



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 18, 2024

+ W.P.(C) 8398/2021, CM APPL. 25969/2021

S.S. DAS

..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Adv. with
Mr. Anurag Ojha and Mr. Karan
Aggarwal, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Ravi Prakash, CGSC for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner challenging the order dated July 2, 2021, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.2640/2019 ('OA', for short), whereby the Tribunal has dismissed the OA filed by the petitioner herein by stating in paragraph 12, onwards, as under:-

"12. The gist of assessment undertaken by the Review Committee has already been furnished in the preceding



paragraphs. The respondents have elaborated the same in the counter affidavit. It is also mentioned that complaints were received from various circles that the applicant, while occupying the position referable to Anti-Dumping, demanded several favours. It may be true that there is no proof about such demands. However, that would be a requirement in the case of disciplinary proceedings. While exercising power under FR 56(j), the Appointing Authority can take note of such allegations. Once the employee is fully granted of his retirement benefits, and is retired, a bit earlier, than in the usual course, the exercise referable to punitive action is not necessary.

13. In **Ashok Kumar Aggarwal** vs. Union of India & Anr. (OA No. 1835/2020), the Tribunal observed as under:-

“38. The situation may not have existed for imposition of penalty. However, the gist of judgments of the Hon’ble Supreme court on the subject is to the effect that the overall record of the employee can certainly be taken into account. At the end of the day, it is the subjective satisfaction of the appointing authority, which in turn is not easily available for judicial review, compared to other administrative decisions.

39. A close scrutiny of the provisions under Para XXIV of the Constitution of India, in which Articles 308 to 314 occur; or the CCS (CCA) Rules or Fundamental Rules, would reveal that even while the several protections are accorded to the civil servants, the administration is conceded with the power to punish or dispense with the services of the employees depending upon the proof of acts of misconduct or on existence of material to show that it is not feasible to continue the employee in service. While holding of inquiry into the allegations of misconduct, is the norm that can be dispensed with in exceptional cases covered by the 2nd proviso to



Article 311 (2) (b) and the corresponding CCS (CCA) Rules.

40. The hardship caused to the civil servants on account of dismissal from service after an inquiry under Rule 14 of the CCS (CCA) Rules or by invoking the provisions akin to Article 311 (2), is phenomenal, if not colossal. The pension, which is almost in the form of estate, stands withdrawn. Other attendant benefits, which are provided as a reward for the service rendered by the employee for major part of his life are forfeited. In contrast, the compulsory retirement under FR 56(j) would have the effect of just advancing the age of retirement and nothing more. The State feels that it would be safer for it, in case the employee is not on its rolls for the remaining part of his service. Roughly stated the major punishments such as dismissal and removal are almost lethal weapons, whereas compulsory retirement is just a tranquilizer. Obviously for that reason, the Hon^{ble} Supreme Court had reduced the interference with such orders to the bare minimum. Exceptions are where order is tainted with malafides or there does not exist any material to warrant such a plea at all. Such grounds, however, do not exist in this case.”

14. Almost the same situation obtains in this case also. In the review also, various points urged by the applicant were taken into account and the order of premature retirement was also referred to.

15. We do not find any merit in the OA and the same is accordingly dismissed.”

2. The facts as noted from the record are that the petitioner joined the Indian Trade Service (‘ITS’, for short) in the year 1989. He was



promoted to the post of Deputy Director General of Foreign Trade ('DGFT', for short), in 1994 and was further promoted to the post of Joint DGFT in the year 2001. He was also promoted on Non Functional Selection Grade ('NFSG', for short) basis in the year 2006 and was selected for Central Deputation under Central Staffing Scheme, in the year 2008.

3. It is stated that another Non Functional Upgradation ('NFU', for short) was given to him, in the year 2011 and he became the Director in the Directorate General of Anti Dumping ('DGAD', for short) in the year 2014. He was posted as Regional Joint DGFT, Guwahati and Shillong in the year 2017. Thereafter, he was put in the Senior Administrative Grade ('SAG', for short) of ITS, at the level of Joint Secretary, on November 16, 2017 and was promoted on regular basis to SAG on February 27, 2018.

4. It is further stated that on May 10, 2018, the Appointing Authority of the petitioner passed an order retiring him from service, before he attained the age of superannuation, by invoking power under FR 56(j) of the Fundamental Rules ('Rules', for short). Pursuant thereto, a review petition submitted by the petitioner against the order passed by the respondent compulsorily retiring the petitioner was rejected by the respondent on June 13, 2019. As a result, OA was filed by the petitioner, challenging the order of premature retirement dated May 10, 2018, and order of rejection of the review, dated June 13, 2019.

5. It was the case of the petitioner before the Tribunal that his service record is without any blemish and he earned several promotions



on time and as such, at no point of time, he faced any disciplinary proceedings and his ACRs were also consistently rated as high.

6. It was also his case that there was absolutely no justification or basis for the respondent herein, to invoke the power under FR 56(j) of the Rules, against him. The order of premature retirement was passed by doubting his integrity and such a step could have been taken, only in consultation with CVC and in the instant case, no consultation was undertaken with CVC.

7. Whereas, it was the case of the respondent before the Tribunal that as part of cleansing the Administration of Anti-dumping Department and for ensuring transparency, a high level Committee was constituted to review the cases of various officers, who had crossed the age of 50 years. The Committee examined the relevant service records of various officers and recommended the case of the petitioner, for premature retirement.

8. It was also the case of the respondent that several observations were made by the concerned authorities at different points of time in the ACRs of the petitioner, doubting his integrity and expressing discontent about his functioning and as the petitioner was occupying a very senior and sensitive position in the department, any small deviation from the prescribed norms is bound to have its impact on the functioning of the department and adversely affecting the interests of the country.

9. After perusing and analyzing the case as set up by both the parties before the Tribunal as well as the judgments of the Supreme Court, it dismissed the OA filed by the petitioner herein, in the manner



as reproduced in paragraph 1 above. It is stated that the petitioner has impugned the order passed by the Tribunal in the following manner:-

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. It is the submission of Mr. Sanjoy Ghose, learned senior counsel appearing on behalf of the petitioner that as per Office Memorandums [‘OMs’] dated June 23, 1969 and May 10, 1974, the approval of Appointment Committee of Cabinet (‘ACC’, for short) is a pre-condition for invocation of FR 56(j) for the officers in SAG and above. The above position has not been subjected to any change and in fact, in all the subsequent OMs dealing with compulsory retirement under FR 56(j) qua SAG, this position remains same. Even OM dated March 21, 2014, specifically refers to said OMs in its appendix and marginal note. In fact, it is the cardinal rule with regard to Central Services Group A.

11. He submits that the above requirement is essential safeguard against arbitrary exercise of powers and the manner for taking a decision, having attributes of safeguards in favour of a Government Servant, and as such must be strictly followed.

12. It is his case that appointment of the petitioner to SAG was done by ACC and thus, it is the only authority competent to remove him. Logical corollary thereof, that any action having effect of removal cannot be undertaken by body different from appointing authority.

13. He further submits that law postulates that the recommendation for invocation of FR 56(j) has to be placed before the ACC. The requirement of “*placing before the ACC*” contemplates full disclosure, so as to enable it, to form a considered opinion. This is akin to



sanctions required for certain actions. It has been held consistently that non-disclosure or not placing the matter before competent authority travels to the root of the matter and nullifies all the actions taken on the subject matter. [Ref. *Swaran Singh Chand v. Punjab State Electricity Board and others*, (2009) 13 SCC758].

14. He also submits that it is an admitted case that the respondent has not placed the matter before ACC for approval or otherwise. Despite orders passed by the Tribunal, the records were not produced and unfortunately, the Tribunal has not adverted to this aspect of the matter despite extensive arguments made on behalf of the petitioner herein.

15. He submits that in case the action proposed under FR56(j) relates to “*lack of integrity*”, CVC must be consulted. OM dated May 10, 1974 specifically requires the consultation with CVC in case action is proposed to be taken for want of integrity. He has taken the aid of the judgment of the Supreme Court in the case of *State of Gujarat and Another v. Justice R. A. Mehta (Retired) and others*, (2013) 3 SCC 1, to contend that the expression “consultation” has been subjected to judicial attention and there is judicial consensus to mean, the following:-

“.....*Ordinarily, consultation means a free and fair discussion on a particular subject, revealing all material that the parties possess, in relation to each other, and then arriving at a decision. However, in a situation where one of the consultees has primacy of opinion under the statute, either specifically contained in a statutory provision, or by way of implication, consultation may mean concurrence. The court must examine the fact-situation in a given case to determine whether the*



process of consultation, as required under the particular situation did in fact, stand complete.....”

16. He further submits that it is settled law, if law prescribes something to be done in a particular manner, all other course stands barred. [Ref. *State of Uttar Pradesh v. Singhara Singh and others*, AIR 1964 SC 358 and *Mohinder Singh Gill and Ors. v. The Chief Election Commissioner, New Delhi and Ors.*, MANU/SC/0209/1977].

17. He further submits, in the instant case, it is an admitted position that there is no such consultation with CVC. In fact, the matter has never been reported to CVC prior to impugned order. CVC is a statutory office and is an independent office unconnected with the hierarchy of respondent/ Ministry of Commerce. The purpose of consultation necessarily is to elicit an independent view as to whether the material alleging imputation of integrity is sufficient to form such view. This primarily requires application of mind by a specialised agency. Particular view qua errors of judgment or one understanding of deviance amounting to “questionable integrity” would be a nebulous feature if left to the “charge making body”. Essential safeguard - therefore-pre ordains the consultation with CVC. Presence of CVO (a Joint Secretary level officer) in the Review Committee is not same as Consultation with CVC. The Tribunal has fallen into error in not appreciating this aspect of the matter despite the fact that the same has been dealt with extensively in oral arguments.

18. He submits that the Tribunal has failed to appreciate that the review for the purpose of invocation of FR 56(j), in law, is required to be done either at the age of 50 years or at 55 years and it must be



completed six months prior to attainment of said age. In the instant case, the petitioner is the only ACC appointee in the list of officers who was cherry picked for the review at the age of 55.6 years without there being any adverse material. Thus, the proceedings adopted, described above, clearly indicate the malice in law, which accentuated such exercise.

19. It is his case that in the instant case, there is no material to justify the invocation of FR56(j). In fact, the observation concerning questionable integrity, is without any material on record. Copiously, the indictment that *‘the petitioner does not hold good reputation in terms of integrity as born out from APAR dossier’* is factually incorrect. The gist of all APARs shows that at no point of time the petitioner is levelled with remarks of the kind imputed upon him. Thus, if it is assumed that the basis for invocation of FR 56(j) is questionable integrity, and the same is derived from APARs, and if APARs are found to be absent with such remarks then the impugned order is “without any basis” worthy of judicial acceptance. In fact, some of the APARs specially records that the integrity of the petitioner as *“integrity above board or nothing adverse”*.

20. He submits that the recent promotion granted to petitioner with ACC approval, followed by the impugned order of compulsory retirement on non-existent grounds makes the order dated May 10, 2018, bad in law. It is settled law that once promotion is granted then absent any new material, the compulsory retirement cannot be inflicted. [Ref. *M. S. Bindra v. Union of India and others, (1998) 7 SCC 310*].

21. He further submits that in the instant case, there is no remark in



recent APARs of the petitioner (even in past as well), which ails the impeccable integrity of the petitioner. In fact, the latest APARs (2016-2017) records impressive entries. It is his case that whole service records must be examined and as such, stray remarks loosing the consistency cannot be a basis for imputation. Moreover, extraneous and over-fending for adverse entries relatable to initial stage of service shall be avoided unless so grave and persistent.

22. It is his submission that the Tribunal has ignored the binding precedent relating to judicial review in case of compulsory retirement / invocation of FR 56(j). The law is clear that in case promotion is granted on same set of facts, unless new material justifying the invocation of FR 56(j) is obtained, such recourse is bad in law. He submits that the finding of the Tribunal, specifically, in paragraph 8, on the pure question of law, is bad in law, as observations of the Supreme Court in the case of *State of Gujarat v. Umedbhai M. Patel, (2001) 3 SCC 314* has been consistently reiterated in subsequent decisions in *Pyare Mohan Lal v. State of Jharkhand and others, (2010) 10 SCC 693* and *Punjab State Power Corporation Ltd. and Ors. v. Hari Krishan Verma, (2015) 13 SCC 156*.

23. He submits that the findings of the Tribunal in paragraph 9 of the impugned order is perverse inasmuch as no instance was raised before the Tribunal which could indicate ‘*deviance having financial implication*’ on the part of the petitioner holding sensitive posts and as such observation of the Tribunal travels beyond respondent’s case.

24. It is his submission that the fact that the same officer viz, Alok Vardhan Chaturvedi has been part of all three Committees (First



Review, the Representation Committee and Second Review), thus reasonable suspicion of bias has vitiated the process. The Departmental bias and malicious conduct of Alok Vardhan Chaturvedi, who formed part of three committees brings out a case of lack of good faith and malice against petitioner *ex facie curiae* [Ref. ***R.P. Kapoor v. Pratap Singh Kairon, 1965 SCC OnLine All 414***].

25. It is also his submission that the Tribunal has ignored the binding precedents relating to judicial review in cases of compulsory retirement/invocation of FR56(j) inasmuch as the law is clear that in case promotion is granted on same set of facts, unless new materials justifying the invocation of FR56(j) are obtained, such recourse is bad in law [Ref. ***Smt. S. R. Venkataraman v. Union of India and another, (1979) 2 SCC 491***].

26. He submits that the petitioner has preferred four representations on June 1, 2018, July 24, 2018, August 3, 2018, August 30, 2018 against the order dated May 10, 2018, whereby he was made to compulsorily retired. The occasion for such representations arose as the petitioner was unaware of grounds leading to order dated May 10, 2018. Various materials based on RTI Replies were produced to exhibit arbitrary and colorable decision making which culminated into order dated May 10, 2018.

27. He also submits that the Representation Committee met on September 07, 2018, but the said committee has foreclosed its wisdom as the comprehensive representation dated August 30, 2018 was deliberately not placed before it by the respondent and only the first representation dated June 1, 2018, which was preferred when petitioner



was not aware of grounds of compulsory retirement, was considered. This approach is *ex facie* bad in law as the comprehensive representation dated August 30, 2018, which refuted all allegations, was not even looked at, let alone considered. Fairness and justness to which law presume the Government to be wedded to, requires due accord to comprehensive representation dated August 30, 2018. It is admitted case of the respondent that this representation was not considered.

28. He submits that, even without considering the comprehensive representation dated August 30, 2018, the Representation Committee found the petitioner's case fit for reconsideration and remanded the matter back for reconsideration to the Review Committee and for approval of the Competent Authority.

29. It is further his submission that the Second Review Committee comprised of same set of officers in as much as it included Alok Vardhan Chaturvedi and Anoop Wadhawan. The said Committee, seemingly, adopted a procedure which, by its very frame, is prejudicial and antithesis to principle of natural justice. This Committee summoned the same officer who allegedly made the confidential note dated March 30, 2017 against the petitioner. The facts stated in said confidential note are plainly untrue, *de hors* the record and were product of "personal grudge" of its maker. For this reason alone, all the subsequent Authorities, i.e. UPSC, ACC and Vigilance authorities in departmental hierarchy had not given any credence to it at the time of subsequent promotion of the petitioner.

30. In fact, in comprehensive representation dated August 30, 2018,



the petitioner has from objective facts, exhibited falsity apparent in said note and the conduct of the officer himself inasmuch as he resorted to tampering with the records. Even the confidential emails dated October 31, 2018 and dated February 02, 2019, highlighting the Representation dated August 30, 2018, addressed by the petitioner have been ignored. The Second Review Committee has, instead of examining the objective facts presented by the petitioner to determine the truthfulness of the confidential note from the departmental records, summoned its maker behind petitioner's back. This approach tantamount to "taking of adverse evidence behind the back", of the petitioner.

31. The Representation Committee has, ignored this serious lapse in procedure adopted by the Second Review Committee and has mechanically put its seal of approval. Thereafter, the papers were to be laid before competent authority, i.e., ACC. The same has never happened.

32. He submits, given the fact that there is no material whatsoever in the entire service record which could be stated to be warranting invocation of FR 56(j) and seemingly conscious of the same, the respondent has relied upon an unknown document beyond records, described to be confidential note dated March 31, 2017 allegedly made by one Inderjit Singh, (who had a very short tenure as DGAD). The contents of note, if taken at face value, do not justify as to how hearsay can have place, without there being any material. Albeit, contextual fact of the matter is that the said officer had tried to interfere in process of investigation undertaken by the petitioner and the petitioner refused to accede to act in the manner which goes against rules. In fact, the same



officer, has at later stage, left with no choice, but signed on final findings prepared by the petitioner as per the Rules. Be that as it may, instead of examining the truthfulness of the said note, the said officer was called upon for interaction even before the Review Committee behind the petitioner's back. It is his submission that it is a serious infirmity and what could not have been brought to fore against petitioner, has been done by verbal impressions in his absence. In fact, Counter Affidavit filed before this Court records that Chairperson of Representation Committee has been revealed with certain facts allegedly in confidence, that tantamount to putting impression with extraneous material.

33. It is further his submission that the impugned action on behalf of the respondent is manifestly arbitrary, colourable and without any authority and thus liable to be set aside. He has referred to judgment of the Supreme Court in the case of *Shayra Bano v. Union of India and others, (2017) 9 SCC 1* to submit that any legislative or administrative actions premised upon manifest arbitrariness is hit by the triangular understanding of concept of reasonableness. [Ref. *E.P. Royappa v. State of Tamil Nadu and another, (1974) 4 SCC 3*].

34. So, on the basis of the aforesaid submissions, the petitioner is seeking interference of this Court to set aside the impugned order.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

35. Whereas, it is the submission of Mr. Ravi Prakash, learned CGSC appearing for the Union of India/respondent that the instructions as contained in DoPT OM dated March 21, 2014 and further supplemented by DoPT OM dated September 11, 2015 empowers an



appropriate authority with an absolute right to retire, if it is necessary to do so in public interest, a government servant under FR 56(j) or Rule 48 (1) (b) of CCS (Pension) Rules, 1972 as the case may be.

36. He submits that in every review, the entire service record has to be considered. The expression 'service record' will take in all relevant records and hence the review should not be confined to consideration of the ACR / APAR dossier. The personal file of the officer may also contain valuable material. Similarly, the work and performance of the officer could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. Even uncommunicated remarks in the ACRs / APARs may be taken into consideration.

37. He submits that DoPT has issued various instructions, from time to time, on the need for periodical review of the performance of Government servants with a view to ascertain whether a Government servant should be retained in service or retired from service in the public interest. Provisions in this regard are contained in FR 56 (j), FR 56 (i) and Rule 48 (1) (b) of CCS (Pension) Rules, 1972. The review is a mandatory exercise to be carried out by each administrative authority.

38. He further submits that the instructions issued by the DoPT have laid down the composition of the Review Committee to undertake review of officials at different levels as well as the composition of Representation Committee, to address representations from those adversely affected by review. The instructions on the subject have been consolidated in DoPT OM dated March 21, 2014, which is further supplemented by DoPT OM dated September 11, 2015 and DoPT OM



dated August 28, 2020.

39. He submits that DoPT has in its OM dated March 21, 2014 issued, updated and consolidated instructions for review of Government servants under FR56(j), FR56(1) and rule 48 of the Rules. This was supplemented by the DoPT OM dated September 11, 2015 wherein, *inter alia*, the DoPT had also laid down the composition of the Review Committees for different levels/categories of officials. It was specified therein that the Review Committee, as applicable in the instant case, may be headed by the Secretary of the concerned Ministry / Department. It further specified that the Chief Vigilance Officer (who is a representative of CVC) should also be associated with the Review Committee. The consolidated instructions of DoPT for review under FR56 (j) as contained in the impugned OMs do not prescribe any consultation with CVO or ACC. The CVO, was the member of the Review Committee, on both the occasions, which recommended the premature retirement of the petitioner. The DoPT has again consolidated all its guidelines, issued from time to time, on the subject, through OM dated August 28, 2020 which again has no requirement for consultation with CVC/ACC.

40. He also submits that as far as integrity is concerned, the instructions have referred to the observations of the Supreme Court in the case of *S. Ramachandra Raju v. State of Orissa, (1994) Supp (3) SCC 424*. So, while considering the integrity of an employee, actions or decisions taken by an 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.

41. He further submits that the DGFT had carried out the review in respect of 49 officers who belonged to ITS and were eligible for review, for their retention or otherwise in the Government service. The Review Committee chaired by the Commerce Secretary and comprising Additional Secretary in Department of Commerce, Joint Secretary & CVO and DGFT, reviewed the 49 officers belonging to the ITS and based on the review, the Committee recommended the retirement of 4 ITS officers, including the petitioner, under FR 56(j). The Committee noted that the continuation of the officers was not in public interest and considering the overall record of the officers, their general reputation among officers/stakeholders and their questionable integrity, recommended their retirement from service under the provisions of FR 56 (j). Along with remarks in the officer's APARs, the confidential note submitted by Director General of Anti-Dumping (DGAD) against the conduct of petitioner was taken on record for the said review. The said complaints received were assessed by the designated Review Committee under FR 56(i). Moreover, petitioner was retired from service on May 10, 2018 after the recommendations of the Review Committee were approved by the Commerce and Industry Minister as the appointing authority.

42. Furthermore, the petitioner made a representation against the order of premature retirement and the same was taken up by the Representation Committee chaired by Ms. Aruna Sundararajan, Secretary (Telecommunication) and comprising Ms. Rachna Shah, Joint Secretary, Cabinet Secretariat and DGFT, which remanded his case



back for re-consideration by the Review Committee. The re-consideration of the review of petitioner was done and the Committee reiterated its decision to prematurely retire him, after due diligence and taking into consideration the factor that his continuation at such a high level of decision making would be injurious to the public interest. The Review Committee also interacted with the former DGAD who espoused about the unethical conduct of the petitioner as conveyed by him earlier through a confidential note, while holding the charge of DGAD.

43. He further submits that the Representation Committee took up the re-considered review of the petitioner and after detailed deliberations on all the facts relating to the dubious integrity of the petitioner, the instructions of the DoPT, judgments of the Courts, the relevant records of the petitioner, the considered view of the Department after re-examination of the case, upheld the decision of the Department of Commerce on premature retirement of the petitioner, thereby rejecting the representation of the petitioner. The petitioner was informed of the rejection of his representation on June 13, 2019.

44. Thereafter, the petitioner preferred the OA before the Tribunal challenging the order dated May 10, 2018 and rejection of representation dated June 13, 2019. The said OA has been dismissed by the Tribunal after considering all the relevant judgments of the Supreme Court in the facts of the present case and the said order of dismissal has been impugned before this Court primarily on the following grounds:

“a) The premature retirement of petitioner was done



without the mandatory consultation with the CVO and ACC;

b) The Petitioner being appointed by ACC, the order for compulsory retirement should be approved by the ACC.

c) There is no material against the petitioner, as his APARs are very good and he has been promoted even after the remarks “there is room for improvement”

d) The composition of the Review Committee on both the occasions had common members in terms of Shri Anup Wadhwan, former Commerce Secretary and Shri A. V. Chaturvedi, former DGFT;

e) The Representation Committee on the first occasion also had Shri A.V. Chaturvedi, former DGFT, as the member, whereas he had been a member of the Review Committee.”

45. He submits that in terms of OM dated March 21, 2014, and September 11, 2015, instructions have been laid down qua the composition of the Review Committees for different levels/categories of officials. It was specified therein that the Review Committee, as applicable in the instant case, may be headed by the Secretary of the concerned Ministry Department. It further specified that the Chief Vigilance Officer (who is a representative of CVC) should also be associated with the Review Committee.

46. He submits that in the instant case of the petitioner, the Review Committees on both the occasions were headed by the incumbent Commerce Secretary, i.e., Ms. Rita Teotia in the First Review Committee and Anup Wadhawan in the Second Review Committee. It is his case that Anup Wadhawan who was the member of the First Review Committee (as constituted with the approval of incumbent



Commerce Secretary), on the first occasion, was Addl. Secretary, Department of Commerce, had to be the head of the Review Committee, on the second occasion, as he had, by then, been appointed as Commerce Secretary. So, the presence of Shri Anup Wadahawan in the Second Review Committee is mandated by DoPT instructions and is beyond the competence of the petitioner to attribute any *mala fide*.

47. He submits that whereas Alok Vardhan Chaturvedi, as the DGFT, was made the member of the Review Committee, with the approval of Commerce Secretary, as he was representing the cadre management authority for ITS. In this context, it needs to be reiterated that the cadre of ITS officers is managed by the DGFT and the DGFT is the custodian of all service matters of ITS officers. So, no bias can be attributed to his being a member of the Review Committee.

48. According to him, Ms. Anita Praveen, CVO, was the member of the First Review Committee on the first occasion and Shri Shymal Mishra, CVO was the member of the Second Review Committee on the second occasion, as representative of CVC. The consolidated instructions of the DoPT for review under FR56 (j) as contained in the impugned OMs do not prescribe any consultation with CVO or ACC. The appointments to the SAG level of ITS are made with the approval of Commerce & Industry Minister as the Appointing Authority. The recommendations of the Review Committee for premature retirement of the petitioner, on both the occasions (original Review Meeting and subsequent Review Meeting for reconsideration) were approved on the file by the Commerce & Industry Minister as the Appointing Authority. ACC is not the appointing authority for the petitioner and no



consultation with CVC or ACC is mandated, as presumed and alleged by the petitioner. Therefore, the contention of the petitioner has no basis.

49. He submits that the representation of the petitioner made against the order of premature retirement, was duly considered by the Representation Committee and remanded the case of the petitioner back for reconsideration to the Review Committee. Accordingly, second review of petitioner was done, and the Second Review Committee reiterated its decision to prematurely retire him. Thereafter, the recommendation of Second Review Committee was placed before the Representation Committee in terms of the Rule 56 (jj) of Fundamental Rules. After detailed deliberations on all the facts relating to the petitioner, the Representation Committee upheld the decision of the Second Review Committee and the petitioner was also informed of the rejection of his representation on June 13, 2019.

50. It is his submission that the composition of the Representation Committee has been notified by the DoPT, which comprises of Secretary, Department of Telecommunication, Joint Secretary, Cabinet Secretariat and a representative of the cadre controlling authority. During the first meeting of the Representation Committee, the cadre was represented by Alok Vardhan Chaturvedi, the DGFT and during the second meeting of the Representation Committee, the cadre was represented by Joint DGFT (HRD). To challenge the deliberations of the Representation Committee on the premise that the DGFT was the member, would tantamount to questioning the wisdom of two senior officers, designated by the DoPT, outside the Department of Commerce



or DGFT. It would be a figment of imagination to presume that such senior officers, of the Representation Committee could be influenced by the presence of DGFT while upholding the premature retirement of a senior Government official. In fact, to the contrary, the Representation Committee, where DGFT was a member, had returned the recommendations of the Review Committee for reconsideration.

51. That apart, the instructions of DoPT contained in OM dated May 10, 1974, referred to by the petitioner, has been superseded long back by consolidated instructions issued by DoPT, from time to time. Moreover, when the case of the petitioner was considered, OMs dated March 21, 2014 and March 11, 2015 were applicable. The consolidated instructions of the DoPT for review under FR 56(j) as contained in the impugned OMs do not prescribe any consultation with CVO or ACC. The DoP&T has again consolidated all its guidelines, issued from time to time, on the subject, through OM dated August 28, 2020, which again has no requirement for consultation with CVC/ACC.

52. He submits that in the instant case, the Second Review Committee also interacted with the former DGAD, who had espoused about the unethical conduct of the petitioner through a Confidential Note dated March 30, 2017. The facts were also shared, in confidence, with the Chairperson of Representation Committee, keeping in view the sensitivity of the issue involved. On reconsideration of all the facts, the representation was rejected by the Representation Committee and conveyed vide order dated June 13, 2019.

53. He further submits that the petitioner was reviewed along with 48 other ITS officers in terms of the DoP&T's instructions contained in



their OM dated March 21, 2014 and OM dated September 11, 2015 and not selectively picked up as alleged. The File Noting regarding decision of compulsory retirement as sought by the petitioner was rejected as the information in the file noting/correspondences contained the views and opinions of various officers who have contributed to the process of the review of all the ITS Officers reviewed under FR 56(j), including the petitioner. So, it had to be denied and the petitioner was replied suitably vide letter dated August 08, 2018.

54. Mr. Prakash has relied upon the judgment of the Supreme Court in the case of *K. Kandaswamy v. Union of India and another, AIR 1996 SC 277*, to contend that while considering the integrity of any employee, actions or decisions taken by an 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 also be taken into account.

55. He submits that it is only after obtaining the approval of Appropriate Appointing Authority, i.e., Commerce & Industry Minister (C&IM), they were retired from service with the direction that they shall be paid a sum equivalent to the amount of their pay plus allowances for a period of three months calculated at the same rate at which they were drawing before their premature retirement from service.

56. He submits that even in OM dated September 11, 2015, integrity is defined in paragraph 5, in terms of the observation of the Supreme Court in the case of *Ramchandra Raju (supra)*. He also



submits that reports of conduct unbecoming of a Government servant may also form basis for premature retirement. (Ref: *State of Uttar Pradesh and Others v. Vijay Kumar Jain, (2002) 3 SCC 641*.)

57. It is his case that as per paragraph 7 of DoPT's OM as were relevant at that time, in the case of officers holding Group-'A' posts and in case of ACC appointees, a Review Committee headed by the Secretary of the concerned Ministry Department acts as a Cadre Controlling Authority. Thus, Commerce & Industry Minister (C&IM) being the Appointing Authority in the case of ITS Officers, is competent to grant approval for premature retirement. Therefore, seeking approval of ACC before issuing order of premature retirement of an ACC appointee is not considered as mandatory.

58. He further submits that the consultation of CVC in case of existence of material indicative of reflecting adversely on the integrity of any employee, is not mandatory in terms of paragraph 8 of the DoPT's instructions, as CVO in the case of gazette officers, was associated as the member in both the Review Committees.

59. He has also relied upon the judgment of the Supreme Court in *Umedbhai M. Patel, (supra)*, to submit *inter alia* that if the services of a public servant are no longer useful to the general administration, the officer can be prematurely retired in the public interest.

60. He submits that the high level Committee was constituted to review the cases of various officers, who have crossed the age of 50 years. The Committee examined the relevant service records of various officers and recommended the case of the petitioner for premature retirement. On scrutiny of APARs dossier of the petitioner, it was



noticed that several observations were made at different points of time in the ACRs of the petitioner, doubting his integrity and expressing discontent about his functioning. The petitioner was holding a very senior and sensitive position in the department and any small deviation from the prescribed norms is bound to have its impact on the functioning of the department and adversely affecting the interest of the country.

61. He submits that the petitioner did not face any disciplinary proceedings in his career. The fact, however, remains that he was holding a very sensitive post, having serious financial implications for the country and there were instances where certain deviations were noticed on his part. After reviewing the case of the petitioner, the Committee formed the following opinion:

“f. Shri S. S. Das (ITS-1989) – The Committee noted that intent and conduct of Shri Das, while dealing with files as well as with clients, has been obstructive and questionable. He does not hold a good reputation in terms of integrity. This fact is borne out by entries in his APAR dossier. On few occasions, during different spells of his posting in DGAD, his unprofessional conduct has been taken on record also. In one case Shri Das as charged with insubordination. In other case, it has been reported that the officer approach in handling the cases has been unprofessional and questionable integrity.

The Committee noted that the officer was recently promoted to the post of Additional DG. However, it was observed that as at the time of the promotion, the officer was technically clear from vigilance angle (in terms of extent instructions of DoP&T on granting vigilance clearance for promotion), the officer was promoted.



The Committee recommended premature retirement of the officer in public interest, taking into account the questionable reputation and conduct of the officer.”

62. It is his submission that in terms of Government of India (Allocation of Business) Rules, 1961 (as amended upto December 28, 2017) ('Business Rules', for short), the business of the Government of India is transacted in the Ministries, Departments, Secretariats, and officers specified in First Schedule. Accordingly, in terms of the First Schedule of Allocation of Business Rules, Commerce & Industry Minister is the cadre control authority of ITS.

63. That in terms of the Government of India (Transaction of Business) Rules, 1961 (as amended upto April 03, 2020), ACC is consulted only for the appointment, empanelment and upgradation of an officer, not for the retirement of an officer.

64. He submits that once a memorandum dated January 15, 2009 was issued to the petitioner to explain for non-issuance of initiation notification within the prescribed time lime in the sunset review case pertaining to import of Met Coke from China PR. In APAR for the year 1997-98, the Reporting Officer of the petitioner had commented that “he works well in a team but better alone and leadership qualities will develop more with experience”. The petitioner had also been advised to be more positive in his attitude towards policy issues. Further, in the APAR for the period 1998-99, Reporting Officer of the petitioner commented in integrity column that few complaints were received against the petitioner. In the APAR for the period 2014-15, while petitioner was posted in DGAD, Reporting Officer commented in the



integrity column that there is room for improvement. In the year 2017, while the petitioner, was posted in DGAD as Joint DGFT and was drawing Grade Pay of Rs. 10,000/-, a Confidential Note was received from AS & DGAD, against the petitioner on March 30, 2017. In the note, it was stated that the petitioner acts as the Investigating officer in various Anti-dumping and CVD cases allotted from time to time and is also in charge of the then created CVD Cell, which co-ordinates the matters relating to CVD cases initiated by other countries against India. It is stated that the petitioner's overall approach in handling a recent case was unprofessional, with calculations and conclusions varying several times. During the processing of this case, the petitioner also tried to push for some principles, which as per prevailing rules/conventions of DGAD were not allowable, and have also not been allowed in the past in any other case. AS & DGAD had also stated that on March 29, 2017, some of the representatives of domestic industry applicants in this case met the petitioner and made certain serious allegations against the petitioner, including demand of some favours in return for doing something in the case. However, considering the nature of allegations, they were reluctant to give a written complaint regarding this.

65. At last, he submits that modalities and approval for the premature retirement of the petitioner on May 10, 2018, under FR 56(j) is in accordance with the laid down guidelines of the DoPT and has been thoroughly examined and upheld by the Representation Committee followed by CAT, Principal Bench, Delhi and as such there arises no scope for any legal intervention on behalf of the petitioner



whose service has been dispensed with for doubtful integrity and as such the writ petition needs to be dismissed.

REJOINDER SUBMISSIONS

66. It has additionally been the case of Mr. Ghose that the respondent, in passing the order dated May 10, 2018 has acted arbitrarily in as much as there was no public interest in subjecting the petitioner with irreparable disadvantage- especially when his official credentials bespeaks of his integrity, competence and ability in performance of public duty assigned to him. In fact, no material existed prior to taking of the impugned decision, least the one justifying the compulsory retirement. At no point of time any material was disclosed which could relate to "*compelling public interest*" forming the bedrock of the Order dated May 10, 2018.

67. He submits that when first representation dated June 1, 2018, was preferred, the petitioner was entirely unaware of exactitude of malice or any instance of past or any fact or reason which could justify the order of compulsory retirement. The said representation was kept pending. In the interregnum, the petitioner had preferred the OA before the Tribunal. During the pendency of said O.A and the said representation, the petitioner, through application under RTI Act, was partially successful in getting ACR/APAR for 10 years, however, file notings regarding decision for Order dated May 10, 2018 was denied. The documents indicative of service credentials were deemed to be relevant. Additional representation dated August 03, 2018 was also preferred and founded on such disclosures received by way of reply to RTI application. The said representation was material because, in



petitioner's case, he has been promoted to SAG upon due approval of ACC on November 16, 2017. Furthermore, last APAR of December 2017, categorically notes that there is nothing adverse against the petitioner. In such circumstances, it was reasonable inference that the order dated May 10, 2018 is not founded on service credential of petitioner. The logical corollary thereof, is that there ought to have been some material outside the service records which led to order dated May 10, 2018. The possibility of that material to be extraneous, irrelevant and *de hors* the record, were imminent.

68. He submits that irrelevant reference to past incidents relatable to memorandum, un-communicated APARs, and alleged confidential note, which has come to fore for first time be responded to. For this reason, the petitioner was constrained to submit the comprehensive representation dated August 30, 2018, which had *inter alia*, responded to on all such counts with material particulars and for this reason alone, it seems, that the first ground relating non issuance of memo for non initiation of investigation a sunset review (SSR) in a case pertaining to Anti Dumping Duty on Met Coke from China in 2009, was dropped. As far as, the non-initiation of the SSR proceedings is concerned, it is matter of record that the said decision was in public interest and due accord of authority concerned- at that point of time existed, and after petitioner's response to the memo the matter was closed. That stand alone incident, otherwise, cannot be a basis for formation of opinion qua merits, integrity, ability, competence and technical soundness of the petitioner. In fact, the approach adopted by the petitioner was most rational and pragmatic and was accepted by the authority concerned.



Furthermore, the said communication relates to period when the petitioner was serving as a Director in Ministry of Finance and his service credential at places wherever he served has been found to be impressive enough to comport him as an asset to the government.

69. He further submits that for the first time in the Reply/Counter affidavit, it is stated that no provision of supplementary representation is contemplated in FR 56(j). It is plainly misconceived for FR 56(j) *per se* does not provide for mechanism to be adopted in the event of resort to grant of compulsory retirement and representation for reconsideration of such decisions. The procedure adopted to submit representation(s) and to enable the government to mitigate the injustice which may have occasioned in the worthy cases are prescribed in subsequent OMs which have been issued from time to time beginning from June 1969. None of the OMs dealing with the subject, restricts the submission of only one representation. In fact, it is bereft of any reason, if in non-adversarial proceedings, new facts which have discovered later (after first representation) could not be brought to fore. The general principal of *audi alterum partem* preordains meaningful hearing which has been judicially read to mean that the prejudiced person shall have full opportunity to rebut anything which could be read against him. The petitioner's right to prefer supplementary representations are all the more a necessity when "reasons/ material/ circumstance" for invocation of FR 56(j) had not been disclosed. Only through representations he was trying to dispel- if at all any suspicion could be remotely found against him, since the focus of legitimacy of invocation of FR 56(j) has not been spelt clearly by the respondent in terms of



disclosure of finding of 'public interest' warranting compulsory retirement.

70. It is his submission that OM dated August 25, 1971, stipulates that FR 56(j) can be exercised only in the following circumstances:-

- (i) To retire a Government Servant on the ground of specific acts of misconduct as a short cut to initiate disciplinary proceedings; or,
- (ii) For reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retrenchment; or
- iii) On the ground that Government Servant may not be suited continue in his officiating post or for promotion to a higher post for which he might be eligible after his attaining the age of 50/55years, or completing 30 years of service as the case may be.

71. He submits that the Supreme Court in **Ankit Ashok Jalan v. Union of India, AIR 2020 SC 1936**, has ruled that in case materials preferred with representation are not analysed or reasonable time frame is not honoured, the same would mean that the very safeguard of preferring representation has been violated. In petitioner's case, this safeguard has been reduced to negation because of excessively dilatory tactics adopted by the respondent.

72. He submits that the judgment of the Supreme Court in the case of **Union of India (UOI) v. J.N. Sinha & Ors., MANU/SC/0500/1970**, was predicated on assumption that compulsory retirement does not involve civil consequences and this judgment was followed in **The**



State of Gujarat and Ors. v. Suryakant Chunilal Shah, MANU/SC/0761/1998, wherein this Court dealt with the concept of public interest in great detail.

73. He submits that it is a settled position of law that the order of compulsory retirement is not a punishment because the same does not wipe out service rendered. The restricted scope of judicial review lies in the sphere that such order being an executive act must not suffer from arbitrariness and the principles which govern the scope of judicial review in determining the legality of subjective satisfaction of executive action shall *ipso jure* apply in such cases.

74. It is his case that in the instant case there is no manifestation that authorities concerned have ever examined all the service records or other relevant materials at the time of alleged review. The mechanical exercise of power is apparent from alleged first stage itself. The OMs intended to give objectivity in exercise of discretion in such kind of case, clearly spelt out the period when officers can be subjected to review for the purpose of compulsory retirement. Reliance has also been placed upon the judgment of the Supreme Court in the case of *The Barium Chemicals Ltd. and Ors. v. The Company Law Board, AIR 1967 SC 295*, to contend the same.

75. It is thus clear that unless respondent satisfactorily shows the cause to carry out review post petitioner's completion of 50 years of age, any reason which must have weighed against petitioner, deserves to be not looked at.

76. He further submits that the constitutional jurisdiction of High Courts in service matter, contemplates of all such powers which are



exercisable under power of judicial review in executive actions. The dictum laid down in *J.N. Sinha & Ors. (Supra)* when speaks of limited judicial review has contemplated the expression in contradistinction with merit review [Ref. *Satish Kumar Singh v. Anil Kumar Yadav and Ors., Chairman, UPPSC, Allahabad, MANU/UP/1944/2015*].

77. He also submits that the respondent in its brief background or elsewhere has not explained what was "in particular" the material which has led the respondent to form an opinion that petitioner has "recurrent issues reflecting on his integrity". The OMs dated May 10, 1974 and September 11, 2015 in paragraph 8, clearly provides that in cases of gazetted officers, initial appointment to which is referable to the ACC, where action is to be taken on the grounds of lack of integrity, CVC shall be consulted before the case is placed before the ACC. In the instant case, neither any material having bearing "in determining the doubtful integrity" of petitioner was brought on record nor was CVC consulted, which is a mandatory requirement and constitutes as an essential safeguard against possible arbitrariness. The mere presence of CVO in the meetings, would not substitute the essential requirement of consultation with CVC. The purpose, mode and process of consultation with a statutory body, cannot be bypassed by mere presence of departmental officer of lower rank than the Secretary heading the meetings. It is, thus, clear that prerequisite consultation with CVC in cases of application of FR 56(j) based on "doubtful integrity" of employee is precondition before formation of bona fide opinion. In the absence of the same, whole process stood vitiated.

78. Reliance has also been placed upon the judgment of the



Supreme Court in the case of *The Barium Chemicals Ltd. and Ors. (Supra)*, to contend the same. It is his submission that the instant judgment of the Supreme Court applies on all fours in instant case, as in absence of consultation with CVC as to "existence of materials" indicative of "reflecting adversely on the integrity of any employee", no opinion on existence, validity and sufficiency qua "integrity" can be formed. This principal impugned action is bad in law for formation of "bona fide opinion".

79. He submits that the law governing the field is clear on two counts: a) only President of India is vested with the powers to grant compulsory retirement under FR 56(j); b) the aid and advice tendered to the President must emanate from cabinet and given the case that the petitioner is SAG appointee, the aid and advice render to him must be that of ACC and not of any other authority inferior or different from ACC. If either of above stated conditions stands violated, the principal impugned order is without jurisdiction and is replete of its validity on that count alone. Reliance has been placed upon the judgment of the Supreme Court in *V.C., Banaras Hindu University v. Shrikant, AIR 2006 SC 2304*, to contend the same.

80. He submits that the clear principle which emanates from the said judgment is this that once an order is passed by an authority which has no power to take a decision then it is an order without jurisdiction and therefore the same is nullity. The doctrine of consequent act provides that all subsequent actions based thereon shall also be nullity. This is an error of jurisdiction which goes to the root of the matter and is an incurable one. In the instant case the petitioner, being SAG (Joint



Secretary) rank officer, can only be removed/ prematurely retired from the service by the appropriate authority. Indubitably the appropriate authority in the present case is the President of India. However, he is required under Article 74 to act on the aid and advice of the council of ministers. Given the fact that the appointment of petitioner in SAG rank is based on aid and advice of ACC, it is duty incumbent upon the respondent that any decision relatable to curtailment of service tenure by the President shall also be backed by the ACC approval. The OMs of 1974 and 1978 specifically provides for the same. Having not done this, the principal impugned order is bad in law as neither the President was rendered any aid and advice qua the petitioner nor was he apprised of material based on which a subjective satisfaction of President qua existence of public interest warranting invocation of FR 56(j) exists. In fact, the principal impugned order dated May 10, 2018 does not indicate, if the decision is taken by President or has been done by the Secretary to the President under his direction. If at all, the best secret material which led to principal impugned order was ever brought before President or if the same remain secret for him as well.

81. He also submits that the statement that DGFT carried out the review in respect of 49 officers belonging to the ITS, for their retention or otherwise in Government service, is not true. The copy of the minutes of the Review Committee obtained under RTI shows that only 5 handpicked officers were reviewed and 4 out of them were recommended for premature retirement. Had there been a review of all 49 officers, the minutes would have reflected the name of all the officers reviewed and more so, comments against all of them would



have been recorded the same way as like the one among five recommended to be retained in the said minutes. It is thus clear that only few officers were first handpicked for review by the Department.

82. He submits that the comments in the APAR, some 20 years back, cherry picked by the Review Committee as '*reflection on the competency and capability or integrity of the petitioner*' are rather frivolous and by no stretch of imagination can be construed to be a negative attribute or reflection on integrity. Further, the same APARs rate the petitioner as an outstanding officer throughout. The only document relied upon by the Second Review Committee is a confidential note which is again based on hearsay and the Author himself says '*there is nothing to substantiate it*'. Further, the comprehensive representation of the petitioner, dated August 30, 2018, to the Representation Committee, which dealt squarely on the confidential note and the conduct of the Author of that note himself, has been deliberately not presented to the Representation Committee and again ignored by the Second Review Committee to protect the Author of that note and perpetuate a wrongful action against the petitioner.

83. He also submits that the Representation Committee, in its minutes clearly records that since the petitioner has been recently promoted to SAG with the approval of UPSC and ACC, the matter should be reconsidered and placed before the appropriate approving authority, hinting thereby to go back to ACC. The respondent has again failed to place the matter before the CVC and ACC. After remand of the case, the Second Review Committee, instead of looking into the comprehensive representation of the petitioner dated August 30, 2018



which deliberated in detail about the so called confidential note challenging every aspect of it, did the most unethical thing by interacting with the author of the note behind the back of the petitioner and accepted his version as gospel truth to reiterate its earlier decision. Moreover, the Second Review Committee preferred to interact with the officer who was the reporting officer of the petitioner for only 4 months' but not the previous officer who had supervised the work for over two years with outstanding reports. The petitioner was also not given an opportunity of hearing to explain his case though requested for.

84. He also submits that the respondent admits that influence was brought on the Chairperson of the Representation Committee by way of sharing of facts on confidential basis thereby compromising the objectivity and independence of the Representation Committee.

85. He further submits that the consolidated OM's of 2014 and 2015 lays down prescriptive timelines for the review and re-composition of the Review Committees, but all other provisions of various OM's issued from time to time i.e., 1969, 1974 etc. have been retained as per the marginal notes of the said OM of 2014 and 2015. OM of 2015 has only reconstituted the Review Committee at the level of Secretary instead of Senior Selection Board as notified in Annex-II of 1969 OM and reiterated in 1974 OM. OM of 2015, does not talk about the Approving Authority. Approving Authority for SAG and above officers continues with the ACC as per 1969 OM and 1974 OM (which is only an extension of 1969 OM) and reiterated in 2014 OM. Similarly, the requirement of CVC consultation for SAG and above officers before



placing it with ACC has not been superseded as is being made out by the respondent. Mere change in, composition of the Review Committee does not alter the approval requirement by ACC and mere presence of CVO in the Review Committee does not satisfy the requirement of Consultation with CVC as provided in OM of 1974.

86. It is his submission that the objection is to the presence of one Alok Vardhan Chaturvedi in the Representation Committee after being a part of the Review Committee, which has clearly carried the departmental and personal bias to the Representation Committee and that is apparent from the fact that the minutes of the Representation Committee was held up for over two months after the meeting. The acts of the respondent had become grave and untenable, because of the admitted fact that pressure and influence have been brought on the chairperson of the Representation Committee by way of sharing of information in confidence outside the representation committee. Therefore, presence of the same person in both the committees is a grave violation of administrative justice. In the instant case, instead of examining the records and forming an opinion thereon, an officer who has long left the department was consulted from back door to infuse his personal vendetta and the same is treated as a justification for impugned action. It is thus a clear case where the consideration for impugned action is extraneous. It is settled law that if a decision cannot be reached by excluding the extraneous material, then the decision shall be deemed to be "*without any material*".

87. He further submits that presence of the same person in both the Committees not only vitiates the proceedings but also carries the



personal and departmental biases as is evident from the fact admitted by the respondent that certain information was confidentially shared with the Chairman of the Representation Committee. It clearly means undue influence and pressure was brought on the Chairperson of the Representation Committee after the committee remanded the case back to the review committee for reconsideration of the case of the petitioner. The Representation Committee was constituted for the purpose of an independent and unbiased consideration of the representation and to take an appropriate view to prevent arbitrary use of the powers by the departments. Therefore, it is not a figment of imagination that such senior officers of the Representation Committee could be influenced by the presence of DGFT/Mr. Chaturvedi. It is an admitted fact that materials *de hors* the records were looked at/or purported to have been looked at or allegedly shared with Chairman of the Representation Committee, seemingly after remanding back the matter by the Committee. The purported sharing of materials which do not form part of record and it seems such were the personal opinion, after remanding back of the matter frustrated the very purpose of "remand back". He submitted that it is only because the Representation Committee found compelling reasons in the first instance, they returned the recommendations of the Review Committee for reconsideration despite the presence of DGFT in the said Committee. Thereafter, as admitted by the respondent, pressure and influence has been brought on the Committee by sharing undisclosed information with the Chairperson of the Representation Committee to poison her mind.

88. He submits that the Review Committee has extracted all that



they felt negative in the service records of the petitioner to give them a colour of consistent poor reputation in terms of conduct, functional competence and integrity, disregarding several glowing remarks made consistently by several supervising officers during the same period of time which included at least 8 Secretary level officers and the petitioner has been all along rated as an outstanding officer without any blemish. In fact after getting to know the grounds of the review, through the reply filed by the Department to the first OA filed by the petitioner in August 2018 before the Tribunal, the petitioner filed a detailed representation dated August 30, 2018 to the Representation Committee commenting upon the frivolous nature of the grounds and refuting the unsubstantiated and hearsay allegation made by the then Additional Secretary, Inderjit Singh through a Confidential note dated March 30, 2017 and also bringing to the notice of the authorities the unethical and mischievous conduct of the author of the note itself. Though the Representation Committee met on September 06, 2018 to consider the representations, the Representation dated August 30, 2018 was deliberately and mischievously not placed before the said Representation Committee and as such not considered by the said Committee. The respondent, in its reply to the OA has admitted this fact and pleaded that there is no procedure to consider the supplementary representation and hence the representation dated August 30, 2018 was not considered at all by the Representation Committee. However, the Representation Committee even based on the first and preliminary representation of the petitioner and the service records of the petitioner, found it fit to remand the case of the petitioner



to the review committee for reconsideration. Even after the case of the petitioner was remanded back to review committee by the representation committee, the said review committee again deliberately and mischievously ignored the said representation because the said representation effectively demolished all frivolous grounds and also brought out the mischief played by the author of the confidential note which formed the main ground of the review. On the contrary, the Second Review Committee interacted with the officer who had given the confidential note to reject the representation even without considering it. Apart from interacting with the author of the confidential note, a new fact now emerges through the counter affidavit that the review committee has gone to the extent of sharing certain facts in confidence, with the Chairperson of Representation Committee to get the representation rejected. It not only seriously violates the principles of independence and fairness of examination of the representations but the respondent has admitted the fact of use of undue influence on the Chairperson of the Representation Committee. The very purpose of an independent committee to examine the representation has been grossly violated by the respondent thereby making a mockery of the whole process. Firstly, as admitted, the respondent has not placed the representation of the petitioner dated August 30, 2018 before the representation Committee and on the other hand used undue influence on the Chairperson to get the representation rejected after it was remanded back to the review committee for reconsideration. Secondly, it is now absolutely clear that only ground on which the decision to prematurely retire the petitioner has been built up is an unsubstantiated



and uncorroborated hearsay note given by an officer who has not even supervised the works of the petitioner for more than four months and that has been termed as consistently of disrepute, disregarding the glorious track record of the petitioner recorded by several senior officers for all the past years. This clearly indicates a deliberate victimisation of an upright officer for reasons other than what has been stated in the Counter affidavit. The respondent further admits that only approval of the commerce minister was obtained to prematurely retire all the four officers. While the other three officers were at the Junior administrative grade (JAG) and Minister is competent to approve their premature retirement, the petitioner was an officer at SAG, recently promoted to the said Grade with the approval of UPSC and ACC. Apart from the statutory requirement of approval of ACC for SAG and above officers and ACC appointees, Commerce Minister was not competent to approve the premature retirement of the petitioner on the very principle that when a higher authority approves the promotion and appointment, a lower authority cannot approve his premature retirement.

89. He also submits that as regards the averment of the respondent that the integrity of the petitioner has been commented upon over a period of time at different levels, it may be noted that the respondent has picked up stray and frivolous comments in ACRS/APARs of 1997-98, 1998-99 as reflection on integrity. The remarks in the said ACRs quoted by the respondent, by no stretch of imagination can be construed as an adverse comment on the integrity. ACR of 1997-98, comments on the '*group orientation and policy orientation*' of the petitioner while



rating the officer as 'outstanding'. It is not understood, how it can be construed as a poor reflection on the integrity of the petitioner. ACR of 1998-99 says '*few complaints received but no substance found*' and rates the petitioner as '*outstanding*'. This in fact is a certificate of integrity in a work environment in which the petitioner was working at that point of time. But this has been picked up as a negative since the review committee did not find anything adverse in any other report/records of over 25 years. As regards the memorandum dated January 15, 2009 which was issued asking the petitioner to explain for non-issuance of initiation notification in an anti dumping investigation in 2008, within the prescribed time limit, the said matter was adequately explained clearly establishing the petitioner's deep and sincere engagement in the matter in the public interest and the issue was appreciated and dropped then itself. But the Committee, in the absence of any other adverse material on record, preferred to pick up this without taking note of the reply and settlement of the issue. Picking up of these three issues itself shows the desperation on the part of the respondent to somehow record something to further its biased conclusion in the absence of any real adverse material in the records of the officer.

90. As regards the APAR of 2014-15, it simply says '*room for improvement*' in the integrity column without substantiating or elaborating it further while giving an '*outstanding*' report with high grades, thereby nullifying the above comment. Therefore, only document relied upon by the Committee was the so-called confidential note dated March 30, 2017 written by an officer who had supervised the



work of the petitioner only for about 4 months. The said officer who had a dubious distinction of manipulating the records and other unethical practices as was brought out by the petitioner in his representation dated August 30, 2018 which was conveniently ignored by the respondent. Even the said note itself says that '*there is nothing on record to substantiate the allegations*', rendering it to 'hearsay'. Further, the Committee failed to take note of the highly appreciative reports of the previous DG of the same department who had given a 9.6 grading to the petitioner. Even, the APAR of the relevant period did not report anything adverse on the officer. Therefore, reliance on a single piece of paper, based purely on hearsay and biased view of an officer, to hold it as to '*aggravate the suspicion on the integrity*' is an aggravated colourable exercise by the respondent.

91. He further submits that the CVC guideline does not even permit to take cognizance of such complaints. But the respondent found it fit to rely on such a note to take the extreme step of easing out the petitioner without even taking note of the representation and the issues raised by the petitioner therein. As far as the contents of the said note and allegations levelled therein are concerned, the petitioner had comprehensively explained and refuted all allegations in his comprehensive representation dated August 30, 2018. It was clearly explained in the said representation that it was the duty and responsibility of the petitioner, as a part of quasi-judicial procedure, to examine all submissions made by different parties and bring all alternatives and options before the Designated Authority and that is what was precisely done. But the said author of the confidential note,



being new to the department, failed to appreciate the process and on the contrary resorted to unethical practice of alteration of records and intimidating the officer.

92. He submits that all these facts were brought out in the comprehensive representation dated August 30, 2018 and that is precisely why the respondent preferred to ignore this representation all together. The whole process was also compromised in a colourable manner due the presence of Alok Vardhan Chaturvedi, DGFT, in both Review and Representation Committee at the same time. None of the conditions set out in *K. Kandaswamy (supra)* case, have been found in the case of the petitioner. Neither, there is any written complaint against the petitioner, nor has the respondent found any suspicious property transaction etc. at any point of the long career of the petitioner to attribute issues of integrity.

93. The OM of 2015 only delegates the power of Senior Selection Board to the Committee headed by the Secretaries to carry out the reviews. It in no way alters the approval powers or delegates the powers of the ACC to any other Authority. The fundamental principles of administrative law will not permit a subordinate body to decide the retirement of an officer appointed or promoted by ACC. Further, the consultation process with CVC for senior functionaries at SAG and above is a safeguard built in to check arbitrary use of the powers by the departmental secretaries. OM of 2015 nowhere takes away that consultation process. Presence of CVO in the Committee for 'Gazetted officers' is not same as 'consultation with CVC' for SAG and above officers. The OMs of 1969 and 1974 clearly makes a difference for



SAG and above officers as a measure of safeguard. CVO of a department, which is generally a SAG level officer, cannot be entrusted the function of consultation with regard to officers of equivalent and higher ranks. The respondent has clearly violated the principles as laid down by the Supreme Court in the case of *Umedbhai M. Patel (supra)*, which states that the order of premature retirement shall not be passed as a short cut to avoid Departmental enquiry, when such a course is more desirable and if the officer is given a promotion despite adverse entries made in the confidential record, then this fact goes in favour of the officer. The respondent agrees that it is true that the petitioner did not face any disciplinary proceedings in his career but goes on to state that the fact remains that he was holding a very sensitive post, having serious financial implications for the country and there were instances where certain deviations were noticed on his part without specifying what was the deviation. In fact, all past records of the petitioner are 'Outstanding' with very high grades and officers after officers have lauded the analytical skills and decision-making ability of the petitioner. The petitioner had been all along held to be an asset to the organisation.

94. He submits the following qua the minutes of the Second Review Committee minutes:-

- I. **The Committee noted that intent and conduct of the petitioner while dealing with files as well as with clients, has been obstructive and questionable-** Nothing in any of the APARs of the petitioner in the entire over 25 years career shows the same. In fact, all the APARs/ACRs,



record in glowing terms, the constructive and positive attitude of the petitioner. A complete statement of all ACRs/APARs of over 20 years was placed before the Tribunal showing high appreciation of the dealings of the petitioner. Therefore, it is not known wherefrom these observations were picked up by the review committee.

- II. **The petitioner does not hold a good reputation in terms of integrity. This fact is borne out by entries in his APAR dossier-** None of the APARs of last 25 years indicate any negative attribute on Integrity as explained earlier.
- III. **On few occasions, during different spells of petitioner's posting in DGAD, his unprofessional conduct has been taken on record also-** This is far from truth. In fact, all the APARs of both the spells of the postings of the petitioner in DGAD, the petitioner's professional competency and conducts have been highly appreciated by all the supervising officers without exception and all the APARs have been 'Outstanding'. Therefore, it is only a figment of imagination or a biased view of the Committee not supported by any record.
- IV. **In one case of the petitioner, he was charged with insubordination-** This is a new allegation raised at the stage of second review committee as there has never been any such charge alleged against the petitioner. The Counter affidavit itself says that there has never been any



disciplinary proceeding against the petitioner. Therefore, this statement is again a figment of Committee's imagination. It is clear that the Department was carrying a grudge against the petitioner because he refused to withdraw a petition regarding the cadre review before this Court in 2015-16 despite pressure and arm twisting by the department. The whole colourable exercise is to ease out the only officer who did not succumb to the pressure to withdraw from the case before this Court.

- V. **In other case, it has been reported that the officer's approach in handling the cases has been unprofessional and questionable integrity-** It is on record that the professional competency, capabilities and approach has been of highest order as vouched by successive reporting and reviewing officers in all the previous years. The Committee has clearly closed its eyes to all these reports and focused only on a single note given by an officer who had not supervised the work of the petitioner even for four months and had no understanding of the quasi-judicial nature of the proceedings. Further, the conduct of the said officer has been unethical and unbecoming of a senior officer because of tampering of records and use of coercion on subordinate officers. This fact was brought to the notice of the Secretary as well as the Committee. But both preferred to ignore this, and the entire process is driven to protect the said officer at the cost of the



petitioner.

VI. **The Committee noted that the officer was recently promoted to the post of Additional DG. However, it was observed that at the time of the officer was technically clear from vigilance angle-** The confidential note was of March 30, 2017 and promotion order to SAG was issued with approval of UPSC and ACC on November 16, 2017. If there was such a serious charge against the petitioner as has been brought out in the Review committee note, it is not understood what prevented the Department to conduct an enquiry and apprise the CVC, UPSC and ACC. While the petitioner was found to be fit by UPSC and ACC headed by Prime Minister, for promotion to SAG based on seniority and fitness, within few months the Committee headed by a secretary finds the petitioner not fit to continue in service.

95. So, on the basis of the above submissions, the petitioner seeks to set aside the impugned order passed by the Tribunal.

ANALYSIS

96. Having heard the learned counsel for the parties, the broad submissions of Mr. Ghose challenging the impugned order, are the following:-

- i. Approval of the ACC is a precondition to invoke FR 56 (j) against the officers of SAG and above;
- ii. The above position has not been subjected to any change, inasmuch as, the OM dated March 21, 2014, specifically refers to



the OM's of 1969 and 1974, which provide that the approval of ACC is mandatory before invoking FR 56(j);

iii. The requirement of seeking approval of ACC is an essential safeguard against arbitrary exercise of powers and the manner for taking a decision. The requirement of taking the approval of the ACC contemplates full disclosure, so as to enable it, to form a considered opinion. The non-disclosure or not placing the matter before the competent authority nullifies the action taken on the subject matter;

iv. In case, the action taken under FR 56(j) relates to 'lack of integrity', CVC has to be consulted;

v. The OM dated May 10, 1974, specifically prescribes the requirement of consultation with the CVC, in case the action is proposed to be taken for want of integrity. It is a settled law, if law prescribes something to be done in a particular manner, all other course stand barred;

vi. In the present case, no consultation has been taken place with the CVC before retiring the petitioner under FR 56(j);

vii. The Tribunal has failed to appreciate that the review for the purpose of invocation of FR 56(j), in law, is required to be done either at the age of 50 years or 55 years and the review must be completed six months prior to attainment of the said age. In the case of the petitioner, review was made at the age of 55.6 years and without there being any adverse material;

viii. In the instant case, there is no material which has been relied upon by the respondent to justify the invocation of FR



56(j) against the petitioner. In fact, the observation concerning questionable integrity is without any material on record;

ix. So, it follows that the indictment that the petitioner does not hold good reputation in terms of integrity has borne out from APAR dossiers is factually incorrect. Even after the adverse remark in the APAR of the petitioner, he has been granted promotion with the approval of ACC. It is a settled position of law that once promotion is granted, absent of any new and adverse material, compulsory retirement cannot be inflicted, specially, when no adverse remark has been found in the subsequent APARs, which questions the lack of integrity on the part of the petitioner;

x. One officer viz. Alok Vardhan Chaturvedi, was made part of all the three committees; thus, reasonable suspicion of bias has vitiated the process;

xi. The order of the Tribunal is contrary to the settled position of law in terms of the judgments referred by the petitioner before the Tribunal;

97. At the outset, it may be stated here that in substance the grievance of the petitioner is with regard to the action taken by the respondent compulsorily retiring the petitioner on May 10, 2018 by invoking FR 56 (j).

98. Though several OMs have been relied upon by the counsel for the parties it may be stated here that on the relevant date, i.e., on May 10, 2018, it was the OM dated September 11, 2015, which was holding the field as regards to principles governing the invocation of FR 56 (j).



The said OM specifically refers to the judgment of the Supreme Court in the case of ***Umedbhai M. Patel (supra)***, to enumerate circumstances under which an officer can be compulsorily retired under FR 56 (j).

99. Suffice to state, the petitioner being an ACC appointee, the Review Committee as contemplated under the OM of 2015, was required to be headed by the Secretary of the concerned Ministry/ Department, as a Cadre Controlling Authority. In this case, as the petitioner was working under DGFT, it was the Secretary, Ministry of Commerce, who was required to be part of the Review Committee. There is no denial to the fact that the Secretary, Ministry of Commerce, was part of the Review Committee which took the decision to compulsorily retire the petitioner.

100. It may also be stated here that one of the pleas of Mr. Ghose is that the petitioner having been retired under FR 56(j) doubting his integrity, he could have only been prematurely retired, with the concurrence of the CVC and in the present case, no such concurrence has been taken by the respondent. In this regard, reliance has been placed by Mr. Ghose on the OM dated May 10, 1974, the relevant part of which reads as under:-

“The undersigned is directed to refer to Item 1(a) of Appendix II to the Ministry of Home Affairs (now Department of personnel and A.R.) O.M. No.33/13/61-Ests. (A) dated the 23rd June 1969 as modified by O.M. No.33/9/78-Ests (A) dated the 10th September, 1971 and to say that the procedure for the review of the cases of Gazette Officers holding posts, initial appointment to which is referable to the Appointments Committee of the Cabinet, is as follows:



*"The Senior Selection Board in respect of officers of the rank of Joint Secretary of equivalent or the Central Establishment Board in respect of offices above the rank of Under Secretary but below the rank of Under Secretary but below the rank of Joint Secretary or equivalent as the case may be, will make its recommendations which will be placed before the appointments Committee of the Cabinet for orders. In respect of officers of the rank of Additional Secretary, Special Secretary and Secretary to the Govt. of India, the Cabinet Secretary will make his recommendation directly to the Appointments Committee of the Cabinet for orders. **Where action is proposed to be taken on grounds of lack of integrity, the Central Vigilance Commission shall be consulted before the case is placed before the ACC.**"*

(emphasis supplied)

101. Though this submission of Mr. Ghose, looks appealing on a first blush, but the OM of 2015, which held the field on the date when the petitioner was compulsorily retired states otherwise, inasmuch as, it has been stipulated that CVO in the case of gazetted officers or his representative in the case of non-gazetted officer, has to be associated, in case the record of such an officer reflects adversely on his/her integrity.

102. In the present case, the record shows that CVO was indeed part of the Review Committee which took the decision to compulsory retire the petitioner. Hence, this plea of Mr. Ghose, needs to be rejected.

103. It is also one of the submissions of Mr. Ghose that the petitioner being appointed by the ACC, the order of prematurely retiring the petitioner could have only been passed after seeking the approval of the ACC. The said plea is without any merit, inasmuch as,



Mr. Ravi Prakash is right in submitting that in terms of the Government of India (Transaction of Business) Rules, 1961, ACC is consulted only for appointment, empanelment and upgradation of the officer and not for retirement of the officer. Moreover, in terms of OM of 2015, in the case of officers holding Group-A post, and in respect of ACC appointees, it is the Review Committee, which may be headed by a Secretary of the concerned ministry/ department as cadre controlling authority, has to pass an order of compulsory retirement. Suffice to state, it is not the case of the petitioner that the Review Committee has not been headed by the secretary, which passed the order of compulsory retirement.

104. One of the pleas of Mr. Ghose is that the Second Review Committee which reviewed the decision of the First Review Committee, comprised of same set of Officers viz. Alok Vardhan Chaturvedi and Anoop Wadhawan and as such their presence in both the committees, is anti-thesis to the principles of natural justice. Whereas it is the submission of Mr. Ravi Prakash that Alok Vardhan Chaturvedi was the DGFT and representing the cadre management of the ITS Officers and as such his presence was required in both the Committees.

105. We are unable to agree with this submission of Mr. Ghose for the simple reason as rightly pointed out by Mr. Prakash that the presence of Alok Vardhan Chaturvedi was required in both the committees as he was representing the cadre controlling authority of the ITS.

106. Similarly, Anoop Wadhawan was required to be present in the



First Review Committee as he was an Additional Secretary. Whereas, in the Second Review Committee, his presence was required in the capacity of Secretary, Ministry of Commerce as by that time, he had become the Secretary. It is stated that the presence of both the officers was in conformity with the requirement as per the instructions laid down in the OMs of 2014 and 2015. Hence, there cannot be any illegality attached to the presence of both the officers.

107. It is also one of the submissions of Mr. Ghose that one Inderjit Singh who, had a very short tenure as DGAD and, gave the confidential note dated March 31, 2017, against the petitioner, had been called upon before the Second Review Committee and moreover, the committee also relied upon his confidential note while approving the recommendation of the First Review Committee. He would submit that the confidential note, without corroborated by any evidence whatsoever, should not have been relied upon and such an evidence would only constitute as hearsay evidence. It is his submission that this hearsay evidence has been weighed by the Second Review Committee for approving the recommendation of the First Review Committee of compulsorily retiring the petitioner.

108. We are of the view that this submission of Mr. Ghose is also not appealing for the reason that the confidential note prepared by one Inderjit Singh was *inter alia* based on complaints received against the petitioner as well as the allegations made by the representatives of the domestic industry. The contents of the confidential note has been reproduced as under for ready reference:-

“His overall approach in handling a recent case was



unprofessional, with calculations and conclusions varying several times. During the processing of this case, he tried to push for some principles, which, as per existing rules/conventions of DGAD, are not allowable, and have not been allowed in the past in any other case.

Yesterday (29.03.2017), some of the representatives of domestic industry applicants in this case met me and made serious allegations against Shri Das, including demand of some favours in return for doing something in this case. However, considering the nature of allegations, they were reluctant to give written complaint regarding this.

Notwithstanding that there is no evidence in support of the allegations, and not even a written complaint, considering various aspects, and the way Sh. Das has been handling this case in the interest of organization, and in public interest, it appears desirable that not only he is disassociated from this cases investigations, but immediately transferred out of DGAD and posted in some non sensitive post. I understand Sh. Das is one of the longest serving officers in DGAD.”

109. In that sense, there was some basis for Inderjit Singh to give the confidential note in the manner he did. We have also perused the confidential note as well as stand taken by the respondents in paragraphs 41, 52 and 64 above qua the confidential note. The aforesaid aspect, coupled with the adverse recording in the APARs, specifically questioning the integrity of the petitioner in APAR of 2014-2015, surely weighs credibility to the confidential note, which aspect was also taken into consideration by the Second Review committee to reaffirm the earlier recommendation of compulsory retirement in respect of the petitioner.

110. Moreover, no allegations imputed against Inderjit Singh,



referred to in paragraphs 32 and 88 above, are as such admissible in law. This we say so, as Inderjit Singh has not been made party to this petition so as to enable this Court to call upon him to file an affidavit with regard to the allegations made by the petitioner against him in the petition. So, the Second Review Committee having taken into consideration the aspects as highlighted by them in its meeting dated May 03, 2019 and as noted by us in paragraphs 109, 112, 113 and 114, as material, to recommend the case of the petitioner for compulsory retirement, therefore, its findings, as such, cannot be discarded.

111. One of the submissions of Mr. Ghose is also that though the petitioner has preferred four representations dated June 1, 2018, July 24, 2018, August 3, 2018 and August 30, 2018 against the order dated May 10, 2018, but when the Representation Committee met on September 7, 2018, to decide the representations, the said Committee foreclosed its wisdom, as the representation dated August 30, 2018, was deliberately not placed before it and only the first representation dated June 1, 2018 was considered by the committee. This approach, according to Mr. Ghose, is *ex facie* bad in law, as the comprehensive representation dated August 30, 2018, which refuted all the allegations as made against the petitioner by Inderjit Singh, has not been considered by the representation committee.

112. We have perused the conclusion drawn by the Representation Committee on September 07, 2018. From the same, it is noted that the Representation Committee had remanded the matter back to the department for taking the case of the petitioner back to the designated Review Committee for re-examination of the recommendation and then



placing it before the Competent Authority for appropriate action. On re-consideration, the Second Review Committee, on May 03, 2019, had referred to the representation dated June 1, 2018 made by the petitioner before the Representation Committee, wherein it has been stated as under:

“a. The extant instructions of DoPT provide that an officer could be compulsorily retired in public interest, after a review under FR 56 (j), on attaining the age of 50 years. While he attained the age of 50 years in 2013, he has been retired in 2018, after having attained the age of 55 years, without any jurisdiction to do so;

b. He has an excellent and unblemished service record with no adverse material against him ever;

c. He was the first Indian Trade Service officer to join the prestigious Post Graduate Diploma Program in Public Policy and Management at IIM Bangalore in 1992 and that he has written many thesis and research papers;

d. His supervising officers have consistently held him as an extremely reliable and knowledgeable officer with outstanding ability and leadership qualities;

e. He has done some highly appreciated work like initiation of the process of debates and discussion on critical policy issues and participated in International Seminars and Workshops organized by WTO as a resource person.

f. He had been entrusted with the responsibility of setting up a Special CVD ceil in the DGAD (now DGTR) to handle all anti-subsidy cases against India;

g. He was promoted to Senior Administrative Grade of Indian Trade Service (Joint Secretary Grade) on ad-hoc



basis, vide order dated 16.11.2017 and was posted as Development Commissioner of MIHAN SEZ, Nagpur. The instructions provide that if an officer has been recently promoted it would go in his favour;

h. No disciplinary proceedings were ever initiated or any adverse report on any account was ever communicated to him in all these years;

i. The integrity column in the confidential reports has always mentioned him as above board;

j. No public interest would be served by retiring an outstanding and hardworking officer who has immensely contributed to the organizations he has served, as duly recorded by his superior officers in the respective APARs.”

113. The Second Review Committee during re-examination of its earlier recommendation of the compulsory retirement of the petitioner, examined the representation of the petitioner including his service record, personal file, the confidential note and the remarks presented in the APARs by the DGFT.

114. After examining all the afore-said relevant materials, the Second Review Committee was of the view that in a few APARs of the petitioner, there were remarks which cast doubts on the integrity of the petitioner. Reference was also made, specifically, to the APAR of 2014-2015, which recorded in the integrity column of the petitioner, that “*there is a room for improvement*”. Suffice to state, this remark was also disclosed to the petitioner, however, no representation was submitted against the same.

115. It is also to be stated here that the Second Review Committee



had also corroborated the contents of the confidential note by examining the file of DGAD (author of the confidential note), while re-examining the case of compulsory retirement of the petitioner.

116. Finally, the Second Review Committee, did not find the contentions as raised by the petitioner, as tenable. It was of the view that at the Senior Level of Bureaucracy, the integrity of the Officer in terms of his conduct and action is of paramount importance and as such, integrity of an officer has to be above board. Therefore, it decided in public interest to reaffirm the earlier decision of recommending the compulsory retirement of the petitioner.

117. So, the plea of Mr. Ghose, of non-consideration of the representations, more particularly, representation dated August 30, 2018, wherein the petitioner has, in paragraphs 15 to 17 of the same, which we reproduce as under, refuted the allegations made against him by Inderjit Singh, is not tenable. More so, when the Second Review Committee has also corroborated the contents of the confidential note by examining the file of the DGAD:-

“15. The third issue raised by AS & DA in his note was certain alleged verbal complaint by some interested party in the case regarding demand of favour by the undersigned. In this connection it is humbly submitted that anti-dumping investigations are highly adversarial in nature where two groups having diverse interests vehemently contest. The losing group has a tendency to feel aggrieved and sometimes comes out with wild allegations, either to threaten or pressurise or intimidate the officers, or to derail the investigations. It happens very often and seasoned and experienced Das used to handle this pressure very tactfully. Unfortunately, this DA, being new, could not handle the extreme pressure



brought on him and succumbed to a well calculated strategy of the industry to remove the inconvenient officer. The DA himself records in the note that the allegations are clearly unsubstantiated and no iota of evidence was available. Further after giving this note and getting the undersigned out of the Directorate DA goes to notify the same finding prepared by the undersigned in a few days.

16. It is respectfully submitted that had there been any unprofessional handling or manipulations as has been alleged in the note the same finding could not have been issued by the DA after transferring the undersigned from the Directorate. The case was examined and re-examined at several levels, including the DA himself, as recorded in his notes. But they obviously could not find anything wrong in the findings and accordingly, the final findings were issued without any changes. Therefore, it clearly appears that whole exercise certainly had nothing to do with the so called verbal complaint, which is in any case unsubstantiated and without any basis as recorded by the officer himself, but some kind of personal vendetta carried by the officer. This is further established by issuance of the same finding without change.

17. It would not be out of place to mention here that the APAR for the same year did not carry any adverse remark in spite of the so called verbal complaint. The APAR for the previous year records significant contribution of the undersigned to the Directorate with very high grade of 9.6/10. Therefore, the allegations of unprofessional handling of the case or allegation on integrity are absolutely unfounded and baseless.”

118. That apart, the very fact that the APAR of 2014-2015, does comment on the aspect of integrity that, “*there is a room for improvement*”, which has not been contested by the petitioner and has also been adverted to, by the Second Review Committee and reiterated



in its decision, therefore, even assuming that the comprehensive representation dated August 30, 2018, has not been considered, wherein, to an extent, the petitioner has highlighted that the allegations made against him are unsubstantiated and the AS&DA (Inderjit Singh) being new in the department, could not handle the extreme pressure brought on him and succumbed to a well calculated strategy of the industry, to remove the inconvenient officer, the plea of non-consideration of the comprehensive representation rendering the order dated May 10, 2018, as illegal and arbitrary, cannot be accepted, specially, when no prejudice has been caused to the petitioner.

119. It is also pertinent to highlight here that the Second Review Committee on re-consideration of the case of the petitioner, has even interacted with AS&DA (Inderjit Singh), to understand the contents referred to in his confidential note, before reiterating its decision of compulsorily retiring the petitioner.

120. It is also the plea of Mr. Ghose, that the interaction with AS&DA (Inderjit Singh) by the Second Review Committee was done at the back of the petitioner. This plea is also not appealing to us, for the simple reason, that to compulsory retire a person invoking FR 56(j), is not a punishment and as such no stigma is attached to it. In that sense, as per the settled position of law, the rigorous of a departmental inquiry and the principles of natural justice, were not required to be conformed with, by giving hearing to the petitioner.

121. At the most, the Second Review Committee has even sought the clarification on the confidential note given by the AS&DA (Inderjit Singh), before forming its opinion. Hence, in that sense, the action of



the Review Committee, is bona fide and cannot be said to be based on hearsay evidence.

122. It is also the submission of Mr. Ghose that the Tribunal has failed to appreciate that the review for the purpose of invocation of FR 56 (j) is required to be done either at the age of 50 years or 55 years and the same must be completed six months prior to attainment of the said age. According to him, in the instant case, the petitioner was of the age of 55.6 years i.e., beyond 55 years and as such, he could not have been compulsorily retired. The said submission is without merit and is no more *res-integra* in view of the judgment of the Supreme Court in the case of **Rajendra Singh Verma (Dead) through L.Rs v. Governor of NCT of Delhi and Ors. MANU/SC/1071/2011**, wherein, in paragraphs 26 to 29, it has been held as under:-

26. This Court has considered the rival contentions raised by the learned Counsel for the parties on the question whether the cases of the Appellants for compulsory retirement, could have been considered again before they had reached the age of 55 years, when the Screening Committee had already considered their cases for compulsory retirement on their attaining the age of 50 years on July 17, 2000, and had not recommended their compulsory retirement which recommendation was accepted by the Full Court of the High Court.

27. In this connection it is relevant to notice certain facts emerging from the record of the case. Rule 27 of the Delhi Higher Judicial Service Rules, 1970 provides that in respect of matters regarding the conditions of service for which No. provision or insufficient provision has been made in those rules, the rules, directions or orders for the time being in force, and applicable to the officers of comparable status in the Indian Administrative Service and serving in connection with the affairs of the Union of India, shall regulate the conditions of such service. Thus Rule 16(3) of the All India Services (Death-



cum-Retirement Benefits) Rules, 1958 ('the Rules of 1958' for short) would be applicable to the officers of the Delhi Higher Judicial Service. Clause (3) of Rule 16 of the Rules of 1958 was substituted in 1972 specifying the age of premature retirement to be 50. Rule 16(3), after its substitution, reads as under: -

16 (3) The Central Government may, in consultation with the State Government concerned and after giving a member of the Service at least three months, previous notice in writing, or three months pay and allowance in lieu of such notice, require that member to retire in public interest from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

Therefore, the matter regarding pre-mature retirement of officers of the Delhi Higher Judicial Service who have completed 30 years of qualifying service or attained 50 years of age, has to be reviewed in the light of Rule 16(3) of the Rules of 1958 quoted above.

28. Similarly, in case of officer of Delhi Judicial Service, Rule 33 of Delhi Judicial Service Rules, 1970 provides that in respect of all such matters regarding the conditions of service for which No. provision or insufficient provision has been made in the Rules, the Rules or orders for the time being in force, and applicable to Government servants holding corresponding posts in connection with the affairs of the Union of India, shall regulate the conditions of such service.

*29. In Delhi Judicial Service Rules, 1970, No. provision for compulsory retirement has been made. **Therefore, Fundamental Rule 56(j), which is, for the time being in force and applicable to Government servants holding corresponding posts envisaged under the Delhi Judicial Service Rules, 1970, shall regulate the matter of compulsory retirement of officers of Delhi Judicial Service. Fundamental Rule 56 (j), which is applicable to officers of Delhi Judicial Service, reads as under:***

(j) Notwithstanding anything contained in this rule, the



appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice:

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

(ii) in any other case after he has attained the age of fifty-five years.

Provided that nothing in this clause shall apply to a Government servant referred to in Clause (e), who entered Government service on or before the 23rd July, 1966.

It would be seen that FR 56(j) gives absolute rights to the appropriate authority to retire any government servant who entered the service before attaining the age of 35 years, after he has attained the age of 50 years.

(emphasis supplied)

123. One of the submissions of Mr. Ghose is also that officer viz. Alok Vardhan Chaturvedi has been part of all the three committees i.e., First Review Committee, the Representation Committee as well as the Second Review Committee and thus, there is reasonable suspicion of bias which has vitiated the process. On this, the stand of Mr. Prakash is that as per the DoPT instructions, the Representation Committee must comprises of Secretary, Department of Telecommunication, Joint



Secretary, Cabinet Secretary and a representation of cadre controlling authority. Suffice to state, Alok Vardhan Chaturvedi, as DGFT, was present in the Representation Committee representing the cadre of the ITS and whereas during the second representation committee, the cadre was represented by the Joint DGFT. In that sense, the presence of Alok Vardhan Chaturvedi was necessary as a representative of ITS. In any case, presence of Alok Vardhan Chaturvedi cannot be said to have vitiated the process for the reason that the final decision has been taken by the Minister as a delegate of the President. Moreover, every committee like First Review Committee, the Representation Committee and the Second Review Committee consisted of other officers, who are higher in status and as such no allegations have been made against them to state that Alok Vardhan Chaturvedi has influenced them to take a decision against the petitioner herein and hence, this plea of Mr. Ghose is also liable to be rejected.

124. Mr. Ghose has relied upon the judgment of the Allahabad High Court in the case of **R.P. Kapoor (supra)**, to contend that departmental bias and malicious conduct of Alok Vardhan Chaturvedi, brings out a case of lack of good faith and malice against petitioner *ex facie curiae*. Suffice to state that the said judgment was delivered while disposing of a criminal misc. application filed under Section 476 of the Cr.P.C. 1898 (Old, Criminal Procedure Code) by the petitioner therein, wherein, the High Court of Allahabad, had comprehensively defined the term ‘malice’ with the aid of multiple cases in order to arrive at a conclusion as to whether the opposite party therein had committed an offence under section 211 of IPC, 1860 and as such, the said case had nothing to



do with invocation of FR 56(j).

125. Insofar as the plea of Mr. Ghose that the Second Review Committee has interacted with the former DGAD, who had espoused about the unethical conduct of the petitioner through a note dated March 13, 2017, which fact was also shared with the Chairperson of the Representation Committee, and as such the whole process has been vitiated, is also not convincing. This we say so, the stand of the petitioner is that the members of the Second Review Committee were influenced by DGAD, who had also shared the facts of the Confidential Note with the Chairperson of the Representation Committee. Impliedly, the submission would mean that the members of the Second Review Committee and also the Representation Committee were influenced by the then DGAD who had interacted or shared the contents of the Confidential Note with the Second Review Committee. Surely, as per instructions of the DoPT, a member of the cadre needs to be present in the deliberation proceedings of a representation committee and as such, the presence of DGFT was because of the said necessity. So, it cannot be said that the officers had interacted/shared the contents of the Confidential Note with an oblique motive with the Chairperson of the Representation Committee. More so, in such a situation, the petitioner was required to make the members of the Second Review Committee as well as the members of the Representation Committee parties to these proceedings in order to elicit affidavit from the said members on the allegations made by the petitioner that they have been influenced by the respective DGFTs. In other words, in absence of them being made parties to the present petition, this plea of Mr. Ghose cannot be



sustained.

126. Insofar as, the plea of Mr. Ghose, that the petitioner having been granted promotion to the post of Joint Secretary, subsequent to the making of the confidential note, he could not have been compulsorily retired is concerned, the same is also not appealing to us. This we say so, as the parameters adjudged for promotion and for compulsory retirement are totally different. In case of promotion, the record pertaining to last five years before the actual date of promotion is taken into consideration. Whereas, in the case of compulsory retirement, the same entails examination of the complete service record of the officer concerned.

127. That apart, the law in this regard is well settled. The Supreme Court in the case of ***Central Industrial Security Force v. Om Prakash, (2022) 5 SCC 100***, has in paragraphs 12 to 15 held as under:

“12. In the judgment reported as Rajasthan SRTC v. Babu Lal Jangir [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219] , the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that Brij Mohan Singh Chopra v. State of Punjab [Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188] was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the “washed-off theory” i.e. the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three-Judge Bench judgment of this Court reported as Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] and it was observed that : (Babu Lal Jangir case [Rajasthan



SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219], SCC pp. 563-64, paras 22-23)

“22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [Badrinath v. State of T.N., (2000) 8 SCC 395 : 2001 SCC (L&S) 13] is not correct and the observations of this Court in Gurdas Singh [State of Punjab v. Gurdas Singh, (1998) 4 SCC 92 : 1998 SCC (L&S) 1004] to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this “washed-off theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old



adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.”

13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in Ram Murti Yadav v. State of U.P. [Ram Murti Yadav v. State of U.P., (2020) 1 SCC 801 : (2020) 1 SCC (L&S) 245] held as under : (SCC p. 805, para 6)

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

14. Thus, we find that the High Court has not only misread the judgment of this Court in Baikuntha Nath Das [Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299: 1993 SCC (L&S) 521] but wrongly applied the principles laid down therein. The adverse



remarks can be taken into consideration as mentioned in the number of judgments mentioned above. There is also a factual error in the order [Om Prakash v. Central Industrial Security Force, 2011 SCC OnLine Del 4388] of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

15. The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight.”

128. Similarly, the Supreme Court in the case of **Arun Kumar Gupta v. State of Jharkhand and another, (2020) 13 SCC 355**, has in paragraphs 15 to 18 held as under:-

“Washed-off theory

15. One of the main arguments raised by the petitioners is that since the petitioners have been promoted to various higher posts, their record prior to the promotion will lose its sting and is not of much value. Reliance is placed on the observations of this Court in D. Ramaswami v. State of T.N. [D. Ramaswami v. State of T.N., (1982) 1 SCC 510 : 1982 SCC (L&S) 115] wherein this Court held as follows : (SCC p. 513, para 4)

“4. In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part



of it which was prior to his promotion. We do not say that the previous history of a government servant should be completely ignored, once he is promoted. Sometimes, past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past.”

16. Reference may also be made to the judgment of this Court in Pyare Mohan Lal [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] in which while dealing with the concept of washed-off theory, this Court after dealing with the entire case law on the subject held as follows : (SCC pp. 704-706, paras 24 & 29)

“24. In view of the above, the law can be summarised to state that in case there is a conflict between two or more judgments of this Court, the judgment of the larger Bench is to be followed. More so, the washed-off theory does not have universal application. It may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being assessed by the reviewing authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his “entire service record”.

29. The law requires the authority to consider the “entire service record” of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote



past is sufficient to award compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides.”

17. The law on the subject of compulsory retirement, especially in the case of judicial officers may be summarised as follows:

17.1. An order directing compulsory retirement of a judicial officer is not punitive in nature.

17.2. An order directing compulsory retirement of a judicial officer has no civil consequences.

17.3. While considering the case of a judicial officer for compulsory retirement the entire record of the judicial officer should be taken into consideration, though the latter and more contemporaneous record must be given more weightage.

17.4. Subsequent promotions do not mean that earlier adverse record cannot be looked into while deciding whether a judicial officer should be compulsorily retired.

17.5. The “washed-off” theory does not apply in case of judicial officers specially in respect of adverse entries relating to integrity.

17.6. The courts should exercise their power of judicial review with great circumspection and restraint keeping in view the fact that compulsory retirement of a judicial officer is normally directed on the recommendation of a high-powered committee(s) of the High Court.



18. It is in the light of the aforesaid law that we will now consider the factual aspects of the present case.”

129. Having said, Mr. Ghose in support of his contentions, as discussed above, has also relied upon the following judgments:

- 1) Dev Dutt v. Union of India and others, (2008) 8 SCC 725;*
- 2) Union of India v. M.E. Reddy and another, (1980) 2 SCC 15;*
- 3) N.C. Dalwadi v. State of Gujarat, (1987) 3 SCC 611;*
- 4) Smt. S. R. Venkataraman (supra);*
- 5) Umedbhai M. Patel (supra);*
- 6) D. Ramaswami v. State of Tamil Nadu, (1982) 1 SCC 510;*
- 7) Saroj Kumar Dutta v. Union of India and others, 2014 SCC OnLine Cal 5034;*
- 8) Swaran Singh Chand (supra);*
- 9) Baidyanath Mahapatra v. State of Orissa and another, (1989) 4 SCC 664;*
- 10) A.K. Kraipak and others v. Union of India and others, (1969) 2 SCC 262;*
- 11) State of Orissa v. Dr. (Miss) Binapani Dei and others, (1967) 2 SCR 625;*
- 12) S. Ramachandra Raju (supra);*
- 13) Amar Nath Chowdhury v. Braithwaite and Co. Ltd. and others, (2002) 2 SCC 290; and*



14) M.S. Bindra (supra).

130. Insofar as the judgment in **Dev Dutt (supra)** is concerned, it is the case wherein the Supreme Court has *inter alia* held that all types of gradings, whether ‘very good’, ‘good’, ‘average’ or ‘poor’, have to be communicated to an employee, so that an employee concerned gets an opportunity of making a representation for improvement of his grading. No doubt, this is a settled position of law. However, in the present case, it is an admitted fact that the petitioner herein, was communicated of his adverse remarks in the APAR of 2014-2015. However, the petitioner chose not to file any representation against it. So, this judgment will have no applicability in the facts of this case.

131. Insofar as, the judgment in **M.E. Reddy and another (supra)** is concerned, it is a case wherein it has been held that if an order of compulsory retirement has been passed in colourable exercise of powers, motivated by victimization, arbitrary or *mala fide*, then a Court can strike it down.

132. It is stated here that the plea of *mala fide*, as urged by Mr. Ghose, is not sustainable in the facts of the present case, for the simple reason, that the petitioner has not alleged in law, mala fides, against the Competent Officer, who has taken a decision to compulsory retire the petitioner, i.e., Minister In-Charge, who has passed the impugned order as a delegate of the President.

133. Having said that, even if allegations of *mala fide* have been made against Inderjit Singh. Firstly, the said allegations are made only in the comprehensive representation dated August 30, 2018 and not in



the OA or writ petition. Hence, the same cannot be read into. Even assuming for a moment, the same can be read into, the same are not made against the Competent Authority and/or the decision making Authority. Even otherwise, as reiterated above, the petitioner was required to make Inderjit Singh, as a party, in the OA / writ petition, to enable Inderjit Singh meet the allegations of *mala fide* made against him by the petitioner. Suffice to state, it cannot be the case of the petitioner, that the Minister as a delegatee of the President, was influenced by Inderjit Singh, to pass an order of compulsory retirement.

134. Insofar as judgment in the case of ***N.C. Dalwadi (supra)*** is concerned, it is the case wherein the Supreme Court has held that even if an order of compulsory retirement is passed, it is upon the Government to show that the order passed was necessary in public interest, otherwise the order would be bad in law. Suffice to state, the very fact that the petitioner was holding the post of Joint Secretary, which is a Senior Public Post in the bureaucracy, it is expected that the integrity of the Officer in terms of his conduct and action, is of paramount importance and a decision of this nature pre-supposes a decision in public interest.

135. As stated above, reliance has also been placed in the case of ***Smt. S. R. Venkataraman (supra)***, wherein, it has been held by the Supreme Court that it is not necessary to examine the question of malice in law if a discretionary power has been exercised for an unauthorised purpose. No doubt, it is a settled position of law that discretionary powers should not be used for unauthorized purposes, however, it is not the case here that the respondent has used its powers



for an unauthorized purpose. This we say so, as already concluded above, that the respondent has acted in conformity with the DoPT instructions as laid down in the OMs of 2014 and 2015, which were existing at the time when the decision was taken by the respondent to compulsorily retire the petitioner. Thus, the said judgment shall have no applicability.

136. Reliance has also been placed upon the judgment of the Supreme Court in the case of ***Umedbhai M. Patel (supra)*** to submit that if an order is passed compulsorily retiring an employee, it should not be based on extraneous consideration and if it is found that the order is based on extraneous considerations, the same can be set aside. Insofar, as the plea of extraneous consideration in the facts of the present case is concerned, we are unable to accept such a plea, for the reason that the action of compulsorily retiring the petitioner has been taken against him on the basis of his entire service record, which includes *inter alia*, his personal files, the confidential note and the remarks made against him by the DGFT in the APARs. So, in that sense, it cannot be said that the order dated May 10, 2018, passed by the respondent is based on extraneous considerations.

137. Insofar as the judgment of the Supreme Court in the case of ***D. Ramaswami (supra)*** is concerned, it was the case wherein the Supreme Court has held that if an order of compulsory retirement is passed soon after a promotion is given to an employee, in absence of any adverse circumstances against such an employee, the same is not justifiable and should be set aside. Suffice to state, the said judgment is of the year 1982 and since then, this proposition has undergone a sea change, as



noted in paragraphs 126,127 and 128 above. So, even if subsequent promotions are given to an employee, that would not mean that the earlier adverse record cannot be looked into. Therefore, this judgment shall also not aid the case of the petitioner.

138. Insofar as the judgment in the case of *Saroj Kumar Dutta (supra)* is concerned, it was the case, wherein the High Court of Calcutta in the facts and circumstances of that case, specifically, after perusing the report of the representation Committee therein, was of the view that the Committee had not used its independent application of mind and that too without considering the grounds incorporated in the representation of the petitioner therein. Suffice to state, in the present case as noted above, the Representation Committee as well as the Second Review Committee, have duly considered the case of the petitioner in the meaningful manner and arrived at a conclusion to compulsory retire the petitioner, after considering the entire service record of the petitioner. Thus, this judgment shall also be inapplicable in the facts of the present case.

139. As far as the judgment in the case of *Swaran Singh Chand (supra)* is concerned, it was the case wherein the Supreme Court has held that if an order suffers from malice in law, neither any averment is required to be made nor strict proof thereof can be insisted upon, as such an order being illegal would be wholly unsustainable. Suffice to state, in the present case, as noted above, the order passed by the respondent, compulsorily retiring the petitioner is not an arbitrary order, inasmuch as, the same has been passed in accordance with the tenets of law i.e., in line with the DoPT' s instructions. Hence, this judgment



shall also not help the case of the petitioner.

140. Similarly, reliance has been placed on the judgment of the Supreme Court in *Baidyanath Mahapatra (supra)*, wherein it has been held that if a government servant is promoted to a higher post on the basis of merits and selection, adverse entries, if any, contained in his service records lose their significance. As already noted above, in view of our conclusion at paragraphs 122 and 123 above, the said judgment shall also have no applicability.

141. Insofar as the judgment in the case of *S. Ramachandra Raju (supra)* is concerned, it is the case wherein the Supreme Court was dealing with the facts wherein the representation of the petitioner therein, was rejected without going into the allegations made by the petitioner in his representation and on that basis the order of compulsory retirement was set aside. Suffice to state, in the present case, the First Review Committee, the Representation Committee, as well as the Second Review Committee, have comprehensively considered the entire service record of the petitioner and came to the conclusion to compulsory retire the petitioner in the public interest and as such, the said judgment shall also not help the case of the petitioner.

142. As far as the judgment in the case of *Amar Nath Chowdhury (supra)* is concerned, it was the case, wherein the appellant therein was subjected to a domestic inquiry and as a result he was removed from the service and as such, it was not the case wherein the petitioner therein was compulsorily retired as opposed to the present case wherein the petitioner herein has been compulsorily retired on the basis of his entire service record and thus, this judgment too, shall also not help the case



of the petitioner.

143. Reliance has also been placed on the judgment of the Supreme Court in *M.S. Bindra (supra)*, wherein the Supreme Court has held that any doubt about integrity of an employee should not be entertained merely on the basis of surmises and should be based on preponderance of probability as judged from the standard of a reasonable man. Suffice to state, in the present case, it cannot be said that the integrity of the petitioner herein has been questioned on the basis of surmises, as all the Committees i.e., the Review Committees (First as well as the Second), as well as the Representation Committee, have examined in detail, the entire service record, including, the confidential note, and remarks made in the APARs of the petitioner questioning his integrity and reputation and upon their subjective satisfaction only, the decision was taken to compulsorily retire the petitioner. Therefore, this judgment shall also not help the case of the petitioner.

144. Reliance is also placed by Mr. Ghose on the judgment of the Supreme Court in the case of *Singhara Singh and others (Supra)* to contend that it is a settled law that if a law prescribes something to be done in a particular manner, all other courses stands barred. In other words, it is his submission that as per the prescribed procedure, before compulsorily retiring the petitioner by invoking FR 56 (j), the respondent should have consulted CVC and by not doing so, the respondent has exercised its power in an arbitrary manner. Suffice to state, as already held above, that the OMs of 2014 and 2015, which held the field on the date when the petitioner was compulsorily retired, did not contain any such stipulation which provided for consultation



with CVC. Hence, to state that respondent has acted in an arbitrary manner with the aid of aforesaid judgment does not look appealing and hence, it will not come to the aid of the petitioner.

145. Similarly, reliance has also been placed on the judgment of the Supreme Court in the case of **Justice R. A. Mehta (Retired) and others (supra)** to define the expression ‘consultation’ in order to contend that the respondent did not have any ‘consultation’ with CVC and as such the order passed by the respondent compulsorily retiring the petitioner is bad in law. As we have already held that ‘consultation’ with CVC was not mandatory in terms of the instructions as laid down in OMs of 2014 and 2015, this judgment will also not help the case of the petitioner.

146. Reliance is also placed on the judgment of the Supreme Court in the case of **Mohinder Singh Gill and Ors. (supra)** to contend that in the O.A., it was the case of the respondent that the petitioner’s integrity was ‘not above board’, whereas, in the present petition, it is the case of the respondent that the petitioner had the poor reputation in terms of ‘conduct and functional competence’ and as such this approach of the petitioner fall foul of the law laid down in **Mohinder Singh Gill and Ors. (supra)**. Suffice to state, as already held above that while invoking FR 56 (j) to compulsorily retire a government employee, an authority has to see an entire service record of an employee and even a single adverse remark can lead to invocation of FR 56 (j). Suffice to state, in the present case also, the respondent after detailed examination of the representation dated June 01, 2018, of the petitioner, as well as his entire service record, had decided to retire the petitioner. Therefore, this



judgment shall also not help the case of the petitioner.

147. Mr. Ghose has also relied on the judgments of the Supreme Court in the cases of *Shayra Bano (supra)* and *E.P. Royappa (supra)*, to contend that the impugned action of compulsorily retiring the petitioner is manifestly arbitrary, colourable and without any authority and as such liable to be set aside. Suffice to state, that this contention of Mr. Ghose is also liable to be rejected for the reason as already held above that the action taken by the respondent is in conformity with the instructions as laid down in the OMs of 2014 and 2015 and as such it cannot be said that the respondent has acted in an arbitrary and colorable manner and as such these judgments shall also not help the case of the petitioner.

148. Reliance has also been placed on the judgment of the Supreme Court in the case of *Ankit Ashok Jalan (supra)* to contend that if the materials preferred with the representations are not analysed or the representation is not honoured within a reasonable time frame, the same would mean that the very safeguard of preferring representation has been violated. Suffice to state that the representation of the petitioner dated June 1, 2018, has been examined by the respondent in detail and even after perusing the representation, the Representation Committee had remanded the case of the petitioner back to the Second Review Committee to consider the case of petitioner afresh. The Second Review Committee after due deliberation had only come to the conclusion that the case of the petitioner was fit for compulsory retirement. Therefore, this plea of Mr. Ghose is also liable to be rejected and as such the aforesaid judgment will also not come to his



aid.

149. Reliance has also been placed on the judgment of the Supreme Court in the case of *J.N. Sinha & Ors. (supra)* to contend that the judgment in *J.N. Sinha & Ors. (supra)* was predicated on assumption that compulsory retirement does not involve civil consequences, however, it is open to an aggrieved party to contend that the opinion formed by the government is based on collateral grounds or it is an arbitrary decision. He contends that this judgment has been followed by the Supreme Court in the case of *Suryakant Chunilal Shah (supra)* wherein it has been held that in cases of compulsorily retirement, the judicial scrutiny does not get excluded altogether and High Court(s) or the Supreme Court can very well interfere in such matters, if they are satisfied that an order passed is:- (a) malafide, (b) based on no evidence or (c) is arbitrary. More particularly, it has also been held that if a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks also lose their sting. Though we agree that the aforesaid propositions are established principles of law, however, in the present case as held above, the respondent has considered the entire service record of the petitioner and only after perusal of the same, all the three committees, have come to the conclusion that the petitioner needs to be compulsorily retired. Therefore, it cannot be said that the order of compulsorily retiring the petitioner has been passed in an arbitrary manner and as such, these judgments shall not help the case of the petitioner.

150. Mr. Ghose has also placed reliance on the judgment of the Supreme Court in the case of *The Barium Chemicals Ltd. and Ors.*



(*supra*) to contend that in absence of consultation with CVC as to existence of materials indicative of reflecting adversely on the integrity of any employee, no opinion on existence, validity and sufficiency qua integrity can be formed and as such the impugned action of the respondent is bad in law for formation of *bona fide* opinion. Suffice to state that this plea of Mr. Ghose is not appealing, firstly, for the reason as already noted above that it was not required for the respondent to consult CVC while passing an order of compulsory retirement and secondly, as already noted above, in detail, that all the three committees have considerably perused the entire service record of the petitioner including the confidential report filed by the former DGAD and only then, the respondent had decided to compulsory retire the petitioner in term of order dated May 10, 2018 and thus, this judgment will also not apply to the facts of this case.

151. He has also relied on the judgment of the Supreme Court in the case of **Satish Kumar Singh** (*supra*), wherein, it has been categorically held by the Supreme Court that if a process leading up to an appointment has failed to look into relevant materials having a nexus to the object and purpose of the legislation or has taken into account irrelevant circumstances, such a decision would stand vitiated on the ground of official arbitrariness. Suffice to state that this judgment shall have no applicability in the facts of the present case for the reason that the order passed by the respondent had taken into consideration all the relevant materials including the entire service record of the petitioner and as such it cannot be held that the decision taken to compulsory retire the petitioner has been taken in an arbitrary manner and without



taking into consideration any relevant material.

152. Reliance has also been placed on the judgment of the Supreme Court in the case of *V.C., Banaras Hindu University (supra)* to contend that the law governing the field of compulsorily retirement is clear on two accounts (a) only President of India is vested with powers to grant compulsory retirement under FR 56 (j) and (b) the aid and advise tendered to President must emanate from cabinet and given the case that the petitioner is SAG appointee, the aid and advise rendered to him must have come from ACC and not of any other authority inferior or different from ACC. Therefore, once an order is passed by an authority which has no power to take a decision then it is an order without jurisdiction, therefore, the same is nullity. Suffice to state, as already held in paragraph 103 above that ACC is consulted only for appointment, empanelment and upgradation of the officer and not for his/her retirement. Therefore, this judgment shall not be applicable in the facts of the present case.

153. Reliance has also been placed on the judgment of the Supreme Court in the case of *A.K. Kraipak and others (supra)*, wherein, it has been held by the Supreme Court that if the purpose of rules of natural justice is to prevent miscarriage of justice then such rules should be made applicable to administrative enquiries also. Moreover, an unjust decision in an administrative enquiry has more far reaching effect than a decision in a quasi judicial enquiry and if a complaint is made before a Court that some principles of natural justice has been contravened, the Court should decide whether the observance of that rule was necessary for a just decision on the facts of that case.



154. There is no doubt that there cannot be an unjust decision even in an administrative enquiry. However, in the present case, as it has been held, that the respondent has not taken an arbitrary decision and it is also settled position of law that in cases of compulsory retirement, the principles of natural justice are not required to be complied with, and as such, the said judgment shall also be inapplicable in the facts of the present case.

155. Mr. Ghose has also taken the aid of the judgment of the Supreme Court in the case of ***Dr. (Miss) Binapani Dei and others (supra)***, wherein, the Supreme Court has held that an officer cannot be removed from office before superannuation except “for good and sufficient reasons” and an authority is under a duty to give that person, against whom an enquiry is held, an opportunity to set up his version or defence and opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. It was also held that though a State has an authority to compulsorily retire a public servant who is superannuated but when that person disputes the claim, he must be informed of the case of the State and he must also be given a fair opportunity of meeting that case before a decision adverse to him is taken.

156. Suffice to state, that though there is not an iota of doubt on the above stated principles of law as laid down by the Supreme Court, however, in the facts of the present case, it cannot be said that the State has not complied with the aforesaid principles. This we say so, for the reason, that the petitioner herein has been given fair opportunity to file his representation against the order of compulsory retirement.



Moreover, the First Review Committee, the Representation Committee as well as the Second Review Committee have gone through the entire service record of the petitioner. In fact, when the representation dated June 1, 2018, was in depth examined by the respondent, it remanded the case of the petitioner back to the review committee for a fresh consideration and only thereafter, the Second Review Committee, came to the conclusion that the service of the petitioner, was no more required. Therefore, the said judgment shall also have no applicability in the facts of the present case.

157. So, from the above, it is crystal clear that the aforesaid judgments relied upon by Mr. Ghose, shall have no applicability in the facts of the present case and as such, not help the case of the petitioner.

158. Having said so, in view of our discussion above, we do not find any merit in the present petition. The impugned order of the Tribunal does not require any interference. The writ petition is dismissed. No costs.

CM APPL. 25969/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JANUARY 18, 2024/aky