IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.08.2025
Pronounced on	19.09.2025

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.26510 of 2023
and
W.M.P.Nos.25916 & 33915 of 2023

1.The Union of India,
Rep. by the Secretary to Government,
Department of Revenue,
128-A/North Block, New Delhi – 110 001.

2.The Chairman,
Central Board of Indirect Taxes &
Customs, North Block, New Delhi – 110 001.

3.The Principal Chief Commissioner of
GST, Central Excise & Customs,
Tamil Nadu & Puducherry Zone,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

4.The Commissioner of GST and Central Excise,
Puducherry Commissionerate,
No.1, Goubert Avenue (Beach Road),
Puducherry – 605 001. ...Petitioners

Vs.

S.Asokraj ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ in the nature of Certiorari, quashing the order of the Central Administrative Tribunal, Chennai Bench dated 26.04.2023 in OA/310/00026/2020.

For Petitioners : Mr.Rajnish Pathiyil
Senior Panel Counsel

For Respondent : Mr.K.Samidurai

ORDER

M.S.RAMESH, J.

1.1. The services of the central civil employees are governed by the Fundamental Rules (hereinafter referred to as 'FR'). FR 56(j) empowers the appropriate authority to retire any Government servant in public interest, after giving three months prior notice or three months pay in lieu of such notice. Such powers could be invoked by the appropriate authority against a Class-I or Class-II employee, after he has attained the age of 50 years.

1.2. By an order dated 22.08.2019, the Commissionerate of GST and Central Excise/4th petitioner herein, by invoking FR 56(j)(i) against the respondent herein, who was employed as a Superintendent of GST and Central Excise and had attained of 50 years, had retired him with immediate effect in public interest, enclosing three months salary in lieu of prior notice.

1.3. Several representations were made by the respondent to the petitioners to revisit the order of compulsory retirement and since the representations were not acted upon, he had filed an Original Application in O.A.No.1327 of 2019 before the Central administrative Tribunal, Chennai (hereinafter referred to as 'the CAT').

1.4. By an order dated 04.10.2019, the CAT had directed the competent authority to consider one of the representations of the respondent dated 03.09.2019 and pass a speaking order within a stipulated time.

1.5. Consequently, the 4th petitioner had passed an order on 11.11.2019, setting forth the views of the Representation Committee and the Review Committee and by accepting the observations of the Representation Committee, had compulsorily retired the respondent.

1.6. This order dated 11.11.2019 was put under challenge before the CAT by the respondent in O.A.No.26 of 2020. After taking into account of the past Annual Performance Appraisal Report (APAR)/Annual Confidential Report (ACR) of the respondent for the period between 2006 and 2015, which had recorded his overall performance as *'predominantly excellent and no adverse reports* *touching upon his integrity'* and also by taking note of the adverse notice against the respondent, for which he was proceeded with departmental action, the CAT was of the view that the compulsory retirement order was punitive and had been passed in lieu of punishment and accordingly set aside the same through its order dated 26.04.2023.

1.7. Aggrieved against the same, the Government has preferred the present Writ Petition.

2. Mr.Rajnish Pathiyil, learned Senior Panel Counsel appearing for the petitioners, vehemently persuaded us that whenever it is brought to the notice of the Government against certain adverse conduct of an employee, the competent authority would be well within their powers to compulsorily retire them in public interest by invoking FR 56(j). According to him, the Review Committee had taken into consideration the entire service records of the respondent, which includes the charge sheets issued to him, as well as his unauthorized absence for 311 days between 27.08.2018 and 22.07.2019 and had observed that in the interest of public and better administration, the respondent's service was no longer required. He also submitted that the order of compulsorily retirement is not a punishment, but was passed purely in the interest of

public and for better administration. He further stressed on the trap cases registered by the CBI against the respondent, as well as the departmental action initiated against him and submitted that his involvement in the criminal cases substantiates him of doubtful integrity and therefore, the competent authority had rightly invoked FR 56(j). In support of his contentions, he had placed reliance on the decisions of ***Shyam Lal Vs. State of Uttar Pradesh and Another*** reported in ***(1954) 1 SCC 572; Baikuntha Nath Das and Another Vs. Chief District Medical Officer, Baripada and Another*** reported in ***(1992) 2 SCC 299; Posts and Telegraphs Board and Others Vs. C.S.N.Murthy*** reported in ***(1992) 2 SCC 317*** and ***M.Vetrichelvi Vs. The State of Tamil Nadu, Public (Special-A) Department*** passed in ***W.P.No.17946 of 2022, dated 15.03.2024.***

3. Per contra, Mr.K.Samidurai, learned counsel for the respondent, strenuously opposed these submissions and submitted that the entire action of the petitioners, compulsorily retiring the respondent, was with a *mala fide* intention and as a punitive measure. According to him, the respondent's overall performance, as reflected in the ACR, has all along been excellent and his integrity over the years between 2000 and 2015,

were recorded as *'impeccable and honest beyond doubt and no adverse reports'*. There were no ACR reports for the period between 2015 and 2019 and there was nothing on his past service record to doubt the integrity of the officer. With regard to the criminal case and the departmental action initiated against him, he submitted that during the discharge of his duties, the respondent had come across loss of revenue to the exchequer due to the actions of the assessees in connivance with his superiors and therefore, he had sent representations to his superior officers, including the CBI, which earned him the wrath of his superiors, as well as the scheming assessees. Aggrieved against his action of being a whistle blower, false cases have been implicated against him by the CBI, as well as the petitioners. Apart from these criminal cases, there is absolutely nothing on record to doubt his integrity or performance. He thus submitted that FR 56(j) has been invoked by the petitioners with *mala fide* intentions and ulterior motive and the CAT had rightly set aside the same. In support of his contentions, he placed reliance on the decisions of ***Baldev Raj Chadha Vs. Union of India*** reported in ***AIR 1991 SCC 70; S.Ramachandra Raju Vs. State of Orissa*** reported in ***AIR 1995 SCC 111*** and ***State of Gujarat Vs. Umedbhai M.Patel*** reported in ***(2001) 3 SCC 314.***

4. Though the order impugned in this Writ Petition has extracted the overall performance of the respondent, as found in his ACR, the petitioners had produced the entire ACR records of the respondent on our directions. We had perused all the records in hand and on consideration of the submissions on either side, the following order is passed.

5. Before we address the facts relating to the case, we deem it appropriate to analyse the scope of FR 56(j). For easy reference, the said Rule is extracted below:-

> "**FR 56(j)**: Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and 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.
>
> Note 1: 'Appropriate Authority' means the authority

which has the power to make substantive appointments to the post or service from which the Government servant is required or wants to retire."

6. The precariousness of the effect of FR 56(j) cannot be better explained than through the words of Justice V.R.Krishnaiyer in ***Shyam Lal's case (supra),*** as extracted below:-

> *"The fundamental rules govern the Central Civil Services and ensure the career security which is the sine qua non of contented service. But potential compulsory retirement under FR 56(j)(i) haunting the afternoon of official life injucts an awesome uncertainty which makes even the honest afraid, the efficient tremble and almost everyone genuflect — not a happy prospect for a civil servant too young to sit idle and too old to get a new job. A jetsam has no option but to become driftwood or join the other profession where everyone, desirable and undesirable, has a chance. We stress this deleterious latency of FR 56(i)(f) to underscore the unwitting harm to public interest it does in the name of public interest."*

7. Similarly, the ingredients and essential requirements of FR 56(j) were also explained therein, thus:-

> *"A breakdown of the provision brings out the basic components. The order to retire must be passed only by "the appropriate authority". That authority must form the requisite opinion — not subjective satisfaction but objective and bona fide and based on relevant material. The requisite opinion is that the retirement of the victim is "in public interest" — not personal, political or other interest but solely governed by the interest of public service. The right to retire is not absolute, though so worded. Absolute power is anathema under our constitutional order. "Absolute" merely means wide, not more. Naked and arbitrary exercise of power is bad in law. These essentials once grasped, the appellant's submissions become self-evident."*

8. The object of FR 56(j) is to weed out the employees who are deemed to have become dead wood and may be a peril to public service, if allowed to continue. No doubt, when the services of such officers come to the adverse notice of the concerned authorities, the information, which they may possess for such inference, may not be supported with material evidences to initiate disciplinary action. There could be instances where

an employee could indulge in misconducts in a scientific method, making it difficult for the authorities to initiate departmental action. Similarly, the services of an employee, if continued, may be perilous to the interest of public and it would be desirable to weed out such an employee, lest much harm may result in continuance of his service. In these and in similar circumstances, the competent authority would be justified in invoking FR 56(j) against Class-I or Class-II employee if he had completed 50 years of age and by giving him three months prior notice of their decision or three months notice pay. However, before arriving at such a decision, it would be the bounden duty of the concerned authority to take into consideration the entire past service records of the Government servant, including his annual performance reports and thereafter arrive at an objective satisfaction as to whether his compulsory retirement, in the interest of public, was desirable or not.

9. The corollary to this would be when the competent authority is possessed of sufficient materials or evidences to prove any misconduct or other acts by which a major punishment of removal or dismissal from service can be invoked, the authority will not be justified in invoking a shortcut method of compulsorily retiring him from service under FR

56(j), instead of proceeding with departmental action against the Government employee.

10. In the decisions relied upon by the learned Senior Panel Counsel for the petitioners, all these aspects have been reiterated and the scope of FR 56(j) has been dealt with. In ***Umedbhai M.Patel's case (supra)***, referred to by the learned counsel for the respondent, the Hon'ble Supreme Court had summarized the principles, in paragraph 11 as:-

> *"**11.** The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:*
>
> *(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.*
>
> *(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.*
>
> *(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory*

retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

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

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

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

11. All the other decisions, referred to by the learned Senior Panel Counsel for the petitioners, are in the same lines of the aforesaid excerpts and therefore, the repetition of its findings are dispensed.

12. With this background, we shall now deal with the manner in which FR 56(j) was invoked against the respondent.

13. For invocation of FR 56(j), law requires the competent authority to take into account the past service records of the respondent herein to satisfy themselves as to whether his services should be continued or not. The CAT, in the impugned order dated 26.04.2023, had undertaken the exercise of analysing the past service records of the respondent for the period between 2006 and 2015. We have also perused the ACR of the respondent and in our view, the report recognizes his services to be remarkable and exemplary, which is seldom found among the regular employees. Below is the extract of the remarks of the Reporting Officer and the Reviewing Officer in the ACR of the respondent for the periods between 1992 and 2015.

YEAR	***Reporting Officer – INTEGRITY***		***Reviewing Officer – ACR REMARKS***
1992-1993	Honest		Very Good
1993-1994	Honest		Excellent
1994-1995	Honest		Good
1995-1996	Honest		Good
1996-1997	Honest – Good		Very Good
1997-1998	Honest		Excellent
1998-1999	Honest		Excellent
1999-2000	Honest		Excellent
	Integrity	**Overall Grading**	
2000-2001	Honest	Excellent	Excellent
2001-2002	Honest	Excellent	Excellent
2002-2003	Honest	Excellent	Excellent
2003-2004	Honest	Excellent	Excellent

YEAR	*Reporting Officer – INTEGRITY*		*Reviewing Officer – ACR REMARKS*
2004-2005	Honest	Very Good	Very Good
2005-2006	Honest	Excellent	Excellent
2006-2007	Honest	Excellent	Excellent
2007	Nothing adverse came to notice	Excellent	Excellent
2008	Nothing adverse came to notice	Excellent	Excellent
2009-2010	Honest	Very Good	Very Good
2010-2011	Honest	Excellent	Excellent
2011-2012	Beyond Doubt	Very Good	Very Good
2012-2013	Beyond Doubt	Very Good	Very Good
2013-2014	Beyond Doubt	Excellent	Excellent
2014-2015	Impeccable	Excellent	Excellent

14. From 2015 till 2019, the respondent's ACR has not been recorded. The respondent, being an officer of such an impeccable record of service and integrity, was curiously implicated in a criminal case in the year 2017. The consequence of this was framing of two charges for departmental actions dated 14.01.2019 and 11.04.2019.

15. The respondent appears to have some explanation for implication in the criminal case. His reasoning is that he was a whistle blower, who had pointed fingers at his superior officers alleging them to have connived with the assessees under the 4th petitioner Department.

According to him, the complaint given by him against the superior officers in this regard is the root cause for implicating him in the criminal case.

16. His service records from 1992 to 2015, if taken on its face value, may vouch the defence taken by him. However, we are conscious of the fact that such a defence requires to be established only during the course of proper trial by a Court of law or during the course of inquiry in a departmental proceedings and we thus refrain from commenting any further on his defence.

17. The order of the 4th petitioner dated 11.11.2019 records that the Review Committee had taken into consideration the entire service records of the officer, which includes the charge sheets issued to him and thereby reached its conclusion to retire the respondent.

18. If the available ACRs between 1992 and 2015 had been taken into consideration, the Reviewing Authority certainly would not have arrived at a dissatisfaction with regard to his continuance in service. On the contrary, what appears to have influenced the minds of the Reviewing

Authority, as well as the Representation Committee, is his involvement in the criminal case initiated by the CBI, for which he was arrested and detained in prison for more than 48 hours. For this involvement, the 4th petitioner had, in our view, rightly placed the respondent under suspension, in terms of Rule 10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 with effect from 08.04.2016 and have also framed charges for disciplinary proceedings dated 14.01.2019 and 11.04.2019, alleging that he has contravened the provisions of Rules 3(1)(i), 3(1)(ii), 3(1)(iii), 3(1)(vi), 3(1)(ix), 3(1)(xviii) and 3(1)(xxi) of Central Civil Services (Conduct) Rules, 1964. Such an action, in our view, has been rightly invoked.

19. However, even before the disciplinary proceedings could arrive to a logical ending, the meeting of the Review Committee, for the purpose of invoking FR 56(j), was convened on 20.08.2019 and an order of compulsory retirement was passed on 22.08.2019. Pursuant to the directions of the CAT in O.A.No.1327 of 2019, a reasoned order was subsequently passed on 11.11.2019.

20. We have already, in the preceding portions of our order, dealt with the circumstances under which FR 56(j) could be invoked. It is not the case of the petitioners that the Commissionerate was bereft of any material or other evidences to substantiate the charges levelled against the respondent. Going by the nature of charges in this case, it is also not conceivable to make make such a claim. The statements of article of charges in the charge memo dated 14.01.2019 alleges the respondent of having conducted a search, in the premises of an assessee, without a search warrant. Likewise, the imputations in the charge memo dated 11.04.2019 were about his alleged involvement in a trap case conducted by the Anti Corruption Branch of CBI and recovery of Rs.2,00,000/- from the desk of the respondent's work table, which is also a subject matter of the criminal case registered against him by the CBI. Both these charge memos have annexed a list of several documents by which the article of charges framed against the respondent was proposed to be established. So also, the list of several witnesses, through whom these evidences were proposed to be sustained, were disclosed therein.

21. In ***Umedbhai M.Patel's case (supra)***, the Hon'ble Supreme Court had referred to several of its own decisions and while summarizing

the law relating to compulsory retirement, had held that an order of compulsory retirement shall not be passed as a shortcut to avoid departmental enquiry when such course is more desirable. It was also held therein that compulsory retirement shall not be imposed as a punitive measure.

22. In the case of ***State of Gujarat and Another Vs. Suryakant Chunilal Shah*** reported in ***(1999) 1 SCC 529,*** the facts before the Hon'ble Supreme Court was almost similar to that of the respondent's case. The employee therein did not have adverse entries or remarks recorded in the CR filed regarding his integrity. However, he was promoted to the higher post, at which point of time, the Review Committee noted the non-availability of character roll entries for the years 1981-1982 and 1982-1983. Two FIRs were registered against the employee under the provisions of Indian Penal Code and Prevention of Corruption Act. The integrity of the respondent was regarded as doubtful and though he was not fit to be retained in the Government service, it was desired that he may be continued in service, in order to make him available for severe departmental punishment and could be removed from service for the alleged misconduct. The Hon'ble Supreme Court, by

referring to some of its own judgments and highlighting the integrity of a Government servant to be the paramount consideration, analysed the facts of the case and had come to the conclusion that the decision of compulsory retirement was punitive and best for the collateral purpose of his immediate removal. The relevant portion of the judgment reads as follows:-

> ***"27.*** *The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a government servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would*

constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee."

23. As held by the Hon'ble Supreme Court, when the CBI had registered a case against the respondent, it would be prudent that the respondent be subjected to a proper trial and to conclude the case on the basis of the evidences by the Court of law. Even in the departmental proceedings, the 4th petitioner was possessed with several documents and witnesses to support the Commissionerate's charges and it would have been prudent for continuation of the departmental action to its logical conclusion. When these alternates were very much available to the 4th petitioner, it appears that they have chosen a shortcut method to avoid the departmental enquiry and had invoked FR 56(j), which can only be inferred as a punitive action.

24. When it is brought to the knowledge of an authority that a Government servant had indulged himself in a misconduct, the appropriate course of action would be by way of initiation of departmental proceedings. The concerned authority will also be justified

in proposing such an action for imposing a major penalty as that of dismissal from service, etc. and substantiate its case during the enquiry. This is what is logically expected from an employer for every act of misconduct conducted by their servants.

25. It is a settled proposition of law that what requires to be done directly, is not permissible to be done obliquely, meaning thereby, whatever is required under law to be done, cannot be legally effected by an indirect and circuitous contrivance on the principles of *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.* If violative, it would only reflect a colorable exercise of power by the authorities to bypass the required action of domestic enquiry and opting a crafty method to compulsory retire him. In our view, the course adopted by the petitioners, to overcome departmental action and ultimately achieve their purpose of terminating the respondent's service, has been obliquely done to avoid any favourable decision which the employee may attain, which cannot stand in the eye of law.

26. The learned Senior Panel Counsel also submitted that, apart from the respondent's involvement in the criminal case, he had also

remained unauthorizedly absent for 311 days from 27.08.2018 onwards. In support of such a statement, he produced a memo dated 22.07.2019, given to the respondent with allegations that he had not submitted a leave application for various spells from 27.08.2018 to 09.08.2019. A perusal of the said memo reflects 19 spells of leave and in most of them, the Commissioner had alleged that he did not submit his leave application. However, barring a few spells, the respondent appears to have intimated the Commissioner of his request for leave through email, which apparently was unacceptable.

27. What can be construed from the submission of the petitioners is that the respondent may have committed a misconduct by remaining on leave without authorization, which may be a misconduct by itself and which also requires to be established through departmental action only. The 4th petitioner also appears to have initiated departmental action by issuance of a memo dated 22.07.2019. Rather than continuing with such an action, this misconduct also has now been cited as a reason to retire him prematurely in the public interest. When it is not the case of the petitioners that they are not possessed of sufficient evidences to prove the misconduct of unauthorized leave, it would not be open to them to

resort to FR 56(j) as an alternate. Hence, we are not inclined to endorse the learned counsel's submission in this regard.

28. The CAT had, in our view, had properly and rightly appreciated the case of the respondent by setting aside the order of the 4th petitioner dated 11.11.2019 invoking FR 56(j). We find no perversity or other justifiable reasons to interfere with the aforesaid order.

29. For all the foregoing reasons, the Writ Petition stands dismissed. Consequently, the petitioners herein shall forthwith comply with the order of the CAT passed in O.A.No.26 of 2020 dated 26.04.2023, in any event, within a period of two weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

[M.S.R.,J] **[V.L.N.,J]**
19.09.2025

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

<u>M.S.RAMESH, J.</u>
<u>and</u>
<u>V.LAKSHMINARAYANAN, J.</u>

hvk

<u>Pre-delivery order made in</u>
W.P.No.26510 of 2023

19.09.2025