



2024:DHC:3107



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22nd April, 2024

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W.P.(C) 2114/2022 & C.M. APPL. 6094/2022**MRITUNJOY KUMAR VERMA**

..... Petitioner

Through: Mr. Tushar Ranjan Mohanty,
Ms. Payal Mohanty, Ms. Soumya Punnia and
Mr. Ankur Goyal, Advocates.

versus

**CENTRAL WAREHOUSING CORPORATION
& ANR.**

..... Respondents

Through: Mr. Tushar Mehta, Solicitor General
of India with Mr. Prabhas Bajaj and
Mr. Rangasaran Mohan, Advocates.

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W.P.(C) 2116/2022 & C.M. APPL. 6108/2022**LT. COL. SHAILESH CHANDRA CHATURVEDI** Petitioner

Through: Mr. Murari Tiwari and Mr. Tushar
Ranjan Mohanty with Ms. Payal Mohanty,
Ms. Soumya Punnia, Mr. Ankur Goyal and
Mr. Rahul Kumar, Advocates.

versus

**CENTRAL WAREHOUSING CORPORATION
& ANR.**

..... Respondents

Through: Mr. Tushar Mehta, Solicitor General
of India with Mr. Prabhas Bajaj and
Mr. Rangasaran Mohan, Advocates.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH**

Signature Not Verified

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By: KAMAL KUMAR
Signing Date: 25.04.2024
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JUDGEMENT

JYOTI SINGH, J.

1. These writ petitions lay a challenge to impugned orders, both dated 20.01.2022, whereby Petitioners were retired prematurely from the services of Central Warehousing Corporation ('CWC')/Respondent No.1 in terms of provisions of sub-Regulation (ii) of Regulation 21 of Central Warehousing Corporation (Staff) Regulations, 1986 (hereinafter referred to as 'CWC Regulations') with immediate effect, by offering to pay an amount of Rs.11,23,329/- equivalent to 3 months' pay and allowances in lieu of 3 months' notice as required under the CWC Regulations. Writ of mandamus is sought for a direction to CWC to grant all consequential benefits. Since both petitions raise common questions of law and the impugned orders emanate from a common recommendation of the Review Committee and decision of the Competent Authority, both were heard together and are being decided by this common judgment. For the sake of convenience and to avoid any confusion, Petitioner/Mritunjoy Kumar Verma in W.P.(C) 2114/2022 is hereinafter referred to as 'Petitioner No.1' and Petitioner/Lt. Col. Shailesh Chandra Chaturvedi in W.P.(C) 2116/2022 is referred to as 'Petitioner No.2'.

W.P.(C) 2114/2022

2. As per the case set out in the petition, Petitioner No.1 applied for the post of Deputy General Manager (General) with CWC while working as Joint General Manager (Tourism) in Indian Railway Catering and Tourism Corporation at Chennai. On the basis of open interview, Petitioner No.1 was selected for the post and joined as Deputy General Manager at Regional Office, Bhopal on 21.09.2011, where he worked for over two and a half years, before joining the office at Delhi on 12.05.2014. Petitioner



No.1 was promoted to the post of General Manager (General) on 19.05.2016 and joined the Inspection Division on 15.07.2016. He worked as General Manager (Commercial)/Group General Manager (Commercial) till February, 2020 and completed the tenure of more than three and a half years successfully. Post of General Manager (Commercial) was a very important post on which appointment was made only after verifying an officer's competency, honesty and dedication to the job assigned. Petitioner No.1's appointment to this post was a testimony to his competence, efficiency, dedication and honesty.

3. On the basis of past record and Annual Performance Appraisal Reports ('APARs'), Petitioner No.1 was promoted as Group General Manager (General) w.e.f. 01.01.2020 and joined as Head of Department of Strategic Planning and Coordination on 28.02.2020. He was brought in the highest scale E-8 in CWC at a very young age of 48 years.

4. After being promoted as Group General Manager (General), Petitioner No.1 was entrusted with the important task of strategic planning and coordination with the parent Ministry as also preparing replies to Parliamentary Questions with regard to working of CWC and he discharged these onerous duties efficiently. Annual Confidential Reports ('ACRs')/APARs of Petitioner No.1 were 'Outstanding'/'Very Good' and his service record is without a blemish. There are no adverse remarks, warnings, censure, etc. in the service record of Petitioner No.1. Respondent No.2/Mr. Arun Kumar Shrivastava joined CWC as Managing Director on 18.06.2018 with date of retirement being 31.10.2022. He was the Reporting/Reviewing and Accepting Authority in the APARs of Petitioner No.1 at different points of time but no adverse remarks/warnings were endorsed in the APARs and Petitioner No.1 continued to be graded as



‘Very Good’ or ‘Outstanding’ and no down-gradation in the APARs was ever communicated to him.

5. Somewhere in October, 2021, Central Vigilance Commission (‘CVC’) forwarded a letter written by a union leader of an Un-Recognized Group ‘C’ & ‘D’ Employees Union to CWC, wherein serious allegations were levelled against Respondent No. 2 and Petitioner No. 1 was praised for his good work.

6. Review Committee was set up on 22.11.2021 to review cases of Premature Retirement for Group ‘A’ Officers of CWC, who were completing 50/55 years between April to December, 2021. On 05.01.2022, Petitioner No.1 applied for the post of Director (Marketing) in Rashtriya Chemicals and Fertilizers Limited under the Ministry of Chemicals and Fertilizers and also applied for the post of Director (Marketing) in Coal India Limited, a PSU under the Ministry of Coal on 07.01.2022, through proper channel. As per procedure, both applications were forwarded on 17.01.2022 to Public Enterprise Selection Board (‘PESB’) by Respondent No.2 after proper enquiry, examination of record and vigilance clearance. To the utter shock of Petitioner No.1, merely after three days of verification of his antecedents and clearance from the Vigilance Department for the purpose of forwarding the applications to PESB, impugned order dated 20.01.2022 was served upon him, retiring him prematurely ‘*in the interest of the Corporation and public interest*’. As per Petitioner No.1, the Review Committee set up to review the cases of premature retirement had recommended his case as fit for retention, but overlooking the recommendation, Respondent No.2 passed the impugned order and that too without any reason to disagree with the Review Committee. Challenging the impugned order, learned counsel for Petitioner No.1 raised the



following contentions:-

(a) The Appointing Authority has the power under Regulation 21(ii) of CWC Regulations to prematurely retire an employee if he has attained the age of 50/55 years and this provision is *pari materia* to FR 56(j) dealing with Compulsory Retirement of Central Government employees. Indisputably, the Competent Authority has the discretion to prematurely retire an employee of CWC in the interest of the Corporation or in public interest, but the discretion has to be exercised judiciously and not arbitrarily, eschewing irrelevant factors and considering relevant ones. Fair play, justice, impartiality and transparency must inform every State action. In the present case, the impugned order is wholly non-speaking and does not spell out a single reason which weighed with CWC to exercise the power and prematurely retire Petitioner No.1. Reasons are the links between the materials on which conclusions are based and the actual conclusions. Reliance was placed on the judgments of the Supreme Court in ***M.J. Sivani and Others v. State of Karnataka and Others*, (1995) 6 SCC 289; *Kumari Shrilekha Vidyarthi and Others v. State of U.P. and Others*, (1991) 1 SCC 212 and *Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla and Brothers*, (2010) 4 SCC 785** in support of the submission.

(b) To facilitate objective implementation of Regulation 21(ii), CWC framed a Policy approved by the Board of Directors and circulated in the form of a Circular dated 13.09.2019, prescribing a procedure for conducting a periodic review of all Groups of employees who cross 50 years of age for adjudging their suitability



for continuance in service. As per the Circular three parameters are to be taken into account by the Review Committee before making its recommendation for retention in service or otherwise and these are: (a) integrity; (b) efficiency/effectiveness; and (c) medical fitness. Review Committee constituted under Clause 7 of Circular dated 13.09.2019 has to take into consideration the entire service record of the employee concerned as per Clause 8(ii). 'Service record' has been explained to mean all relevant records including ACRs/APARs and to facilitate the consideration, CWC is to prepare a comprehensive brief putting together all updated facts and material available about the employee. The service record of Petitioner No.1 would show that he has never been visited with any charge sheet, minor or major and has received two promotions on 19.05.2016 and 01.01.2020 respectively, the latter bringing him into the highest E-8 scale. Integrity of Petitioner No.1 has been throughout certified as '*beyond doubt*'. Taking into account that Petitioner No.1 was medically fit; had 'Very Good'/'Outstanding' gradings in APARs i.e. above the benchmark; and nothing adverse was communicated to him either with respect to efficiency or integrity, Review Committee recommended his retention and in this backdrop, the decision of the Competent Authority to retire him prematurely, is unsustainable in law and smacks of *malafides*.

(c) The mandatory procedure laid down in Clause 5 of Circular dated 13.09.2019 has been violated to the extent that the Review Committee was required to conduct the review six months prior to the employees attaining the age of 50 years and while Petitioner No.1 turned 50 on 28.12.2021, the review was undertaken belatedly in



December, 2021/January, 2022 instead of in April to June, 2021. Even otherwise, the impugned order has been passed in undue haste and hurry and in this process, Clause 11(vii) of the Circular dated 13.09.2019 which provides that '*in the case of Employee on leave, the procedure would be either to recall the Officer from leave and serve the orders of retirement when he joins duty or wait for the Employee to join duty on the expiry of leave and then serve the order*', has been completely glossed over. Petitioner No.1 was on leave on the relevant day and therefore, either he should have been called back to join duty or CWC ought to have waited for him to join back for serving the impugned order. It is settled law that a decision in haste is often based on non-application of mind and smacks *malafide* and leads to arbitrariness. Post haste decisions have been held to be bad in law. [**Ref.: NOIDA Entrepreneurs Association v. NOIDA and Others, (2011) 6 SCC 508**].

(d) CWC cannot question that the procedure stipulated in the Circular dated 13.09.2019 is mandatory and is required to be followed in letter and spirit. Section 6 of the Warehousing Corporations Act, 1962, under which CWC has been set up, provides that the general superintendence and management of the affairs and business of CWC shall vest in a Board of Directors and the Circular dated 13.09.2019 having been approved by the Board of Directors in 346th Meeting held on 28.06.2019 binds CWC and Respondent No.2 and therefore, the impugned decision passed without following the procedure laid down in the Circular deserves to be set aside. Reliance was placed on the judgment of the Supreme Court in **Swaran Singh Chand v. Punjab State Electricity Board and Others, (2009) 13**



SCC 758, wherein it was unequivocally held that Administrative Instructions issued by the Government have a binding effect. In ***Ramana Dayaram Shetty v. International Airport Authority of India and Others, (1979) 3 SCC 489***, the Supreme Court held that it is a well settled rule of Administrative law that an Executive Authority must be rigorously held to the standards by which it professes its actions to be judged and must scrupulously observe those standards on pain of their invalidation.

(e) There is no cavil to the power of the Competent Authority in CWC to prematurely retire its employees, however, the power can be exercised only in the interest of the Corporation as evident from a bare reading of Regulation 21(ii) of CWC Regulations. The provision is *pari materia* to FR 56(j), which has been interpreted in several judgments and it is consistently held that the power to compulsorily retire a Government servant is one of the facets of doctrine of pleasure and the object is to weed out the ‘dead wood’ to maintain efficiency and initiative in the service. In the landmark case of ***State of Gujarat v. Umedbhai M. Patel, (2001) 3 SCC 314***, the Supreme Court has observed that order of compulsory retirement can be passed if for better administration, it is necessary to chop off dead wood but cannot be imposed as a punitive measure. By no stretch of imagination, Petitioner No.1 can be termed as ‘dead wood’ and in fact, he is an asset to CWC. Reliance was also placed in this context on the judgments in ***Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another, (1992) 2 SCC 299***; ***State of Punjab v. Gurdas Singh, (1998) 4 SCC 92***; ***Nisha Priya Bhatia v. Union of India and Another, (2020) 13 SCC 56***; ***Arun***



Kumar Gupta v. State of Jharkhand and Another, (2020) 13 SCC 355; Central Industrial Security Force v. HC (GD) Om Prakash, (2022) 5 SCC 100; and Captain Pramod Kumar Bajaj v. Union of India and Another, 2023 SCC OnLine SC 234.

(f) The service profile and the service record of Petitioner No.1 maintained with CWC would highlight his credentials, efficiency and competency in work and will also amplify the illegality in the impugned order to invoke a provision such as Regulation 21(ii) of CWC Regulations to prematurely retire Petitioner No.1 presumably as ‘dead wood’. Petitioner No.1 by the dint of his hard work and competency earned two promotions after he joined CWC. On 19.05.2016, he was promoted as General Manager (General) and was posted as General Manager (Commercial), a prestigious appointment, tenable by persons with exemplary skills and competency. He was again promoted on 01.01.2020 as Group General Manager (General) and joined as Head of Department of Strategic Planning and Coordination on 28.02.2020, which was within the last 5 years of the date of the impugned order. Petitioner No.1 was being called by UPSC as member of Selection Committee for conducting interviews for Gazetted posts since 2014 onwards. He was member of Selection Committees for post of Stores Officer in 2014 and 2015 and post of Manager Grade-I/Section Officer in 2017. Petitioner No.1 was nominated twice for Residential Training Programmes at prestigious Indian Institute of Management, Ahmedabad. He was also nominated by CWC for a National Workshop on Succession Planning for Board level positions, organised by Standing Council of Public Enterprises (‘SCOPE’)



in November, 2019, to prepare Petitioner No.1 for higher responsibilities which he was to subsequently shoulder at higher positions. Petitioner No.1 was nominated as a Director in various Boards including Board of Madhya Pradesh State Warehousing and Logistic Corporation, Odisha State Warehousing Corporation, etc. Petitioner No.1 has around ten years of experience as Director in various State Warehousing Corporations, which are State Government Public Sector Enterprises and has immensely contributed to their working and betterment.

(g) Impugned order is motivated and actuated by *malafides*, for the reason that being one of the two seniormost officers in CWC, Petitioner No.1 was eligible to be appointed to the post of Director (Personnel), which had fallen vacant on 31.07.2022. Needless to state that if Petitioner No.1 was moved out of the consideration zone, it would stand to benefit those junior to him. On 17.01.2022, Respondent No.2 had forwarded/recommended the applications of Petitioner No.1 for the post of Director (Marketing) in Coal India Ltd. and Rashtriya Chemicals and Fertilizers Limited, while he was also holding the charge of Vigilance Officer of CWC and therefore, it is inconceivable that within a period of three days, impugned decision was taken on the ground that Petitioner No.1 was dead wood to be retired prematurely.

(h) From the counter affidavits filed by the Respondents, it appears that the immediate trigger for the impugned decision was a letter from one of the union leaders to CVC against Respondent No.2, which led to his bias against Petitioner No.1. The contents of the letter/complaint included serious allegations against Respondent



No.2 and good/positive words for Petitioner No.1. This is the only foreseeable reason for the order of premature retirement, in the absence of any adverse service record and the report of the Review Committee recommending his retention in service. In fact, propriety demanded that in the given circumstances, Respondent No.2 should have recused himself from taking any decision with respect to Petitioner No.1. It is a settled law that bias vitiates everything and in this context, reliance was placed on the judgment of the Supreme Court in *Badrinath v. Government of Tamil Nadu and Others*, (2000) 8 SCC 395, where the Supreme Court quashed the selection and directed a fresh selection on the ground that the Committee which had interviewed the Respondent therein comprised of two persons against whom he had filed contempt petitions in the High Court. The Review Committee was an expert committee constituted for the purpose of examining whether Petitioner No.1 was deserving of retention in service or not and once the Committee recommended retention in service, based on extensive deliberation and perusal of service record, only for very cogent and strong reasons the Competent Authority could have disagreed, but no reason for the disagreement exists and/or finds mention in the order.

(i) Respondents attempted to justify the impugned action by urging that recommendations of Review Committee are only recommendatory and placed reliance on the judgments of the Supreme Court in *State of Tamil Nadu and Others v. M.N. Sundararajan*, (1980) 4 SCC 592 and *Union of India and Others v. Dulal Dutt*, (1993) 2 SCC 179, both of which are inapplicable to the facts of the present case. Petitioner No.1 had made efforts to obtain



the reasons for the impugned decision including filing an application under the Right to Information Act, 2005 but to no avail. In ***Dulal Dutt (supra)***, the Supreme Court had observed that “*The Competent Authority did not agree with the recommendation of the Review Committee for the retention of the Applicant. He was certainly entitled to do so, but in arriving at any contrary decision, he should have recorded a speaking order indicating the reasons of his own opinion.*” In the present case, no reason exists for disagreeing with the recommendation of the Review Committee and none forms part of the decision. Case of ***M.N. Sundararajan (supra)***, is completely different as in the said case, validity of the Review Committee itself was under challenge. In ***Baldev Raj Chadha v. Union of India and Others, (1980) 4 SCC 321***, the Supreme Court observed that when an order is challenged and its validity depends on its being supported by public interest, State must disclose its materials so that Court may be satisfied that the order is not bad in law.

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7. As per the averments in the petition, Petitioner No.2 joined CWC as General Manager (General) on 06.07.2015 through an open recruitment process, after completing over 22 years of exceptional service in the Indian Army from 1992 to 2015, where he held various coveted and challenging appointments. Petitioner No.2 was an Ammunition and Armament expert specializing in Improvised Explosive Devices, Smerch Weapon Systems (Russia) and Prithvi Missile Systems and was nominated for a prestigious UN mission in South Sudan.

8. After joining CWC on 06.07.2015, Petitioner No.2 headed the States of Tamil Nadu, Kerala, Puducherry and Andaman and Nicobar Islands in



his first stint, adding value to the organization by introducing various Multinational Companies/Fast Moving Consumer Goods Companies to CWC, resulting in growth of business of CWC and setting a precedence for their proliferation in CWC. Later, he headed the prestigious Delhi-NCR Region and won accolades in both the Regions. On the basis of good service record and APARs, Petitioner No.2 was promoted as Group General Manager (General) on 11.04.2019 and was brought in the highest scale E-8 at a young age of 48 years.

9. After promotion, Petitioner No.2 was appointed as Head of Department of important Technical and Inspection Divisions of CWC. All technical parameters were monitored efficiently and inspections were done timely by Petitioner No.2. In six and a half years of his service, Petitioner No.2 served as a Director on the Boards of Tamil Nadu, Kerala, Andhra Pradesh, Odisha and Uttarakhand State Warehousing Corporations, where he contributed immensely and the very fact that he was promoted by Respondent No.2 and had a continuous unblemished stint as Group General Manager in the Corporate Office is a testimony of his Outstanding service.

10. The APARs of Petitioner No.2 were all 'Very Good'/'Outstanding' from 2015-2016 to 2019-2020 and the integrity was certified as '*beyond doubt*'. After communication of the 'Outstanding' APAR for the year 2019-2020, mandatory review for continuation in service in respect of Petitioner No.2 with other officers, attaining the age of 50 years was carried out by CWC on 16.04.2021, in which Petitioner No.2 was found '*Fit for Retention*' in service. Somewhere in October, 2021, a letter from a union leader from an unrecognized union was forwarded by CVC containing allegations against Respondent No.2 and praises for Petitioner



No.2. On 08.11.2021, application of Petitioner No.2 for appointment with Prasar Bharti was duly forwarded by CWC alongwith Vigilance and Cadre Clearance and Integrity Certificate, through proper channel. For some strange reason and against the policy and possibly out of *malafide*, case of Petitioner No.2 was placed in the list of officers for consideration by a Review Committee, constituted on 22.11.2021 to review the cases of Premature Retirement of Group 'A' officers who were completing 50/55 years between April to December, 2021.

11. On 31.12.2021, Respondent No.2 sent a letter to CVC maligning Petitioner No.2 to protect himself from legal action pursuant to the complaint received from the union leader. On 07.01.2022, Review Committee submitted its report categorically referring to Circular dated 13.09.2019 and stating that in the absence of regular Chief Vigilance Officer ('CVO') in CWC, integrity of officers, including Petitioner No.2 could not be assessed. However, Respondent No.2 returned the file on the same day and insisted on carrying out the review. On 17.01.2022, Director, Coal India Limited scrutinized and approved the application of Petitioner No.2 for the post of Director, duly certifying his integrity. A day later, on 18.01.2022, Review Committee submitted another report reiterating its stand on associating the CVO. However, overlooking the observations of the Committee and in furtherance of his ill intent, Respondent No.2 took a decision on 20.01.2022 to retire Petitioner No.2 prematurely, with no justifiable reason to do so.

12. Learned counsel for Petitioner No.2 adopted the common arguments urged on behalf of Petitioner No.1 and the additional contentions can be encapsulated as follows:-



(a) Impugned order is bereft of any reason, save and except, stating that it is in the interest of the Corporation and in public interest to retire Petitioner No.2 prematurely. It is settled law that every action of the State or instrumentality of the State must be informed by reason else it becomes vulnerable being arbitrary. [*Ref.: Kumari Shrilekha Vidyarthi (supra); M.J. Sivani (supra); Shukla and Brothers (supra); and Ravi Yashwant Bhoir v. District Collector, Raigad and Others, (2012) 4 SCC 407*].

(b) Impugned order reeks of *malafides* as it was issued without any cause and at a time when all officers in CWC were on the verge of getting promotions with huge financial benefits as per communication dated 17.01.2022 received from the Nodal Ministry and clearly Petitioner No.2 would have earned promotion as Executive Director in the E-9 scale.

(c) It is a settled law that Compulsory or Premature Retirement is resorted to in the interest of the employer and/or in public interest and where the employee is a dead wood and not in a case as the present one, where the employee has crossed the efficiency bar; has 'Outstanding'/'Very Good' ACRs; is holding prestigious appointments and no lapse or inefficiency is forthcoming from the service record. Petitioner No.2 got a promotion in the year 2019, owing to his APARs and good credentials and held several important appointments. He was not a dead wood but truly an asset to CWC, having reached the highest Grade of E-8 in a short span of time and at a young age of 48 years. A minor penalty of censure was imposed on Petitioner No.2 on 10.01.2019 but soon thereafter, he was promoted on merit and selection basis to the post of Group General



Manager (General). On 25.02.2019, application of Petitioner No.2 for the post of Managing Director, Central Railside Warehousing Corporation, a subsidiary of CWC, was recommended and forwarded to PESB, implying that he was fit and competent to head CWC's subsidiary. Petitioner No.2 was nominated for Leadership Excellence Training by CWC for one week in the Residential Training Programme at the prestigious IIM, Indore from 18-22.11.2019, which are for senior and meritorious officers. He was nominated for a National Workshop on Succession Planning for Board Level positions conducted by SCOPE in November, 2019. He also qualified the 'Data Analytics' course meant for Directors, CVOs and Senior officers, besides being nominated as Director in various State Warehousing Corporations and their Boards.

(d) Mandatory review in respect of Petitioner No.2 was already completed on 16.04.2021, where he was found fit for retention in service and as per the rule position, next review was due only in 2025, when Petitioner No.2 is attaining the age of 55 years. His name was deliberately added to the current review for officers attaining the age of 50 years in April to December, 2021, at the instance of Respondent No.2. Paragraph 4(i) of Circular dated 13.09.2019 provides a quarterly review of performance of employees, six months before the employee attains the age of 50/55 years. Paragraph 4(iii) creates an exception permitting the Competent Authority to order review at any time after the mandatory review but in 'exceptional circumstances' and on 'exceptional material', none of which existed in the present case. In *State of Uttar Pradesh v. Chandra Mohan Nigam and Others, (1977) 4 SCC 345*, the Supreme Court observed



that once a review has taken place and no decision to retire is ordered by the Central Government, the officer gets a lease upto the next barrier of 55 years.

(e) In order to examine whether the officers are fit for retention in the interest of the Corporation on reaching the age of 50 years, a detailed Circular has been issued laying down the procedure for conducting the review by a Review Committee, whose constitution is also provided in the Circular. Therefore, recommendation of the Review Committee cannot be casually glossed over and in case the Competent Authority, for any exceptional reason, considers it fit to take a different opinion, it can only do so for very cogent and strong reasons. In the present case, even the 2nd Review Committee did not recommend premature retirement of Petitioner No.2 and instead, refrained from making a recommendation in the absence of a Vigilance Officer, in view of the allegation that there was a vigilance angle involved in the matter *albeit* that was also factually incorrect. Despite this observation, Respondent No.2 by his note dated 07.01.2022, insisted on a review by the Committee. The Circular mandates the association of a Vigilance Officer in case a vigilance angle is attached in any given case and if the CVO was not appointed by CWC, the only two options available to Respondent No.2 were either to defer the review or to co-opt the CVO from a sister organization, such as the FCI or from the Administrative Ministry, as per the past practice. It was not open to proceed to take a decision in the absence of a recommendation by the Review Committee either way i.e. to retain Petitioner No.2 or to retire him prematurely.



(f) Respondent No.2 was clearly biased against both the Petitioners, perhaps on an erroneous understanding that the letter from the union leader had some connection with the Petitioners, which is factually wrong. None had any association with the union or its leader and in fact, even according to Respondent No.2, union had been writing several letters in the last four years highlighting the alleged corrupt practices adopted by Respondent No.2, to all possible forums such as CVC, CBI, EOW, etc. Merely because in one of the letters, there was appreciation for the work of the Petitioners, Respondent No.2 assumed that they had some hand in the origin of these letters. It is this misunderstanding which triggered the 2nd Review, which was wholly unwarranted, considering the recommendations of the 1st Review Committee. While insisting on the 2nd Review, Respondent No.2 overlooked that he had himself graded Petitioner No.2 'Outstanding' in the APAR prior to 2020-2021 and had forwarded his application for appointment with Prasar Bharti, certifying the Vigilance clearance. The fact that the 2nd Review Committee was not constituted to consider the case of Petitioner No.2 is self-evident from the Minutes of the Meeting, which state that the Committee was constituted to consider cases of Premature Retirement for Group 'A' Officers who were completing 50/55 years from April to December, 2021 and Petitioner No.2 had attained the age of 50 years on 28.12.2020.

(g) On account of the *malafide* and the biased approach, Respondent No.2 created records to justify the decision to retire Petitioner No.2. There was absolutely no adverse material against Petitioner No.2 to be placed before the Review Committee at the first



instance. In order to achieve his objective for invoking Regulation 21(ii) of CWC Regulations, Respondent No.2 after constitution of the Review Committee, fabricated a letter dated 31.12.2021 addressed to CVC and also obtained a note from Assistant General Manager (Vigilance) dated 03.01.2022 and placed them before the Committee. On 31.01.2022, APAR for the year 2020-2021 was communicated to Petitioner No.2 i.e. 11 days after the impugned order. On receipt of the APAR, Petitioner No.2 noticed that in the column relating to integrity, the word '*doubtful*' has been endorsed. Firstly, it is not known why 3 months were taken to communicate the APAR as against the time limit of 15 days, if the same was ready prior to the impugned decision. Secondly, the procedure laid down in the Instructions for Rendition of ACRs for endorsing a serious remark of '*doubtful integrity*' was never followed and no memo, warning or any communication was ever sent which could justify the endorsement of this remark. The previous APARs of Petitioner No.2 as well as the performance during the relevant period, even otherwise, does not justify the recording of '*doubtful integrity*' and significantly, this endorsement is in Part-I of the said APAR and not in Part-II. This speaks volumes of how in one part of the APAR the integrity is illegally and deliberately assessed and endorsed and backdated to achieve the object of dispensing with the services of Petitioner No.2.

Contentions on behalf of CWC

13. CWC is a statutory corporation established under Warehousing Corporations Act, 1962 and is a Mini Ratna Schedule 'A' Public Sector Undertaking formed with the objective of providing reliable, cost effective,



value-added, integrated warehousing and logistics solutions across the country in a socially responsible and environment friendly manner. CWC operates Bonded Warehouses, General Warehouses as well as Inland Container Depots ('ICDs')/Container Freight Stations ('CFSs') all over the country. Being a premier warehousing agency in India, CWC is providing warehousing and logistics support services to a diverse group of users of such services and has also diversified its activities to construction, operation and management of CFSs and ICDs at different locations in India. Presently, CWC is operating 422 Warehouses across the country with a total storage capacity of 130 Lakh Metric Tonnes ('LMT'). It holds 50% equity in 19 State Warehousing Corporations who are operating about 2055 warehouses with cumulative capacity of 354.85 LMT.

14. Present petitions are neither maintainable nor sustainable in law. Impugned orders have been passed in conformity with provisions of Regulation 21(ii) of CWC Regulations which is *pari materia* to FR 56(j), applicable to Central Government employees and which *inter alia* provides right to the Government as an employer to take a decision to retire an employee prematurely before attaining a certain age in public interest or in the interest of employer institution. These provisions enable the employer to consider cases of employees who have attained the age of 50/55 years for premature retirement having regard to the totality of facts and service records based on the subjective satisfaction that their continuation is not in the interest of the institution. The scope of judicial review is extremely narrow and limited in relation to subjective satisfaction of the Competent Authority taking a decision of premature retirement and Courts cannot sit in judgment over the said decision as an Appellate Authority. Judicial review is permissible in a narrow window in cases where the decision is



founded on arbitrary or capricious grounds or vitiated by *malafides* or overlooks relevant materials. Order of premature retirement is neither a penalty nor punishment nor it casts any stigma on the employee and therefore, principles of natural justice have been held not to be applicable before the decision is taken by the Competent Authority. The provision is clearly meant for the employer to weed out the dead wood where the employee is found to be inefficient or there are issues of integrity. In ***Ram Murti Yadav v. State of Uttar Pradesh and Another*, (2020) 1 SCC 801**, the Supreme Court reiterated the settled position that scope of judicial review in matters relating to compulsory/premature retirement is extremely narrow and principles of natural justice have no application. Reliance was also placed on the judgments of the Supreme Court in ***State of U.P. v. Sri Shyam Lal Sharma*, (1971) 2 SCC 514; *Union of India v. V.P. Seth and Another*, 1994 SCC (L&S) 1052, *Gurdas Singh (supra)*, *State of U.P. and Others v. Vijay Kumar Jain*, (2002) 3 SCC 641, *Purushottam Kumar Jha v. State of Jharkhand and Others*, (2006) 9 SCC 458 and *Central Industrial Security Force (supra)*, for the propositions and it was urged that writ petitions be dismissed on this ground alone.**

15. Elaborating on the judgments aforesaid, it was urged that in ***Central Industrial Security Force (supra)***, it was held that Courts should not interfere with exercise of power of compulsory retirement if arrived *bona fide* and on the basis of material on record. It was observed that whether or not the conduct of the employee is deserving of an order of compulsorily retirement is for the Competent Authority/employer to decide and is its domain. If there is material on record which shows that efficiency of the employee was slackening in the last two years of the period under review, no fault can be found with the conclusion that the employee should not be



retained in service. In *Vijay Kumar Jain (supra)*, the Supreme Court observed that dead wood needs to be removed to maintain efficiency in service. Government's right to compulsorily retire an employee is a method to ensure efficiency in public service and in doing so, the Government is entitled to take into account the entire service record, character role or confidential reports, with emphasis on later entries in the character role of the employee.

16. In exercise of power under Regulation 21(ii) of CWC Regulations and following the procedure laid down in Circular dated 13.09.2019, a Review Committee was constituted for conducting review of eight Group 'A' officers of CWC who had crossed the age of 50 years. The Review Committee submitted its recommendations to the Competent Authority and upon receipt of the report, the Competent Authority after considering the totality of facts and the entire service record and on subjective satisfaction formed on the basis of objective material and having regard to the interest of functioning of CWC as a whole, took a decision on 20.01.2022 to prematurely retire 4 out of the 8 officers under consideration, which included the Petitioners.

17. Petitioners are incorrect in their submission that the material placed before the Competent Authority has been kept away from the Court. Gist of the material/service record that formed part of the consideration has been brought forth in the counter affidavits. While conducting the performance review, especially of employees occupying senior leadership positions, who by their status and position are expected to demonstrate commensurate leadership qualities to inspire and motivate the workforce, various factors are taken into consideration such as discipline, devotion to duty, sincerity, efficiency and integrity. The material on record indicated and justified that



continuation of the Petitioners in service was not in the interest of CWC.

18. Petitioner No.1 had joined CWC on 06.10.2011 as DGM (General) and was posted at Regional Office, Bhopal as Regional Manager. During his tenure, he was appointed as Inquiry Officer in a case of serious irregularities committed by some employees of CWC, wherein disciplinary proceedings had been initiated and charge sheets for major penalty had been issued. The inquiry was to be completed within six months but was not completed by Petitioner No.1 even after two years. On account of this, another officer was appointed as Inquiry Officer and Petitioner No.1 was warned to be vigilant in future. In his next tenure at Delhi, Senior Assistant Manager (G) working in the Personnel Division, made a complaint regarding misbehaviour of Petitioner No.1. However, the complaint was not pursued in the absence of substantive evidence. During Petitioner No.1's tenure in Commercial Division, he was found lacking in the leadership role required to be exercised by him and vide order dated 29.03.2019, Petitioner No.1 was transferred from Corporate Office, Delhi to Regional Office Bhubaneswar *albeit* subsequently on his request for transfer on the ground of children's education and health of aged parents, he was transferred back to Delhi. Petitioner No.1 lagged on several counts, particularly, in monitoring and managing proposals received from the Regional Offices and accomplished nothing extraordinary or outstanding. Despite detailed Guidelines to ensure punctuality circulated vide Circular dated 23.01.2020 effective from 01.02.2020, Petitioner No.1 was not marking his attendance, thereby setting a wrong example for the workforce under him. Communication was issued to Petitioner No. 1 on 17.02.2020 by Director (Personnel), cautioning him in relation to non-marking the attendance, to which Petitioner No.1 had responded, but the response was



unsatisfactory. There appeared to be some kind of attempt by Petitioner No.1 through union leaders of CWC to influence the review of his performance. The letter from the union leader was received by the CVC in October, 2021, and was forwarded to the Vigilance Division of CWC for action. The complaint was aimed at praising both the Petitioners who were strong contenders for post of Director (Personnel) and was motivated.

19. As far as APARs of Petitioner No.1 are concerned, Petitioner No.1 has placed on record his APAR for the period 2019-2020 while for the period 2020-2021, the same has been placed on record by CWC and the contents are self-explanatory and being matter of record need no elaboration. Even if the APARs are 'Very Good'/'Outstanding', that is not the sole criteria to continue Petitioner No.1 in service, as the overall record does not merit his retention in CWC.

20. Insofar as Petitioner No.2 is concerned, he joined CWC on 06.07.2015 as General Manager (General) and was posted in the Inspection and Publicity Division at the Corporate Office at New Delhi. In a short period of two months, he was transferred from the Corporate Office to Field Office to work as Regional Manager, Chennai and was posted back to Delhi in less than one year. During his tenure at Delhi as Regional Manager, there was an incident of theft of cargo from an import container stored at ICD, Patparganj, during December, 2015. As a result, the contract of the security service provider was terminated on 03.05.2016 for breach of the contract and its claim towards payment of Rs.30,28,367/- was rejected and security deposit was forfeited. The termination was challenged by the security agency before this Court but the petition was rejected on account of existence of an arbitration clause in the contract. Arbitrator was appointed by the Competent Authority to adjudicate upon the disputes.



While the arbitration proceedings were ongoing and without waiting for the conclusion, Petitioner No.2 unilaterally took a decision to release the payments and as a result, an amount of Rs.30,28,367/- was released to the security agency. Disciplinary inquiry was initiated in this regard against Petitioner No.2 which culminated in imposition of penalty of censure, which was never challenged by Petitioner No.2.

21. During the year 2021, a detailed investigation was conducted by Vigilance Division in relation to the working of the Regional Office, Delhi which revealed a number of irregularities during the tenure of Petitioner No.2, who was responsible for appointing the Security Agencies sponsored by Directorate General Resettlement and making payments to them. It was revealed that the Regional Office had been making impermissible/ excess payments of wages and House Rent Allowances to DGR sponsored Security Agencies as well as excess payments of HRA to CWC employees deployed at some Regional Warehouses. Despite bringing this to his notice, Petitioner No.2 took no steps for recovery of the excess payments and continued to authorize their release and this resulted in rejection of counter claim of CWC in the arbitral proceedings against one such security agency. The view of the Arbitrator was that the CWC had taken no steps to issue notices demanding recovery *albeit* one of the grounds was also that the counter claim was time-barred.

22. At the time when Petitioner No.2 was Head of Department of Technical and Inspection Division, CWC was in the process of implementing and integrating the Anti-Bribery Management System (ABMS) at CWC's office and Bureau of Indian Standard had submitted its bill, which was, however, dropped by Petitioner No.2 and work order was issued to another entity, without ascertaining if they had qualified auditors



for ABMS certification. Finally, the certification was completed by BIS, but this action of Petitioner No.2 delayed the entire process and a Memorandum dated 04.09.2020 was issued to Petitioner No.2. There were temperamental problems with Petitioner No.2 and complaint was received in 2019 from the then AGM(G) and from a Car Service Provider in February, 2021, for misbehaviour including a complaint from one of the employees in the Helpdesk Team. Petitioner No.2 was not marking his attendance despite a communication dated 17.02.2020 by the Director (Personnel). Petitioner No.2 was responsible for complaints made by the union leader, which contained false and frivolous allegations against Respondent No.2 and praises for the Petitioners and reflected as if they were the victims of a conspiracy in CWC, which may obstruct their upcoming promotions.

23. Insofar as the APARs of Petitioner No.2 are concerned, in Part-I of his APAR for the period 01.04.2020 to 30.09.2020, his integrity has been endorsed as 'doubtful' and a secret note which is self-explanatory has been attached by the Reporting Officer. APAR was communicated to Petitioner No.2 on 31.01.2022 and his representation against the same is pending. Taking into account the overall record, a considered decision was taken by the Competent Authority to invoke Regulation 21(ii) of CWC Regulations and retire Petitioner No.2 prematurely. The argument that being an uncommunicated APAR on the date of the impugned decision, the said APAR could not be taken into consideration by the Competent Authority has no legs to stand in view of the observations of the Supreme Court in **Gurdas Singh (supra)**, where the Supreme Court held that the whole record of the service of the employee can be taken into consideration while considering his overall performance and this will include any



uncommunicated adverse entries as well. Equally misconceived is the contention that on account of the promotions granted to the Petitioners, their past record including any penalty or memos etc., have been washed out. The Supreme Court has held in **Gurdas Singh (supra)** that any adverse entry prior to earning promotion or crossing the efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering a case of compulsory retirement. This principle was reiterated by the Supreme Court in **Arun Kumar Gupta (supra)**, holding that the ‘washed-off’ theory would not apply when the case of an employee is being assessed to determine whether he is fit to be retained in service and this is more so when the record relates to integrity.

24. No plea of *malafide* or bias has been taken against any person in the writ petitions. Faced with this *lacuna*, in the rejoinder affidavits, for the first time, bald and baseless averments of *malafide*/bias have been made, which is an afterthought. For the legal proposition that whenever allegations of *malafides* are levelled, sufficient material and cogent reasons making out a *prima facie* case must be set out in the pleadings and concerned persons must be impleaded as parties, reliance was placed on the judgment of the Supreme Court in **Purushottam Kumar Jha (supra)** and of this Court in **Lakhanlal v. Indian Roads Congress, 2008 SCC OnLine Del 219**.

25. Petitioners have placed heavy reliance on the recommendations of the Review Committee, which is misconceived, as the recommendations are purely recommendatory and are not binding on the Competent Authority, as held by the Supreme Court in **Dulal Dutt (supra)** and **M.N. Sundararajan (supra)**. In fact, one of the members of the Review Committee had penned a separate note with respect to two Petitioners



disagreeing with the other two members finding that Petitioners were not fit for retention. The contention that the Competent Authority was required to pass a reasoned and speaking order while taking a decision to prematurely retire the Petitioners is equally misconceived. In *Dulal Dutt (supra)*, the Supreme Court has reiterated that the order of compulsory retirement need not be a speaking order.

26. Petitioners have attempted to overemphasize that their applications were forwarded to other organisations for appointment since their service records were impeccable, along with their cadre clearance, vigilance and integrity certificates few days before the impugned decisions and this speaks volume of the *malafides* of the Competent Authority. This argument only deserves to be rejected. In fact, the forwarding of the applications demonstrates that there was no bias against the Petitioners. Applications were forwarded in view of the Guidelines dated 19.03.2010 formulated by CWC and has no bearing or connection with the consideration for premature retirement and was based on the position that obtained on the respective dates. Fitness of any candidate for outside employment is to be finally ascertained by the recruiting organisation and not by CWC who had the limited role of forwarding the applications, after ascertaining the eligibility criteria of minimum educational qualifications and experience. CWC forwarded 9 applications of Petitioner No.1 for Board level positions in other organisations but is unaware of his selection in any one of them.

27. I have heard learned counsels for the Petitioners and learned Solicitor General of India for the Respondents.

28. The question that this Court is called upon to decide is whether the impugned orders, both dated 20.01.2022 prematurely retiring the Petitioners have been validly passed in exercise of power under Regulation



21(ii) of CWC Regulations. It is undisputed that but for the passing of the impugned orders, Petitioner No.1 would have retired in due course on 31.12.2031 and Petitioner No.2 would have retired on 31.12.2030.

29. It is a common case of all the parties that provisions of Regulation 21(ii) of CWC Regulations are *pari materia* to FR 56(j). There is a wealth of judicial precedents on the principles required to be followed and applied by the Competent Authority while taking a decision to compulsorily retire an employee invoking FR 56(j) of Fundamental Rules. These principles were authoritatively laid down by the Supreme Court in **Baikuntha Nath Das (supra)** and relevant passage is as follows:-

“34. The following principles emerge from the above discussion:

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

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

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

30. The aforesaid principles were reiterated by the Supreme Court in ***Nand Kumar Verma v. State of Jharkhand and Others, (2012) 3 SCC 580***, in the following passage:-

“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.”

31. The Supreme Court re-stated and re-affirmed the principles in ***Umedbhai M. Patel (supra)***, as under:-

“11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.*
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.*
- (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.*
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.*
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration.*



(vi) *The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.*

(vii) *If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.*

(viii) *Compulsory retirement shall not be imposed as a punitive measure.”*

32. The object of compulsory or premature retirement was highlighted by the Supreme Court in ***Allahabad Bank Officers’ Association and Another v. Allahabad Bank and Others, (1996) 4 SCC 504*** and relevant passage is as under:-

“5. The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. Generally speaking, Service Rules provide for compulsory retirement of a government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held — and there is no duty to hold an enquiry — is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in *Shyam Lal v. State of U.P. [(1955) 1 SCR 26 : AIR 1954 SC 369]* and *State of Bombay v. Saubhagchand M. Doshi [AIR 1957 SC 892 : 1958 SCR 571]*. Thus, by its very nature the power to compulsorily retire a government servant is distinct and separate from the power to punish him by way of removal, dismissal etc. for misconduct. A government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences. Though compulsory retirement deprives a government servant of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get pension, that cannot be regarded in the eye of law as punishment as pointed out in the case of *Shyam Lal [(1955) 1 SCR 26 :*



AIR 1954 SC 369] and Union of India v. M.E. Reddy [(1980) 2 SCC 15 : 1980 SCC (L&S) 179] . Thus, compulsory retirement differs from dismissal and removal both in its nature and incidence or effects. Therefore, compulsory retirement is not considered prima facie and per se a punishment and does not attract the provisions of Article 311. This Court in a series of decisions starting with Shyam Lal case [(1955) 1 SCR 26 : AIR 1954 SC 369] has held that compulsory retirement is neither a punishment nor a stigma; and, that can now well be regarded as settled legal position. But, if any stigma is attached to the order of compulsory retirement then it may be treated as an order of punishment in reality. So also, if a formal enquiry is made on an allegation of misconduct and a finding holding him guilty is recorded and thereafter the order of compulsory retirement is passed then such an order even when it does not contain any allegation or a stigmatic statement may be regarded as an order of punishment, attracting provisions of Article 311. The reason is that the court would infer in such cases that the real intention of the Government was not to compulsorily retire its employee but to punish him.”

33. It is, therefore, clear as day that an employer has an absolute right to retire the employee in public interest with a caveat that the decision which is arrived at on subjective satisfaction of the Competent Authority must be founded on objective considerations, taking into account the entire service record with particular emphasis on the record close to the date of consideration. The objective and purpose of these provisions in the service Rules, enabling premature retirement of an employee, is to weed out the ‘dead wood’ to maintain high standards of efficiency in the service. Principles of natural justice embodying the rule of *audi alteram partem* have no place in the context of an order of compulsory retirement and the performance, conduct, etc. of the employee is to be assessed by the employer and Courts must be slow in interfering with these orders. In ***Posts and Telegraphs Board and Others v. C.S.N. Murthy, (1992) 2 SCC 317***, the Supreme Court observed as under:-

“5. an order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to



require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. ...”

34. In ***K. Kandaswamy v. Union of India and Another, (1995) 6 SCC 162***, the Supreme Court observed that while exercising power under Rule 56(j) of FR, the appropriate Authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. Government is given the power to energise its machinery by weeding out dead wood, inefficient and corrupt people and those with doubtful integrity and when such a *bona fide* opinion is formed in public interest, Courts would not interfere with the order. The Supreme Court, however, added that the opinion must be based on the material on record, otherwise it would amount to arbitrary or colourable exercise of power. What is ‘public interest’ was explained by the Supreme Court in the classic decision in ***Union of India v. Col. J.N. Sinha and Another, (1970) 2 SCC 458*** and relying on the said decision, the following observations were made by the Supreme Court in ***State of Gujarat and Another v. Suryakant Chunilal Shah, (1999) 1 SCC 529:-***

“11. What is “public interest” was explained in the classic decision of this Court in Union of India v. Col. J.N. Sinha [(1970) 2 SCC 458 : AIR 1971 SC 40 : (1971) 1 SCR 791] . It was pointed out that the object of premature retirement of a government servant was to weed out the inefficient, corrupt, dishonest employees from the government service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead wood, are to be dispensed with. The Court observed: (SCC pp. 461-62, paras 9-11)

“Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action



against the government servants. That Rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the Rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is a 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.

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.

In our opinion, the High Court erred in thinking that the compulsory retirement involves civil consequences.”

12. *This was also the view of this Court in H.C. Gargi v. State of Haryana [(1986) 4 SCC 158 : 1986 SCC (L&S) 738 : AIR 1987 SC 65].*

13. *In Gian Singh Mann v. High Court of Punjab & Haryana [(1980) 4 SCC 266 : 1980 SCC (L&S) 527 : AIR 1980 SC 1894] it was pointed out that “the expression ‘public interest’ in the context of premature retirement has a well-settled meaning. It refers to cases where the interests of public administration require the retirement of a government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competency and utility called for by the government service to which he belongs”.*

14. *In Kailash Chandra Agarwal v. State of M.P. [(1987) 3 SCC 513 : 1987 SCC (L&S) 263 : (1987) 4 ATC 209 : AIR 1987 SC 1871] it was pointed out that the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment and that Article 311(2) of the Constitution could not be invoked, as the employee*



concerned was no longer fit in public interest to continue in service and, therefore, he was compulsorily retired.

15. In *Union of India v. M.E. Reddy* [(1980) 2 SCC 15 : 1980 SCC (L&S) 179 : AIR 1980 SC 563] it was pointed out that the object of compulsory retirement was to weed out the dead wood in order to maintain a high standard of efficiency and initiative in service. Rule 16(3) of the All-India (Death-cum-Retirement) Rules, 1958, empowered the Government to compulsorily retire officers of doubtful integrity. The safety valve of public interest was the most powerful and the strongest safeguard against any abuse or colourable exercise of power under that Rule.”

35. In this context, it would be useful to allude to the observations of the Supreme Court in *Baldev Raj Chadha (supra)*, where the Supreme Court observed that security of tenure is the condition of efficiency of service. The administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow and therefore, it must be emphatically stated that under the guise of ‘public interest’ if unlimited 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. Therefore, to constitutionalise the rule of premature retirement, it must be read so as to free it from the potential for mischiefs and the exercise of power must be *bonafide* and promote public interest. Relevant passage is as follows:-

“8. This takes us to the meat of the matter viz. whether the appellant was retired because and only because it was necessary in the public interest so to do. It is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is a terminal step to justify which the onus is on the Administration, not a matter where the victim must make out the contrary. Security of tenure is the condition of efficiency of service. The Administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and the sombre problems of one's own life's evening, your experience, accomplishments and fullness of fitness become an asset to the Administration, if and only if you are not harried or worried by “what will happen to me and my family?” “Where will I go if cashiered?” How will I survive when I am too old to be newly employed and too young to be superannuated?’ These considerations become all the



more important in departments where functional independence, fearless scrutiny, and freedom to expose evil or error in high places is the task. And the Ombudsmanic tasks of the office of audit vested in the C & AG and the entire army of monitors and minions under him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique overawing is very much in public interest. So it is that we must emphatically state that under the guise of "public interest" if unlimited 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. To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected. The exercise of power must be bona fide and promote public interest. There is no demonstrable ground to infer mala fides here and the only infirmity alleged which deserves serious notice is as to whether the order has been made in public interest. When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of "public interest" justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest."

36. Recently, the Supreme Court in ***Captain Pramod Kumar Bajaj (supra)***, re-stated the principles for invoking the power to compulsorily retire an employee and made two significant observations: (a) 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 on the face of it so patently arbitrary that it cannot withstand judicial scrutiny, must be struck down; and (b) it is open to the Court to pierce the smoke screen to ascertain if the decision of compulsory retirement was actuated by *malafide*. Finding the decision against the Appellant therein to be punitive in nature and passed to short circuit the disciplinary proceedings and observing that as per service records, Appellant's



efficiency and integrity remained unimpeachable throughout his career, the Supreme Court quashed the order of compulsory retirement with consequential benefits.

37. Insofar as the scope and ambit of judicial review of an order of compulsory or premature retirement is concerned, the Supreme Court in ***Madhya Pradesh State Cooperative Dairy Federation Limited and Another v. Rajnesh Kumar Jamindar and Others***, (2009) 15 SCC 221, laid down the following parameters, on the touchstone of which an order of compulsory retirement can be examined, within the scope and ambit of the power of judicial review:-

“35. 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; and*
- (iv) when there is no evidence in support of the case.”*

38. In ***M.S. Bindra v. Union of India and Others***, (1998) 7 SCC 310 and ***Pritam Singh v. Union of India and Others***, (2005) 9 SCC 748, it was re-affirmed that judicial scrutiny of any order imposing compulsory retirement is permissible, if the order is either arbitrary or *malafide* or based on no evidence. The word ‘arbitrary’ was explained in ***Pritam Singh (supra)***, to mean that no reasonable person could have come to the conclusion that the concerned employee had outlived his utility and become a dead wood which had to be chopped off based on the service profile and material on record.

39. With these principles perspicuously elucidated by the Supreme Court, I may revert to the present petitions. The impugned orders have been



passed by the Competent Authority in CWC in exercise of power under Regulation 21(ii) of CWC Regulations which is extracted hereunder, for ready reference:-

“21. SUPERANNUATION AND RETIREMENT

(i) xxx xxx xxx

(ii) *Notwithstanding anything contained in clause (i) above the appointing authority shall, if it is of the opinion that it is in the interest of the corporation to do so, have the absolute right to retire a Group A, B, C and D employee if he has attained the age of 50 years by giving him a notice of not less than three clear months in writing or three months pay and allowances in lieu of such notice.*

Provided that an employee belonging to the above Groups, may, by giving a notice of not less than three clear months in writing to the appointing authority, voluntarily retire from the service of the Corporation after he has attained the age of 50 years.

EXPLANATION 1 – *Notice given under sub-Regulation (ii) shall require acceptance by the appointing authority provided that in the absence of any refusal of permission for voluntary retirement, the same shall become effective from the date of the period of notice.*

EXPLANATION 2 : *An employee who has elected to voluntarily retire and has given a notice under sub-regulation (ii) shall be precluded from withdrawing his notice except with the specific approval of the appointing authority.”*

40. Section 6 of the Warehousing Corporations Act, 1962 under which CWC was set up, reads as follows:-

“6. Management of Central Warehousing Corporation.— (1) *The general superintendence and management of the affairs and business of the Central Warehousing Corporation shall vest in a board of directors who, with the assistance of an Executive Committee and a managing director, may exercise all the powers and discharge all the functions which may be exercised or discharged by the Central Warehousing Corporation under this Act.*

(2) *The board of directors shall act on business principles having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the Central Government.*

(3) *If any doubt arises as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.”*



41. By virtue of Section 6, management and general superintendence of CWC vests with the Board of Directors, who with the assistance of Executive Committee or the Board of Directors, utilises the powers for smooth functioning of the Corporation. The Board of Directors formulated a Scheme for invocation of Regulation 21(ii) in furtherance of which, Circular dated 13.09.2019 was issued. The Managing Director/Competent Authority is thus obliged and under a mandate to exercise its power to prematurely retire its employees strictly in consonance with the said Circular. In *Swaran Singh Chand (supra)*, the Supreme Court unequivocally held that instructions issued by the Government will bind it. In *H.V. Nirmala v. Karnataka State Financial Corporation and Others, (2008) 7 SCC 639*, the Supreme Court observed as under:-

“14. We are, however, not unmindful of the legal principle laid down in Vitarelli v. Seaton [3 L Ed 2d 1012 : 359 US 535 (1958)] which has been noticed in Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] stating : (SCC p. 503, para 10)

“10. Now, there can be no doubt that what Para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by Respondent 1 and since Respondent 4 did not satisfy this standard or norm, it was not competent to Respondent 1 to entertain the tender of Respondent 4. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in Vitarelli v. Seaton [3 L Ed 2d 1012 : 359 US 535 (1958)] where the learned Judge said : (US p. 546-47)

‘An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency,



that procedure must be scrupulously observed. ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.”.....”

42. Therefore, as rightly contended on behalf of the Petitioners, it is not open to CWC to pass an order of premature retirement in violation of the procedure detailed in the Circular dated 13.09.2019. The Circular has been issued by the Board of Directors in 346th Meeting held on 28.06.2019 for ‘*Strengthening of Administration-review of cases of all Groups of employees of the Corporation who cross 50 years of age for adjudging their suitability for continuance in service*’. The objective behind laying down an elaborate procedure is palpably clear from Clause 1, which reads as follows:-

“1. OBJECTIVE:

The broad objective of the procedure is to issue the guidelines / framework for better, fair and impartial implementation of Regulation 21(ii) in a transparent manner to weed out the employees of doubtful integrity and the employees who have become inefficient/ ineffective or medically unfit and the services of such employees are no longer useful to the Corporation so that probity and high level of standards of efficiency & integrity amongst the employee of the Corporation can be ensured and the general administration and business of the organisation can be strengthened.”

43. The procedure delineated for review of performance of the employees for premature retirement or retention in service is as under:-

“3. PROCEDURE FOR REVIEW:

3.1 The following procedure and guidelines shall be followed for review of performance of the employees under this Regulation for premature retirement from the service so that it can be ensured that the power vested in the authority are exercised in a fair and transparent manner so that the premature retirement of the employee is in public interest and the decision of the authority is not an arbitrary one and it is not based on collateral grounds.

3.2 Head of Estt Section shall compile the information about the employees whose review is required to be done in a quarter of the year.



All the necessary documents shall be compiled well in advance and the same will be put up before the committee.

4. EMPLOYEES TO BE COVERED UNDER REVIEW:

All Group-A, B, C & D employees of the Corporation are to be reviewed as per the following details:

- i) Quarterly review of performance of employees of Group-A, B, C & D employees has to be undertaken six months before the employees attained the age of 50/55 years.*
- ii) Notwithstanding anything contained in (i) above, a review may be taken up at any time, in cases where no such review has been undertaken earlier.*
- iii) Notwithstanding anything contained in (i) and (ii) above, the Competent Authority shall have the right to order a review of any Employee at any time after the review, as above, if he is of the opinion that exceptional reason such as subsequent performance, or the conduct, or the state of physical health of the Employee warrants so.*
- iv) The employees who are on deputation to other organisation are also required to reviewed, if they fall in the above categories.*

Note: *The Competent Authority should ensure that prescribed procedure like forming of opinion to retire a Government employee prematurely in public interest is strictly adhered to, and that the decision is not an arbitrary one, and is not based on collateral grounds as per the order of the Hon'ble Supreme Court in case of UOI & Col. J.N. Sinha (1571 SCR (1) 791).*

5. PERIOD OF REVIEW:

The review should be carried out six months before the date on which an employee completes the qualifying service for review (50/55 years) as per the following schedule. The preparation should begin in advance so that the entire exercise can be completed as per the schedule.

<i>Sl. No.</i>	<i>Quarter in which review is to be made</i>	<i>Cases of employees who will be attaining the age of 50/55 years, as the case may be, in quarter</i>
<i>1.</i>	<i>January to March</i>	<i>July to September of the same year</i>
<i>2.</i>	<i>April to June</i>	<i>October to December of the same year</i>
<i>3.</i>	<i>July to September</i>	<i>January to March of the next year</i>
<i>4.</i>	<i>October to December</i>	<i>April to June of the next year</i>

Note: *In order to ensure that the review is undertaken regularly, it is desirable that the concerned Division should maintain register of the employees who are due to attain the age of 50/55 years. This register should be scrutinized at the beginning of every quarter by the Head of*



Estt. Section and the same should be countersigned by him.

xxx

xxx

xxx

7. REVIEW COMMITTEE:

The review shall be conducted by the Standing Committee detailed as under:

<i>Sl. No.</i>	<i>Employee's Group who is under consideration</i>	<i>Composition of Review Committee</i>
<i>1.</i>	<i>Group-A</i>	<i>i. Director (Pers) ii. Director (Fin) iii. Director (M & CP)</i>
<i>2.</i>	<i>Group-B</i>	<i>i. 02 GGMs ii. 02 GMs</i>
<i>3.</i>	<i>Group-C</i>	<i>Consisting of 04 Group-A officials</i>
<i>4.</i>	<i>Group-D</i>	

Note:

- i) The senior most member of the Committee will act as a Chairman.*
- ii) In case any member of the committee mentioned above is not available then Appointing Authority may nominate another member."*

8. GUIDELINES FOR REVIEW COMMITTEE:

- i) Before the cases are put up to the Review Committees, the Personal files of the concerned Officers should be brought up-to-date.*
- ii) In every review, the entire service records should be considered. The expression 'service record' will take into account all relevant records and hence, the review should not be confined to the consideration of the ACR/APR dossier. The personal file of the employee may contain valuable material. Similarly, the work and performance of the employee could also be assessed by looking into files dealt by him or in any papers or reports prepared and submitted by him. It would be useful if the Corporation puts together all the updated facts/material available about the employee and prepare a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACR/APR may be taken into consideration.*
- iii) Employees whose integrity is doubtful will be retired. The CVO in case of Group A officers, or his representative in the case, of other officers/employees, will be associated in case of record reflecting adversely on the integrity of any officer/employee.*

As far as integrity is considered, the following observations of the Hon'ble Supreme Court may, while upholding premature retirement in a case, may



be kept in view:-

The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal' from service. But his conduct and reputation's such that his continuance in service would be a menace to Corporation service and injurious to public interest.

*S Ramchandra Raju vs State of Orissa
[(1994) 3 SCC 424]*

Thus while considering integrity of an employee, actions or decisions taken by the employee which do not appear to be above board, complaints received against him or, suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, may be taken into account. Judgement of apex court in case of Sh K. Kandaswamy, I.P.S. (TN:1966) in K. Kandaswamy vs Union Of India 86 Anr, 1996 AIR 277, 1995 SSC(6) 162 is relevant here. There were persistent reports of Sh K. Kandaswamy acquiring large assets and of his getting money from his subordinates. He also indulged in property transactions which gave rise to suspicion about his bonafides. The Hon'ble Supreme Court upheld his compulsory retirement under provisions of the relevant Rules.

Similarly, reports of conduct unbecoming of a Government servant may also form basis for premature retirement. As per the Hon'ble Supreme Court in State of U.P And Others vs Vijay Kumar Jain, appeal (civil) 2083 of 2002:

If conduct of a government employee become unbecoming to the public interest or obstructs the efficiency in public service, the government has an absolute right to compulsorily retire such an employee in public interest.

iv) Employees who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be fitness/competence of the employee to continue in the post which he/she is holding.

v) While the entire service record of an employee should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding five years or where he has been promoted to a higher post during that five years period, his service in the highest post, has been found satisfactory. However, in the case of employees who have been promoted during the last five years, the previous entries in the ACRs/APARs may be taken into account if the employee was promoted on the basis of seniority cum fitness, and not on the basis of merit.

Consideration is ordinarily to be confined to the preceding 5 years or to the period in the higher post. In case of promotion within the period of 5



years, only when retirement is sought to be made on grounds of ineffectiveness. There is no such stipulation, however where the employee is to be retired on grounds of doubtful integrity.

vi) Ordinarily no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. It is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement.

The above instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness but not on the ground of doubtful integrity. The damage to public interest could be marginal if an old employee, in the last year of service, is found ineffective, but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.

vii) The recommendation of the Committee should be either for retaining or for retirement of the employee under review. In case, if the committee recommends for retirement of an employee, the Review Committee should indicate clearly, in detail, the grounds on which the Committee has come to the conclusion that the employee should be retired prematurely.

viii) The proceedings of the Review Committee should clearly indicate that material relating to the inquiry/disciplinary proceedings/Court Proceedings pending against the Officer was not taken into account while coming to the conclusion whether the officer concerned should be retained in service/retired from service.

9. Additional Guidelines to be considered by Review Committee:

The additional guidelines to be considered by the Review Committees for evaluating an employee on grounds of efficiency and effectiveness and reviewing his/her integrity:

A) Matters to be kept in mind while reviewing Efficiency/Effectiveness of Performance:

i) While the entire service record of an employee should be considered at the time of review, greater emphasis should be placed on his performance during the 5 years preceding the review. If an employee had been promoted to higher post during the period of 5 years, the service in the higher post shall receive greater emphasis. If, during the aforesaid- period of 5 years, there is evidence of deterioration in efficiency and unsatisfactory performance, the Review Committee shall examine the entire service record and arrive at a total picture about the suitability or otherwise of the officer for further retention in service. ”

44. Coming to the case of Petitioner No.1, firstly, there is merit in the



argument that the broad objective of the Circular is to lay down Guidelines for better, fair and impartial implementation of Regulation 21(ii) in a transparent manner and to weed out employees having doubtful integrity; inefficient/ineffective performance; and/or those who are medically unfit. Petitioner No.1 is right in his contention that he falls in none of the three categories and therefore, the impugned order is unsustainable in law. Petitioner No.1 is medically fit. His ACRs/APARs have been 'Very Good' or 'Outstanding' and there is no adverse remark in any APAR. Integrity of Petitioner No.1 has been assessed as '*beyond doubt*' in all the APARs. He has never been visited with any charge sheet in his entire career. Petitioner No.1 joined CWC on 21.09.2011 and received two promotions on 19.05.2016 and 01.01.2020, respectively. The APARs of Petitioner No.1 in a tabulated form are as follows:-

Sl. No.	Year	Marks/Grading
1.	2020-2021	86.16 (Very Good)
2.	2019-2020	92.00 (Outstanding)
3.	2018-2019	84.44 (Very Good)
4.	2017-2018	93.57 (Outstanding)
5.	2016-2017	93.02 (Outstanding)
6.	2015-2016	89.3 (Very Good)
7.	2014-2015	88.70 (Very Good)
8.	2013-2014	81.65 (Very Good)
9.	2012-2013 (Part-1)	Very Good
10.	2012-2013 (Part-2)	Very Good



Integrity Details of the Petitioner No.1

Sl. No.	Year	Observation
1.	2020-2021	Beyond Doubt
2.	2019-2020	N.A.
3.	2018-2019	Beyond Doubt
4.	2017-2018	N.A.
5.	2016-2017	N.A.
6.	2015-2016	Beyond Doubt
7.	2014-2015	Not Doubtful
8.	2013-2014	Not Doubtful
9.	2012-2013 (Part-1)	Beyond Doubt
10.	2012-2013 (Part-2)	Beyond Doubt

45. In *Ram Ekbal Sharma v. State of Bihar and Another*, (1990) 3 SCC 504, the Supreme Court dealing with *pari materia* Rule 74(b)(ii) of Bihar Service Code, 1979, observed that the object of the Rule is to get rid of a Government servant who has become dead wood and has lost his utility, has become useless and whose further continuance in service is considered not to be in public interest. The Supreme Court noted that the Appellant had an unblemished career and undoubtedly by dint of his merit and flawless service career had been promoted as a Joint Director in 1983 and



later as a General Manager and that the order although couched in innocuous terms was a measure of punishment. In *Suryakant Chunilal Shah (supra)*, the Supreme Court observed that there was no material on record which could justify a reasonable opinion that Respondent had outlived his utility as a Government servant or had lost his efficiency to become a dead wood so as to compulsorily retire him and the pendency of two criminal cases did not mean that he was guilty and that mere involvement in a criminal case may or may not constitute relevant material for compulsory retirement. In *Nand Kumar Verma (supra)*, the Supreme Court held that formation of opinion for compulsory retirement is based on subjective satisfaction of the Authority, but the same must be on valid material.

46. Applying the aforesaid principle, the Division Bench of the High Court of Jammu and Kashmir in *State of J&K v. Bhumesb Sharma, 2022 SCC OnLine J&K 802*, upheld the order of the learned Single Judge quashing the order on compulsory retirement on the ground that there was no material on record justifying the action. There was no denial in the said case that the APARs of the employee were either 'Good' or 'Outstanding' or that no inquiry was pending against him. The action was held to be arbitrary and without application of mind. A similar view was taken by the Division Bench of the Punjab and Haryana High Court in *Hawa Singh Bhambhu v. State of Haryana and Another, 2020 SCC OnLine P&H 4006* and relevant paragraphs are as follows:-

"20. In the present case, while passing order of premature retirement, the material with regard to utility outlived by the appellant or retiring him for not performing his duty in an effective manner and by considering the allegations against him and also in not maintaining an efficient administration or an objective view of overall performance, have not been taken into consideration.



21. Admittedly, there is no adverse entry in the service record of the appellant regarding his work and conduct or even his integrity is not doubtful and as such, no conclusion can be drawn that it is not in public interest to keep the appellant any more in service of the Government. Meaning thereby, the impugned order of premature retirement has been passed without there being any material on record and without being any public interest but in a punitive manner.

22. The service record of the appellant from the year 1999-2000 to 2017-2018 is reflected in annual confidential reports, photocopies of which have been submitted by learned State counsel and the same is reproduced as under:—

Sr. No.	Year	Grading	Integrity	Remarks
1.	1999-2000	Good	Honest	1
2.	2000-01 i).01.04.2000 to 28.11.2000 ii).29.11.2000 to 31.3.2001	N.A. Very Good	N.A. Honest	-----1/3
3.	2001-02	N.A.	N.A.	—
4.	2002-03	N.A.	N.A.	—
5.	2003-04	Good	Honest	1
6.	2004-05	Good	Honest	1
7.	2005-06	N.A.	As per integrity certificate nothing is adverse	—
8.	2006-07	N.A.	As per integrity certificate nothing is adverse	—
9.	2007-08	N.A.	As per integrity certificate nothing is adverse	—
10.	2008-09	N.A.	As per integrity certificate nothing is adverse	—
11.	2009-10	Outstanding	Honest	1
12.	2010-11	Outstanding	Honest	1



13.	2011-12	Outstanding	Honest	1
14.	2012-13	Very Good	Honest	1
15.	2013-14	Outstanding	Honest	1
16.	2014-15	Outstanding	Honest	1
17.	2015-16	Outstanding	Honest	1
18.	2016-17	N.A.	N.A.	—
19.	2017-18	N.A.	N.A.	—

23. *From the facts as mentioned above, it can safely be said that there is not material before us, which would show that there were adverse remarks in the annual confidential reports or integrity was doubtful at any point of time or the appellant was found to be a man of doubtful integrity or he was not found fit to be retained in service in any manner or his continuation in service was not in public interest."*

47. There is an added factor in favour of Petitioner No.1 which cannot be overlooked. Acting in consonance with the procedure laid down in the Circular dated 13.09.2019, a Review Committee was set up on 22.11.2021, to review cases of Group 'A' officers, who were attaining the age of 50/55 years from April, 2021 to December, 2021, for adjudging their suitability in service under Regulation 21(ii). Shadow file containing the photocopy of the Minutes of the meetings held was handed over by the counsel for CWC during the course of hearing. Minutes reflect that the Committee met several times between 14.12.2021 to 07.01.2022 to assess the performance of the officers under consideration by going through the relevant documents furnished by the Personnel Division. While reviewing the performance of the officers under consideration, the Committee initially observed on 07.01.2022 that in absence of CVO, integrity of the officers under review could not be assessed, as per the terms of the extant instructions or policy of CWC/DoP. The Competent Authority/Respondent No. 2, however, compelled the Review Committee to proceed with the



review of the cases in the absence of CVO and accordingly, the Committee proceeded to give its recommendations on 18.01.2022. Minutes indicate that insofar as Petitioner No.1 was concerned, the Review Committee noted that it did not find any circumstantial or sufficient material for his discontinuation from service as per CWC performance review policy dated 30.09.2019 and categorically recommended his continuation in service, subject to consideration of the agreed list, along with 4 other officers. It is true that the recommendations of the Review Committee are not binding on the Competent Authority and it is entitled to take a decision independently, but it cannot be glossed over that the Committee was envisaged under the Circular dated 13.09.2019, which was issued with the objective of streamlining the process of considering cases of employees for continuation in service so that reviews are undertaken fairly and impartially. CWC could have left the decision of premature retirement solely and singularly on the Appointing Authority, but that was not done as it was envisioned that as a first step an expert body should deliberate on the service record and give its recommendation, which would form the basis and an important input for the Competent Authority to take a balanced decision. Therefore, in my considered view, when the Committee, based on extensive deliberations on the service record of Petitioner No.1, gave its recommendation to retain him in service, Competent Authority could disagree only for valid, strong, cogent and justified reasons, based on the 'service record'. Much was argued on behalf of CWC that an order of compulsory retirement need not be a speaking order or an order containing reasons. There cannot be a quarrel on the proposition that the order need not be a speaking order as held by the Supreme Court in *Dulal Dutt (supra)*, however, the Supreme Court did not intend to state that no reason should exist.



48. In *Umedbhai M. Patel (supra)*, the Supreme Court upheld the order of the High Court quashing an order of compulsory retirement observing that there were absolutely no adverse entries in the Respondent's confidential record and even in the rejoinder before the Supreme Court nothing was averred that his service record revealed any adverse entries as also the fact that the Review Committee did not recommend the compulsory retirement of the Respondent.

49. To justify the impugned order CWC has in the counter affidavit flagged four instances, which allegedly show lack of discipline, devotion, sincerity and professionalism on the part of Petitioner No.1. It is stated that: (a) Petitioner No.1 was appointed as Inquiry Officer in a case of serious irregularities committed by certain employees of CWC with respect to rice bags at a warehouse in Chhattisgarh and instead of completing the inquiry within six months, he was unable to do so even in two years; (b) complaint of misbehaviour by the Senior Assistant Manager (G); and (c) non-marking of his attendance despite a Circular dated 23.01.2020. The procedure detailed in Circular dated 13.09.2019 for conducting of review provides that before the cases are put up before the Review Committee, personal files of the officers will be brought upto date and all material will be put together by the Corporation as a comprehensive brief for consideration by the Review Committee, which would constitute service record. It is unfathomable that these four issues were not placed before the Review Committee, which is presumed to have looked into them before recommending retention of Petitioner No.1 and as noted above, no reason is forthcoming in the note containing the decision for disagreement with the recommendation, save and except, all documents etc. have been looked into.



50. Additionally, Petitioner No.1 has explained in the rejoinder that while working as Regional Manager, Bhopal Region he was appointed as an Inquiry Officer in 3 disciplinary proceedings in addition to other assignments as Regional Manager, which were timebound. All employees involved in this inquiry were posted at different locations. Charge sheeted employees were in Raipur, Presenting Officer was in Lucknow and Defence Assistant was at Hyderabad. There was repeated non-appearance of prosecution witnesses and charged employees. In the meantime, Petitioner No.1 was transferred to Delhi where he underwent a major surgery for disc bulge and could not attend office for 8 months. Additionally, Petitioner No.1 was also appointed as Presenting Officer at the same time for 8 charged officers posted at Moga, Punjab and Inquiring Authority for 5 charged officers posted at Patna. This was against the Office Memorandum dated 31.07.2012 of DoPT providing that not more than 2 inquiries can be assigned to an officer at one time. No action was initiated against Petitioner No.1 at that stage as everyone was aware of the ground reality. Insofar as the complaint by Senior Assistant Manager is concerned, CWC itself admits that the same was closed as there was no evidence. As far as the attendance is concerned, Petitioner No.1 explains that it was brought to the notice of the concerned Authority at the relevant time when show cause notice was issued the biometric system was a new system in place and had teething problems. Be that as it may, it was never intentional on the part of Petitioner No.1 to not mark the attendance and when on two occasions, he forgot to mark the evening attendance, he had applied for leaves. On one occasion, he had marked his attendance but the same was not captured by the system and he had applied for full day leave. The reply to the show cause notice was duly considered and finding truth in



the submissions, no action was taken.

51. To this Court, it appears that only to justify the illegal action, impugned herein, CWC is adopting the approach of reverse engineering by picking up trivial issues going back to yester years and which even otherwise, in my view, do not justify an order of premature retirement, considering the overall outstanding record of Petitioner No.1. Manner in which Respondent No.2 has approached and decided the case of Petitioner No.1 is wholly flawed and arbitrary. The decision in the file does not reflect a single reason which would shed light on what weighed with Respondent No.2 to disagree with the Review Committee and fortifies the stand of Petitioner No.1 that the decision is tainted and has its genesis in the letters sent by the union leader to CVC. It was also rightly contended by the Petitioners that once there was a likelihood of bias on account of these letters, Respondent No.2 ought to have recused himself from considering the cases of the Petitioners. It is a settled law that the test is of real likelihood of bias even if the bias was not the direct cause, which means that there is a substantial possibility of bias and the test is whether a reasonable intelligent man, fully apprised of all circumstances, would feel a serious apprehension of bias.

52. Service record of Petitioner No.1 is unblemished with no adverse remarks in his APARs. In fact, as can be seen from the tabular representation above, his APARs are either 'Very Good' or 'Outstanding' and his integrity was never assessed as 'doubtful'. No charge sheet was issued to Petitioner No.1 and he has earned two promotions in short intervals and reached the highest E-8 scale in CWC at a young age of 48 years. Petitioner No.1 has been a part of several State Boards and involved in training workshops etc. at various levels. With this service profile, this



Court is unable to conclude that Petitioner No.1 can be termed as ‘dead wood’, which requires to be chopped off, being inefficient or incompetent. No doubt, Competent Authority in CWC has the power to prematurely retire its employees but as held by the Supreme Court in **Baldev Raj Chadha (supra)**, the right is not absolute. Absolute power is anathema under our Constitution and arbitrary exercise of power is bad in law. The Supreme Court emphatically stated that if in the guise of ‘public interest’ unlimited discretion is regarded as acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness and arbitrariness. This Court is compelled to hold that the impugned order is vitiated by arbitrariness and smacks of *malafides* and cannot be sustained in law.

53. Insofar as Petitioner No.2 is concerned, the chronology of facts and events narrated in the petition is telling. Petitioner No.2 joined CWC on 06.07.2015 as General Manager (General) in an open recruitment after serving the Indian Army from 1992 till 2015, where he held coveted appointments, both in India and abroad and it needs no gainsaying that he had an impeccable record and his integrity was beyond doubt. Indisputably, Petitioner No.2 was promoted to the highest scale as Group General Manager (General) on 11.04.2019 in the early phase of his career and at a young age of 48 years. Petitioner No.2 has given a tabular representation of his APARs which reveals that the APARs from 2015-2016 to 2020-2021 have been ‘Outstanding’/‘Very Good’ and his last APAR communicated to him, prior to the impugned order on 26.10.2020 was ‘Outstanding’. The problem started in October, 2021, when a letter received by CVC from a union leader of an unrecognised union was forwarded to CWC. Reading of the letter, which is also a part of the file handed over by CWC, shows that



several allegations were levelled against Respondent No.2 while Petitioners were praised.

54. Noticeably and significantly, prior thereto Petitioner No.2 had attained the age of 50 years on 28.12.2020 and was due for the mandatory review, pertaining to the quarter April, 2020 to June, 2020, since review is to be conducted six months in advance as per the Circular dated 13.09.2019. Accordingly, meeting of the Review Committee for performance review of 14 Group 'A' officers was convened on 15.04.2021. Minutes of the Meeting indicate that the Committee reviewed/perused the personal file, ACRs/APARs of the officers under consideration along with abstract of service record, conduct and discipline, property returns, vigilance status, etc. and after a detailed examination, recommended retention of Petitioner No.2 along with other officers. Petitioner No.2 has urged that there was no plausible reason or justification to have placed his case before a second Review Committee in December, 2021, as he had neither reached the next milestone of completing 55 years nor was there any subsequent development entailing the second review. There is no explanation or response to this contention, seriously urged on behalf of Petitioner No.2 by CWC, save and except, relying on the APAR for 2020-2021 where in Part-I, his integrity has been assessed as 'doubtful'. Admittedly the second Review Committee declined to review the case of Petitioner No.2 in the absence of CVO, a mandate under the laid down procedure. *De hors* this, Respondent No.2 proceeded to pass the impugned order, which is bereft of any reason justifying the decision. In my view, the impugned order is flawed for the following reasons:-

- (a) Once the mandatory review was conducted in respect of Petitioner No.2 in April, 2021 and he was found fit for retention, in



the ordinary course, the next mandatory review was due only in the year 2025, when he attains the age of 55 years. In ***Chandra Mohan Nigam (supra)***, the Supreme Court observed that once a review has taken place and no decision on that has been taken by the Central Government, the officer gets a lease upto the next barrier at 55 and if he is again cleared at that point, he is free and untrammelled upto 58 years. Clause 4(i) of Circular dated 13.09.2019 provides for quarterly review of performance of employees of Group A, B, C and D, six months before the employees attain the age of 50/55 years. Exception to this is carved out in sub-clause (iii) of Clause 4 which provides that if the Competent Authority is of the opinion that exceptional reasons such as subsequent performance or conduct or physical health are made out, a review can be ordered notwithstanding sub-clause (i). No exceptional reason is forthcoming in the decision in the file to conduct a second review in December, 2021. CWC has made a desperate attempt to justify the decision in its counter affidavit, which cannot be done. In ***Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others, (1978) 1 SCC 405***, the Supreme Court held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, else an order bad in the beginning may, by the time it comes to Court on account of a challenge, will get validated by additional grounds later brought in.

(b) Coming to the reason furnished in the counter affidavit to support the order of Premature Retirement, it is averred that the



integrity of Petitioner No.2 was assessed as ‘doubtful’ and for this reference is made to his APAR of 2020-2021. This is in my view, is wholly misconceived. This Court is conscious of the fact that the subject matter of this petition is not a challenge to the APAR, however, it does require to be noted that assessing the integrity of an officer in an APAR is a very serious matter and thus a mandatory procedure is laid down by the DoPT in several OMs, which is required to be followed for filling up columns relating to integrity, which *prima facie* has not been followed in the present case, as urged by the counsel for Petitioner No.2.

(c) Even assuming for the sake of argument that the APAR of 2020-2021, with an endorsement of ‘*doubtful integrity*’ in Part-I entailed a second review in a short span of 6 months, the correct and fair approach should have been to: (a) associate the CVO; and (b) to disassociate Respondent No.2 from taking a decision with respect to premature retirement of Petitioner No.2. From a bare perusal of the APAR which has been placed on record by CWC, it is evident that the Reporting and the Reviewing Officer for the said APAR was Respondent No.2. There is no gainsaying that having made an endorsement of doubtful integrity, he had a negative view on Petitioner No.2’s integrity and therefore, in the interest of justice, fairness, transparency and impartiality, Respondent No.2 ought to have recused himself from taking a decision on Petitioner No.2’s retention and continuation in service. In the present case, the bias is writ large from the facts and perusal of the notings in the file leading to the impugned decision. The Review Committee declined to assess Petitioner No.2 on the ground that since there was an integrity angle,



CVO ought to be associated with the case and this observation had its genesis in paragraph 8 (iii) of the Circular dated 13.09.2019 which stipulates *'Employees whose integrity is doubtful will be retired. The CVO in case of Group A officers, or his representative in the case of other officers/employees, will be associated in case of record reflecting adversely on the integrity of any officer/employee.'* Despite this observation of the Review Committee on 07.01.2022, Respondent No.2 insisted that the review should be carried out. After the directions were received, the Committee furnished its report dated 18.01.2022 and while it recommended retention of Petitioner No.1, it reiterated its stand in respect of Petitioner No.2 to associate CVO before further consideration. No doubt, one of the members of the Committee i.e. Director (Finance) penned a separate note but a reading of the note shows that on the basis of some documents in a short cryptic note of six lines, he observed that major conspiracy issues were involved in respect of both the Petitioners. It is not understood on what basis this conclusion was made since there were no allegations of 'conspiracy' and is not even the basis or reason for the premature retirement, even today. Significantly, after this dissenting note, Chairman of the Committee penned a separate detailed note in which he narrated the discussions of the Committee on different dates and in no uncertain terms reiterated that he was of the firm view that CVO must get involved to decide the integrity issue in all cases. He also noted that it was desirable to take action in an appropriate manner so that the stand taken sustains in Court of law. At this stage, it also becomes relevant to note that on 17.01.2022, Respondent No.2 had forwarded the application of



Petitioner No.2 for appointment in another PSU certifying his integrity. However, actuated by malice, Respondent No.2, overlooking all factors including the insistence of the Review Committee to associate the CVO took a decision on 20.01.2022 to prematurely retire Petitioner No.2.

(d) Court has perused the decision, which is absolutely unreasoned and merely states that Respondent No.2 had seen all documents like Agenda, extant Instructions, APARs etc. and the report of the Review Committee, remarks of Director (Finance) and separate note of the Chairman and after due deliberation was convinced that it would be in the interest of the Corporation and public interest to prematurely retire Petitioner No.2. Before this Court, CWC has sought to justify the decision to disagree with the Review Committee on the ground that no CVO was appointed at that stage in CWC to which Petitioner No.2 has responded by urging that in the past in such a scenario, CVOs from sister organisations or the Nodal Ministry are associated and rightly so.

(e) It is also significant to note that the secret note appended to Part-I of APAR 2020-2021 refers to an incident of 2019 relating to release of claims of a security agency. It is undisputed that soon after the incident, minor penalty proceedings were initiated against Petitioner No.2 which culminated in imposition of a minor penalty of censure vide order dated 10.01.2019. Beyond a doubt, this fact was before the Review Committee held in April, 2021 which had recommended retention of service of Petitioner No.2. No cogent reason is forthcoming as to why this incident was taken in the secret note for assessing the integrity in 2020-2021 APAR and not earlier



APAR rendered for the period 2019-2020 and this strengthens the case of Petitioner No.2 that the only objective was to create material to retire him. Short affidavit has been separately filed by Respondent No.2 but no arguments were advanced on his behalf and the contents of the reply are far from justifying the allegations made by Petitioner No.2, duly supported by material on record.

(f) There can be no doubt that while considering the case of premature retirement of an employee, his entire service record is to be taken into consideration but it is equally true that the Competent Authority cannot dissect the record and consider only that part which is against the employee overlooking the record which reflects a good performance of the employee. The impugned decision does not show consideration of crucial factors such as: all other APARs of Petitioner No.2 were 'Very Good'/ 'Outstanding'; his integrity was assessed 'beyond doubt' in other APARs; recommendation of the Review Committee in April, 2021 to retain him in service, promotions earned by him and the prestigious appointments held and tasks accomplished till 2021 and absence of endorsement of 'doubtful integrity' in Part-II of APAR of 2020-2021.

55. It was strenuously argued by the learned Solicitor General on behalf of CWC that this Court ought not to interfere in matters of compulsory or premature retirement as the scope and ambit of interference is extremely narrow and limited. This proposition of law is beyond any cavil. However, it is equally settled that Courts can lift the veil and the smoke screen to see if the decision is *malafide* and arbitrary. Facts and circumstances in the present cases, as aforementioned, leave little doubt on both these aspects and the impugned orders thus warrant interference in the limited window



of judicial review. In view of these special and peculiar facts and circumstances, I am of the view that the matter needs to be re-considered by the Competent Authority.

56. For all the aforesaid reasons, both the impugned orders dated 20.01.2022 are hereby quashed and set aside. Petitioner No.1 shall be reinstated within four weeks from today with all consequential benefits, including back wages.

57. Insofar as Petitioner No.2 is concerned, it is directed that the Review Committee shall consider his case in accordance with the procedure laid down in the Circular dated 13.09.2019, taking into account the service record as envisaged therein and with inputs of the CVO, as per the mandate of the Circular. Recommendation shall be sent to the Competent Authority for taking a considered decision on continuation of Petitioner No.2 in service of CWC. Needless to state the decision shall be taken in accordance with law and taking into account the service record of Petitioner No.2, recommendation of the Review Committee and/or any other relevant factor and uninfluenced by the impugned decision. It is further directed that the entire exercise will be completed within three months from today. The decision shall be communicated to Petitioner No.2 within one week thereafter. In case the decision is in favour of Petitioner No.2, he shall be reinstated forthwith with all consequential benefits. In case the decision is otherwise, Petitioner No.2 shall be at liberty to take recourse to appropriate remedies in law, to assail the same, if so advised.

58. Writ petitions are allowed to the aforesaid extent and disposed of along with pending applications.

JYOTI SINGH, J

APRIL 22, 2024/shivam/kks