

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 5039 of 2023

Santosh Kumar Dubey, aged about 52 years, son of late Shankar Dayal Dubey, resident of 301-C, Road No.1A, Ashok Nagar, P.O.-Ashok Nagar, P.S.-Argora, District-Ranchi, Jharkhand. Petitioner

Versus

1. The Union of India, through its Chairman-cum-Chief Executive Officer, Ministry of Railway, Railway Board, having its office at room no.236, Rail Bhawan, Raisina Road, P.O.-Rail Bhawan, P.S. Parliament Street, New Delhi-110001.
2. The Chairman-cum-Chief Executive Officer, Railway Board, having its office at room no.236, Rail Bhawan, Raisina Road, P.O.-Rail Bhawan, P.S. Parliament Street, New Delhi-110001.
3. The Director General, Railway Protection Force, having its office at room no.440, Rail Bhawan, Raisina Road, P.O.-Rail Bhawan, P.S. Parliament Street, New Delhi-110001.
4. The Director, Railway Protection Force, having its office at room no. 441, Rail Bhawan, Raisina Road, P.O.-Rail Bhawan, P.S. Parliament Street, New Delhi-110001.
5. The Joint Director, Railway Protection Force, having its office at room no.441, Rail Bhawan, Raisina Road, P.O.-Rail Bhawan, P.S. Parliament Street, New Delhi-110001.
6. Under Secretary/Estt (s), Railway Board, Ministry of Railway, Government of India, having address at Rail Bhawan, Raisina Road, P.O.-Rail Bhawan, P.S.-Parliament Street, New Delhi-110001. Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner	: Mr. Indrajit Sinha, Advocate. Mr. Amrendra Pradhan, Advocate
For the Respondents	: Mr. Anil Kumar, ASGI Mr. Ravi Prakash, CGC

C.A.V. On 12.07.2024 **Delivered on 06/08/2024.**

Heard learned counsel for the parties.

2. The petitioner had initially filed this writ application challenging the memorandum of charges dated 31.01.2023 issued by the respondents to initiate a departmental proceeding against him. The petition was taken up for hearing on 05.10.2023 and an interim order to the effect of staying

the departmental proceeding was passed, which was further continued on 07.11.2023.

Thereafter, while this stay was in vogue, the respondents passed another order dated 05.12.2023 by which the petitioner has been premature retired from the service which was subsequently challenged by the petitioner by filing an application for amendment. The said application was allowed by an order dated 19.12.2023 and hence, when the matter has been taken up for the final hearing, the petitioner, seeks to challenge both the above aforesaid orders, i.e., the memorandum of charges issued by the respondent authorities dated 31.01.2023, as well as the order of premature retirement passed by them dated 05.12.2023.

3. A preliminary objection has been raised by Mr. Anil Kumar, ASGI representing the respondents questioning the maintainability of the instant writ petition on the ground of lack of territorial jurisdiction of this court. The contention of the respondents is based on the fact that the initiation of the departmental proceedings as well as the order of premature retirement dated 05.12.2023 have been passed by the authorities based at New Delhi and the same was served & executed by the authorities based out at Lucknow; and hence no cause of action has arisen within the territorial limits of this High Court.

Mr. Indrajit Sinha, learned counsel for the petitioner in response, has submitted that in order to maintain a writ petition under Article 226 of the Constitution of India, suffice is to establish that a part of cause of action has arisen within the territorial jurisdiction of the High Court of Jharkhand, Ranchi, and in order to buttress this submission, he referred to the memorandum of charges to show that the allegations against the petitioner relates to a period when he was posted at Ranchi, Dhanbad and Chakradharpur, which are located within the State of Jharkhand.

Likewise, in respect of the order of premature retirement, he has drawn attention of this court to the fact that the order of premature retirement has been based by the respondents on the fact that the petitioner's name was put in the agreed / secret list because the petitioner was named in an FIR lodged by the Central Bureau of Investigation in which it was alleged that the petitioner while working at Dhanbad, Ranchi and Chakradharpur had amassed wealth disproportionate to the known sources of his income.

The argument, therefore is that both the impugned actions emanate from the alleged misconduct of the petitioner while he was posted at Ranchi, Dhanbad and Chakradharpur, and hence a part of cause of action has arisen within the territorial jurisdiction of this High Court and in view of article 226 (2) of the Constitution of India, this court has the territorial jurisdiction.

The second submission on this point which has been put forward by Mr. Sinha is that the order of premature retirement which has been passed by the respondents is in gross contempt of this court, as this court by an order dated 05.10.2023 had stayed the further proceedings of the departmental enquiry initiated and pending against the petitioner and only in order to overreach the said interim order, an order of premature retirement has been passed by the respondents; and hence it is only the High Court of Jharkhand, which can look into this aspect.

The facts pointed out by the counsel for the petitioner are beyond any dispute and so is the legal position. In view of the provisions contained in Article 226 (2) of the Constitution of India, I find and hold that the writ petition is maintainable as part of cause of action has arisen within the territorial limits of this High Court and hence cannot be dismissed on the ground of lack of territorial jurisdiction.

4. So far as a merit of the case is concerned; Mr. Sinha has assailed the impugned action of the respondents on several grounds.

5. Regarding the Departmental Proceedings, it has been submitted that the initiation of the departmental proceedings is vitiated for the reason that while seeking a statement of defence from the petitioner, the respondents had also decided to remit the matter for enquiry and have otherwise violated Railway Services Discipline and Appeal Rules and acted in contravention of the principles of natural justice.

He contended that the charges (3 in number) relate to a period between 2003 to 2010 and therefore the delay in initiation of the departmental enquiry in the year 2023 is impermissible and if allowed to continue, would cause grave prejudice to the petitioner and deny him to contest the same with effective defence.

It has been further submitted that the departmental proceeding is based on presumption of the facts which are identical to that of the criminal proceedings, which is of grave nature involving complicated questions of law and facts and hence the conduct of departmental proceedings will seriously prejudice the petitioner's defence in the criminal trial and hence must be stayed till the conclusion of the Criminal Trial.

He further contended that the impugned proceedings also suffer from grave procedural lapses and is in violation of Railway Servants D&AR Rules, Principles of Natural Justice and non-compliance of the CVC guidelines in not supplying a copy of the Stage-1 Advice of CVC.

He lastly submits on this issue that even if the allegations are taken to be true in its entirety; even then, no misconduct in terms of the extant service rules can be said to be prima facie made out.

Mr. Anil Kumar, ASGI has contended that there is no procedural irregularity in initiation of the Departmental

Proceedings by the respondents and the contention of the petitioner is misconceived and without any basis.

6. On the issue of premature retirement, it has been submitted that the order of premature retirement is arbitrary and unreasonable. There is no material to justify the action of the respondents.

The petitioner has been a high-performing officer, extensively used for important responsibilities by the department, receiving many appreciations and endorsements and rated as 'outstanding' in his APARs with his integrity 'Certified' by his superior authorities. He cannot be termed as 'not able to being utilised' or 'Dead wood' and there is no 'public interest' involved.

There is no vigilance case, 'adverse remarks or D&AR punishment against the petitioner during his entire service of 26 years.

The order has been passed against the Railway rules, in inexplicable haste, as a short cut to the Departmental proceedings.

The action of the respondents is contemptuous as the order of premature retirement was passed to overreach the interim order dated 05.10.2023 passed by this court.

Learned ASGI has refuted the allegations made by the petitioner and submits that the order of pre-mature retirement has been issued within the four corners of law and the applicable provisions.

7. The arguments advanced by both the parties are dealt herein below in detail.

On the question of the Disciplinary Enquiry, it has been contended by learned counsel for the petitioner that the initiation and continuance of the disciplinary proceedings are contrary to the Service Rules and basic tenets of service Jurisprudence and Principles of Natural Justice.

Learned counsel for the petitioner has submitted that

the respondents have failed to consider the representation dated 14 January 2022 filed by the petitioner and the failure to consider the same is fatal. On the other hand, the respondents have contended that the representation dated 14 January 2022 was not relevant and hence was not considered inter alia for the reason that by the time the representation dated 14 January 2022 reached the Vigilance Department of the respondent, the request for prosecution sanction from the Central Bureau of Investigation was also received, which was issued on 14.06.2022.

8. At this stage itself, it is necessary to observe that while considering the grant of prosecution sanction and other issues like initiation of this departmental proceeding, the representation dated 14.01.2022 submitted by the petitioner was already available with the respondents, but admittedly, they chose not to consider the same.

In my opinion, the representation dated 14 January 2022 ought to have been considered by the respondents, while taking a final view on the request for prosecution sanction as also while considering initiation of departmental proceedings by the issuance of a charge sheet.

Moreover, even after the issuance of the instant charge sheet, the petitioner vide representation dated 24.03.2023 brought to the notice of the respondents that a detail representation along with evidences vide his representation no. SKD/Rep-I/2022 dated 14 January 2022 covering all the fundamentals of the subject matter was pending for more than one year. Admittedly; even at that stage, the respondents did not take into consideration the said representation. The respondents not only rejected the request of the petitioner for further extension of time to file his response to the charge-sheet but by the same stroke of pen remitted the matter for enquiry.

The reason assigned in the counter affidavit by the respondents for non-consideration of the representation dated 14 January 2022 is absolutely untenable in the eyes of law, and hence it is held that the representation dated 14 January 2022 ought to have been considered in its correct perspective and the failure to do so has caused prejudice to the petitioner.

It is well settled that the subjective satisfaction must be based on all the materials available on record by the concerned authorities and failure to consider relevant facts in fairness, amounts to non-application of mind and gives rise to a ground for judicial review.

The Hon'ble Apex Court in the case of ***Delhi Development Authority v. H.C. Khurana***, reported in ***(1993) 3 SCC 196*** has held that the decision to initiate disciplinary proceedings cannot be subsequent to the framing of the chargesheet, since the chargesheet is a consequence of the decision to initiate discipline proceedings. Framing the charge sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings.

9. The counsel for the petitioner has submitted that from the facts disclosed in the counter affidavit filed by the respondents, it is clear that after the completion of the investigation by the CBI, a proposal for seeking sanction of prosecution/initiation of departmental proceedings was received which was referred to the Central Vigilance Commission ("CVC") for obtaining their first stage advice, which in turn was granted on 9 March 2022, and there after the sanction was accorded by the competent authority on 14.06.2022.

In the reply to the rejoinder filed by the respondent on 11 July 2024, it has been stated that the officer concerned in the Vigilance Directorate requested CBI/ACB/Patna to send the draft charge-sheet which was received on 22 September

2022, based on which the disciplinary authority issued the charge-sheet for major penalty on 31 January 2023.

Thus, the basis for issuance of the charge sheet appears to be the first stage advice of the CVC and the materials supplied by the Central Bureau of Investigation in order to obtain the prosecution sanction. It is therefore in this background, when the articles of charges are perused, it would transpire that though the misconduct as against the petitioner is alleged to be non-disclosure of the properties purportedly acquired by him, but in order to successfully prosecute the petitioner departmentally on the alleged facts, a finding that the property standing in the name of his father or other relatives or persons were in fact acquired by the petitioner; would require a determination to that effect, which can only be adjudicated by the court, which would be holding the trial against the petitioner in the case initiated by the Central Bureau of Investigation.

Thus, the irresistible conclusion that can be arrived is that the disciplinary authority without analysing the material in hand and without any application of their own independent mind took a decision to initiate the disciplinary proceedings and caused the instant charge memorandum dated 31.01.2023 to be issued.

10. Further, the illegality was perpetuated when the decision to remit the file to enquiry was taken by the disciplinary authority simultaneously while seeking the written statement of defence, to be filed by the petitioner and yet to be considered and disposed by the disciplinary authority.

Rule 9(7) of the Railway Servants Discipline and Appeal Rules, 1968 provides that –

“The disciplinary authority shall deliver or caused to be delivered to the Railway servant, a copy of the articles of charge, statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Railway servant to submit a written statement of his defence within 10 days or such

further time as the disciplinary authority may allow.”

Rule 9 (a) (i) and (iv) of the Railway Servants Discipline and Appeal Rules, 1968 is also relevant and is reproduced hereunder-

9) (a) (i) On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.

(iv) If the disciplinary authority, after consideration of the written statement of defence, is of the opinion that the imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for imposition of major penalty...

The Supreme Court in the case of ***State of Punjab v. V K Khanna***, reported in **(2001) 2 SCC 330** (para 34) held as follows:

“34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias — what bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply — is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative — the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.”

11. The statutory provision as also the declaration of law by the Supreme Court of India unequivocally points out that the failure to consider the written statement of defence before taking a decision on the initiation of the departmental enquiry stands vitiated on account of bias.

In the instant case, the respondents had issued the charge sheet on 31 January 2023. However, on the request of the petitioner, the time to submit the written statement of defence was extended up to 31.03.2023 and thereafter the petitioner by his representation dated 24 March 2023 sought for further extension of time. The said representation came to be, rejected and the rejection was communicated by

the Joint Director, RPF's letter dated 16.05.2023 wherein it was mentioned that the disciplinary authority had observed that no further extension of time for submission of representation against the charge sheet would be granted, and the case is remitted to enquiry. However, vide para-3 of the said letter dated 16.05.2023, the petitioner was also asked to submit his defence statement forthwith.

The stand reflected in the letter dated 16.05.2023 is not only inconsistent but mutually destructive for the simple reason that on one hand, the disciplinary authority had refused to grant any further extension of time and remitted the case for enquiry; and on the other hand, the petitioner was directed to submit his reply forthwith. Even if the petitioner had submitted a reply, the disciplinary authority having taken the decision to remit the matter for enquiry would not have considered the reply and hence such a course of action adopted by the respondent was clearly in the teeth of the statutory rules mentioned above.

The violation of this nature goes to the very root of the matter, inasmuch as, the decision to initiate the enquiry was taken in a pre-determined manner, in gross violation of the principles of natural justice, the compliance of which is also mandated by the service rules.

12. It is further evident from the counter affidavit filed on 13 February 2024, the respondents have stated that the petitioner had been seeking time instead of submitting any written statement of defence and therefore in order to avoid any further delay, the disciplinary authority decided to process the matter further for nomination of enquiry officer, and a presenting officer as per Rule 9(b) & (c) of the Railway Servants Discipline and Appeal Rules, 1968.

Hence, it is admitted by the respondent that without waiting for the filing of the written statement of defence by the petitioner, which was sought for forthwith vide letter

dated 16.05.2023, and without considering or disposing the same, a decision to initiate the enquiry by appointing an enquiry officer and presenting officer was taken by the disciplinary authority. It needs to be noted that though the petitioner had made a request for extension of time by his letter dated 24.03.2024, the decision to refuse such extension came around one and half months later, as the same was communicated vide letter dated 16.05.2023 and before such refusal was communicated to him seeking his defence statement forthwith, a decision to initiate the enquiry nominating an enquiry officer was already taken by the disciplinary authority.

There is no explanation submitted by the respondents as to why the decision to refuse extension was taken at such a belated stage; and why before even communicating such refusal and seeking his defence forthwith and considering/disposing the same in true spirit, the decision of initiating the enquiry and nomination of the enquiry officer was taken by the disciplinary authority, which could have been utilised otherwise.

13. A predetermined decision reflects the unfairness, arbitrariness and bias of the disciplinary authority and therefore nullifies all acts subsequent to. Therefore, in the light of the pronouncement of the Supreme Court of India in the case of ***State of Punjab v. V.K.Khanna*** (*supra*) it is held that the violations of Rule 9(7) and 9(a)(i) & (iv) of the Railway Servants Discipline and Appeal Rules, 1968 has vitiated the entire proceedings and therefore on this score alone the same is liable to be quashed and set aside.

14. In respect of the other procedural lapses, the petitioner has also contended that the respondents along with the charge sheet should have supplied the copy of the first stage advice of the Central Vigilance Commission, which purportedly formed the basis for initiation of the

departmental proceeding. In support of his contention, the petitioner has relied upon the CVC circular no.99/VGL/66/28.09.2000 wherein after considering the judgement of the Hon'ble Apex Court in the case of *State Bank of India v. D. C. Aggarwal and another* (judgement dated 13 October 1992) and the Karnataka High Court in *Writ Petition No. 6558/1993* at paragraph 3 of the said letter it has been provided as follows-

".... Therefore, a copy of the commissions, first stage advice may be made available to the concerned employee along with the copy of the charge-sheet served upon him, for his information."

In the instant case, admittedly, a copy of the first stage advice of the Central Vigilance Commission has not been supplied to the petitioner along with the charge-sheet. However, the respondents in their counter affidavit have stated that the same can be supplied at a later stage. Such a stand by the respondent is clearly contrary to the above guidelines issued by the CVC, which is binding on them.

However, the violation by the respondents may not be of such a nature which would enable the court to quash the charge-sheet on this score and for the above reason, but at the same time, it would be proper to hold that the respondent should have followed the CVC guideline and supplied the first stage advice tendered by the CVC along with the charge-sheet, which would have enabled the delinquent to know about the materials that are against him and respond to the charge-sheet in an effective manner. This would have facilitated and thereby enabled the respondent-employer to take a decision on the issue whether or not to proceed with the enquiry any further.

15. The other contention with respect to the illegality committed by the respondent in framing the charge sheet is with respect to the use of indefinite and vague terms in the charge sheet, such as "any other witness/documents if found relevant". There is no quarrel on the proposition that

the charges must be clear and specific and the employer/disciplinary authority must disclose all the materials that are proposed to be used against the delinquent along with the charge sheet. It has been time and again held that issuance of a charge sheet is an important stage in the departmental proceeding and a government employee facing a departmental enquiry is entitled to all the relevant statements, documents, and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges.

The '*non-disclosure of evidential material*' on the part of the respondent authorities, amounts to denial of reasonable opportunity as already settled by the Hon'ble Supreme Court in ***Chandramma Tewari Vs. UOI***, reported in **1987 (Supp) SCC 518**. In the case of ***Indu Bhushan Dwivedi Vs. State of Jharkhand***, reported in **(2010) 11 SCC 278** it has further been envisaged that, reasonable opportunity includes the duty to disclose material adverse to the employee, even when there is no statutory rule to this effect. In this context, reference may also be made to the decision of the Hon'ble Apex Court rendered in the case of ***State of Uttar Pradesh and others v. Saroj Kumar Sinha***, reported in **(2010) 2 SCC 772** wherein it was held as follows:

"36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration."

"39. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself the inquiry. We, therefore, have no reason to interfere with the judgment of the High Court."

16. On a conspectus of what has been noticed above, it is clear that the respondents while issuing the charge-sheet have not followed the mandatory provisions of law as also

the basic principles of service jurisprudence, thereby have committed not only errors of jurisdiction but rendered the entire initiation and continuance of the departmental enquiry a nullity, on the ground of violation of the principles of natural justice. Accordingly, it is held that the action of the respondents without application of mind and without considering the materials already available before them, in independent and impartial manner; serving the charge sheet upon the petitioner without supplying the clear list of all the specific witnesses/documents proposed to be used to sustain the charges; and the further decision to remit the case for enquiry without even communicating the decision to refuse any further extension of time and without permitting the petitioner to file his statement of defence sought for by the respondents is bad in law, and therefore it is ordered that the impugned charge-sheet and the decision to remit the matter for enquiry be quashed.

17. It has also been argued by Mr. Sinha that the entire proceeding is also bad in law due to belated initiation of departmental proceedings. In order to appreciate this aspect of the matter it would be important to quote the charges levelled against the petitioner, which reads thus –

Shri Santosh Kumar Dubey, while working in Chakradharpur, Dhanbad and Ranchi Divisions, conducted himself and acted in a manner which is unbecoming of a Railway Servant in as much:

Article of charge No. 1:

That shri Santosh Kumar Dubey, the then DY.CSC/RPF(Construction)/Ranchi/ ECR, now DIG-cum-CSC/RPF/RDSO while working in Chakradharpur, Dhanbad and Ranchi Divisions...failed to intimate the department/competent authority regarding purchase of 03 commercial shops... on 23.04.2008.

Article of charge No. 2:

That shri Santosh Kumar Dubey, the then DY.CSC/RPF(Construction)/Ranchi/ ECR, now DIG-cum-CSC/RPF/RDSO while working in Chakradharpur, Dhanbad and Ranchi Divisions...failed to intimate the department/competent authority regarding:

- (i) Receipt of Rs. 10 lakhs into his HUF A/c...in 2008-09, ...from ...his father-in-law,*
- (ii) Receipt of Rs. 1 lakh on 26.06.2008 and Rs. 1.50 lakhs on 18.11.2008 from his father Late Shankar Dayal Dubey,*
- (iii) Receipt of Rs. 4.64 lakhs (Rs. 2 lakhs on 20.05.2008 and Rs. 2.64 lakhs on 30.06.2008) from Shri Rajesh Kumar Dubey,*

- (iv) Receipt of Rs. 4.5 lakhs during 30.12.2009 to 15.05.2010 from Shri Amrendra Kumar Singh,
Article of charge No. 3:
That shri Santosh Kumar Dubey, the then DY.CSC/RPF(Construction)/Ranchi/ ECR, now DIG-cum-CSC/RPF/RDSO while working in Chakradharpur, Dhanbad and Ranchi Divisions...failed to intimate the department/competent authority regarding execution of an agreement dated 26.11.2003 with M/s Heritage Developer, Ranchi

From the above, it is clear that the allegations relate to a period commencing in the year 2003 and ending in the year 2010, which are approximately 21 years and 13 years respectively, from the date of issuance of the charge-sheet. It is not the case of the respondent that the delay in issuing the charge sheet was attributable to the delinquent – petitioner. The law relating to delay being a ground to thwart the initiation of a disciplinary proceeding was laid down by the Supreme Court of India in the cases of **State of MP Vs. Bani Singh**, reported in **AIR 1990 SC 1308**; **State of Punjab Vs. Chamanlal Goyal**, (1995) 2 SCC 570; and **PV Madhvan Vs. MD Tamilnadu Housing**, Appeal (Civil) 4901 of 2005 and the twin-test applied to examine whether the delay could be held as fatal, are as follows –

- (i) whether the delay is attributable to the delinquent, and
(ii) whether that causes any pre-judice to the delinquent.

18. Learned counsel of the petitioner has urged before this court that as a railway servant, the petitioner is required to give two kinds of intimation related to the properties viz. (1) Prior intimation whenever a new transaction is made or properties procured in terms of rule 16 and 18, except those following in the exempted categories and (2) Annual Immovable Properties Return with full details of the properties, their location, mode of acquisition and annual income incurring there from. This dual intimation system ensures that even if a property skips the ambit of the prior intimation as mentioned under (1) above, the superior authorities would notice the acquisition

of a new property in the ambit of Annual Immovable Properties Return filed by the employee as mentioned under (2).

It has been submitted that the petitioner had filed the annual immovable properties returns within the time stipulated, and thus the respondents had all the required information if at all any gaps of intimation as alleged by the respondents could have been considered to be actionable under the Conduct rules. Thus, it is argued that, the petitioner cannot be attributed to the delay.

In support of this contention learned counsel of the petitioner has also urged that the delay has caused great prejudice, inasmuch as, the petitioner is not been in a position to defend the charges effectively in absence of the evidence / statement of his father and mother, who have since expired 13 years ago. Charge No 1 and 2(ii) relate to the properties owned / transactions made by his father and mother respectively. The other grounds in this regard, which have been urged by the petitioner are that, after such a long time of around 20 years, it is rather impossible to reconstruct the facts and circumstances prevailing at that point of time or to retrieve the documents and other evidences to defend.

Learned ASGI relying upon the counter affidavit dated 11.07.2024, tried to explain the delay initially on the part of completion of the investigation by C.B.I who sent a proposal seeking sanction for prosecution only on 21.10.2021, i.e. after more than 8 years of registration of the case in July 2013, and further around one and half years in the name of their internal processes like seeking advice from the CVC, seeking to frame the departmental charge-sheet by C.B.I. and other functions of various directorates.

19. Thus, nowhere the delay has been attributed to the

delinquent-petitioner. The plea of prejudice due to demise of the father and mother of the petitioner the prime transactors in this case, 13 years ago, as raised by the petitioner has also not been controverted by the respondents.

As already settled by the Hon'ble Apex Court in the cases referred above, one of the grounds for interfering with the initiation of a disciplinary proceeding on the touchstone of delay is that, the delay is not attributable to the delinquent; and the other ground is that the delay is prejudicial to the delinquent in defending his case. The instant case undisputedly involves both the factors.

Viewed thus, I am of the opinion that that belated initiation of the disciplinary proceeding, more particularly when the delay is not attributable to the petitioner and the huge delay has caused prejudice to the petitioner for the reasons mentioned above, should not be allowed to be continued any further. The petitioner is right in contending that in the given circumstances, he has in fact rendered defenceless and the enquiry would not afford a reasonable opportunity of hearing to the petitioner. It will be an empty formality. Accordingly, it is held that the issuance of the charge sheet on the basis of stale allegations cannot be sustained in the eyes of law, and is hereby quashed.

20. The petitioner has also taken a stand that the issues which would fall for consideration by the disciplinary authority if the impugned proceeding is permitted to be proceed then in that event his trial would be seriously affected and prejudiced. In support of his contention, the petitioner has referred to section 13(1)(e) of the Prevention of Corruption Act, 1988 (prior to its amendment), which reads as follows:

"Section 13(1)(e): - if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his

known sources of income.”

*“Explanation- For the purposes of this section, “known sources of income” means **income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law**, rules or orders for the time being applicable to a public servant.”*

Learned ASGI on the other hand have vehemently contended that a departmental proceeding cannot be kept in abeyance indefinitely on the ground that a criminal trial on the same set of facts has been initiated.

There is no quarrel about this proposition. However, the Supreme Court in the case of **Stanzen Toyotetsu India Pvt. Ltd. v. Girish V. And Others**, reported in **(2014) 3 SCC 636** held that if the case involves complicated questions of fact and law, then that may be a sufficient cause for deferring the proceedings of the disciplinary enquiry.

21. The explanation to section 13(1)(e) PC Act (before amendment in 2018) makes it clear that receipt of income from lawful sources, if intimated in accordance with the provisions of any law, rules, or orders for the time being applicable to the public servant forms “known sources of income”. Hence, the submission of the petitioner that the issue of intimation or non-intimation of certain income/receipts is the ‘*defining point*’ for the same to be included as known sources of income while calculating the disproportionate assets becomes ‘*pivotal*’ to prove or disprove an offence allegedly committed under section 13(1)(e) of the PC Act, appears to be a valid one.

The petitioner appears to be right in contending that if the departmental proceeding is permitted to continue and the petitioner is compelled to examine and cross-examine the common witnesses, and put forward the same defence, then the same shall have a direct impact on the criminal trial and would gravely prejudice his case in such criminal trial. Equally, it is well settled that when determination in departmental enquiry involves adjudication of grave and

complicated questions of fact and law, the departmental enquiry should await the decision of the jurisdictional court.

There is no gainsaying that a case of disproportionate assets under P.C. Act is a grave matter involving complicated questions of fact and law; and therefore, in the fact situation with which we are faced with, demand that the departmental enquiry should await the outcome of the criminal trial. Reference may be made to the judgment of the Hon'ble Apex Court in the case of ***Indian Overseas Bank v. P. Ganeshan***, reported in ***(2008) 1 SCC 650***.

22. In this context, it would also be pertinent to mention that the petitioner had relied upon CVC guideline, no. 99/VGL/69 dated 26 February 2021, wherein it has been provided that the failure to intimate is only technical in nature and should not attract any harsh punishment. The respondents also relied upon the same circular and highlighted that the failure to intimate cannot be termed to be technical when such allegations relate to acquisition of assets, disproportionate to the known sources of income.

I find that the stand taken by the respondents that the case of the petitioner is covered by the latter part of the said CVC guideline, inasmuch as, the case set up against the petitioner involves an enquiry into the acquisition of assets disproportionate to the known sources of income and hence cannot be termed to be technical tends to support the submission of the petitioner and fortifies the contention of the petitioner that the departmental enquiry is on the same set of facts on which the criminal case is founded and the disciplinary authority is neither competent nor authorised to return a finding that the alleged acquisition of property is disproportionate to the known sources of income or not. Additionally, therefore on this ground as well, I have no hesitation to hold that in the instant case, the facts demand that the departmental proceeding should not have been

initiated or at least continued till the conclusion of the criminal trial against the petitioner.

23. Apart from the above grounds, Mr. Sinha contended that the allegations even if taken to be true on their face value do not make out any misconduct

He contended that the charge-sheet on the face of it does not constitute any misconduct. On perusal of the three charges mentioned in the charge sheet/article of charges, it transpires that all of them relate to failure on the part of the petitioner to intimate the department regarding the acquisition of property or financial transactions.

The Ld. ASGI on the other hand has contended that the Railway Servants (Conduct) Rules, particularly Rule 18, thereof covers the transactions made not only by the railway servant, but also by the family members of the railway servant and thus even the transactions have been independently done by the father or mother or brother of the petitioner, he was required to intimate the same, and hence the allegations do constitute misconduct for which the petitioner has to subject himself to the disciplinary authority's jurisdiction.

On the other hand, the learned Counsel of the petitioner contended that, the father, mother or brother of the employees are not considered as members of the family, so far the railway service rules are concerned, which was not controverted by the respondents.

This Court is of the view that to decide the current issue will be more of academic exercise, inasmuch as, I have already held that the departmental proceeding should not have been initiated or at least continued till the conclusion of the criminal trial against the petitioner. However, the issue is kept open to be decided in an appropriate case.

24. In the instant case, the petitioner has also assailed the order of premature retirement. Admittedly, the

respondents had initiated a departmental proceeding by issuing a chargesheet on 31 January 2023. The same was challenged by the petitioner by filing the instant writ petition and a bench of the court by an order dated 5th October 2023, while directing the respondent to file the counter affidavit, passed an interim order staying the further proceedings. The respondents failed to file their counter affidavit within this time stipulated by the order dated 5 October 2023, and therefore they made a request before the court to grant them further time which was acceded to by this court by order dated 7 November 2023. In the meantime, the interim relief was continued.

From the averments made in the counter affidavit as also in the further affidavit filed by the respondents, it appears that during the pendency of the present petition before this court, the respondents proceeded to invoke the provisions of Rule 1802 (corresponding to FR 56-J) and consequently have passed an order of premature retirement against the petitioner on 05.12.2023, which was challenged by filing an application for amendment.

25. Rule 1802 of the Railway Rules, which corresponds to the Fundamental Rules 56 relating to All India Services or the services under the Central Government reads as under:

(a) Notwithstanding anything contained in this Rule, the appointing authority shall if 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 allowances in lieu of such notice: -

(i) If he is in Group 'A' or Group 'B' service or post in a substantive or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

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

(Authority:- Railway Board's letter No. E(P&A)I-88/JCM/NC-2 dated 6.7.89)

(b) (1) Any railway servant may by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years if he is in Group 'A' or Group 'B' service or post (and had entered Government service before attaining the age of 35 years) and in all other cases after he has attained the age of 55 years:

Provided that it shall be open to the appropriate authority to withhold permission to a railway servant under suspension who seeks to retire under this clause.

(2) A railway servant, referred to in sub-rule (1) may make a request in writing to the appointing authority to accept a notice of less than three months, giving reasons therefore. On receipt of a request under this sub-rule, the appointing authority may consider such request for curtailment of the period of notice of three months on merits and, if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months, on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

The railway board by a circular being RBE No. 48 / 2022 as contained in letter no. E(P&A) I-2019 / RT -21 dated 11.04.2022 set out a detailed procedure for invoking Rule 1802. Paragraph-4 under the heading “periodic review salient points” sets out the criteria for review of services. Sub-para (a) deals “age and service”, whereas sub-para (b) deals with the provision relating to scrutiny of service records, which reads as under:

Para- 4. Criteria for review of Services:

(a) Age and Service rendered:

- (i) Group A and B: After attaining 50 years (if entered service before age 35);
- (ii) Group A and B: After attaining 55 years (if entered service after age 35);

(b) Service Records:

The entire service records should be considered in every review. Based on the service records, a comprehensive brief is to be prepared for consideration by the 'Review Committee'. 'Service records' would take into account the following:

- (i) ACR/APAR dossiers;
- (ii) Personal file;
- (iii) Work and performance of the officer to be assessed by looking into the files dealt with by him or in any papers or reports prepared and submitted by him;
- (iv) Un-communicated remarks in ACRs/APARs may be taken into consideration;
- (v) If the officer was promoted during the last 5 years (on the basis of seniority-cum fitness and not on the basis of merit), the previous entries in the ACRs may be taken into account.

(Reference: E(P&A)I-2015/RT/38 dated 10/12.11.2015)

Paragraph 4(c), 5A, 5F and 5J were also pressed by the petitioner in support of its contention that the order of premature retirement is bad and therefore are quoted hereunder:

Para- 4 (c): Ground of Ineffectiveness vis-a-vis Doubtful integrity-

(i) No employee should ordinarily be retired on grounds of ineffectiveness if his/her service during the preceding 5 years or where he/she has been promoted to a higher post during that 5 year period, his/her service in the highest post, has been found satisfactory.

(ii) There is no such stipulation if the employee is to be retired on grounds of doubtful integrity.

(iii) No employee should be ordinarily retired on grounds of ineffectiveness if, in any event, he/she would be retiring on superannuation within a period of one year from the date of consideration of his/her case. However, if there is a 'sudden and steep fall in competence, efficiency or effectiveness of an officer', it would be open to review his case for premature retirement. This condition is not relevant in cases of doubtful integrity.

(Reference: E(P&A)I-2015/RT/38 dated 10/12.11.2015)

Para-5. Procedure and Guidelines-

A. Cases of Railway Servants to be reviewed 6 months before attaining the age of 50/55 years or on completion of 30 years of service/ 30 years of qualifying service, whichever occurs earlier.

F) Rules relating to premature retirement should not be used:

i. To retire on grounds of specific misconduct as a shortcut to initiating formal disciplinary proceedings. (CAT/PB/New Delhi in O.A No. 1827/2017, in the matter of Sangeeta Rao vs. UOJ vide order dated 18.09.2018, dismissed the plea of the government servant who was compulsorily retired under 56(J) for habitual late coming); or

ii. For reduction of surplus staff on grounds of affecting the general economy without following rules of retrenchment.

J) Once a decision has been taken by appropriate authority to retain an employee beyond the age of 50 years after review, he would ordinarily continue in service till he attains the age of retirement. If however, the appropriate authority considers at any time after review that retention would not be in the public interest, that authority may take necessary action to retire the employee as per the laid down procedure.

26. The provisions of Fundamental Rules 56J has fallen for consideration before the Supreme Court of India on various occasions and the law in this regard is by now fairly well settled. Few judgements which would cover all the aspects which are relevant for the purposes of adjudication of this case are being relied upon by this court.

The Supreme Court in the case of **Baldev Raj Chadha V. Union of India**, reported in **(1980) 4 SCC 321** has held as under:-

“25. The whole purpose of fundamental Rule 56(j) is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. But under the guise of ‘public interest’ if limited

discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness, and disguised dismissal. The exercise of power must be bonafide and promote public interest.”

“26. An officer in continuous service of 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement cannot be compulsorily retired on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms.”

The Supreme Court in the case of **Madhya Pradesh State Cooperative Dairy v. Rajnesh Kumar Jamindar and Ors**, reported in **(2009) 15 SCC 221**, has held as follows-

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

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

“39. It is also a well-settled principle of law that an authority discharging a public function must act fairly. It, for the aforementioned purpose, cannot take into consideration an irrelevant or extraneous matter which is not germane for the purpose for which the power is sought to be exercised. The Scrutiny Committee as also the Review Committee was required to pose unto themselves a correct question of law so as to enable them to find out a correct answer. It was, therefore, imperative that the criteria laid down in the circulars issued by the State of Madhya Pradesh should have been scrupulously followed.”

“40. Federation, therefore, in our opinion, having regard to the fact that there was no material to show that the respondents - employees had become dead wood, inefficient or corrupt, must be held to have abused its power.”

The Supreme Court in the case of **Captain Pramod Bajaj V. Union of India and others, Civil Appeal No. 6161 of 2022** judgement dated 03 March 2023 has held as under:-

“26. As per the material placed on record, the APARs of the appellant reflect that over the past several years, his integrity was being regularly assessed as ‘Beyond doubt’ till as late as... and found upto the mark. In his APARs of the past one decade, till the period just prior to the order of his premature retirement, the respondents were consistently grading the appellant as “outstanding”. No adverse entries were made by his superiors in the APARs of the appellant in so far as his work performance was concerned. No aspersion was cast either on his conduct or character during all this period. As per the service records, his efficiency and integrity remained unimpeachable throughout his career. The inference drawn from the above is that the appellant’s service record being impeccable could not have been a

factor that went against him for the respondents to have compulsorily retire him.”

“38. It has been repeatedly held that any exercise of power that exceeds the parameters prescribed by law or is motivated on account of extraneous or irrelevant factors or is driven by malicious intent or is on the face of it, so patently arbitrary that it cannot withstand judicial scrutiny, must be struck down.”

“39. If the appellant was worthy of being continued in service for little short of a decade after he attained the age of 50 years and of being granted an overall grade of 9 on the scale of 1-10 on 31st July 2019 it has not been shown as to what had transpired thereafter that made the respondents resort to FR 56(j) and invoke the public interest doctrine to compulsorily retire him... In such a case, this court is inclined to pierce the smoke screen and on doing so, we are of the firm view that the order of compulsory retirement in the given facts and circumstances of the case cannot be sustained. The said order is punitive in nature and was passed to short-cut the disciplinary proceedings pending against the appellant and ensure his immediate removal. The impugned order passed by the respondents does not pass muster as it fails to satisfy the underlying test of serving the interest of public.”

Further, in the case of *Baldev Raj Chadha v. Union of India*, AIR 1981 SC 70 the Hon’ble Apex Court has further held that the word “absolute” appearing in FR 56 “merely means wide, not more.” In the case of *Sr. Supdt. Of Posts Vs. Izhar Hussain*, AIR 1989 SC 2262, the Supreme Court has also declared rule-2(2) of LPR, part of the same pension rules, as *ultra vires* as it conferred arbitrary & unguided power on the Government.

In the case of ***Union of India v. J.N. Sinha***, reported in **AIR 1971 SC 40** at page 42 it was clarified by the Hon’ble Supreme Court of India that FR 56 cannot be used for ‘*collateral reasons or in arbitrary manner*’. This judgement was relied upon by the learned ASGI appearing for the respondents. In the same case, it was further held that “*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*”.

It has been held in the case of ***Brij Mohan Singh Chopra v. State of Punjab***, reported in **AIR 1987 SC 948** that the condition for exercise of the power is ‘*public interest*’ only and “*The exercise must be based on materials which have reasonable nexus with public interest*”.

It has been held in the case of **S. Ramchandra Raju Vs. State of Orissa**, reported in **(1994) 2 LLN 1311** that, *“The opinion should be formed on totality of the facts and the entire service record or character rolls”*.

It has been held in the case of **Posts & Telegraph Board v. CSN Murthy**, reported in **AIR 1992 SC 1368** that, *“The opinion should be arrived at bona fide and on the basis of material on record”*.

It has been held in the case of **Union of India Vs. R.C. Mishra**, reported in **(2003) 9 SCC 217** that, it would be an abuse of power if, material relied upon do not show that the employee could be considered as ‘dead wood’.

In the case of **HC Gargi Vs. State of Haryana**, reported in **AIR 1987 SC 65** and further in the case **Anil Mahajan Vs. UOI**, reported in **(2013) 7 SCC 243** it has been held that, *“The efficiency of the employee should be adjudged on the basis of materials available on records. If the opinion is founded on material which does not justify... the order has to be stuck down.”*

Further, in the cases of **Sisir Vs. State of West Bengal**, reported in **1981 (1) Serv LJ 450 (Cal.)** and in the case **A.S. Bhatti Vs. UOI**, reported in **1993 (2) Serv. LJ 66 (AP)** respectively the principles of law which has been applied is that, *“Mere suspicion regarding the integrity of an employee cannot be the basis of forming the view...”* and *“stray observations in the service records cannot be the basis of for formation of requisite opinion”*

27. Coming to the facts of the present case, it has been contended by the petitioner that he attained the age of 50 years on 14 January 2021, and therefore, in terms of paragraph 5A of the circular being RBE no. 48/2022 review qua him should have been initiated in May – June 2020 and concluded by December – January 2021. Had his services found not satisfactory, then he should have been

prematurely retired in the year 2021 itself. On the contrary, the petitioner was granted promotion, to the level of Deputy Inspector General on 18 October 2018 and was granted a Non-Functional Senior Administrative Grade (NF – SAG) in the year 2021 with effect from 01 January 2020.

The facts indisputably show that the services of the petitioner were found to be satisfactory by the respondents, and therefore the petitioner contends that as per paragraph 5-J of the above circular, he would ordinarily continue in service till he attained the age of retirement that is up to 31 January 2031.

It has further been argued on behalf of the petitioner that, he has been rated as an ‘*outstanding*’ officer in all his APARs and all the integrity columns in all of his APARs have also been duly certified by his superior officers. Some of the remarks of his reporting authorities, as also agreed to by the reviewing and accepting authorities regarding his performance and conduct as shown in the APARs are reproduced hereunder –

1. Year 2015-16: while working as Sr. SC -cum- Principal, RPF/ZTI, KGP-
“He is very disciplined and learned officer, having excellent knowledge of rules & regulations. He is physically fit for any kind of duty”
2. Year 2017-18: while working as above-
“He is a young, physically fit, sharp and hard task master.”
3. Year 2018-19 Part-I: while working as above-
“Excellent work done. Control of crime in challenging manner. Upgrading facilities of Institute. Beautiful fort-wall planning.”
4. Year 2018-19 Part-II: while working as DIG/Projects, NR-
“Is a matured officer. Performance satisfactory. Takes interest ...completes work in time. Set up Cyber cell in Northern Rly.”
5. Year 2019-20 Part-I: while working as above-
“Very matured officer. Takes interest in Technology drives. Takes interest in office work.”
“Has done good job, benefitting whole organisation. He has taken initiatives and worked sincerely.”
6. Year 2020-21: while working as above-

“He is highly dedicated, hardworking and sincere officer of the Force. The projects being dealt by him are difficult. He has been able to carry on all the projects. He is an excellent chaser ...succeeded in most of the Zones.”
7. Year 2021-22 Part-I: while working as above-

"He has succeeded to in ensuring the projects run successfully. Started some new projects."

28. While arguing on behalf of the respondents, the learned ASGI admitted the outstanding appraisals of the works of the petitioner being available in APARs. However, he tried to rely on the inability of the respondents to utilise the services of the petitioner properly due to his name being entered in the agreed/secret list.

It has further been argued on behalf of the petitioner that, there had never been any D&AR punishment awarded to him during his entire service career; nor any vigilance case had ever been registered against him during his entire service period; which fact has not been controverted by the respondents.

It has also been contended that the petitioner had always been a high-performing officer, and his services have extensively been used by the respondents as well as he has received various endorsement/appreciation and in support of this contention several documents have been brought on record.

Therefore, it has been contended that, there could have been no occasion for the respondents to pass an order of premature retirement of the petitioner as 'non-performing', having 'doubtful integrity' or being any 'dead wood' as required under Rule-1802. It has also been contended that, the purported action has been taken arbitrarily on collateral reasons and there is no 'public interest' involved.

Some key work-performances and utilisation by the department narrated in the petition are re-produced hereunder-

1. Since August 2018 to August 2022 he worked as Head and Nodal Officer of all IT/ICT projects in RPF, introducing around 22 New software systems all across the country in the Force. He also successfully represented the Railways before various other organisations like- Ministry of Home Affairs, C-DAC, National Informatics Centre, Beureau of Police Research & Development, National Crime Records Bureau, Defence Research and

Development Organisation, Centre for Railway Information System and brought optimal synergy for the railways, in public interest.

2. During 2018-2022 for the first time in the organisation, he successfully rolled-out the RPF Security Management System (RSMS) all across the country in the Force and also introduced approx. 100 further modifications in the system to make it maximum useful for the Force.

3. During 2018-2022 for the first time in the organisation, he successfully introduced the Crime and Criminal Tracking Network and System (CCTNS) and 'Inter Operable Criminal Justice System' (ICJS) all across the country in the Force, without a single penny of expenditure to the Railways, in the highest public interest.

4. During 2018-2022 for the first time in the organisation, he successfully established 16 (sixteen) 'Cyber Cells' including drafting & publishing of 'Standard Operating Procedure' (SOP) for the same; and also conducted the development of manpower, standardization of equipment and training to enable them function in more scientific manner, in public interest.

5. He played an important role in introducing around 20 New systemic improvements/innovations all across the country in the Force to improve and save revenue, improve efficiency and make it public-friendly in the highest public interests, which was also accepted & recognised by the superior authorities of the department.

6. The aforementioned systemic improvements/innovations by him have not only been recognized by the administration but also DG/RPF launched them personally in the force.

7. In February 2019, two systems, namely the Railway Security Helpline-182 (for the public travelling in trains) and RPF Barracks Management System (for the RPF personnel staying in the Barracks) were developed under his supervision which were also launched by the minister of state for railways.

8. In the year 2019 and 2021, the petitioner played a 'Key role' in organising and representing the RPF in 'National Conference on Railway Security' attended by all state heads of railway security.

9. The petitioner single-handedly developed the 'RPF-Website' and many other Systems as 'Nodal Officer' which was not only approved but also launched by the minister of railways personally during the aforementioned 'National Conference on Railway Security' 2021.

10. During the intervening period of January 2022 to August 2022 the petitioner 'single-handedly' conceptualised, developed and successfully launched and implemented all across the country in the force the 'Transfer Management System' (TMS) which was not only approved and adopted by the respondents; but was subsequently awarded by the minister of railways.

11. In February 2023, the petitioner played an important role in organising and representing India in the UIC 'World Security Congress' at Jaipur as Chairman of the 'Committee on UIC Officials' attended by all UIC country heads of railway security which was not only approved and recognized but was also awarded by the DG/RPF.

12. Based on his exemplary performance and professional skills shown during the preceding years, the petitioner was nominated as 'Chairman' of the 'Security Committee' of 67th 'All India Police Duty Meet' (AIPDM) scheduled in February 2024 at Lucknow.

The petitioner has also enclosed certain documentary proofs in support of such contentions.

29. On the other hand, without denying the aforementioned work-performance and his utilisation by the department narrated by the petitioner, the respondents in their reply have simply submitted that these are self-appraisal by the officer (petitioner) recounting his own achievements and hence need no comments.

30. Given to the length and breadth of the work-profiles admittedly assigned to and successfully carried out by the petitioner, some of which have also been clearly endorsed, appreciated, personally launched and rewarded by the highest authorities of the department like- DG/RPF and Minister of Railways, exactly during the preceding years constituting part of the instant review under rule-1802; holding that he had turned a 'Dead wood' or the department was not able to utilise his services fruitfully, or retiring him prematurely had become necessary in public interest – is completely arbitrary and perverse.

31. In addition to the above, it has also been contended that the order of premature retirement by the respondents has only been passed to overreach the order of this court staying the further departmental proceedings, and therefore makes out a case of contempt. In reply to that, the respondents have tried to defend their action as separate and independent to the departmental proceedings.

Mr. Anil Kumar, Ld. ASGI has further contended that following the registration of FIR by C.B.I. in 2013, the name of the petitioner was put in the agreed/secret list since 2014, and hence the services of the petitioner could not be utilised to the optimal as per his seniority, and the respondents continuing to pay him full salary without commensurate work will tantamount to loss of public exchequer.

The further case of the respondents that the service records of the petitioner were scrutinised on 23.11.2023 by an internal committee, and on 29.11.2023 by a review committee (*when an order of stay of the Departmental proceeding was in force*) who recommended for his premature retirement. The same was approved by the competent authority on 1 December 2023, and accordingly an order of premature retirement was issued on 5 December 2023.

The learned ASGI had further contended that the proceedings under Rule 1802 is separate from and independent of the departmental proceedings and has nothing to do with the ongoing disciplinary action against the petitioner, and the respondents have ‘absolute powers’ to retire an employee after attaining the age of 50.

It has been further submitted that the principles of natural justice are not attracted in the case of premature retirement in terms of Rule 1802, as it is not a punishment and thus, there is no question of putting an employee to notice prior to issuance of the order of premature retirement. He also contended that Rule 1802 can be initiated any time after an employee attend the age of 50 years and hence it is incorrect on the part of the petitioner to contend that once the petitioner was continued after attaining the age of 50 years, he would ordinarily be entitled to continue till his date of superannuation.

The learned ASGI emphasised that the requirement of passing an order of premature retirement is only “*public interest*”, and such decision is only to be based on the subjective satisfaction founded on the materials relevant in this regard. He had also sought to distinguish the judgements relied upon by the counsel for the petitioner more particularly judgement rendered in the case of **Captain Pramod Kumar Bajaj** (Supra) on the ground that

they were rendered in different fact situations which are not applicable to the present case.

32. The facts narrated by the respondents reveal that the entire exercise culminating in passing of the order of premature retirement, which includes the process of collection of all the records related to entire service of the employee spread over various offices of his previous postings, examination of the same by the attached office, preparation of the notes, scrutiny by an internal committee, scrutiny by the review committee and decisions to approve through multiple levels, was completed within a short span of 10 days.

At this stage, it is pertinent to indicate that as per para-5A of the railway board guidelines RBE No. 48/2022 dated 11.04.2022 relied by both the parties, the process has to be initiated 6 months before, and as per para-7 of that guidelines, the same has to be done on 3-monthly (quarterly) basis. Nothing has been brought on record by the respondents which would justify or explain the haste with which the decision to premature retires the petitioner was necessitated.

33. There cannot be any cavil that an employer cannot use the premature retirement route as a shortcut to a regular departmental enquiry. The facts become more glaring in view of the interim order passed by this court on 5 October 2023 and continued by the order dated 7 November 2023. Admittedly, a departmental proceeding was pending against the petitioner. No event or occurrence had taken place after the passing of the interim order by this court or even after the issuance of the chargesheet against the petitioner on 31 January 2023 which can reasonably justify the emergent action of retiring the petitioner prematurely.

34. Much emphasis has been laid by the learned ASGI on

the fact that the name of the petitioner has been put in the agreed/secret list and therefore his services cannot be used to the optimum level, thereby rendering him a deadwood. In order to appreciate this point, it is necessary to first understand the effect an employee has when his or her name is included in the agreed/secret list.

The Railway Vigilance Manual, 2018 provides the criteria for inclusion of the name of an employee and preparation of a secret list vide paragraph 322.2 and 322.3, chapter III, which read as under:

Para-322.2, Chapter III of the **Rly vigilance Manual 2018** provides that the secret list is prepared in the light of criteria laid down for the purpose namely –

- (a) Officers convicted in a Court of Law on a charge of lack of integrity or for an offence involving moral turpitude but on whom in view of exceptional circumstances, a penalty other than dismissal, removal or compulsory retirement is imposed.*
- (b) Officers awarded departmentally a Major Penalty: (i) On charge of lack of integrity or (ii) On charge of gross dereliction of duty in protecting the interests of Government although the corrupt motive may not be capable of proof; or*
- (c) Officers against whom proceedings for a Major Penalty or a Court Trial are in progress for alleged acts involving lack of integrity or moral turpitude; or*
- (d) Officers who were prosecuted but acquitted on technical grounds, and in whose case, on the basis of evidence during the trial, there remained a reasonable suspicion against their integrity.*

Para-322.3 Exceptions: The following will be excluded for this purpose:

- (a) Officers who have been cleared or honourably acquitted as a result of disciplinary proceedings or court trial.***
- (b) Officers against whom an enquiry or investigation has not brought forth sufficient evidence for recommending even a disciplinary case.*
- (c) Officers who have been convicted for offences not involving lack of integrity or moral turpitude.*
- (d) Officers against whom disciplinary proceedings have been completed or are in progress in respect of administrative lapses, minor violation*

35. From the above, the only reason which comes out as why the name of the petitioner had been put in the agreed/secret list is, the initiation of the criminal proceedings against the petitioner by the Central Bureau of Investigation in the year 2013. There is no other reason put

forth also by the respondents before this court.

There is no gainsaying that a person against whom a criminal investigation is lodged and after conclusion of the investigation is put on trial, would still be '*presumed to be innocent*' till he is proven guilty on conclusion of the trial. However, such status of the petitioner in a criminal case is not disturbed by putting his name in the agreed/secret list. Para-322.3 as referred above, also provides for exclusion of the names from this list, of the officers who have been cleared or honorably acquitted as a result of disciplinary proceedings or court trial.

The intent purpose of maintaining the agreed/secret list is provided by the railway vigilance manual vide paragraph 322.7 and 322.8 which is reproduced as hereunder-

Para-322.7: *"The Agreed List is meant only for the purpose of intensive vigilance and carrying out preventive checks".*

Para-322.8: *The purpose of maintenance of these lists is to take such administrative action as is necessary and feasible in the type of cases mentioned below:*

- (a) Transfer from a "Sensitive" post,
- (b) Non nomination to Selection Committees,
- (c) Non nomination to Tender Committees,
- (d) Non appointment as Arbitrators,
- (e) Non nomination as Inquiry Officers,
- (f) Non sponsoring of names for foreign assignments/deputations,
- (g) Refusal of permission for commercial re-employment after retirement,
- (h) Refusal for re-employment in Public Sector Undertakings.

It goes without saying that the above does not include premature retirement of an officer on that basis. Similarly, para-4 of the guidelines circulated by the Ministry of Railways vide RBE 48/2022 which lays down '*criteria for review of services*' under Rule 1802 does not include putting in agreed/secret list as any criteria. Whereas the integrity being doubtful could be held as one of the criteria for review, but that should emanate objectively from the service records, and not from the collateral reasons like

subjectively putting the name in agreed/secret list to keep a watch as a criminal proceeding is pending against the officer. Therefore, the action of retiring the petitioner prematurely on the sole ground of being in agreed/secret list, is not supported by the rules/law.

36. The very object of maintaining this list, as it appears from the provisions above, is limited to keep a watch on the employee concerned. The inclusion of the name of an employee in the agreed/secret list cannot *ipso facto* give rise to a cause of action for order of premature retirement. If that be so, then the respondents had also to justify why the other persons whose names have also been entered in the agreed/secret list, have not been prematurely retired from services or what are the special features available in the case of the petitioner, which makes him different from the others who are placed in the agreed/secret list; as well as if such action was at all required as a follow up of keeping the petitioner in such list, why that was not done prior to the stay order granted by this court in October 2023 against the departmental proceedings, particularly in view of the fact that as per the respondents, the petitioner was kept in that list since year 2014 (for the last 09 years); rather admittedly during the period, he was granted Two promotions and various postings to utilise his services.

Furthermore, even after the petitioner's name was put on the agreed/secret list, he has been promoted substantively to a higher post in the year 2018 and also granted a Non-Functional Senior Administrative Grade with effect from 1 January 2020. The inclusion of the name of the petitioner in the agreed/secret list therefore has had no bearing, whatsoever, so far as his performance and integrity is concerned.

37. The concern of the respondents is that the petitioner cannot be posted in any place which is of sensitive nature.

Such contention, has been strongly refuted by the petitioner, by presenting copy of a Directive bearing no. 58 issued under the signature of the DG/RPF dated 10.03.2023 comprising an extensive list of sensitive and non-sensitive posts enclosed as Annexure-A showing numerous posts commensurate to the rank of the petitioner in non-sensitive category. I find force in the submissions made by the petitioner.

The above facts do not in any manner justify the action of the respondents in prematurely retiring the petitioner. The facts which also weigh in favour of the petitioner is the grades awarded to him in the APARs. Admittedly, the petitioner has always been rated as “*Outstanding*” with “*Integrity Certified*” by all his reporting, reviewing and accepting authorities, i.e. around 3 x 10 (yrs) = 30 independent senior officers of different levels/backgrounds having directly supervised the day-to-day functions and conduct of the petitioner.

38. Furthermore, the ‘*Brochure on Confidential Reports*’ 1999 published by the Ministry of Railways under the endorsement of the Secretary, Railway board, presented by the learned counsel of the petitioner in reply to counter affidavit dated 12.07.2024; in its chapter – I paragraph – 1.2 provides that, *confidential reports, must be held to be a document, which is the true indicator of the achievement of the reportee officer.* (APAR is new nomenclature of the ACR)

Further at paragraph 1.5 of the same chapter, it has been provided that, the system of confidential report has two principal objectives which are-

- A. *To assess the performance of the subordinate...,*
- B. *To assess his potential potential and to prepare him through appropriate feedback...,*

Paragraph 3.9 of Chapter – III of the said brochure provides that, *confidential reports on gazetted railway servants must contain full and frank appraisal of his work*

during the year, the traits of character, whether pleasant or unpleasant, aptitude, personality, and bearing, which contribute to quality of his work.

Paragraph 3.10 categorically provides that; *government servant should not be graded “Outstanding” unless exceptional qualities and performance have been noticed in him.*

Paragraph 3.15 provides that, *(i) if the officers integrity is beyond doubt, the column should be so stated and (ii) if there is any doubt or suspicion, the column should be left blank and action taken...*

Paragraph 3.16 provides that, *assessment of the performance of a gazetted railway servant at more than one level ensures a greater degree of objectivity and fairness.*

Paragraph 3.20 provides that; *the confidential report is an important document as it provides basic and vital inputs for assessing the performance of an officer and for his/her further advancement.*

39. A careful comparative analysis of the above provisions which cover the intent and purpose of maintaining APARs vis a vis the intent and purpose of maintaining agreed/secret list, would show that whereas the APARs are the objective and true assessment of the performance, potential and integrity of an officer, the agreed/secret list is only a subjective arrangement with the sole purposes of keeping a watch/vigilance checks over his work.

There cannot be any doubt that both, the APARs as also the secret/agreed list, must be considered in the correct perspective by the employer in arriving at a decision. The overall service records of an employee forms the basis for a decision which an employer must take account of, regarding his continuance or discontinuance in service, while issuing an order of premature retirement.

40. Though it is not permissible for this court under Article 226 of the Constitution of India to reappraise the materials before the competent authority like an appellate authority, but within the boundaries set out for judicial review, it is permissible to sift the materials in order to arrive at a conclusion, whether the decision is vitiated on account of unreasonableness and / or arbitrariness.

The material produced before this court clearly indicate that the respondents after having issued a charge sheet for initiating major penalty proceedings and after having been restrained by this court to proceed with the regular departmental enquiry, has passed the order of premature retirement with inexplicable haste. Nothing has been brought to the notice of this court, which would justify such an action taken during the pendency of the present petition. It would have been a different situation, if some, intervening facts had occurred during the pendency of the petition or even after the initiation of the Departmental proceeding, which would justify the act of premature retirement.

Further, the APARs and other records of the service of the petitioner do not indicate that the petitioner has not been properly utilised or not been performing or lacking any integrity. The '*Outstanding*' rating of the petitioner's services by his superiors in his APARs, grant of promotions twice during the preceding 5 years, and his nomination to various national/international committees by the respondents; are all indicative that the respondents were happy with the services of the petitioner and he was a performer; is another aspect which cannot be lost sight of.

The fact that the petitioner was not prematurely retired on his attaining the age of 50 in January 2021, but was given non-functional SAG with back effect (i.e. 01.01.2020) in the same year, also cannot be ignored.

41. The contention of the learned ASGI that after attaining the age of 50, the respondents are free to take decision of premature retirement at any point of time, confers arbitrary and unguided powers upon them which has already been struck down by the Supreme court of India in **Sr. Supdt. Of Posts Vs. Izhar Hussain, AIR 1989 SC 2262**. The contention is also not commensurate with the paras - 4(b)(v), (c)(i) (e)(f) and 5-F(j) of the guidelines circulated by the Ministry of Railways vide RBE No. 48/2022 which provide that if at all any such mid-way review is required, that must be based on some exceptional circumstances and the appropriate authority should demonstrate visible meticulousness as the government servant had been found effective on the earlier review. Otherwise, ordinarily, as per the guidelines issued by the respondents themselves, an employee who has not been prematurely retired on attaining the age of 50 should be permitted to continue till he attains the age of superannuation; and no employee should be retired on the grounds of ineffectiveness if he has been promoted during the last 5 years and his services were found satisfactory.

42. The further contention of the respondents that they are not able to utilise the services of the petitioner due to lack of posts in non-sensitive category is contradictory to the enlistment of posts in that respect as contained in Directive no. -58 issued by themselves; and the ground taken by them that the instant order of premature retirement was passed to offload the burden on exchequer is violative of the guidelines contained in para-5-F(ii) referred below –

F) Rules relating to premature retirement should not be used:

ii. for reduction of surplus staff on grounds of affecting the general economy without following rules of retrenchment.

43. In view of the facts stated above it can be safely inferred and concluded that the order of premature retirement was passed arbitrarily for collateral reasons, with inexplicable haste, in order to avoid the regular departmental enquiry and was an act which has the effect of overreaching the interim order passed by this court and otherwise has been found to be a decision which suffers from perversity and complete non-application of mind. The decision to prematurely retire the petitioner is an act which is *ex facie Arbitrary and Unreasonable* and hence deserves to be quashed and set aside.

44. Before parting, it would be pertinent to mention that after passing of the order of premature retirement, this court by an order dated 19.12.2023 directed that the order of premature retirement must be kept in abeyance. The petitioner has complained about violation of that order of this court. The respondents have admitted that they have not kept the order of premature retirement in abeyance. The justification given for non-compliance of the order is that the order of premature retirement was given effect to and hence was irreversible, which is absolutely unacceptable.

The petitioner has also highlighted the last sentence of the Order dated 05.12.2023 which provides that, if he (the petitioner) so desires, he may represent in writing within three weeks from the date of the order is served on him. In their reply, this provision has been admittedly pleaded by the respondents as an alternative channel available to the petitioner.

Thus, if the respondent themselves feel that the order of premature retirement can be set aside on a representation made to the superior officers, and then the order is reversible in nature. Even otherwise, the order is not irreversible in nature. The respondents have certainly violated the order passed by the court on 19.12.2023.

However, taking a lenient view, the matter is not being precipitated further with a hope that the respondents to comply with the present order in the right earnest in its letter and spirit, without any further miscarriage of justice.

45. Having regard to the aforesaid findings and the judicial pronouncements, this writ application is allowed. Consequently, the impugned charge-sheet dated 31.01.2023, and order of premature retirement dated 05.12.2023, are hereby, quashed and set aside.

As a consequence, the services of the petitioner be restored forthwith with all consequential benefits and continuity of service. The intervening period may be regularised as leave due.

46. As a result, the instant writ application stands disposed of in the manner indicated herein above. Pending I.A, if any, also stands disposed of.

(Deepak Roshan, J.)

Jharkhand High Court
Dated- 06 / 08 /2024
Amardeep /
AFR/