dismissing O.A.No.1835/2020 preferred by the Petitioner vide judgment and order dated 18.12.2020 and no error has been committed by the Respondents while rejecting the representation preferred by the Petitioner vide order dated 19.08.2019.
- 4.2** It is further submitted that there are 64 officers who have been compulsorily retired under Rule 56(j) of Fundamental Rules in public interest including the present Petitioner. Initially, SLP(C) No.22421/2019 was preferred by the Petitioner against order of Delhi High Court in W.P.(C) 9339/2019. The said SLP was dismissed by

Hon'ble the Supreme Court. In W.P.(C) No.9339/2019, the High Court held that challenge to the order of compulsory retirement should be made before the Tribunal and not directly in the High Court. This order was upheld by the Supreme Court and the SLP was dismissed on 21.10.2019.

4.3 It is further submitted by learned counsel for the Respondents that the order of compulsory retirement passed by the Respondents is independent decision taken by the Respondents by Review Committee after considering the entire service record of the Petitioner and Review Committee after considering the entire service record was of the opinion that the Petitioner is no longer useful into the service of the Respondents.

4.4 Learned counsel for the Respondents has taken this Court to criminal cases filed against the Petitioner by CBI and has submitted that the following two cases were registered against the Petitioner:-

- i) **RC S18-1999/E-001**: it was alleged that Shri Ashok Kumar Aggarwal and one Mr. Abhishek Verma were involved in criminal conspiracy by way of forging a document (a fax message) and using it as a genuine document with the intention to create false evidences to implicate one Shri S. C. Barjatya.
- ii) **RC S-19/1999/E-001**: The case was registered against Shri Ashok Kumar Aggarwal for alleged possession of disproportionate assets against his known sources of income. The CBI in its report has estimated the total disproportionate assets of Shri Ashok Kumar Aggarwal at Rs.12,04,46,946/-.

4.5 It is submitted by the learned counsel for the Respondents that in the

aforesaid cases charge sheets were filed and the sanction for prosecution was also granted vide orders dated 26.06.2002 and 26.11.2002 by the competent authority. The High Court quashed the orders granting sanction for prosecution against which the Department has filed SLPs being:-

- i) SLP (CrI.) No.10083/2016
- ii) SLP (CrI.) No.10112/2016
- iii) SLP (CrI.) No.418/2017
- iv) SLP (CrI.) 419/2017.

This is a common judgment and order dated 13.01.2016 passed by the High Court in W.P.(C) No.1401/2002 and CrI.Rev.P. No.338/2014.

The aforesaid SLP(CrIs.) are pending before Hon'ble the Supreme Court.

- 4.6** It is further submitted by learned counsel for the Respondents that the Petitioner was placed under suspension w.e.f. 23.12.1999 after he was arrested by CBI in the aforesaid two cases. The order of suspension was initially challenged before the Tribunal. The suspension order was quashed with a liberty to pass a fresh order.
- 4.7** Again the fresh suspension order dated 25.04.2003 was passed and again it was quashed by the Tribunal. The Department challenged the said order in writ petition before the High Court which was dismissed and SLP preferred by the Department was also dismissed. Suspension was revoked on 24.03.2014 and was made effective from 12.01.2012.
- 4.8** It is also submitted by the Respondents that the Petitioner was facing two departmental inquiries vide charge sheets dated 14.03.2014 and 20.03.2014. Again in two separate litigations before the Tribunal,

these chargesheets were quashed.

- 4.9** It is further submitted by learned counsel for the Respondents that in his career span of 34 years, Petitioner has been in litigation against the Respondents for 20 years.
- 4.10** It is submitted by the Respondents that in these circumstances, it cannot be said that the continuation of the services of the Petitioner with the Respondents is in public interest. The conduct of the Petitioner has shaken the confidence of the Department to post him to any public post which involves public dealing or is sensitive in nature and hence, the Review Committee concluded that his continuing in the services will not be useful to the public and is injurious to public interest and the services of the Petitioner are no longer useful to the general administration. The conduct of the Petitioner is unbecoming of a Government servant and is injurious to public interest and obstructs the efficiency in public services.
- 4.11** It is also submitted by counsel appearing for the Respondents that the Government of India has absolute right to retire a Government Servant in public interest and, therefore, in the light of the aforesaid, the Review Committee recommended that the Petitioner be compulsorily retired in public interest under Rule 56(j) of Fundamental Rules.
- 4.12** The learned counsel submitted that the Review Committee also clarified that the pre-mature retirement of the Petitioner is not being recommended as punitive measure and that the order of compulsory retirement will not be treated as punishment under Article 311 of the Constitution of India.

- 4.13 The learned counsel has taken this Court in detail to the counter affidavit filed by the Respondents in O.A.1835/2020 and has explained in detail, the scope of compulsory retirement under Rule 56(j) of Fundamental Rules on the basis of the decision rendered by Hon'ble Supreme Court in *Baikuntha Nath Das v. Chief Distt. Medical Officer, Baripada* AIR 1992 SC 1020.
- 4.14 It is submitted by learned counsel appearing on behalf of the Respondents that compulsory retirement involves civil consequences. The rule merely points out the “Doctrine of Pleasure” embodied in Article 310 of the Constitution of India.
- 4.15 It is further submitted by learned counsel for the Respondents that material from the entire service record of the Petitioner was considered by the Review Committee and it was decided that the Petitioner's continuance in the services is not in public interest. It is also submitted that the Petitioner did not file his Immovable Property Returns (IPR) at the time of joining which is required under law. There are correspondences between the Respondent and Petitioner dated 27.03.2000, 02.03.2000, 06.03.2000 and 14.03.2000. It is also pointed out that the Petitioner had not submitted his appraisal for the financial year 1998-1999. For the year 2014-15, the Petitioner had not submitted his Annual Performance Appraisal Reports (hereinafter referred to as 'APAR') to the authorities even after the timeline elapsed, as per the timeline prescribed by the Department.
- 4.16 Learned counsel for the Respondents has narrated in detail about these aspects of the matter and submitted that writing of ACR/APAR is public trust and responsibility and, therefore, the Petitioner has failed

to perform the public duty of writing of ACRs and APAR. Thus, the Petitioner has developed a tendency of not following Government instructions in writing of APARs/public duty. Promotions etc. are based upon ACRs/APARs and, therefore, the Petitioner obstructed his superior authorities to evaluate his work, conduct, character and capacity and, therefore, taking a holistic view of the record of the Petitioner, the Review Committee concluded that the conduct of the Petitioner is such that his continuance in the service would be a menace to public service and injurious to public interest and hence, his services are no longer useful to the general administration.

- 4.17** The learned counsel further submitted that the Petitioner has been acquitted on a technical ground. SLPs are pending against the same before the Hon'ble Supreme Court. Sanction for prosecution was quashed by the High Court on technical ground, that entire material was not placed before the Sanctioning Authority at the time of granting of sanction. Thus, decision of the High Court is under challenge and matters are pending before the Supreme Court.
- 4.18** Learned counsel appearing on behalf of the Petitioner has argued at length about "honourable acquittal" and "acquittal on technical ground" on the basis of several decisions.
- 4.19** It is further submitted that the order of compulsory retirement is absolutely independent decision taken by the Review Committee based on entire service record of the Petitioner and the Review Committee had arrived at a subjective satisfaction that the Petitioner must be retired under Rule 56(j) of Fundamental Rules in public interest.

- 4.20 He also submitted that this Court is not sitting in appeal against the decision of the Review Committee and that there is no *malafide* on the part of the Respondents while taking the decision of compulsory retirement of the Petitioner nor there is any arbitrariness on the part of the Respondents while passing the order of compulsory retirement. The said order has been passed upon recommendation of the Review Committee after looking to the entire service record of the Petitioner.
- 4.21 It is also submitted that it is not necessary that immediately upon attaining the age of 50 years by the Petitioner, the decision must be taken by the Respondents for his compulsory retirement. As per Rule 56(j) of Fundamental Rules, after the Petitioner attains the age of 50 years, the compulsory retirement order can be passed by the Respondents.
- 4.22 Learned counsel for the Respondent has relied upon the following decision of the Supreme Court in *Union of India & Ors. v. Nasirmiya Ahmadiya Chauhan* (1994) Suppl. 2 SCC 537
- 4.23 It is submitted by the counsel for the Respondents that order of compulsory retirement under Rule 56(j) of Fundamental Rules is neither stigmatic nor does it entail any civil consequences and, therefore, compulsory retirement does not prejudice a Government servant nor there is violation of the fundamental right of the Petitioner.
- 4.24 Learned counsel has relied upon the decision rendered by Hon'ble Supreme Court in *K. Kanda Swamy vs. Union of India* (1995) 6 SCC 162 and *Union of India vs. M. E. Reddy* 1980 (2) SCC 15.
- 4.25 Learned counsel for the Respondent has also relied upon the decision

rendered by Hon'ble Supreme Court in *Nisha Priya Bhatiya vs. Union of India*, Civil Appeal No.2365/2020 (para-54 and 71 thereof) reported in *Nisha Priya Bhatia vs. Union of India & Anr*, (2020) 13 SCC 56.

4.26 Learned counsel has also relied upon the decision in *Ram Murthy Yadav vs. State of U.P. & Ors.* (2020) 1 SCC 801.

4.27 On the basis of the aforesaid decisions, it is submitted by counsel for the Respondents that no error has been committed by the Tribunal while deciding O.A.No.1835/2020 by the judgment and order dated 18.12.2020 and rightly the Tribunal has not interfered with the order of compulsory retirement passed by the Respondents on 10.06.2019 and the rejection of the representation dated 19.08.2019.

4.28 It is, therefore, submitted that this petition may not be entertained by this Court and the same may kindly be dismissed.

REASONS:-

5. This petition has been preferred by the Original Applicant in O.A.No.1835/2020 against judgment dated 18.12.2020 (Annexure P-1) delivered by the Central Administrative Tribunal, Principal Bench, New Delhi as well as the order dated 10.06.2019 passed by the Respondents (Annexure P-2). This Petitioner has also challenged an order dated 19.08.2019 (Annexure P-3) passed by the Respondents whereby representation of the Petitioner was rejected. This Petitioner has been compulsorily retired under Rule 56(j) of Fundamental Rules by Respondents. This order has not been interfered with by the Tribunal, hence, the Original Applicant has preferred the present petition under Article 226 and 227 of the Constitution of India.

6. Petitioner is an officer of 1985 batch of Indian Revenue Service. In exercise of powers under **Rule 56(j) of Fundamental Rules**, Respondents have **compulsorily retired** the Petitioner vide order dated 10.06.2019. For ready reference, the said order is reproduced hereunder:-

“ORDER NO. A 147/2019

WHEREAS **the President is of the opinion** that it is in **the public interest to do so;**

Now, THEREFORE, in exercise of the powers conferred by clause (j) of rule 56 of the Fundamental Rules, **the President hereby retires Sh. Ashok Kumar Aggarwal (85042) Joint Commissioner of Income Tax** with immediate effect from the **afternoon of 11 June 2019** on completing 50 years of age and shall be paid a sum equivalent to the amount of his pay and allowances for a period of three months calculated at the same rate at which he was supposed to be drawing them immediately before his retirement.

Sd/-

(D.K.Verma)

Deputy Secretary to the Government of India”

(emphasis supplied)

7. A representation was preferred by the Petitioner against the aforesaid order. The same was also rejected vide order dated 19.08.2019.
8. The aforesaid orders were under challenge by the Petitioner before the Central Administrative Tribunal in O.A.No.1835/2020. This OA was dismissed by the Tribunal vide detailed judgment and order dated 18.12.2020.
9. All the aforesaid three orders have been challenged by the Petitioner in this writ petition.
10. **Rule 56(j) of Fundamental Rules** is reproduced hereunder for ready

reference:-

“Notwithstanding anything contained in this rule, **the appropriate authority shall**, if it is of the opinion that **it is in the public interest to do so, have the absolute right to retire** any government servant by giving him notice of not less than three months in writing or three months pay and allowance in lieu of such notice.-

- (i) If he is in Class I or Class II service or post (and had entered the Government service before attaining the age of thirty-five years **after he has attained the age of fifty years**);
- (ii) In any other case after he has attained the age of 55 years.

Provided that nothing in this clause shall apply to a Government servant referred to in Clause (c) who entered Government service on or before 23rd July, 1966 and to Government servant referred to in Clause (f) ”

(emphasis supplied)

11. As per **Department of Personnel and Training (DoPT)** Office Memorandum dated 11.09.2015 bearing O.M.No.25013/01/2013, all the Secretaries of the Cadre Controlling Authorities will constitute Review Committees consisting of two members at appropriate level (**Annexure R-4** to the memo of counter affidavit of Union of India in O.A.No.1835/2020). Review Committee was constituted in terms of the aforesaid office memorandum. Before the Review Committee **all the facts were presented about the Petitioner and entire service record of the Petitioner was placed before the Review Committee** including entries in the Confidential Reports and the litigations entered into by the Petitioner with the Respondents and the orders passed in all the litigations between the parties to this writ petition. **A subjective satisfaction was arrived at by the Review Committee and a recommendation was made for compulsory**

retirement of the Petitioner in public interest, which was accepted by Union of India and Petitioner was made compulsorily retired in public interest.

12. The Central Government considering the aforesaid recommendation of the Review Committee, by its order dated 10.06.2019 passed an order of compulsory retirement in public interest, of the Petitioner with effect from 11.06.2019.

13. Much has been argued out by learned Senior Counsel appearing on behalf of the Petitioner about the order of compulsory retirement dated 10.06.2019 mainly on the ground that this Petitioner has succeeded in several litigations against Union of India and hence, the order of compulsory retirement is tainted with malice in law and also on the ground that there is a delay on the part of the Respondents while passing the order of compulsory retirement and the same is contrary to the undertaking given to Delhi High Court in C.M.No.11272/2019 in W.P.(C) No.9230/2016.

14. None of the aforesaid grounds raised by the learned Senior Counsel for the Petitioner is accepted by this Court. It ought to be kept in mind that order of compulsory retirement under Rule 56(j) of Fundamental Rules is absolutely a separate, distinct exercise under Rule 56(j) of Fundamental Rules and an independent decision has been arrived at by the Union of India through the recommendation of the Review Committee.

15. An order of compulsory retirement is not a punishment nor it attaches any stigma to an employee – Petitioner. Subjective satisfaction of the Government in public interest, arrived at after considering the entire service record of the Petitioner, where principal of natural justice is not required to be observed while passing an order of compulsory retirement because order

of compulsory retirement does not amount to punishment.

16. It has been held by Hon'ble the Supreme Court in *Baikuntha Nath Das v. Chief District Medical Officer* reported in (1992) 2 SCC 299, in Para-12,33,34 and 36 as under:-

“12. As far back as 1970, a Division Bench of this Court comprising J.C. Shah and K.S. Hegde, JJ. held in *Union of India v. J.N. Sinha* [(1970) 2 SCC 458 : (1971) 1 SCR 791] that an order of compulsory retirement made under F.R. 56(j) does not involve any civil consequences, that the employee retired thereunder does not lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant. It was pointed out that the said rule embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution and that the rule holds the balance between the rights of the individual government servant and the interest of the public. The rule is intended, it was explained, to enable the government to energise its machinery and to make it efficient by compulsorily retiring those who in its opinion should not be there in public interest. It was also held that rules of natural justice are not attracted in such a case. If the appropriate authority forms the requisite opinion bona fide, it was held, its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision. It is significant to notice that this decision was rendered after the decisions of this Court in *State of Orissa v. Dr Binapani Dei* [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] and *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150] . Indeed, the said decisions were relied upon to contend that even in such a case the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action. The contention was not accepted as stated above. The principles enunciated in the decision have been accepted and followed in many a later

decision. There has never been a dissent — not until 1987.

XXX

XXX

XXX

33. At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is adverse remarks — not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(j) or a rule corresponding to it. The object and purposes for which this power is to be exercised are well stated in J.N. Sinha [(1970) 2 SCC 458 : (1971) 1 SCR 791] and other decisions referred supra.

34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement **is not a punishment**. It implies **no stigma** nor **any suggestion of misbehaviour**.

(ii) The order has to be passed by the government on forming the opinion that it is **in the public interest** to retire a government servant compulsorily. The order is passed on the **subjective satisfaction of the government**.

(iii) **Principles of natural justice have no place in the context of an order of compulsory retirement**. This does not mean that judicial scrutiny is excluded altogether. While the **High Court** or this Court **would not examine the matter as an appellate court**, they may interfere if they are satisfied that the order is passed (a) **mala fide** or (b) that it is based on **no evidence** or (c) that **it is arbitrary** — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) **shall have to consider the entire record of service** before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls,

both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.

XXX

XXX

XXX

36. So far as the appeals before us are concerned, the High Court which has looked into the relevant record and confidential records has opined that the order of compulsory retirement was based not merely upon the said adverse remarks but other material as well. Secondly, it has also found that the material placed before them does not justify the conclusion that the said remarks were not recorded duly or properly. In the circumstances, it cannot be said that the order of compulsory retirement suffers from mala fides or that it is based on no evidence or that it is arbitrary.”

(emphasis supplied)

17. Compulsory retirement involves no civil consequences. The Government servant does not loose any of the rights acquired by him before retirement while a minimum service is granted to the Government Servant, the Government is given power to energize its machinery and make more efficient by compulsory retiring those who in its opinion should not continue in the service of the Government in the interest of public.

18. It has been held by Hon'ble the Supreme Court in *Union of India v. Col. J.N. Sinha* 1970(2) SCC 458 in para-8, 9 and 10 as under:-

“8. Fundamental Rule 56(i) in terms **does not require that any opportunity should be given to the concerned government servant** to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office **at the pleasure of the President** as provided in Article 310 of the Constitution. But this “pleasure” doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150] “the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it”. It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

9. 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.”

(emphasis supplied)

19. Validity of Rule 56(j) of Fundamental Rules has already been upheld by the Hon'ble the Supreme Court in *T.G. Shivacharana Singh v. State of Mysore* **AIR 1965 SC 280**. It has been held that a Government servant serving under the Union of India holds office at the pleasure of the President of India as provided under Article 310 of the Constitution of India.

20. It has been held in the aforesaid decision by Hon'ble the Supreme Court that compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but the rule provides that such retirements can be made only after the officer attains a prescribed age. Compulsorily retired Government Servant does not loose any benefits earned by him till the date of retirement.

21. The fundamental source of compulsorily retiring an employee of the Government is derived from **“Doctrine of Pleasure”** which springs from Article 310 of the Constitution of India. It has been held by Hon'ble the Supreme Court in *Nisha Priya Bhatia vs. UOI & Anr. (Supra)* in paragraphs, **33,40,42,43** as under:-

“33. Further, it is pertinent to note that the grounds referred to in Rule 135 nowhere contemplate it as a consequence of any fault or wrongful action on the part of the officer and unlike

penal actions, do not stigmatise the outgoing officer or involve loss of benefits already earned by him and there is no element of punishment. Sub-rules (2), (3) and (4) of Rule 135 reinforce this view as the same provide for appropriate benefits such as pension, gratuity, lump sum amount, etc. for the public servant who has been subjected to compulsory retirement. Thus, the employee is not faced with any loss of benefits already earned. We say so because the examination of the characteristics of such a rule is not focussed around the motive or underlying intent behind its enactment, rather, it lies in the consequence and effect of the operation of such a rule on the outgoing employee. **The rule does not result into a deprivation of the retired employee of any benefit whatsoever in lieu of such order of compulsory retirement** and thus, attracts no stigma or any civil consequence to the retired employee for his/her future. **The invocation of this Rule, therefore, falls in sync with the second proposition in Shyam Lal** [State of U.P. v. Shyam Lal Sharma, (1971) 2 SCC 514] **which looks down upon any loss of profits in a non-stigmatic order of compulsory retirement. Succinctly put, a compulsory retirement without anything more does not attract Article 311(2).** We may usefully refer to Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, AIR 1960 SC 1305] and Union of India v. Dulal Dutt [Union of India v. Dulal Dutt, (1993) 2 SCC 179 : 1993 SCC (L&S) 406] to bring home the stated position of law.

XXX

XXX

XXX

40. We also deem it necessary, at this juncture, to note that the mere fact of **non-prescription of inquiry** under Rule 135 of the 1975 Rules, before making the order of compulsory retirement, **does not go against the constitutionality of the Rule**. Additionally, the rule does not prohibit any inquiry and is in general line with the orders of compulsory retirement wherein the right of outgoing employee to participate in the process of formation of such decision is not envisaged in law, as the underlying basis of such action is the larger public

interest and security of the Organisation; and not any culpable conduct of the employee. Moreover, Rule 135 incorporates a language that is self-guiding in nature. The usage of words “exposure” and “unemployability for reasons of security” are not insignificant, rather, they act as quintessential stimulants for the competent authority in passing such order. The mandatory determination of what amounts to an exposure or what renders an employee unemployable due to reasons of security under Rule 135, is both a precondition and safeguard, and incorporates within its fold the subjective satisfaction of the competent authority in that regard. In order to reach its own satisfaction, the authority is free to seek information from its own sources. Thus, in cases when the ingredients of Rule 135 stand satisfied in light of the prevalent circumstances, the need for giving opportunity to the officer concerned by way of an inquiry is done away with because the underlying purpose of such inquiry is not the satisfaction of the principles of natural justice or of the officer concerned, rather, it is to enable the competent authority of the Organisation to satisfy itself in a subjective manner as regards the fitness of the case to invoke the rule. Therefore, the procedure underlying Rule 135 cannot be shackled by the rigidity of the principles of natural justice in larger public interest in reference to the structure of the Organisation in question, being a special rule dealing with specified cases.

XXX

XXX

XXX

42. A conjoint reading of Articles 309 and 311 reveals that Article 311 is confined to the cases wherein an inquiry has been commenced against an employee and an action of penal nature is sought to be taken. Whereas, Article 309 covers the broad spectrum of conditions of service and holds a wider ground as compared to Article 311. That would also include conditions of service beyond mere dismissal, removal or reduction in rank. It holds merit to state that this wide ground contemplated under Article 309 also takes in its sweep the conditions regarding termination of service **including compulsory retirement**. In *Pradyat Kumar Bose v. Chief Justice of Calcutta High Court* [*Pradyat Kumar Bose v. Chief Justice of Calcutta High Court*,

AIR 1956 SC 285] , this Court touched upon the ambit and scope of Article 309 of the Constitution and expounded that the expression “conditions of service” takes within its sweep the cases of dismissal or removal from service.

43. We further note that generally it is correct to say that the rules governing conditions of service, framed under Article 309, are subject to other provisions of the Constitution, including Article 311. The opening words of Article 309 — “Subject to the provisions of this Constitution” — point towards the same analogy. However, this subjection clause shall not operate upon the rules governing compulsory retirement. For, the legal concept of compulsory retirement, as discussed above, is a non-penal measure of the Government and steers clear from the operation of Article 311, unless it is a case of removal or dismissal clothed as compulsory retirement. Had there been a rule providing for removal, dismissal or reduction in rank, it would have been controlled by the safeguards under Article 311. It has also been observed in *State of U.P. v. Babu Ram Upadhyaya* [State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751 : (1961) 1 Cri LJ 773] that the validity of a rule shall be hit by Article 311 only if it seeks to affect the protection offered by Article 311, and not otherwise as in the present case.”

(emphasis supplied)

22. The Petitioner has been compulsorily retired vide order dated 10.06.2019. Complete service record of the Petitioner was placed before the Review Committee. While taking the decision of compulsorily retiring the Petitioner, the Review Committee was of the opinion that continuation of the Petitioner in services of the Respondent is no longer in public interest. The Committee noted that CBI had registered two cases against the Petitioner:-

“**RC S18-1999/E-001**: it was alleged that Shri Ashok Kumar Aggarwal one Mr. Abhishek Verma were involved in criminal conspiracy by way of forging a document (a fax message) and

using it as a genuine document with the intention to create false evidences to implicate one Shri S. C. Barjatya.

RC S-19/1999/E-001: The case was registered against Shri Ashok Kumar Aggarwal for alleged possession of disproportionate assets against his known sources of income. The CBI in its report has estimated the total disproportionate assets of Shri Ashok Kumar Aggarwal at Rs.12,04,46,946/-.”

23. Charge sheets were filed in both the aforesaid criminal cases against the Petitioner. Sanction for prosecution was also granted vide orders dated 26.06.2002 and 26.11.2002 by the Competent Authority. Delhi High Court quashed the order of granting sanction for prosecution in Criminal Writ Petition and in Criminal Revision Petition against which the Department has preferred the Special Leave Petitions before Hon’ble the Supreme Court being:-

- a) SLP(CrI.) No.10083/2016,
- b) SLP(CrI.) No.10112/2016,
- c) SLP (CrI.) No.418/2017 and
- d) SLP (CrI.) No.419/2017.

24. These SLPs are preferred against the common judgment and order dated 13.01.2016 delivered by Delhi High Court. All these SLPs are pending before the Supreme Court.

25. Much has been argued out by learned Senior Counsel appearing on behalf of the Petitioner that there are several litigations initiated by the Petitioner for suspension, quashing of the charge sheets in departmental proceedings, for quashing of the sanction for prosecution, for getting promotions etc. and the Petitioner has succeeded in all these litigations.

This constitutes *malafide* in law on the part of the Respondents.

26. Learned Senior Counsel has also taken this Court to various orders passed by different Courts in varieties of matters filed by him and has pointed out that in few matters, there are observations in the judgment about legal malice on the part of the Respondents.

27. Much emphasis was given by the learned Senior Counsel, Mr. Vikas Singh appearing on behalf of the Petitioner that looking to the observations in the aforesaid matters, there is malice on the part of the Respondents while passing the order of compulsory retirement dated 10.06.2019.

28. We are not in agreement with this contention canvassed by the learned Senior Counsel for the reason that compulsory retirement is absolutely an independent decision arrived at by the Review Committee keeping in mind the entire service record of the Petitioner and usefulness of the Petitioner into the services of the Respondents. In the 34 years span of his career, for 20 years, Petitioner has been busy in litigation with the Respondents. The conduct of the Petitioner has shaken the confidence of the Respondents to post him on public posts which involves public dealing.

29. It has also been pointed out by the learned Counsel for the Respondents that the Petitioner did not file his immovable property returns (IPR) at the time of joining which was required under the law. Correspondences dated 27.03.2000, 02.03.2000, 06.03.2000 and 14.03.2000 have also been annexed as **Annexure R-6** to the memo of the counter affidavit filed by the Respondents before the Tribunal. Similar is the position for APARs dossier of the Petitioner.

30. These APARs were also not submitted by the Petitioner which are self appraisal reports for the year 1998-99, 2015-16, 2017-18, 2018-19. As per

DoPT, OM No.21011/02/2009 – Esstt.(A) dated 16.02.2009, writing of ACR/APAR is a public trust and responsibility and the Petitioner has failed to perform the public duty of writing the ACR/APARs within the due date. Thus, the Petitioner had developed a tendency of not following Government instructions of writing APARs. Thus, after considering all these materials available on record including relating to the departmental inquiries against the Petitioner and taking a holistic view of the record, the Review Committee concluded that conduct of the Petitioner is such that his continuance in service would be a menace to public service and injurious to public interest. Hence, the services of the Petitioner are no longer useful to the general administration. The conduct of the Petitioner is unbecoming of a public servant and obstructs efficiency in public services. Therefore, the Review Committee had recommended that Petitioner be compulsorily retired in public interest under Rule 56(j) of Fundamental Rules.

31. This decision of the Review Committee is an absolutely independent proceedings and looking to the overall service record of the Petitioner, this subjective satisfaction has been arrived at by the Review Committee. There is no allegation of personal *malafide* upon the members of the Review Committee. What is contended by learned Senior Counsel for the Petitioner is legal malice by the Respondents because of certain observations made by the competent Courts in the litigation by the Petitioner against the Respondents.

32. Even if there are decisions in the matter of suspension, departmental inquiries and any challenge of grant of sanction for prosecution in favour of the Petitioner, that does not mean that the Petitioner cannot be compulsorily retired by the Respondents. The observations made in the orders while

deciding the matter initiated by the Petitioner is one thing whereas, the order of compulsory retirement which is passed on the basis of entire service record of the Petitioner and the decision taken by Review Committee, is altogether another thing. If any employee of the Union of India has succeeded in litigation(s) that does not mean that looking to the overall service record of the Petitioner, after certain age as per rules, he cannot be retired by the Union of India. It ought to be kept in mind that compulsory retirement is a subjective satisfaction which has been formed on the basis of the entire service record. It is not a punishment. Compulsory retirement may have some adverse effect upon the employee but if the Review Committee is of the opinion that in the interest of public his services should be brought to an end by compulsory retirement after prescribed age on the basis of the entire record of service, such an employee has no right to continue into the services after a prescribed age, as per rules.

33. Rule 56(j) of Fundamental Rules is an extension of **“Doctrine of Pleasure”**, If the employer – Union of India is of the opinion that no useful purpose will be served by continuing an employee into the services of the Union of India, in the public interest such an employee can be made compulsorily retired.

34. While taking the decision of the compulsory retirement all the service record of the Petitioner has been considered by the Review Committee.

35. It has been held by Hon'ble Supreme Court in ***State of Punjab v. Gurdas Singh (1998) 4 SCC 92*** in paragraph – 11 as under:-

“11. The facts in the present case are quite similar to that in Union of India v. V.P. Seth [1994 SCC (L&S) 1052 : (1994) 27 ATC 851 : AIR 1994 SC 1261] . Here also the only ground on which the order prematurely retiring Gurdas Singh was set

aside was that two adverse entries after his promotion from the rank of Assistant Sub-Inspector to Sub-Inspector were not communicated to him and earlier adverse entries could not be taken into account because even when those existed Gurdas Singh had earned his promotion. It is not necessary for us to again reiterate the principles where the Court will interfere in the order of premature retirement of an employee as these have been accurately set down by various pronouncements of this Court and particularly in Baikuntha Nath Das case [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] . Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. **The whole record of service of the employee will include any uncommunicated adverse entries as well.**”

(emphasis supplied)

36. It has been held by Hon’ble Supreme Court in ***Ramchandra Das v. State of Orissa & Others*** **(1996) 5 SCC 331** in paragraph-7 as under:-

“7. It is contended for the respondent that adverse entries for the two years referred to earlier and pending departmental proceedings would not be sufficient to compulsorily retire the government servant on the premises that after promotion they would become irrelevant and minor penalty was imposed. It is true that the government servant was allowed to cross the efficiency bar to enable him to avail of the benefits to draw higher scale of pay after crossing the efficiency bar. The adverse remarks made are after promotion. Even otherwise, the remarks form part of service record and character roll. The record of enquiry on conduct also would be material. Though minor penalty may be imposed on given facts and

circumstances to act of misconduct, nevertheless it remains part of the record for overall consideration to retire a government servant compulsorily. **The object always is public interest. The material question is whether the entire record of service was considered or not? It is not for the court/tribunal to see whether** the decision of the Government to compulsorily retire the government servant **is justified or not.** It is for the Government to consider the same and take a proper decision in that behalf. **As stated earlier, it is settled law that the Government is required to consider the entire record of service. Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered.** The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after promotion and not earlier to promotion. **Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits.”**

(emphasis supplied)

37. In view of the aforesaid decision even if promotion has been granted to him, still compulsory retirement can be granted by Union of India under Rule 56(j) of Fundamental Rules as under the said rule the entire service record of the employee is to be seen and if the Review Committee is of the opinion that in the interest of public looking to overall service record, the employee requires to be retired, there is no right vested in the employee to

continue in the employment after a prescribed age under the Rules.

38. Much has been argued out by learned Senior Counsel appearing for the Petitioner that as the charges levelled against the Petitioner in departmental inquiry have been quashed, the decision of compulsory retirement dated 10.06.2019 is because of legal malice on the part of the Respondents. This contention of the Petitioner is devoid of any merits. It has been held by Hon'ble Supreme Court in *State of U.P. vs. Vijay Kumar Jain*, (2002) 3 SCC 641 which relied upon the judgment in *Shyam Lal vs. State of U.P.* AIR 1954 SC 369 in paragraph 10 as under:-

“10. Before we advert to the question which we are required to decide, it is necessary to notice the nature of an order compulsorily retiring a government servant under FR 56(c). In *Shyam Lal v. State of U.P.* [AIR 1954 SC 369 : (1955) 1 SCR 26] it was held that an order of **compulsory retirement is neither a punishment nor is any stigma attached to it** and it was held therein as thus: (SCR pp. 41-42)

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

(emphasis supplied)

39. In view of the aforesaid even if there is quashing of charges in a

departmental proceedings, still the respondents have all power, jurisdiction and authority under Rule 56(j) of Fundamental Rules for passing an order of compulsory retirement of the Petitioner.

40. Compulsory retirement has various facets. Compulsory retirement can be passed looking to the overall service record of the Government employee. Compulsory retirement order can also be passed in public interest with a view to improve efficiency of the administration or to weed out people of doubtful integrity or corrupt employee but sufficient evidence was not available to take disciplinary action in accordance with the rules, so as to inculcate a sense of discipline in the services. Thus, even if for this petitioner, the departmental charges have been quashed and set aside and the sanction granted for prosecution in two criminal cases have been quashed and set aside, still the Respondents can pass an order for compulsory retirement of the Petitioner.

41. It has been held by Hon'ble Supreme Court in *State of Orissa and Ors. vs. Ram Chand Das (Supra)* in paragraph 3 as under:-

“3. This appeal by special leave arises from the judgment and order passed by the Orissa Administrative Tribunal in OA No. 340 on 1987 on 18-7-1992. The respondent while working as Assistant Conservator of Forests was compulsorily retired from service by proceedings dated 1-8-1983 which came to be challenged by the respondent in the above proceedings. The Tribunal allowed the application on three grounds: (i) the respondent was allowed to cross the efficiency bar; (ii) since he was promoted, after the adverse remarks were made, the records were wiped out; and (iii) the entire record and overall consideration thereof was not done and, therefore, the exercise of the power of compulsory retirement under Rule 71(a) was not valid in law. The question is whether the view taken by the Tribunal is correct in law? It is needless to reiterate that the

settled legal position is that **the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in** accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking such decision to retire a government employee compulsorily from service, has to consider the entire record of the government servant including the latest reports.”

(emphasis supplied)

42. Learned Solicitor General of India on behalf of the Respondents submitted that the Petitioner has been given benefit of technical ground for quashing the orders of sanction for criminal prosecution in 2 CBI cases registered against him, against which SLPs (Crl.) are pending before Hon'ble Supreme Court and, they are as under:-

- a) SLP(Crl.) No.10083/2016,
- b) SLP(Crl.) No.10112/2016,
- c) SLP (Crl.) No.418/2017 and
- d) SLP (Crl.) No.419/2017.

43. Learned Solicitor General of India submitted that there are serious charges against the Petitioner in the aforesaid criminal cases which have been investigated by CBI, one of which is regarding disproportionate assets case. The details of these criminal cases have been narrated in the counter affidavit filed by Union of India in O.A. No.1835/2020 before the Tribunal. As these matters are already pending before Hon'ble Supreme Court, this Court is refraining from going into the details of the charges levelled against

the Petitioner. Suffice it would be to say that it is the subjective satisfaction arrived at by the Review Committee that looking to the entire service record of the Petitioner including the aforesaid two criminal cases, Union of India do not want to continue this Petitioner into the services and as stated hereinabove Rule 56(j) of Fundamental Rules is an extension of “**Doctrine of Pleasure**”. After certain minimum prescribed services and after the prescribed age as per rules, there is no right vested in the employee to continue into the services. It depends upon the pleasure of the Union of India to continue him into the services or not looking to his entire service record and his usefulness into the services and his overall performance during the later years. In overall assessment of a Central Government employee, even if there is acquittal from charges, Union of India can always arrive at a conclusion that looking to the entire service record and looking to the usefulness of the Petitioner into the services, he can be made compulsorily retired from the services. This decision is a complex decision and varieties of factors are to be kept in mind by the Review Committee and as stated hereinabove, the Union of India has to weed out the dead woods. Thus, those who are not useful into the services, those who are interested only in litigation in the Court, those who are not obeying the orders of the Government during their service tenure can be retired from the service. This power is given to the Government to energize its machinery and to make it more efficient by compulsorily retiring those, who in its opinion should not be into the services in public interest.

44. Thus, even if this Petitioner has succeeded in few litigations, a subjective satisfaction can always be arrived at by the Respondents looking to the entire service record and performance of the Petitioner to make him

compulsory retire.

45. Much has been argued out about the “honourable acquittal” and “acquittal on technical ground” but we are not going into much detail about this aspect of the matter because the difference between the two is remarkable and noticeable and has been clarified in several decisions referred by the Hon'ble Supreme Court, but, as the Special Leave Petitions are pending, we are not going into the detail analysis of “honourable acquittal” and “acquittal on technical ground” in this case. Suffice it would be to say that even if there is acquittal from the charges levelled against the employee for one or the other reasons, an overall decision can always be taken by the Review Committee looking to the entire service record and the performance of the Central Government employee for taking a decision of compulsory retirement. There is no ban or bar for the respondents that no compulsory retirement order can be passed whenever there is quashing of the charges in any litigation between an employee and the Central Government. What is to be seen is overall assessment of the performance of an employee and his usefulness into the services and not one or two matters and decisions in those matters. This opinion is a subjective satisfaction of the Review Committee. In the present case, there is no procedural error committed by the Review Committee while taking the decision under Rule 56(j) of Fundamental Rules. Even if there are observations about malice in law while deciding few matters between the Petitioner and Union of India, that does not mean that there is presence of malice when Review Committee has taken a decision under Rule 56(j) of Fundamental Rules retiring compulsorily this Petitioner dated 10.06.2019. There is no personal malice alleged by the Petitioner upon the members of the Review Committee.

46. There is no arbitrariness on the part of the Review Committee while taking the decision of the compulsory retirement of the Petitioner, the decision is based upon the entire service record, performance of the Petitioner and the usefulness of the Petitioner into the service of the Union of India and looking to the totality of the facts and circumstances of the Petitioner, subjective satisfaction has been arrived by the Review Committee. We are not sitting in appeal against the subjective satisfaction of the Review Committee.

47. There is no perversity in the order of the Review Committee. Review Committee has seen the entire record of service of the Petitioner including the decision rendered in various litigations initiated by the Petitioner and Review Committee is of the opinion that the continuation of the services of the Petitioner is no longer required and he should be made compulsorily retired.

48. Thus, there is no *malafide*, no arbitrariness and no perversity on the part of the Review Committee while arriving at a subjective satisfaction of compulsory retirement of the Petitioner. It ought to be kept in mind that compulsory retirement is not a punishment. Such compulsory retired Government servant does not lose any benefits earned by him till the date of his retirement.

49. Much has been argued out by learned Senior Counsel for the Petitioner that there is a delay while passing the order of compulsory retirement under Rule 56(j) of Fundamental Rules, the date of birth of the Petitioner is 11.12.1962, he attained the age of 50 years much prior to the order of compulsory retirement. It ought to be kept in mind that there is no need for the Respondents under the law to immediately pass an order of

compulsory retirement, no sooner did the Central Government employee has attained the age of 50 years. On the contrary, looking to the Rule 56(j) of Fundamental Rules, compulsory retirement order can be passed after the age of 50 years of the Petitioner. It has been held by Hon'ble Supreme Court in **Union of India v. Nasirmiya Ahmadmiya Chauhan (1994) Suppl.(2) SCC 537** in paragraph – **3** as under:-

“3. We have heard learned counsel for the parties. This Court has authoritatively laid down in various judgments that the **power under Fundamental Rule 56(j) can be exercised by the appropriate authority at any time in public interest after the government servant has attained the relevant age** or has completed the period of service as provided under the Fundamental Rules. The appropriate authority has to form the opinion that it is in the public interest to retire a person under Fundamental Rule 56(j) on the basis of the service record of the person concerned. **There is no other bar for the exercise of the power** under the said Fundamental Rule by the prescribed authority. Government instructions relied upon by the Tribunal are only the guidelines laid down by the Central Government for its functioning. A government servant cannot be heard to say that though the order of retirement is justified on the basis of his service record but since there is violation of some Government instructions the order is liable to be quashed. **The Tribunal was wholly unjustified** in holding that prejudice was caused to the respondent in the sense that he could legitimately believe that under the instructions his case **would not be reviewed after the lapse of certain period**. The action under Fundamental Rule 56(j) against a government servant is dependent on his service record earned by him till he reaches the age or completes the service provided under the said rule. **If the record is adverse then he cannot take shelter behind the executive instructions and must be “chopped off” as and when he catches the eye of the prescribed authority.**”

(emphasis supplied)

50. In view of the aforesaid interpretation of Rule 56(j) of Fundamental Rules no error has been committed by the Respondents while passing the order of compulsory retirement.

51. Looking to the Rule 56(j) of Fundamental Rules, from the very inception into the Government service till the age of 50 years there is enough and ample scope for the Government employee to improve his performance to prove his faithfulness and loyalty to the Government, to make his services necessary in the Government, to make his services useful to the Government for rest of the years of his service. Government is taking the work from honest hands and dishonest hands. Sometimes they are enthusiastic and sometimes they are lethargic. Sometimes there is combination of both, i.e., honest man may be lethargic and dishonest man may be enthusiastic, but, all these employees for any reason whatsoever, sometimes because of even quashing of the charges against them, they have been continued into services, but, enough is enough. After a prescribed age of an employee, there is an assessment by the Government through Review Committee and if looking to the entire service record of the employee and looking to his performance and looking to his usefulness into the remaining services, if he is to be weeded out, the Union of India has all powers, jurisdiction and authority under Rule 56(j) of Fundamental Rules to make such employee compulsory retired, even if there is acquittal from some of the charges levelled against him by the Union of India.

52. The Review Committee has formed *bonafide* opinion under Rule 56(j) of Fundamental Rules without any *malafides*, arbitrariness and perversity. Hence, the correctness of the decision which is a subjective satisfaction of the Review Committee, on merits, cannot be challenged before this court. It

has been held by Hon'ble Supreme Court in *Nisha Priya Bhatia vs. UOI & Anr.(Supra)* in paragraphs 54 and 71, as under

“54. Given the factual matrix of the present case, we deem it proper to carve out some important events from the aforementioned chain. The aforementioned sequence of events reveals the chain of internal communications in the aftermath of which the order dated 18-12-2009 was eventually passed. The secret note sent by the Secretary (R) to PMO, dated 11-5-2009, opinion of the then Solicitor General of India by Letter dated 21-7-2009, opinion of the Department of Legal Affairs, Union Ministry of Law and Justice and the PMO note in which the invocation of Rule 135 was determined as the only viable option, constitute together a complete chain of inquiry revealing **due application of mind** by the respondents into the question of compulsory retirement. **It is settled law that the scope of judicial review is very limited in cases of compulsory retirement and is permissible on the limited grounds such as non-application of mind or mala fides.** Regard can be had to *Pyare Mohan Lal v. State of Jharkhand* [*Pyare Mohan Lal v. State of Jharkhand*, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] . The abovequoted set of events are so eloquent that it leaves us with no other conclusion but to hold that the action of compulsory retirement was the just option. Assuming that some other option was also possible, it would not follow that the decision of the competent authority to compulsorily retire the appellant was driven by extraneous, malicious, perverse, unreasonable or arbitrary considerations. The prerequisite of due application of mind seems to be fulfilled as the decision has been reached in the aftermath of a series of discussions, exchanges and consultations between the Organisation and the PMO over the course of 15 months from 22-9-2008 to 18-12-2009.

XXX

XXX

XXX

71. As regards the grant of pension to the appellant, the appellant shall be entitled to all the benefits under sub-rules (2) to (4) of Rule 135 in their true letter and spirit. The impugned judgment [*Union of India v. Nisha Priya Bhatia*, 2019 SCC

OnLine Del 6473] has directed the respondents to secure various benefits to the appellant, including the benefit of promotion and fixation of date of pension as per the date of notional superannuation in 2023. That direction has not been challenged before us by the respondents. The pension of an employee retired under Rule 135 is to be determined in accordance with the date of notional superannuation and not in accordance with the date of actual retirement. This, in our view, reflects the beneficial, balancing and protective outlook of the Rule as it seeks to deal with the competing considerations of public interest including security (of the Organisation or the State) and individual interest of the outgoing employee. Thus, we direct the respondents to abide by the stipulations contained in sub-rules (2) to (4), and in particular the benefit extended to the appellant by the High Court referred to above, in their true letter and spirit and in right earnest, if already not done.”

(emphasis supplied)

53. As stated hereinabove, that the scope of the judicial review is very limited in cases of compulsory retirement only on limited grounds such as non-application of mind or *malafide*, the compulsory retirement order can be challenged. One must keep in mind, the principles enunciated by Hon'ble Supreme Court in *Pyare Mohan Lal vs. State of Jharkhand* (2010) 10 SCC 693.

“18. Thus, the law on the point can be summarised to the effect that an order of **compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct**, as prescribed in the statutory rules. (See *Surender Kumar v. Union of India* [(2010) 1 SCC 158 : (2010) 1 SCC (L&S) 24] .) The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, **the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said Authority, the**

post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee “rendered himself a liability to the institution”, there is no occasion for the court to interfere in the exercise of its limited power of judicial review.

XXX

XXX

XXX

21. However, a three-Judge Bench of this Court in *State of Orissa v. Ram Chandra Das* [(1996) 5 SCC 331 : 1996 SCC (L&S) 1169] had taken a different view as it had been held therein that such entries still remain part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. Therefore, such entries do not lose significance, even if the employee has subsequently been promoted. The Court held as under: (SCC pp. 333-34, para 7)

“7. ... Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension.”

(emphasis added)

This judgment has been approved and followed by this Court in *State of Gujarat v. Umedbhai M. Patel* [(2001) 3 SCC 314 : 2001 SCC (L&S) 576 : AIR 2001 SC 1109], emphasising that the “entire record” of the government servant is to be examined.”

(emphasis supplied)

54. In view of these decisions and looking to the conclusion arrived at by the Respondents of compulsorily retirement of the Petitioner, it cannot be said that the Respondents were driven by extraneous, malicious, perverse, unreasonable or arbitrary considerations.

55. It has been held by Hon'ble Supreme Court in *Ram Murthy Yadav vs. State of U.P.* (2020) 1 SCC 801, in paragraph - 6 as under:-

“6. The service records of the appellant have been examined by the Screening Committee, the Full Court as also by the Division Bench of the High Court. **The scope for judicial review of an order** of compulsory retirement based on the subjective satisfaction of the employer **is extremely narrow and restricted**. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. **The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.**”

(emphasis supplied)

56. **There are serious allegations against the Petitioner of corruption and of disproportionate assets including CBI cases** for which sanction was given for prosecution and the SLPs are pending before the Hon'ble Supreme Court. Even if the employee has succeeded in one or two cases or in few cases against the Central Government, that does not make him “**compulsory retirement proof**” employee. Such type of employee can also be made compulsory retired if looking to the entire service record and overall performance of the employee, usefulness of the employee into further service is not in public interest. **There can be water proof tents or heat proof houses but there cannot be “compulsory retirement proof**

employee” even if, he has succeeded in few cases against the Central Government.

57. This aspect of the matter have been properly appreciated by the Review Committee while arriving at a subjective satisfaction of compulsory retirement of the Petitioner and these aspects of the matter have also been properly appreciated by the Tribunal while deciding O.A.No.1835/2020 vide judgment dated 18.12.2020.

58. Much has been argued out on behalf of the Petitioner that there is a breach of undertaking given by the then Additional Solicitor General during the proceedings of C.M.No.11272/2019 in W.P.(C) 9230/2016. We are not in agreement with the contention raised by the learned Senior Counsel appearing on behalf of the Petitioner.

59. If we analyse the facts of this litigation, it appears that C.M.No.11272/2019 was preferred by the Petitioner in which issue involved was about grant of promotion in a sealed cover procedure, when it was opened it was found out that the Departmental Promotion Committee found the present Petitioner unfit for promotion. The Tribunal quashed the departmental charge sheets, there was an order of all the promotions to be granted which have been granted to the juniors of the Petitioner.

60. This order of the Tribunal was challenged by the Respondents by way of 3 separate writ petitions including W.P.(C) 9230/2016. These writ petitions preferred by the Respondents were dismissed by Delhi High Court against which SLP was also dismissed. As the order dated 02.02.2016 of the Tribunal was not complied with, Petitioner had filed C.M.No.11272/2019 in W.P.(C) 9230/2016. Thus, in a disposed of writ petition being W.P.(C) 9230/2016, a fresh C.M.No.11272/2019 was preferred for execution of an

order of the Tribunal dated 02.02.2016 and in this litigation, time was sought for by the then Additional Solicitor General on 27.05.2019 and the matter was adjourned to 08.07.2019 and in the meanwhile, on 10.06.2019 in an independent and separate proceedings under Rule 56(j) of Fundamental Rules, Petitioner has been made compulsorily retired.

61. Proceedings under Rule 56(j) of Fundamental Rules is distinct and independent proceedings undertaken by the Respondents on the basis of the entire service record of the Petitioner and keeping in mind the performance of the Petitioner and his usefulness into the services. A subjective satisfaction has been arrived at by the Review Committee to compulsory retire the Petitioner. These proceedings under Rule 56(j) is a proceedings under separate rule, hence, no question whatsoever arises that as the Additional Solicitor General had taken time in C.M.No.11272/2019 preferred in a disposed of W.P.(C) No.9230/2016, there will be automatic stay upon the decision making process under Rule 56(j) of Fundamental Rules. Even if promotion is due, a decision can always be taken by the Respondents under Rule 56(j) of Fundamental Rules.

62. It has been held by Hon'ble Supreme Court In *State of Orissa vs. Ram Chandra Das* (1996) 5 SCC 331 in para-7 as under:-

“7. The object always is public interest. The material question is whether the entire record of service was considered or not? It is not for the court/tribunal to see whether the decision of the Government to compulsorily retire the government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. As stated earlier, it is settled law that the Government is required to consider the entire record of service. Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note

that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after promotion and not earlier to promotion. Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits.”

(emphasis supplied)

63. In view of the aforesaid decisions, even if the promotion has been granted to a Government employee he can be made compulsory retired under Rule 56(j) of Fundamental Rules. In the facts of the present case order under Rule 56(j) of Fundamental Rules has been passed before grant of promotion to the Petitioner.

64. As a cumulative effect of the **aforesaid facts**, including the fact that the petitioner is not the only officer, but, 64 other officers who have been compulsorily retired under **Rule 56(j)** of the Fundamental Rules, **reasons and judicial pronouncements**, no error has been committed by the Central Administrative Tribunal while deciding **O.A.No.1835/2020** vide judgment and order **dated 18.12.2020 (Annexure P-1)** and no error has been committed by the Respondents while passing order **dated 10.06.2019 (Annexure P-2)** and no error has been committed by the Respondents while rejecting the representation of the Petitioner vide order **dated 19.08.2019**

(Annexure P-3).

65. We are in full agreement with the reasons given by the Tribunal in the judgment and order dated 18.12.2020 in O.A.No.1835/2020.

66. Petitioner has already been made compulsorily retired since 10.06.2019, i.e., approximately for the last 27 months, he is not into the services of the Government.

67. In view of the aforesaid facts, reasons and judicial pronouncements, the judgments relied upon by learned Senior Counsel for the Petitioner are of no help to the Petitioner.

68. Hence, there is no substance in this writ petition and the same is, therefore, dismissed, along with the pending application.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 22, 2021

'anb'