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

\+ W.P.(C) 17582/2025, CM APPL. 72597/2025 & CM APPL. 72599/2025

UNION OF INDIA & ORS. .....Petitioners
Through: Ms. Pratima N. Lakra, CGSC with Ms. Kiran Dharam and Mr. Shailendra Kumar Mishra, Advs.

versus

RINKU DHUGGA .....Respondent
Through: Mr. Ankur Chhibber, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **15.04.2026**

C. HARI SHANKAR, J.

A. The *lis*

1. By judgment dated 8 August 2025, the Central Administrative Tribunal[1] has set aside (i) order dated 7 August 2023 issued by the Department of Personnel and Training[2], compulsorily retiring the respondent from service, (ii) letter dated 8 August 2023, whereby the said decision was communicated by the Ministry of Home Affairs[3] to the Chief Secretary, Arunachal Pradesh, under whom the respondent was serving at the time and (iii) order dated 26 March 2024, whereby

[1] "the Tribunal" hereinafter
[2] "DOPT" hereinafter
[3] "MHA" hereinafter

the memorial submitted by the respondent seeking reconsideration of the decision to compulsorily retire from service, was rejected.

2. By this writ petition, the Union of India[4] challenges the judgment of the Tribunal.

3. We have heard Ms. Pratima N. Lakra, learned CGSC and Mr. Ankur Chhibber, learned Counsel for the respondent. Having done so, and having perused the impugned judgment, we are not of the opinion that the case for issuance of notice is made out.

B. Facts

4. The respondent is an officer of the Indian Administrative Service, which she joined in September 1994, having been allotted the AGMUT[5] cadre. She was granted Senior Scale in 1998, Jr Administrative Grade in 2003, Selection Grade in 2007 and Super Time Scale in 2010. She was transferred to the State of Arunachal Pradesh on 26 May 2022, where she joined on 27 June 2022.

5. It was while she was serving in Arunachal Pradesh that, by order dated 7 August 2023 issued by the DOPT, as communicated to the respondent by the MHA on 8 August 2023, the respondent was compulsorily retired from service under Rule 16(3)[6] of the All India

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[4] "UOI" hereinafter

[5] Arunachal Pradesh-Goa-Mizoram-Union Territories

[6] **16(3)** The Central Government may, in consultation with the State Government concerned, require a member of the service to retire from service in public interest after giving such Member at least three months's previous notice in writing or three month' s pay and allowances in lieu of such notice, -

(i) after the review when such Member completes 15 years of qualifying Service; or

(ii) after the review when such Member completes 25 years of qualifying Service or attains the age of 50 years, as the case may be, or

Services (Death-cum-Retirement Benefits) Rules, 1958[7], by the following order:

> "In exercise of the powers conferred by sub- rule 3 of Rule 16 of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958, the President in consultation with the Ministry of Home Affairs hereby required Ms. Rinku Dhugga, IAS (AGMUT:1994), a member of the Indian Administrative Service, borne on the cadre of AGMUT (AGMUT:1994) who has completed 25 years of service and already attained 50 years of age, to retire from service in public interest, with immediate effect by giving three month pay and allowances in lieu of notice.
>
> 2. A cheque for some approximate to the aggregate amount of her pay and allowances for a period of three months is enclosed.
>
> 3. By order and the name of the President."

As we have already noted, this order was communicated by the MHA to the respondent under cover of letter dated 8 August 2023.

6. The decision to compulsorily retire the respondent from service was taken consequent to the recommendations of a Review Committee which met on 21 March 2023, in terms of Rule 16(3) of the 1958 Rules. It is necessary to reproduce, in its entirety, the Minutes of the Meeting of the Review Committee, which culminated in the recommendation that the respondent be compulsorily retired from

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(iii) If the review referred to in (i) or (ii) above has not been conducted after the review of any other time as the Central Government deems fit in respect of such Member.

Explanation:- For the purposes of sub-rule (3), "review" of the entire service record of the Member of the Service regarding suitability or otherwise of such Member for further retention in the Service to be conducted regularly of each Member of such Service, firstly, after his completion of 15 years of qualifying Service and secondly, after his completion of 25 years of qualifying Service or on his attaining the age of 50 years, as the case may be, or if the review referred to in clauses (i) or (ii) of this sub-rule has not been conducted in respect of such Member, such review may be conducted at any other time as the Central Government deems fit.";

Note 1: In computing the period of three months' notice referred to in sub-rules (2), (2A) and (3) the date of service of the notice and the date of its expiry shall be excluded.

Note 2: In the case of a member of Service who retires under sub-rule (2) or (2A) or who is retired under sub-rule (3), the date or retirement shall be treated as a non-working day.

[7] "the 1958 Rules" hereinafter

service, thus:

"MINUTES OF THE 'MEETING OF THE REVIEW COMMITTEE FOR INTENSIVE REVIEW OF THE SERVICE RECORDS OF IAS OFFICERS OF JOINT AGMUT CADRE

A meeting of the Review Committee was held on 21.03.2023 at 10:15 AM for intensive review of the service records of IAS officers of Joint AGMUT cadre, as required in terms of Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 to be read with DoP&T' s letter No. 25013/02/2005-AIS.II dated 28.06.2012. The composition of the Review Committee is as under:

1. Shri. Ajay-Kumar Bhalla, Union Home Secretary - Chairman.

2. Dr. Dharmendra S. Gangwar, Secretary (BM), MHA - Member,

3. Shri Naresh Kumar, Chief Secretary, Govt. of NCT of Delhi - Member

4. Shri Khilli Ram Meena, Addl. Secretary & FA, M/o Rural Development; Govt. of India - Member

5. Shri Ashutosh Agnihotri, Joint Secretary (UT), MHA - Member Secretary

2. The Review Committee carefully perused, Rule 16(3) of the AIS (DCRB) Rules, 1958 read with DoP&T' s letter No. 25013/02/2005 - AIS. II dated 28.06.2012. The Committee also considered the extant rules and instructions issued by the Govt. of India from time to time including the guidelines laid down by the Hon'ble Supreme Court of India in the case of ***State of Gujarat vs Umed Bhai M. Patel*** (civil appeal No 1561 of 2001) on premature retirement from service.

3. Accordingly, the Review Committee reviewed the service records of 121 IAS officers of joint AGMUT cadre, who were eligible for review as on 31.12.2022, by grouping them: into two categories:

(i) Category- I: 76 IAS officers who have completed 15 years of qualifying service.

(ii) Category-II: 45 IAS officers who have completed 25 years of qualifying service or attained the age of 50, whichever is earlier, subject to the following conditions:

(a) The officer should have completed minimum 15 years of qualifying service.

(b) In the case of State Service Officers appointed to the All India Service by promotion or selection, they should have completed minimum 05 years of actual service in the respective All India Service.

4. The Review Committee was apprised about the overall service records of the IAS officers in the 02 categories, including the summarized ACRs/APARs in the years preceding the review, adverse remarks', if any, recorded by the supervisory authorities, and status of promotion, empanelment, physical/mental health, integrity, and vigilance. The Committee was also informed about instances of officers being placed under suspension, implicated in criminal cases, or subjected to disciplinary inquiries. The issue of Ms. Padma Jaiswal, IAS (AGMUT:2003) has not been considered as the case of her removal from service is pending in the Delhi High Court.

5. The Review Committee was of the considered view that prolonged unauthorized absence from office should be considered, as a criterion for rendering officers physically/mentally unfit for continuation in public service. The Committee also took note of cases of non - initiation or delayed initiation of PARs/ACRs by officers for prolonged or multiple periods, with the same being viewed as non - seriousness toward official responsibilities. The Committee concluded that assessment of the suitability of IAS officers for retention, in public service would be based on a comprehensive examination of their overall service records, with primary focus on the following aspects:

(a) Analytical assessment of performance based on ACRs/APARs and material in the personal records.

(b) Action proposed/initiated/taken in the context of misconduct or criminal case.

6. (i) The Review Committee, after perusal of the overall service records, came to the conclusion that *120 out of the 121 IAS officers do not attract the provisions for premature retirement from service in public interest and are, therefore, suitable for continuation in service.*

(ii) *In the case of the remaining one IAS officer*, namely Ms. Rinku Dhugga, IAS (AGMUT: 1994), the Committee was of the considered view that comprehensive examination of her service records throughout her tenure was necessary to ascertain her suitability for retention in service.

7. CASE REVIEW OF MS. R1NKU DHUGGA, IAS (AGMUT: 1994)

Name of the officer: Ms. Rinku Dhugga

Service: IAS, 1994 [RR]

Date of Birth: 18.08.1969

Date of Superannuation: 31.08.2029

Current Grade: Super-Time Scale [Level 14 in the Pay Matrix]

Posting: Principal Secretary, Department of Indigenous Affairs, Govt. of Arunachal Pradesh [On unauthorized absence w. e. f. 30.06.2022]

7.1 ACR/APAR grading sheet during service

PAR Year	Period of PAR	Reporting	Reviewing	Accepting	Remarks
1997-98	01.04.1997 to 31.03.1998	NRC			Period treated as no-report period
1998-99	01.04.1998 to 31.03.1999	Time Barred			Supervisory authorities recorded appraisals beyond the time-frame stipulated in the AIS (CR) Rules, 1970[8]
1999-00	01.04.1999 to 15.06.1999	NRC			Period does not exceed 90 days.
	16.06.1999 to 08.12.1999	Time Barred			Self-appraisal report submitted after a delay of 1.5 years
	09.12.1999 to 31.03.2000			Demitted Office	Date not appended by Supervisory authorities while recording appraisal. Hence, it cannot be ascertained whether appraisals were recorded within the time-frame stipulated in the AIS (CR) Rules, 1970.
	01.04.2000 to 20.08.2000	Time Barred			Supervisory authorities recorded appraisals beyond the time-frame stipulated in the AIS (CR) Rules, 1970

[8] All India Services (Confidential Reports) Rules, 1970

2000-01	21.08.2000 to 08.12.2000	-	-	-	PAR not available in the records
	09.12.2000 to 31.03.2001	Very Good	Time Barred	Time Barred	Reviewing Authority appraisal beyond the time-frame stipulated in the AIS (CR) Rules, 1970
2001-02	01.04.2001 to 26.08.2001	-	-	-	PAR not initiated
	27.08.2001 to 31.03.2002	-	-	-	PAR not initiated as officer reported upon was not on duty for at least 90 days during the period
2002-03	01.04.2002 to 03.05.2002	-	-	-	
	04.05.2002 to 31.03.2003	-	-	-	Date not appended by Supervisory authorities while recording appraisal. Hence, it cannot be ascertained whether appraisals was recorded within the time-frame stipulated in the AIS (CR) Rules, 1970.
2003-04	01.04.2003 to 31.07.2003	-			PAR not available in the records
	01.08.2003 to 31.03.2004	Time Barred			Supervisory authorities recorded appraisals beyond the timeframe stipulated in the AIS (CR) Rules, 1970
2004-05	01.04.2004 to 08.04.2004	NRC			Period does not exceed 90 days
	09.04.2004 to 22.07.2004	Time Barred			Supervisory authorities recorded appraisals beyond the timeframe stipulated in the AIS (CR) Rules, 1970
	24.07.2004 to 31.03.2005	Time Barred			
2005-06	01.04.2005 to 31.03.2006	Time Barred			
2006-07	01.04.2006 to 02.07.2006	-			Seld appraisal report not submitted on time by officer reported upon
	03.07.2006 to 09.10.2006	-	-	-	Date not appended by supervisory authorities while recording appraisal. Hence, it cannot be ascertained whether appraisal was recorded within the time-frame stipulated in the AIS (CR) Rules, 1970
	10.01.2006 to 31.03.2007	-	-	-	Appraisal not recorded by supervisory Authorities
2007-08	01.04.2007 to 15.07.2007	NRC			Period of duty under supervisory authorities was less than 90 days
	16.07.2007 to 31.03.2008	9.00	9.00	-	Appraisal of Accepting Authority was time-barred in terms of AIS(PAR) Rules, 2007
2008-09	01.04.2008 to 31.07.2008	9.00	9.00	9.00	
	01.08.2008	7.20	9.00*	Demitted	*The then Hon'ble LG,

	to 31.03.2009			Office	A&N Islands increased final grading from "7.50" to "9.00" based on a representation submitted by Ms. Rinku DHugga, IAS
2009-10	01.04.2009 to 31.03.2010	No Report			**PAR not initiated** as officer was not duty for atleast 90 days during the period
2010-11	01.04.2010 to 04.10.2010				
	05.10.2010 to 31.03.2011	Time Barred			Self appraisal submitted on time by officer reported upon. However, appraisal recorded by supervisory authorities was time-barred in terms of AIS (PAR) Rules, 2007.
2011-12	01.04.2011 to 31.03.2012	Time Barred			1. Date not appended by officer reported upon while submitted self-appraisal report. Hence, it cannot be ascertained whether the same was submitted on time. 2. Appraisal recorded by supervisory authorities was time- barred in terms of AIS (PAR) Rules, 2007
2012-13	01.04.2012 to 25.10.2012	-	-	-	Self appraisal report not submitted on time by officer reported upon.
	26.10.2012 to 31.03.2013	Demitted Office	Demitted Office	Demitted Office	
2013-14	01.04.2013 to 08.01.2014	Time Barred			Self appraisal submitted on time by officer reported upon. However, appraisal recorded by supervisory authorities was time-barred in terms of AIS (PAR) Rules, 2007.
	09.01.2014 to 31.03.2014	NRC			Period does not exceed 90 days
2014-15	01.04.2014 to 27.08.2014	8.70	6.00	6.00	
	28.08.2014 to 28.02.2015	9.90	5.00	5.00	
	01.03.2015 to 31.03.2015	NRC			Period does not exceed 90 days
2015-16	01.04.2015 to 31.03.2016	8.32	9.10	5.00	
2016-17	01.04.2016 to 30.11.2016	8.74	8.74	Demitted Office	
	01.12.2016 to 31.03.2017	7.10	7.10	7.10	
2017-18	01.04.2017 to 10.08.2017	7.45	7.45	8.00	
	11.08.2017	7.45	7.45	8.00	

	to 03.12.2017				
	04.12.2017 to 31.03.2018	9.00	7.45	8.00	
2018-19	01.04.2018 to 27.11.2018	9.00	7.00	8.00	
	28.11.2018 to 31.03.2019	9.00	7.00	8.00	
2019-20	01.04.2019 to 31.03.2020	9.00	9.00	9.00	
2020-21	01.04.2020 to 11.10.2020	9.00	9.00	9.00	
	12.10.2020 to 28.12.2020	NRC			Period does not exceed 90 days
	29.12.2020 to 31.03.2020	9.00	9.00	9.00	
2021-22	01.04.2021 to 31.03.2022	9.50	9.50	Demitted Office	
2022-23	01.04.2022 to till date	-	-	-	Officer on unauthorized absence w.e.f. 30.06.2022

<u>Observations of the Review Committee</u>:

(i) The Committee observed that during the years 1998-99, 2000-01, 2003-04, 2004-05, 2005-06, 2007-08, 2010-11, 2011-12, and 2013-14, the Supervisory Authorities of Ms. Rinku Dhugga, IAS did not record their appraisals within the time - frame stipulated in the All India Services (Confidential Rolls) Rules, 1970 and All India Services (Performance Appraisal Report) Rules, 2007. The Committee also noted that during the years 1999-00, 2002-03, and 2006-07, the Supervisory Authorities of Ms. Rinku Dhugga, IAS did not append any date while recording their appraisals. Hence, it could not be ascertained whether the appraisals were recorded within the time - frame stipulated in the All India Services (Confidential Rolls) Rules, 1970.

In view of the above, the Committee decided that the ACRs/APARs recorded in respect of Ms. Rinku Dhugga, IAS during the aforesaid years are non-admissible. Further, since. the period of valid ACRs/APARs in respect of Ms. Rinku Dhugga, IAS is only approximately 10 years out of the 25 years of service completed by the officer in the IAS, the Committee was of the considered view that the assessment recorded in the ACRs/APARs could not considered as the sole basis for taking a decision regarding the officer's retention in service.

(ii) The Committee observed that Ms. Rinku Dhugga, IAS failed to submit her self-appraisal reports or initiate her PARs within the stipulated time-frame on multiple occasions; further, the Committee also noted several periods during which the officer' s performance could not be supervised as she was not on duty for the minimum required duration. This resulted in non-recording of her ACRs/APARs during the PAR years 1999-00, 2001-02, 2002-03, 2006-07, 2009-10, 2010-11, 2012-13, and 2022-23. The Committee viewed such acts by the officer as non-seriousness toward official responsibilities; moreover, the Committee also considered it possible that the officer deliberately delayed or avoided the initiation of her PARs to avoid adverse reports/appraisals by her supervisory authorities.

(iii) The Committee observed that the supervisory authorities of Ms. Rinku Dhugga, IAS consistently recorded adverse remarks regarding her performance during the PAR years 2014-15, 2015-16, 2017-18, and 2018-19 as under:

A. Shri Najeeb Jung, then Hon'ble Lieutenant Governor of Delhi, assessed Ms. Rinku Dhugga as an unreliable, non-punctual, and "average officer" who exhibited "tardy performance" during years 2014-15 and 2015-16.

B. Shri Arvind Kejriwal, Hon'ble Chief Minister of Delhi, opined that Ms. Rinku Dhugga, IAS "lacked commitment, sense of responsibility in official dispensation" and exhibited " incompetence, lackadaisical and laidback attitude, and insensitiveness towards public, interest" during the 2017-18 and 2018-19.

7.2. **Leave Records**

<u>Leave availed by the officer for greater than 30 days in a PAR year, which the prior approval of the Competent Authority</u>

PAR Year	Period of availed leave
2001-02	217 days (from 27.08.2001 to 31.03.2002)
2008-09	31 days (from 26.05.2008 to 27.06.2008)
2009-10	124 days (in 03 spells) + 389 days (in 07 spells) = 513 days
2010-11	
2019-20	71 days (in 06 spells)
2020-21	65 days (from 12.10.2020 to 17.12.2020)
2021-22	112 days (from 06.09.2021 to 26.12.2021)

<u>Leave availed by the officer without prior approval/clearance of the Competent Authority</u>

PAR Year	Period of leave	Purpose of leave
2016-17	06 days (from 17.06.2016 to 22.06.2016)	Ex-India
2017-18	04 days (from 19.05.2017 to 22.05.2017)	
	04 days (from 25.07.2017 to 28.07.2017)	

2019-20	35 days (from 25.11.2019 to 29.12.2019)	visit
	13 days (from 11.03.2020 to 23.02.2020)	
2021-22	28 days (from 28.04.2021 to 24.05.2021)	
2022-23	09 days (from 25.05.2022 to 02.06.2022)	
	266 days (from 30.06. 2022 to till date)	147 days of ex-India leave from 07.08.2022 to 31.12.2022 and 56 days of ex-India leave from 25.01.2023 to till date

Observations of the Review Committee:

The Committee observed that Ms. Rinku Dhugga, IAS has shown a continuous tendency to proceed on unauthorized leave, without obtaining prior approval/clearance from the Competent Authority, during her entire service tenure.

The Committee also noted that Ms. Rinku Dhugga, IAS was transferred from Delhi to Arunachal Pradesh vide MHA' s order dated 26.05.2022. After joining the Govt. of Arunachal Pradesh 27.06.2022, the officer immediately proceeded on unauthorized leave from 30.06.2022. The Committee took a serious view regarding the fact that the officer has not joined her duty with Govt. of Arunachal Pradesh since then. Further, she has again proceeded on an unauthorized India leave w. e. f. 07.08.2022. The Committee noted with concern that Ms. Rinku Dhugga, IAS remains on unauthorized absence from duty w. e. f. 30.06.2022 till date, with a majority of period being spent outside the country.

7.3 Promotion and Empanelment

Current Grade in cadre: Super-Time Scale Year of promotion: 2010

Current Grade at the Centre: Not empanelled till date Year of empanelment: NIL

Observations of the Review Committee:

The Committee noted that. Ms. Rinku Dhugga, IAS was promoted to Super-Time Scale in 20 along with her batch-mates, after completion of 16 years of service. However, the officer has failed to earn any promotions since then. All IAS officers of joint AGMUT cadre till 1998 batch, except Rinku Dhugga, IAS, have been promoted to the HAG on completion of 25 years of qualifying service. However, the DPC continuously determined that Ms. Rinku Dhugga, IAS was unfit for promotion to the HAG during the panel years 2019, 2020, 2021, 2022, and 2023.

The Committee further noted that Ms. Rinku Dhugga, IAS has not been empanelled with the Govt. India till date. IAS officers are generally considered for empanelment to Joint Secretary or equivalent level posts after completion of 16 years of service and for empanelment to Additional Secretary or equivalent level posts after completion of 25 years of service. All IAS officers of AGMUT cadre 1995 batch, except Ms. Rinku Dhugga, IAS, have been empanelled to hold atleast Joint Secretary or equivalent level posts with the Govt. of India.

7.4 **Vigilance Status**

The Committee observed that Ms. Rinku Dhugga, IAS is not clear from vigilance angle as on date because disciplinary proceedings have been initiated against her in the following two cases:

A. Ms. Rinku Dhugga, IAS, then posted with the Govt. of NCT of Delhi as Secretary (L&B), allege misused her official position to enter the Thyagraj Stadium, New Delhi with her pet after visit hours in May 2022. The officer has been charge-sheeted for imposition of minor penalty vide MHA's memorandum dated 27.02.2023.

B. Ms. Rinku Dhugga, IAS, currently posted with the Govt. of Arunachal Pradesh as Principal Secretary (Indigenous Affairs) proceeded on unauthorized foreign visit w.e.f. 07.08.2022. The officer has been charge-sheeted for imposition of major penalty vide MHA's memorandum dated 27.02.2023. Moreover, the period of her unauthorized foreign visit i.e., from 07.08.2022 till the date of return to the country, has been treated as dies-non.

8. **Recommendations of the Review Committee**

After careful examination of the case details relating to adverse remarks recorded by the supervise authorities regarding performance, repeated instances of proceeding on ex-India leave without prior sanction/clearance of the Competent Authority, non-promotion over a long period, non-empanelment with the Government of India, and long period of unauthorized absence from duty, the Review Committee is of the considered view that Ms. Rinku Dhugga, IAS (AGMUT: 1994) is not fit to continue in Government service. The Committee also considers that the ongoing disciplinary proceedings against Ms. Rinku Dhugga, IAS (AGMUT 1994) should not come in the way of prematurely retiring the officer in public interest. The disciplinary proceedings can continue after the officer's premature retirement from service in public interest and an appropriate penalty can be imposed on her terminal benefits after retirement. Accordingly, the Review

Committee hereby recommends as under:

> "Ms. Rinku Dhugga, IAS (AGMUT: 1994) may be prematurely retired from service in public interest under Rule 16 (3) of the All India Services (Death-cum-Retirement Benefits) Rules 1958 to be read with DoP&T's letter No. 25013/02/2005 - AIS. II dated 28. 06. 2012."

7. The respondent challenged the decision to compulsorily retire her from service *vide* OA 3636/2024, which has come to be allowed by the impugned judgment.

C. The impugned judgment

8. The Tribunal set aside the decision to compulsorily retire the respondent from service by holding that none of the considerations enumerated by the Review Committee, in its meeting dated 21 March 2023, justified the compulsory retirement of the respondent.

9. While doing so, the Tribunal placed reliance on the judgments of the Supreme Court in ***State of Gujarat v. Umedbhai M. Patel*[9], *State of Gujarat and Anr. v. Suryakant Chunilal Shah*[10]** and ***Nand Kumar Verma v. State of Jharkhand*[11].**

10. Apropos, the ACRs of the respondent, the Tribunal observed that, in most cases the ACRs were either not available or could not be taken into account owing to the default on the part of the Superior Officers, in entering the remarks / grading on time. The Tribunal observed that the respondent could not be faulted for defaults

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[9] (2001) 3 SCC 314
[10] (1991) 1 SCC 529
[11] (2012) 3 SCC 580

committed by her Superior Officers.

11. With respect to the comments entered by the Hon'ble Lieutenant Governor and the Chief Minister of Delhi, the Tribunal noted that no warning, advisory or memorandum have been issued to the respondent, calling upon her to improve her performance or otherwise adversely commenting upon her performance, consequent to the said comments. Rather, in the year immediately succeeding the adverse comments made by the Chief Minister, the respondent has been given excellent gradings in her ACRs. The Tribunal held that, therefore, these comments could not justify compulsory retirement of the respondent.

12. Referring to the judgment of the Supreme Court in ***Suryakant Chunilal Shah***, the Tribunal noted that the minutes of the various DPCs held on 11 December 2018, 28 December 2020, 24 December 2021 and 27 December 2022 noted that the respondent had consistently obtained a benchmark of more than seven which was the prescribed benchmark for promotion and that her integrity was beyond reproach.

13. This factor, even by itself, observes the Tribunal, was sufficient to vitiate the decision to compulsorily retire the respondent from service.

14. Adverting next to the unauthorised absence of the respondent from service, the Tribunal notes that uptill 2021-22, the respondent had remained absent for six days in 2016-2017, four days in two spells in 2017-2018, 48 days in 2019-2020 and 37 days in 2021-2022. All other leaves availed by the respondent were duly sanctioned. The Tribunal observes that no disciplinary or even administrative action have been initiated against the respondent for any of the aforesaid periods of alleged unauthorised absence and no adverse entry was ever entered in her ACRs.

15. The only period surviving was the period from 30 June 2022 to 23 April 2023, for which a chargesheet has been issued to the respondent on 27 February 2023, which was quashed by the Tribunal on 7 May 2005 on the ground of incompetence of the disciplinary authority.

16. Ms. Lakra points out that the decision of the Tribunal has subsequently been reversed by this Court on the ground that the chargesheet was within jurisdiction. Nonetheless, the fact remains that the chargesheet was pending even on the date when the decision to compulsorily retire the respondent was taken.

17. Further in respect of the leave availed by the respondent after 7 August 2022, the Tribunal has placed reliance on the counter affidavit filed by the State of Arunachal Pradesh, in which it has been specifically acknowledged that the leave sought by the respondent had been approved by her controlling officer and that the file had also been forwarded to the Secretary Personnel for obtaining approval but approval could not be obtained only for want of the service book of the respondent. It was, therefore, after the respondent's leave had been sanctioned that she had proceeded on leave. The Tribunal also places reliance on order dated 6 June 2023 issued by the Government of Arunachal Pradesh, by which the period of absence of the respondent from 7 August 2022 to 23 April 2023 was directed to be treated as *dies-non* but while clarifying that it would not be treated as break in service or result in any forfeiture of past service and no penalty would visit the respondent for the said offence under the All India Services (Discipline and Appeal) Rules, 1969. In such circumstances, observes the Tribunal, the respondent who had consistently obtained more than the requisite benchmark for promotion, in the DPC which met on 11 December 2018, 28 December 2020, 24 December 2021 and 27 December 2022, all of which had certified her as an officer of integrity with no pending disciplinary proceedings against her, could not be treated as "dead wood". The Tribunal also observes that compulsory retirement was not a substitute for disciplinary proceedings.

18. Aggrieved thereby, the Department of Personnel and Training has filed the present writ petition.

D. Rival Contentions

19. The primary contention of Ms. Lakra, is in the teeth of established law on the subject, the Tribunal has, in the present case, sat in appeal over the decision to compulsorily retire the respondent from service by substituting its own subjective decision for the decision of the petitioners, which is impermissible in law. She submits that a decision to compulsorily retire an officer is essentially one which is in the discretion of the Appointing Authority. It is only where such decision is exercised capriciously, *malafidely* or in a manifestly arbitrary manner with no reasons whatsoever, that the Court can interfere. Else, the sufficiency of the reasons for compulsorily retiring an officer from service is not a matter which can be examined by a Court. She relies for this purpose on the judgment of the Supreme Court in ***Pyare Mohan Lal v. State of Jharkhand***[12] and of a Division Bench of this Court of which one of us (C Hari Shankar, J.) was a member in ***Union of India v. Babulal Agrawal***[13]**.**

20. Ms. Lakra submits that the minutes of the Review Committee, extracted in para 6 (supra) were evocative and self-explanatory in nature. They set out manifest reasons regarding the respondent as an officer whom it was not desirable to continue in service. It is not one but a plenitude of considerations which weighed with the Review Committee and, even if any one of those consideration did not meet with the approval of the Court that would not justify setting aside the order of compulsory retirement.

21. Mr. Ankur Chhibber, in response, submits that the respondent was promoted as Super Time Scale in 2010. As such, her ACRs till 2010-2011 could not be considered as a basis to compulsorily retire her from service, the fact that she was promoted being a relevant consideration in that regard. All her ACRs after 2010-2011 were above the requisite benchmark for promotion and if she was not promoted, it was completely arbitrary decision on the part of the petitioner of which the petitioner itself could not be permitted to seek advantage. In fact, he submits that the most recent ACRs prior to the

[12] **(2010) 10 SCC 693**
[13] **2025 SCC OnLine Del 3423**

decision to compulsorily retire the respondent from service, all graded the respondent above 9.0 which was close to the highest grading which could not be obtained by an officer. In such circumstances, Mr. Chhibber submits that it would be absurd to treat the respondent as dead wood and, therefore, as liable to be compulsorily retired.

22. In her entire career points out Mr. Chhibber, there is not a single adverse entry in the respondent's ACRs. She has been visited only with two chargesheets which was issued on 27 February 2023, the first having been issued for taking her dog for a walk in the stadium, which was never proceeded with and the second was for unauthorised absence, which was quashed by the Tribunal on the ground of want of jurisdiction and consequent to the said decision having been set aside by this Court is presently pending.

23. He submits that in such circumstances, no fault whatsoever could be found with the Tribunal in setting aside the decision to compulsorily retire the respondent from service.

E. Analysis

I. <u>The law</u>

24. There can be no doubt about the fact that an order of compulsory retirement is fundamentally discretionary in nature, and that, ordinarily, said discretion vests with the competent administrative authority. It is also true that Courts cannot sit in appeal over the decision to compulsorily retire an officer.

25. With the evolution of the law, and the need to ensure fairness in public administration, the scope of judicial review of orders of compulsorily retirement, while still restricted, is alive and kicking – to employ a somewhat pedestrian adjective – to the extent that, if a case for interference is made out, the Court is not merely competent, but obligated to interfere. The latitude of discretion that vests in authorities who are empowered to compulsorily retire is vast, and the the very vastness of the said discretion renders it susceptible to abuse and misuse. This is a real and live possibility, of which the Supreme Court has taken notice more than once, and, therefore, the Supreme Court has itself identified the considerations which a Court, sitting in judicial review over a decision to compulsorily retire, is required to bear in mind.

26. We therefore deem it appropriate to identify the various indicia laid down by the Supreme Court regarding the scope of interference with orders of compulsory retirement and the factors that Courts are required to bear in mind in that regard, even while recognizing that the Court cannot substitute its view, as a Court of appeal, over the view of the administrative authority, provided it otherwise passes judicial muster.

27. These indicia may be enumerated as under, with reference to the judicial authorities which exposit them:

(i) Compulsory retirement was meant to weed out the worthless, so that the administration was not manned by drones, do nothings, incompetents and unworthies, who are a burden on the administration owing to insensitive, insouciant, unintelligent or dubious conduct.[14] Its object is to weed out the deadwood so as to maintain a high standard of efficiency and honesty and keep the service unpolluted[15], and also to weed out those whose integrity is doubtful.[16]

(ii) The Court is not absolved from minimal review of the validity of the order.[17] The Court has the right to examine whether some ground or material germane to the issue exists or not.[18]

(iii) The order should not be *mala fide*.[19]

(iv) The order should not be based on no evidence.[20]

(v) An order of compulsory retirement issued without application of mind stands vitiated.[21]

(vi) The order should not be arbitrary in the sense that no reasonable person, on the given material, would regard it as a case for compulsory retirement.[22]

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[14] **S. Ramachandra Raju v. State of Orissa, 1994 Supp (3) SCC 424 (para 6)**
[15] **Nand Kumar Verma v. State of Jharkhand, (2012) 3 SCC 580**
[16] **Rajesh Gupta v. State of J & K, (2013) 3 SCC 514 (para 25)**
[17] **Baldev Raj Chadha v. U.O.I., (1980) 4 SCC 321 (para 8), S. Ramachandra Raju (para 5)**
[18] **Nand Kumar Verma (para 32)**
[19] **Baikuntha Nath Das v. District Medical Officer, (1982) 2 SCC 299 (para 34 (iii)), S. Ramachandra Raju (para 4), Baldev Raj Chadha (para 8)**
[20] **Baikuntha Nath Das (para 34 (iii)), M.P. Sate Coop. Dairy Federation Ltd v. Rajnesh Kumar Jamindar, (2009) 15 SCC 221 (para 35)**
[21] **M.P. Sate Coop. Dairy Federation Ltd (para 35)**
[22] **Baikuntha Nath Das (para 34 (iii)), S. Ramachandra Raju (para 4), M.P. Sate Coop. Dairy Federation Ltd (para 35)**

(vii) The order should not be perverse.[23] It should not be based on collateral grounds.[24]

(viii) The order should promote public interest.[25]

(ix) The order should take into account the entire service record of the officer.[26] Failure to do so would vitiate the decision.[27]

(x) Record of later years should be accorded greater importance.[28] Consideration of much earlier reports, ignoring the performance in later years, in which where was no adverse entry, would stand vitiated.[29] Equally, failure to consider the ACRs of the last five years was held to vitiate the decision to compulsorily retire the officer.[30]

(xi) The entries in the CRs would have to be considered, favourable as well as adverse.[31] Reliance was required to be placed on the opinion of the higher officer who had an occasion to observe the working of the concerned officer.[32]

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[23] **Baikuntha Nath Das (para 34 (iii))**
[24] **S. Ramachandra Raju (para 4)**
[25] **S. Ramachandra Raju (para 4), Baldev Raj Chadha (para 8)**
[26] **Baikuntha Nath Das (para 34 (iv)), State of Orissa v. Ram Chandra Das, (1996) 5 SCC 331, Pramod Kumar Bajaj (paras 24, 26), Umedbhai M. Patel (para 11)**
[27] **S. Ramachandra Raju (para 7). C.D. Ailawadi v. U.O.I., (1990) 2 SCC 328, Madan Mohan Choudhary v. State of Bihar, (1999) 3 SCC 396 (para 32)**
[28] **Baikuntha Nath Das (para 34 (iv)), Ram Chandra Das (para 3), Pramod Kumar Bajaj (para 24)**
[29] **S. Ramachandra Raju (para 7)**
[30] **M.P. State Coop. Dairy Federation (para 41)**
[31] **Baikuntha Nath Das (para 34 (iv)), Ram Chandra Das (para 3), Pramod Kumar Bajaj (para 24)**
[32] **Nawal Singh v. State of U.P., (2003) 8 SCC 117 (para 12), Nand Kumar Verma (para 39)**

(xii) Acting in a casual, haphazard or even negligent manner in maintaining of records would not make out a case for compulsory retirement.[33]

(xiii) The fact that the officer was promoted to a higher post notwithstanding the adverse remarks results in the adverse remarks losing their sting, particularly when promotion was based on selection and not seniority.[34] Non-consideration of this fact would vitiate the decision, as promotion, or permission to cross efficiency bar, would militate against any presumption that the officer was deadwood.[35] This would amount to considering vital material and being influenced by material which is less relevant to the decision.[36] It would not stand to reason that an officer who was permitted to cross the efficiency bar would, shortly thereafter, be fit to be compulsorily retired.[37]

(xiv) Material to sustain and support the order must be disclosed by the State.[38]

(xv) If departmental proceedings are dropped midway and the officer is, instead, compulsorily retired, it would be stigmatic and would stand vitiated.[39] Similarly, if the authority has, instead of proceeding with and concluding the enquiry, adopted

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33 Rajesh Gupta (para 30)

34 Baikuntha Nath Das (para 34 (v)), S. Ramachandra Raju (para 10), M.P. State Coop. Dairy Federation (para 37), Umedbhai M Patel (para 11), Pramod Kumar Bajaj (para 26)

35 S. Ramachandra Raju (para 7), Swami Saran Saksena v. State of U.P., (1980) 1 SCC 12, Nand Kumar Verma (para 37), Pramod Kumar Bajaj v. Union of India, (2023) 11 SCC 466 (para 21)

36 S. Ramachandra Raju (para 7)

37 Swami Saran Saksena (para 3), Pramod Kumar Majaj (para 21)

38 Baldev Raj Chadha (para 8), S. Ramachandra Raju (para 5)

39 S. Ramachandra Raju (para 7)

the easier course of compulsorily retiring the officer, it would be penal and would stand vitiated.[40] Compulsory retirement, if resorted as a short cut to avoid disciplinary proceedings, stands vitiated even on that ground.[41]

(xvi) The real test has been described as "whether the order of compulsory retirement is occasioned by the concern of unsuitability or as a punishment for misconduct".[42]

II. Application of the principles by the Supreme Court

28. Having thus distilled the principles emerging from authoritative pronouncements of the Supreme Court on the aspect of judicial review in cases of compulsory retirement, we may advert to some of the decisions which exemplify how these principles have been applied by the Supreme Court.

29. ***S. Ramachandra Raju***

29.1 In this case, the Review Committee had relied on earlier ACRs of the officer which recorded his performance to be below average. However, in later years, it was noticed that his efficiency had considerably improved. He was also permitted to cross the efficiency bar. In these circumstances, the Supreme Court observed that, the officer having served for 14 years and having been permitted to cross the efficiency bar and reach the maximum salary in the pay scale, with

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[40] State of U.P. v. Madan Mohan Nagar, AIR 1967 SC 1260, State of U.P. v. Abhai Kishore Masta, (1995) 1 SCC 336 (para 8)0
[41] Umedbhai M. Patel (para 11), Pramod Kumar Bajaj (para 26)
[42] Nisha Priya Bhatia v. Union of India, (2020) 13 SCC 56, Pramod Kumar Bajaj (para 28)

no adverse entries for five years immediately prior to the decision to compulsorily retire him, that decision could not be sustained merely on the ground that, long years back, his performance was poor.

29.2 The decision overlooked the improvement in the officer's performance and, more specifically, the positive gradings in later years, proximate to the decision to compulsory retire him from service.

29.3 Yet another factor which compelled the Supreme Court to hold the decision to compulsorily retire the officer to be unsustainable was the fact that, though departmental proceedings have been initiated against him, they were dropped midway and he was compulsorily retired from service. The Supreme Court found this to be stigmatic in nature and, therefore, in contravention of Article 311 of the Constitution of India.

30. ***M.S. Bindra***[43]

30.1 In this case, the decision to compulsorily retire the officer was relating to his involvement in three cases, as an officer of the revenue department, the first with respect to M/s. Orkay Silk Mills Ltd.[44], the second with respect to M/s. Golden Tobacco Company[45] and the third with respect to one Ashok Jain and his brother. Consequent to issuance to it of a show cause notice, OSM was subjected to adjudication resulting in imposition, on it, of penalty and fine of ₹10

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[43] **M.S. Bindra v. Union of India, (1998) 7 SCC 310**
[44] "OSM", hereinafter
[45] "GTC", hereinafter

crores. However, the officer was found to be remiss in his duty as the adjudication order was nearly 100 pages in length, and passed on the day immediately following conclusion of hearing, which indicated that it was probably prepared before hand, a penalty of ₹50 Lacs was imposed on the proprietor of OSM without issuing a show cause notice to him and huge sums of duty were demanded from OSM on the ground that they representing unaccounted production, without going through OSM's claim that they related to wastage.

30.2 Apropos GTC, instructions were issued by one Bhattacharjee, Deputy Director to units under him to keep the investigations in respect of the company in abeyance. The Screening Committee held that these instructions would have been given at the behest of the officer. With respect to Ashok Jain and his brothers, the allegation was that as he was not paid ₹10 Lakhs as demanded by him, the officer moved applications before the concerned Criminal Court for cancellation of the Bail granted to them.

30.3 With respect to these three allegations against the officer, the Supreme Court noted that none of them could make out a case for compulsorily retiring him from service. Apropos OSM, it was noted that the operation was headed by the officer. Apropos the adjudication order passed in the case of OSM, the Supreme Court noted that no adverse inference could be drawn from the fact that an adjudication order of 100 pages had been released a day after final hearing concluded. It was quite possible that the prefatory portion of the order as well as the summary of evidence was prepared even while arguments were in seisin, leaving a crucial discussion part of the order to a stage after conclusion of arguments. Such a course of action, it was observed deserves to be commended rather than criticized. Similarly, it was too far fetched to assume that the officer penalized OSM without a show cause notice to help OSM.

30.4 Apropos GTC, the Supreme Court observed that instead of regarding the direction to Bhattacharjee to keep investigations in abeyance as a ground to compulsorily retire the officer, at the very least, the circumstances in which such instructions have been issued should have been asserted from Mr. Bhattacharjee. In the third case relating to import of spare parts for making Honda Cars, the officer had in fact applied for cancellation of the bail granted to the Jain Brothers, which indicated integrity on his part rather than otherwise. The Jain Brothers for their part never alleged that any demand had been made by the officer from them. Moreover, the Supreme Court observed that officers whose integrity was otherwise unquestionable could not be regarded as of doubtful integrity merely on the basis of statements of the persons whom they had prosecuted.

30.5 In these circumstances, the Supreme Court held that there was "utter dearth of evidence" with the Screening Committee on the basis of which it could conclude that the officer was a person of doubtful integrity.

31. ***Madan Mohan Choudhary***

This case dealt with compulsory retirement of a judicial officer. The Supreme Court noted that the decision to compulsorily retire the officer was taken without considering the fact that entries prior to his promotion to the superior judicial service were not bad and there was no doubt about his integrity. Again, in this case, the decision to compulsorily retire the officer was taken on the basis of certain judicial orders passed by him. The Supreme Court held that even if the order was to be treated as wrong in law, there was nothing to indicate that it had been passed on extraneous considerations and, therefore, there was no material on the basis of which it could be opined that it would be in public interest to retire the officer from service could be arrived at.

32. ***M.P. State Coop. Dairy Federation Ltd v. Rajnesh Kumar Jamindar***

In this case, the Supreme Court noted that, in the preceding years proximate to the date of compulsory retirement of the respondent, he had positive ACRs, which were not taken into consideration. In para 41 of the report, the Supreme Court noted that "the necessity to give special consideration to the performance of the employees for the last five years before the order was passed had been given a complete go-by".

33. ***Nand Kumar Verma***

33.1 Selective consideration of the ACRs of the officer, by the Reviewing Committee was, in this case, too, found to be a factor which vitiated the decision of compulsory retirement. It is worthwhile to reproduce, in this context, paras 35 and 36 of the report, thus:

"35. The High Court has taken the decision on the basis of selective service record which includes the summarised ACRs, as quoted in the impugned judgment, for the selected years. The ACRs for the initial years 1975-1976 and 1976-1977 remark him as capable of improvement against the quality of work, the ACRs for the years 1982-1983, 1983-1984 point that his work is unsatisfactory, the ACRs for the years 1984-1985, 1987-1988 remark his work performance as unsatisfactory with bad reputation and quarrelsome attitude, and the ACRs for the later years 1993-1994 and 1994-1995 refer to some private complaints and remark that his powers were divested by the High Court and the ACRs for the recent years 1997-1998 and 1998-1999 point no defect in judicial work but disposal of cases is poor. Whereas, the appellant furnished certain service records which include the ACR recorded by the Inspecting Judge in the year 1985 which evaluate the appellant as B — Satisfactory against the entry "Net result", further the ACR prepared by the District and Sessions Judge, Samastipur for the year 1997-1998 assessed him as an officer of average merit, maintaining good relationship with bar, staff and colleagues but poor disposal, and the ACR prepared by the District and Sessions Judge, Muzaffarpur for the year 1998-1999 assessed him as a good officer but poor disposal. However, his poor disposal during this period is justified up to certain extent in the background of his involvement in the continuous and unnecessary disciplinary proceedings which was based on the charges of granting of bail indiscriminately, even after the fact that he had been exonerated of these charges long back in the year 1995 by the High Court at Patna.

36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service."

33.2 This decision is significant, as it illustrates an instance in which the Court examined the ACRs of the officer itself and even opined that there was a reasonable explanation for the poor disposal by the officer for certain years. Clearly, the extent of judicial review in such matters is, therefore, not nearly as circumscribed as Ms. Lakra would seek to contend.

33.3 In the context of the officer's performance, the Supreme Court also emphasised that the view of the officers who had an opportunity to watch his functioning from close quarters, and had reported favourably regarding his performance, had to be accorded greater importance.

34. ***Rajesh Gupta***

34.1 Three separate FIRs were registered against the officer in this case. Consequent on investigation, the allegations in all three FIRs were found to be "not proved". In one of the FIRs, however, there was a recommendation to initiate departmental action against the officer, which was never initiated. Consequent on completion of investigation in the said FIR, the officer was in fact promoted as Executive Engineer. During the period for which he worked as Executive Engineer, the officer was required to recommend sanctioning of technical approval for construction work in various projects. His conduct in such capacity was enquired into. The enquiry officer noted that no proper records had been maintained by the office of the officer and some sanctions had been issued out of record. Casual and haphazard manner of maintaining records was also noted. Though this report was submitted on 22 July 2003, no action was taken on the basis thereof. Purportedly on a cumulative assessment of his work, the officer was compulsorily retired.

34.2 The Supreme Court noted that the officer had 24 years of spotless service to his credit. In his ACR, he had been graded "Good" for the year 1997-1998. His integrity was remarked to be "excellent". Similar remarks were entered for the years 1998-1999 and 1999-2000. For the year 1999-2000, the reviewing officer had assessed the officer to be "very good". Similar remarks were to be found in his ACR for the year 2000-2001. It was also noted that no complaint had been brought to the notice of the reporting officer in any of these years.

34.3 Despite his service record being thus blemish-free, the officer was compulsorily retired on 26 April 2005 on the ground that, as per inputs provided by the Additional DG, CID, he had amassed properties disproportionate to his known sources of income. Prior thereto, a departmental enquiry had been initiated against him on 22 May 2003 on the allegation of having issued backdated sanctions relating to execution of certain works, passing of bills and estimates in Jammu and other matters related thereto.

34.4 The Supreme Court held, by evaluating the material, that there was in fact no material before the High Powered Committee which had considered his case, to conclude that he possessed assets disproportionate to his known sources of income. Insofar as sanctioning of technical approval for construction works was concerned, the Supreme Court observed that, at worst, the officer could have been held to have acted in a casual and haphazard manner in the maintenance of records, which, even if negligent, could not lead to a conclusion that he acted with ulterior motive. The conclusions at which the High Powered Committee had arrived, too, did not co-related to assessment of work and integrity of the officer in his ACR. In such circumstances, the Supreme Court was of the view that the decision of the State Government to compulsorily retire the officer suffered from the vice of arbitrariness.

35. ***Pramod Kumar Bajaj***

35.1 The APARs of the appellant Pramod Kumar Bajaj[46] in this case reflected that, over several years, his integrity was assessed as "beyond doubt" and his work performance was found to be up to the mark. In the APARs for the decade prior to the year of his compulsory retirement, Bajaj was graded as "outstanding". There were no adverse entries in his APAR. No aspersion was caste on his conduct or character during this period. His efficiency and integrity remained unimpeachable as per his service records.

35.2 One of the factors which propelled the decision to compulsorily retire Bajaj was that there were nine complaints against him. The Supreme Court noted that of these nine complaints, four had been closed in 2016-17. One complaint related to alleged harassment, by Bajaj, of another officer of the department, who was, later, arrested on the charges of corruption. No explanation was ever sought from Bajaj on the said complaint. Two other complaints were stated to be "under examination". The only surviving complaint was one which had been made by the former wife of Bajaj, alleging bigamy, moral turpitude, etc. She had later divorced the officer. The matrimonial dispute

[46] "Bajaj" hereinafter

between them was settled in mediation. A decree of divorce by mutual consent was also recorded. The Supreme Court held that, in such circumstances, Bajaj could not have been compulsorily retired on the ground that there was a series of complaints against him. Though all these complaints were within the knowledge of the department at all points of time, Bajaj's service record remained unblemished.

35.3 The Supreme Court also noted that though Bajaj had been cleared and approved up to the ACC for appointment as Member, Income Tax Appellate Tribunal[47], the vigilance clearance earlier granted to him for the said periods was later withheld on the ground that there was an adverse Intelligence Bureau[48] Report against him. This IB Report also arose from the matrimonial dispute between Bajaj and his wife, which was later settled. Certain orders passed by Bajaj in adjudication were also cited as grounds for compulsory retirement, whereas, as the Supreme Court noted, these orders were upheld both by the ITAT as well as by the High Court. Following this, the Supreme Court has observed as under in para 4 of the report:

> "There appears an apparent contradiction in the approach of the respondents who had till as late as in July 2019 continued to grade the appellant as "Outstanding" and had assessed his integrity as "Beyond doubt". But in less than three months reckoned therefrom, the respondents had turned turtle to arrive at the conclusion that he deserved to be compulsorily retired. If the appellant was worthy of being continued in service for little short of a decade after he had attained the age of 50 years and of being granted an overall grade of 9 on the scale of 1-10 on 31-7-2019 it has not been shown as to what had transpired thereafter that made the respondents resort to FR 56(j) and invoke the public interest doctrine to compulsorily retire him with just three months of service left for his retirement, in routine. In such a case, this Court is inclined to pierce the

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[47] "ITAT" hereinafter
[48] "IB" hereinafter

> smokescreen and on doing so, we are of the firm view that the order of compulsory retirement in the given facts and circumstances of the case cannot be sustained. The said order is punitive in nature and was passed to short-circuit the disciplinary proceedings pending against the appellant and ensure his immediate removal. The impugned order passed by the respondents does not pass muster as it feels to satisfy the underlying test of serving the interest of the public."

III. Applying the law to the facts before us

36. In the present case, when one applies the above principles, there is no scope, whatsoever, for this Court to interfere with the decision of the Tribunal.

37. Ms. Lakra emphatically sought to contend that the Tribunal had sat as a court of appeal with the decision of the competent authority but had found fit to compulsorily retire the respondent. According to her, the Tribunal far exceeded its power of judicial review.

38. We do not agree.

39. The judgments cited by us *supra* make it apparent that far from there being any embargo, there is not even any proscription on the court, while sitting in judicial review over an order of compulsory retirement, perusing the material against the concerned officer in detail, to satisfy itself that there existed material which would justify compulsory retirement of the officer. It is true that the court would not substitute its subjective satisfaction for that of the competent authority. Unless it is a case where there is no material, or the material against the officer is woefully inadequate to sustain the decision to compulsorily retire her, or him, the court would not interfere with the decision of compulsory retirement.

40. In a case such as the present, where the Review Committee has clearly itemized the considerations which prompted its decision to compulsorily retire the petitioner, the Tribunal was well within its authority in examining whether, on facts, the decision would sustain in view of the extant legal position. Of course, while doing so, the Tribunal – as also this Court – would have to bear in mind the inbuilt limitations on judicial review in such a case, taking care to see that the exercise of judicial review does not assume the colour of appellate jurisdiction.

41. In the present case, however, the review committee has clearly set out the considerations which have propelled the decision to compulsorily retire the respondent. When one examines these facts in the backdrop of the law as noted earlier in this judgment, the position which emerges is as under.

42. The Review Committee took into consideration

(i) the ACRs of the respondent,

(ii) adverse comments made against the respondent by the LG and the Chief Minister,

(iii) periods during which the respondent allegedly remained absent without authorization and

(iv) two charge-sheets issued to the respondent.

III A. Re. ACRs

43. *There is no consideration, by the Review Committee, of the gradings given to the respondent in her ACRs, though they stand tabulated in the Minutes of the Meeting of the Review Committee. More specifically, the Review Committee has completely ignored the fact that,*

(i) for the period 1 December 2016 to 31 March 2017, she was graded 7.10,

(ii) for the periods 1 April 2017 to 10 August 2017, 11 August 2017 to 3 December 2017, 4 December 2017 to 31 March 2018, 1 April 2018 to 27 November 2018 and 28 November 2018 to 31 March 2019, she was consistently graded 8.0, and

(iii) for the periods 1 April 2019 to 31 March 2020, 1 April 2020 to 11 October 2020 and 29 December 2020 to 31 March 2021, she was consistently graded 9.0, which corresponds to "Outstanding".

Applying the law laid down in the judgments cited earlier, the omission, on the part of the Review Committee, in taking into account the contents of the respondents' ACRs is by itself fatal to the decision to compulsorily retire her. As has been held by the Supreme Court in similar matters, it is difficult to accept that an officer who, in the last 5 years prior to the decision to compulsorily retire her, was consistently getting outstanding or very high gradings, could be regarded as deadwood, and fit to be weeded out of service.

44. *In fact, there is complete non-consideration, by the Review Committee, of the* ***content*** *of the respondent's ACRs. This is a serious lacuna, which, again, is fatal to the decision to compulsorily retire her.*

45. Instead, the Review Committee has concentrated on peripherals, while referring to the ACRs. It has noted the fact that, for certain periods, the higher officers had not reviewed the ACRs in time. As the Tribunal has rightly held, the respondent cannot be blamed for delay on the part of her superior officers. Then again, for some periods, she had served under the officer for less than 90 days, so that the ACR could not be written. This, too, could not be laid at the respondent's door. The only periods for which the respondent was alleged not to have submitted her self-appraisals on time were 2006-2007 and 2012-2013, which were much prior to the decision to compulsorily retire her. To us, it is clear that, even if it were to be assumed that, for two periods way back in time, there was delay on the part of the respondent in submitting her self appraisals, that cannot be regarded as a ground to regard her as "deadwood" nearly a decade thereafter especially when, in the interregnum, she was awarded high rankings in her ACRs. Unfortunately, as we have already noted, these rankings were entirely ignored by the Review Committee.

III B. <u>Comments of the LG and the Chief Minister</u>

46. The Tribunal has also discountenanced the reliance, placed by the respondent, on the comments of the LG and the Chief Minister. We find no error in the view of the Tribunal. The Tribunal has noted that, after the said comments had been made, the respondent had secured gradings of 8.0 and 9.0 in her APARs. The judgments of the Supreme Court, cited *supra*, make it apparent that gradings in the APARs have to be accorded pre-eminence.

47. Besides, as has been correctly noted by the Tribunal, no action – not even a warning or so much as a memo – was issued to the petitioner, which could vouchsafe the remarks of the LG and the Chief Minister. These remarks could not, therefore, have been relied upon to treat the respondent as deadwood; much less to compulsorily retire her from service.

III C. <u>Re. unauthorized absence</u>

48. There are three periods of absence to which the minutes of the Review Committee allude, divided into (i) leave availed, of more than 30 days' duration, with the approval of the competent authority, (ii) leave availed without prior approval or clearance of the competent authority and (iii) absence with effect from 7 August 2022.

49. The period of leave availed *with the approval of the competent authority*, quite obviously, cannot be treated as a ground to regard the respondent as deadwood, or otherwise liable to be compulsorily retired. Approval of leave sought itself predicates that the leave was sought for acceptable and genuine grounds. Such leave, irrespective of its length, duration or frequency, cannot be regarded as unauthorized absence, or operate to the prejudice of an officer for any purpose. One may refer, in this context, to ***State of Punjab v.***

Bakshish Singh[49], which clearly holds that leave, once sanctioned, if availed, cannot be regarded as unauthorized absence.

50. Apart from these, prior to 7 August 2022, the periods of absence of the respondent were for 6 days in 2016-2017, 4 days in two spells in 2017-2018, 48 days in 2019-2020 and 37 days in 2021-2022. *Not a single memo, or advisory, or warning, or disciplinary proceeding, was initiated against the respondent for any of these periods of leave. Rather, in all these years, the respondent was consistently granted an APAR grading of 9.0, thereby clearly belying any assumption that these periods of absence indicated that the respondent was "deadwood", or required to be weeded out.*

51. Insofar as the alleged unauthorized absence post 7 August 2022 is concerned, the respondent was charge-sheeted for the said period, and the charge-sheet stood quashed by the Tribunal on the day when the Screening Committee met on the ground of incompetence of the issuing authority. The Screening Committee Minutes, for no conceivable reason, do not record this fact. Ms Lakra has pointed out that the decision of the Tribunal has since been set aside by this Court, as a result of which the disciplinary proceedings stand revived. Even so, when the disciplinary proceedings are still pending, and keeping in view the consistent performance of the respondent in the preceding years, the pendency of the proceedings can hardly constitute a basis for compulsorily retiring the respondent. It cannot be forgotten that a charge-sheet merely contains allegations, and, till they are proved, they remain allegations.

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[49] **(1998) 8 SCC 222**

52. In the present case, this aspect assumes greater importance in view of two predisposing factors. The first is the fact that the respondent had not only applied for leave for the aforesaid period, but her application had been recommended by her Controlling Officer, and the file was in fact forwarded to the Secretary (Personnel) for sanction, which could not be granted only because her service book was not available. The second important factor is the issuance of Order dated 6 June 2023 by the Government of Arunachal Pradesh, treating the period of absence from 7 August 2022 to 28 April 2023 as *dies non*, and further directing that it was not to be treated as a break in service, or entail forfeiture of the respondent's past service.

53. It is settled, in the decisions cited earlier, that compulsory retirement cannot be used to remove an employee, merely to avoid disciplinary proceedings. In the present case, when a charge-sheet for the period of absence of the respondent post 7 August 2022 already stands issued, it would be completely unjustified to compulsorily retire the respondent from service on the same ground. What, one wonders, would be the consequence, if the charge-sheet is ultimately dropped?

III D. Vigilance Status

54. The Review Committee also opined that the respondent was not clear from the vigilance angle, as she had had two charge-sheets issued to her.

55. The Tribunal has rejected this, too, as a ground to compulsorily retire the respondent and, in our considered opinion, rightly. The first charge-sheet was issued in 2023 for imposition of minor penalty, on the allegation that the respondent had walked her dog in a stadium. No disciplinary proceeding followed, thereby indicating that, even in the perception of the petitioner, the case was too trivial to merit disciplinary action. We may note, in this context, that the respondent's husband, also a senior civil servant, was also charge-sheeted for the same incident – as, presumably, they both walked the dog – and was merely awarded a minor punishment.

56. The second charge-sheet was issued to the respondent on 27 February 2023, for her alleged unauthorized absence from work with effect from 7 August 2022. We have already dealt with this charge-sheet, and its ramifications, earlier.

III E. <u>Relevant factors omitted from consideration</u>

57. Most significantly, however, the decision to compulsorily retire the respondent from service stands fatally imperilled by the omission, on the part of the Review Committee, to consider all factors in favour of the respondent, which, whether cumulatively or even individually considered, would clearly negate any assumption that she was "deadwood", or deserving of being compulsorily retired. The Reviewing Committee omitted to take into consideration the fact that

(i) *the respondent was not awarded <u>a single adverse remark</u>, in her APARs, during her entire tenure,*

(ii) *her gradings, in the five years preceding the decision to* *compulsorily retire her, were all outstanding, i.e. above 9.0,*

(iii) *the DPCs which met on 11 December 2018, 28 December 2020, 24 December 2021 and 27 December 2022, to consider her case for promotion, all recorded that she was an officer of certified integrity,*

(iv) *if at all she was not promoted despite her gradings, the fact that there were no adverse remarks against her, and her unquestioned integrity, that could not be held as a factor against her to justify compulsorily retiring her from service, and*

(v) *she had, in fact, been promoted to the Supertime Scale in 2010, so that her records prior thereto ceased to retain any serious significance.*

58. Most importantly, the performance of the respondent, as reflected in her ACRs, has been totally ignored. This is a serious flaw in the decision of the Reviewing Committee and, consequently, the decision to compulsorily retire her from service.

59. As has been held in ***S. Ramachandra Raju***, ***Nand Kumar Verma*** and ***Rajesh Gupta***, compulsorily retirement is an extreme step, taken to "weed out the worthless", so that the administration was not manned by "drones, do nothings, incompetents and unworthies, who are a burden on the administration owing to insensitive, insouciant, unintelligent or dubious conduct", to "weed out the deadwood" so as to maintain efficiency, honesty and keep the service unpolluted and free from officers of doubtful integrity. None of these unenviable adjectives have been employed by the Reviewing Committee to describe the respondent, nor is there a scintilla of material, in the Minutes of the Meeting of the Reviewing Committee, which would indicate that any of them *could* apply.

60. The considerations which should inform a decision to compulsorily retire an officer, when applied to the present case would, therefore, seem to indicate exactly to the contrary.

III F. <u>A final factor</u>

61. We are constrained to record, here, a final, somewhat disquieting, factor, for which Ms. Lakra, too, is unable to provide any reasonable explanation. Significantly, the Tribunal, in the impugned judgment, has also noticed it. The Review Committee considered the case of as many as 122 officers for judging their suitability for compulsory retirement. In the case of 121 officers, the Review Committee merely observes, summarily, that, "after perusal of the overall service records, … 120 of the 121 IAS officers do not attract the provisions for premature retirement from service in public interest and are, therefore, suitable for continuation in service". However, "in the case of the remaining one IAS officer (the respondent)", the Committee felt that "comprehensive examination of her service records throughout her tenure was necessary to ascertain her suitability for continuation in service".

62. Why was the respondent thus singled out for privileged treatment of "comprehensive examination of her service records throughout her tenure"? Why was this not done in the case of 120 other officers? Why is there no whisper of any justification for the clearly summary decision that all the 120 officers were *ex facie* eligible to be continued, and the case of the respondent alone required to be subjected to a searching scrutiny?

63. We do not know.

64. We may note that, though the Tribunal has noted this fact with some consternation, the writ petition, too, provides no explanation.

65. For some reason, however, it is *ex facie* clear that the case of the respondent was accorded treatment which was radically different from that accorded to the remaining 120 officers considered by the Review Committee.

66. We find this puzzling, given the outstanding gradings earned by the respondent in the years proximate to the meeting of the Review Committee, and the fact that there is not even a whisper of an allegation that her integrity was not above board, or that she was inefficient or tardy in the discharge of her duties.

67. For want of any further forthcoming material, we say no more.

F. Conclusion

68. In such circumstances, we are in agreement with the Tribunal that the decision to compulsorily retire the respondent is vitiated both in law and on facts.

69. The writ petition is dismissed *in limine*.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

APRIL 15, 2026/*AR/aky/yg*