HIGH COURT OF DELHI

BENCH : HON'BLE MR. JUSTICE V. KAMESWAR RAO, HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

Date of Decision: April 29, 2024.

W.P.(C) 3409/2019, CM APPLs. 15677/2019 & 30205/2023

JITENDRA KUMAR OJHA …PETITIONER

VERSUS

UNION OF INDIA …RESPONDENT

Legislation:

Fundamental Rules, Rule 56(j)
Research and Analysis Wing (Recruitment Cadre and Services) Rules, 1975, Rule 135
CCS (Pension) Rules, 1972, Rule 48

Subject: Judicial review of compulsory retirement under Fundamental Rule 56(j) on grounds of non-performance and integrity doubts, with reference to entire service record and statutory adherence.

Headnotes:

Compulsory Retirement Controversy – Petitioner challenges his compulsory retirement under FR 56(j) based on his entire service record being reviewed, claiming it was without procedural compliance and an assessment of an 'outstanding' service record – Dispute centers on whether adverse records can be disregarded and if the timing of the review was legally appropriate – Tribunal dismisses OA, stating no procedural impropriety or unjust application of FR 56(j), emphasizes that full record review justified the decision – [Paras 1-16, 53-76]

Legal Interpretation of FR 56(j) – Consideration of entire service record, including past adverse entries permissible under FR 56(j) – Supreme Court precedents cited to reject "washed-off theory" where earlier adverse records

may not be ignored in compulsory retirement considerations – High Court upholds that compulsory retirement under FR 56(j) is not punitive and does not imply stigma – [Paras 54, 59-61]

Procedural Adherence and Judicial Review – High Court examines whether procedural norms under FR 56(j) and related Office Memorandums were followed – Findings indicate the review was conducted post-petitioner reaching age threshold but within acceptable limits – Upholds Tribunal's view that non-adherence to exact review timing does not invalidate compulsory retirement decision when procedural fairness is observed – [Paras 52, 55-56, 73-75]

Decision: The petition challenging the compulsory retirement was dismissed with no costs, affirming the decision of the Tribunal which found the retirement justified based on the petitioner's service record, adherence to procedure, and lack of evidence of arbitrariness or malafides in the application of FR 56(j).

Referred Cases:

- **Baikuntha Nath Das & Anr vs. Chief District Medical Officer Saripada & Anr., (1992) 2 SCC 299**
- **S G Jaisinghani vs. Union of India and Ors., 1967 SCC OnLine SC 6**
- **S Ramachandra Raju vs. State of Orissa, 1994 Supp (3) Supreme Court Cases 424**
- **Baldev Raj Chadha vs. Union of India and Others, 1980 (4) SCC 321**
- **Ms. Nisha Priya Bhatia vs. Union of India and Another, (2020) 13 Supreme Court Cases 56**

Representing Advocates:

Mr. Umesh Sharma, Mr. Rakesh Pandey, Ms. Shivani, Mr. Arnav Mittal, Mr. Rajat Kapoor for the petitioner

Mr. Kritiman Singh CGSC with Mr. Waize Ali Noor, Mr. Varun Rajawat, Mr. Kartik Baijal, Mr. Varun Pratap Singh, Ms. Vidhi Jain, Ms. Shreya V. Mehra, and Mr. Madhav Bajaj for the respondent

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner challenging the order dated February 15, 2019, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("Tribunal") in OA being 1052/2018, whereby the Tribunal has dismissed the OA of the petitioner by stating in paragraph 7 onwards as under:-

"7. The duties that were discharged by the applicant in RAS are of typical and complicated nature, v The record discloses that at various points of time his work was appreciated by the authorities at different levels. However, by its very nature the service of an officer in RAS has its own graph. The ups and downs occur more on account of the satisfaction or otherwise of the officer himself than due to any external factors.

8. In the words of the applicant himself, he did not feel like continuing in the organization after 2012. In para 4.7, he stated as under:-

"4.7 It is submitted that by 2012 the applicant had realized, that his career in the respondent"s organization was over and there existed a serious all round threat to him if he stepped out abruptly. However, having invested the best years of his life in the organization, the applicant wanted to exit on a pleasant and graceful note. In that regard the applicant addressed the letters dated 21.10.2014, 28.06.2017 and 21.09.2017 to the Secretary(R). The first letter of 21.10.2014 contains comments of the then Secretary (R) and the second letter dated 28.06.2017 was duly acknowledged by his staff officer. While seeking to exit the organization, the applicant did not wish to desert a position of responsibility. The then Secretary(R) in 2014 inveigled the applicant to stay focused on the important task of Training and despite his persistent pleas for permission to proceed on VRS, he was nominated to the NDC in 2016. As soon as he completed the NDC course, his request for 45 days leave was turned down and he was hurriedly posted in a position of responsibility that involved heavy workload and tremendous responsibility. Any attempt to

abruptly quit those assignments in the midst thereof would have amounted to desertion and wasting the tax payer"s money and trust. Consequently, the Applicant decided to continue serving for at least one more year before quitting service. His intention to eventually exit had been amply informed to all concerned as also his request for necessary support for a smooth release from service. He had clearly stated this in his letters dated 28.06.2017 and 21.09.2017 to the Secretary (R) as well as in an earlier letter dated 10.02.2017 addressed to the Special Secretary. However, his representation dated 21.09.2017 and other requests were peremptorily rejected by the respondent vide letter dated 26.0.2017."

9. He continued his effort to move out of the organization by addressing letters at a subsequent stage also. Last of such effort was by meeting the Special Secretary personally. Para 4.9 of the OA reads as under:-

"4.9 That on 15.01.2018, the applicant had also approached Special Secretary citing his unstable health, irregular blood sugar, intestinal and kidney health issues and requested for long leave before putting in his papers for VRS. In response, the Special
Secretary, advised that unless immediate hospitalization was necessary, the applicant should continue with his duties until mid February, 2018, when a substitute was expected to join. Given his proclivity to attach greater importance to his duties, the applicant withheld his request for VRS and continued discharging his official responsibilities. That the applicant had sought templates for VRS in December, 2017, from the concerned Under Secretary can be easily verified. The requests aforesaid were entirely oral given the high degree of trust that the applicant assumed at all times within and among the officers of the organization."

10. It is in this background that the impugned order dated 17.01.2018 came to be passed. It reads as under:- " Now therefore, in exercise of The powers conferred by clause (j) of Rule 56 of the Fundamental Rules, the President hereby retires Shri Jitendra Kumar Ojha with immediate effect, he having already attained the age of
50 years qualifying for pension on the January, 17, 2018. The President also directs that Shri Jitendra Kumar Ojha shall be paid a sum equivalent to the amount of his pay plus allowance for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement."

11. Though the applicant made an attempt to contend that his case was not processed in accordance with the procedure prescribed for exercise of power under Clause (j) of Rule 56 of Fundamental Rules, we do not find any pleading in that behalf.

12. The apprehension of the applicant is that the order may be treated as the one, reflecting the lack of confidence in him or attributing absence of integrity. However, there is nothing in the order which can be construed as making even a remote suggestion to that effect.

13. The procedure prescribed by the DOP&T requires the case of this nature to be dealt with by a Committee, constituted for this purpose. The committee examined the entire record and came to the conclusion that the applicant deserves to be retired.

14. In all fairness to him, they did not indicate any reason that warranted such a decision. Even in the counter affidavit they did not mention anything that would adversely affect the respect or morale of the applicant.

15. Whatever may be the desirability or otherwise of continuing an officer even after he expressed his desire to move out, it is not at all advisable to ignore such developments in an organization like RAS. Not only the full dedication to serve but also complete inclination to work is needed. Even the slightest of disinclination to work in the Organization is prone to be detrimental to the Nation.

16. Though the applicant made a mention of his desire to take VRS, the same did not take place. He has been expressing his desire to leave the organization on several occasions, that include his meetings with the superior officers. It is under these circumstances, that the impugned order came to be passed. The applicant was extended all the benefits as though he retired on attaining the age of superannuation. In addition to that, the amount equivalent to salary of three months was paid.

17. We are of the view that no prejudice can be said to have been caused to the applicant and that the impugned order does not suffer from any factual or legal infirmity. To allay the fear of the applicant that it may be treated as the one expressing lack of confidence in him or pointing out absence of integrity, we make it clear that the order shall not be construed as reflecting the lack of integrity or efficiency on the part of the applicant.

18. We do not find any merit in the OA. It is accordingly dismissed with the above observations. There shall be no order as to costs"

2. The facts as noted from the record are that the petitioner joined the Indian Railway Traffic Service ("IRTS") in the year 1990. Thereafter, he joined the Research & Analysis Service ("RAS") of Govt. of India in the year 1993. It was his case before the Tribunal that he handled several responsibilities that were entrusted to him over the period of his service. His accomplishments in National Security and Governance, Counter Insurgency, Health as component of National Security etc. were rewarded by various authorities. However, in the year 2012, he realized that there existed an all round threat to him and wanted to have a respectful and graceful exit from the Organization.

3. In this regard, the petitioner addressed certain letters to the concerned Secretary. It was his case that he was dissuaded by his superiors from taking Voluntary Retirement Scheme ("VRS") and in fact, he was persuaded to accept an assignment in National Defence College ("NDC") which was duly completed by him. Even, on January 16, 2018, he met the Secretary and renewed his request to permit him to opt for VRS.

4. It is also his case that the respondent issued an order dated January 17, 2018 retiring the petitioner from service, in exercise of powers conferred under Rule 56 (j) of Fundamental Rules ("FR 56 (j)") on his attaining 50 years of age. It was mentioned in that order that the petitioner would qualify to be given pension and that a sum equivalent to three months of pay and allowances shall be paid to him immediately before the retirement.

5. It is the case of the petitioner and so contended by Mr. Umesh Sharma, learned counsel appearing for the petitioner that the career of the petitioner was brilliant throughout and his ACRs were rated mostly as „outstanding" and despite that, the respondent has passed the order of compulsory retirement, almost as a measure of punishment. Therefore, such an order is malafide in nature, more so, when there was absolutely no basis for the respondent to pass that order.

6. It is in this background that the petitioner has challenged the order dated January 17, 2018, passed by the respondent, whereby in the public interest, the petitioner was compulsorily retired by invoking powers stipulated under FR 56 (j) of the Fundamental Rules ("Rules"). 7. He submitted that it is evident from the order dated January 17, 2018, that the statutory power conferred upon the reviewing committee/competent authority has not been

exercised in the same manner as prescribed in the Office Memorandum dated March 21, 2014. [Ref. ***Nazir Ahmad v. King Emperor, AIR 1936 PC 253***, ***State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358*** and ***A.K. Roy v. State of Punjab, (1986) 4 SCC 326***].

8. It is his submission that despite hostility of powerful syndicates and cliques, the petitioner‟s high quality professional efforts, diligence and meritorious services, had been regularly acknowledged and appreciated by the respondent. Moreover, the petitioner had also received *'Uttam Seva Praman Patra*' for the year 2009, which was duly signed by the then Hon'ble Prime Minister of India in 2011.

9. He submitted that the eligibility for granting such an award is minimum 6 „outstanding‟ APARs in the preceding 10 years with none being less than „very good‟. No APARs/ACR of the petitioner had ever been graded less than „very good‟ despite sustained hostility of a few senior officers against him. Also, the petitioner was always promoted on time and has neither faced any DE/PE nor any charge sheet has been issued to him.

10. It is his submission that in the middle of 2010, the petitioner started facing threats/intimidations/several other clandestine acts of harassments including such accidents/incidents which seriously endangered his life. Most records qua the aforesaid incidents are available with police agencies of the concerned country and these were also brought to the notice of the security wing of the respondent‟s organization through supervisory officer of the petitioner, who in early 2012 also forwarded a long list of numbers from an inimical country from which threatening calls were made at residential phone of the petitioner.

11. He submitted that the petitioner was never informed or intimated about review being carried out by the respondent of the services of the petitioner. Also, the conclusion of the purported „Review Committee‟ runs contrary to the service record of the petitioner. Hence, the same raises reasonable suspicion that such an order has been passed arbitrarily with possible manipulations and forgery of records.

12. It is his submission that various Office Memorandums on FR 56 (j) published by the Government of India from time to time and interpretation thereof by the Supreme Court envisages that the said Rule is meant to remove the „deadwood‟ in administration in order to improve its overall efficiency. It empowers the Government to retire such officials whose entire service records, particularly over the preceding five years, contain recurrent

instances of non-performance, and/ or where there are recurrent instances of doubtful integrity at any point of time in the course of entire service.

13. He submitted that the Office Memorandum dated March 21, 2014, on periodical review of services of government servants under FR 56 (j) /Rule 48 of CCS (Pension) Rules,1972, clearly emphasizes vide Para 4, on adherence to the „*specified criteria*" in order to ensure that *„the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily*" . Such specified criteria envisages:

a) observance of the timeline, which is a specific tri-monthly quarter, depending on date of birth/completion of certain number of years of service in respect of each official; b) examination of entire service records, with emphasis on records of the preceding five years (only in case of retirement on grounds of ineffectiveness); and c) recurrent instances of bad performance and/or „suspected integrity".

14. It is his submission that the action of the respondent is *mala fide*, illegal and vindictive as no material grounds existed for compulsorily retiring the petitioner, inasmuch as, most of the APARs/ACRs of the petitioner have continuously been graded „outstanding" and none of them have been graded less than „very good", etc.. Moreover, the petitioner was also promoted regularly without initiation of any PE/DE against him, with the last promotion being to the rank of Joint Secretary in 2012. Even otherwise, promotion despite adverse entries is a fact in favour of the petitioner.

15. He submitted that the following criteria as laid down in OM dated March 21, 2014, which is required to be followed by the Review Committee in making recommendation for compulsory retirement, has not been followed by the respondent whilst compulsorily retiring the petitioner :-

i. government employee whose integrity is doubtful should be retired;

ii. government employees who are found to be ineffective should be retired;

16. While entire service record should be considered at the time of review, no employee should be retired on ground of ineffectiveness if his service during the preceding 5 years is satisfactory. It is his case that from the following reasons, it is clear that the aforesaid criteria has not been followed by the respondent:-

i. the respondent never pleaded before the Tribunal that the integrity of petitioner was doubtful or he was ineffective;

ii. the petitioner was awarded "*Uttam Sewa Praman Patra*" by the then Hon"ble Prime Minister for the year 2009;

v. the petitioner was picked up for promotion to the rank of Joint Secretary in the year 2012; iv. APARs of the petitioner from 2012-2015, show „Outstanding‟ grading and his „integrity‟ beyond doubt; The petitioner was nominated to NDC programme held from January 04, 2016 – November 25, 2016. The essential requirements for nomination to this programme were excellent record of past performance, clearance from vigilance/disciplinary angle, no standing adverse ACR/APAR entry and forwarding of copies of APARs of preceding five year to Ministry of Defence;

vi. The letter of the respondent dated September 16, 2015 nominating the petitioner for the aforesaid course mentioned that the petitioner was clear from vigilance/disciplinary angle. Moreover, the petitioner successfully completed the course and was in top bracket of officers who earned the degree in First Class with Distinction.

17. He submitted that it is the case of respondent itself that as per OMs dated March 21, 2014 and September 11, 2015, the services of the petitioner were to be reviewed only in January-March quarter of 2016.

Any review outside the specified timeline is not permissible and has been done illegally in the petitioner‟s case, i.e. his services were reviewed in 2017. Hence, the review carried out in 2017 that culminated into passing of impugned order of compulsory retirement dated January 17, 2018, is bad in law and cannot be sustained.

18. It is his case that malafide is writ large by the respondent as the same is evident from the following facts:-

i. In the petitioner‟s letter dated October 21, 2014, he firmly opposed practices within the organization which violated principles of fairness and objectivity in establishment matters. He was also warned in 2012 to stay away from Dawood network related issues. As such, the petitioner apprehended revengeful action from invisible quarters and wanted to quit the organization;

ii. The petitioner‟s letter dated February 10, 2017 depicts that petitioner was intentionally targeted. Therein, he also cited about his ill health and again made the request to quit the organization;

iii. In the petitioner‟s letter dated June 28, 2017, he complained of being targeted through every possible means for his past initiatives, including under rating of his part APAR as „Very

Good‟ by overlooking all available facts; iv. In the petitioner‟s letter dated September 21, 2017, he requested for support in smooth exit from the organization and also for correction of last 2 (part) of his APARs. Therein, he apprehended revenge in future.

19. Moreover, it is his submission that the grounds as laid down for compulsory retirement under FR 56 (j):- are restricted to „doubtful integrity" and/or „Non-performance", if reflected in service records. The said Rule lays down a specific time frame to review service records of officials for this purpose, which is two tri-monthly Quarters (Q) before an official attains the age of 50/55 years or completes 30 years of service. As the petitioner was born on August 15, 1966, and joined the services before attaining the age of 35 years, his services under FR 56 (j) could be reviewed only in Q-1 (Jan-Mar) of 2016, more particularly, when he had attained the age of 50 years in Q-3 (July-Sept) of 2016. As per respondent"s own counter affidavit filed before the Tribunal, it is evident that it reviewed the services of the petitioner, under this Rule in Q-3 of 2017 (i.e., September 2017). Hence, this very „review", being way beyond the stipulated Quarter, is null and void and so are all actions/decisions arising out of the same.

20. He submitted that during Q-1 (Jan-March) of 2016, when the petitioner"s services were due for review under the aforesaid Rule, the petitioner had already joined the NDC programme (i.e., on January 04, 2016). For which the stipulated requirements, as prescribed by the Ministry of Defence were excellent and unblemished service records.

The respondent"s Joint Secretary"s letter dated September 16, 2015, addressed to Under Secretary of Ministry of Defence, vide which the petitioner was nominated to the above mentioned programme, had explicitly stated that the petitioner was clear from vigilance/disciplinary angle. The letter had also forwarded attested photocopies of the petitioner"s APARs of the preceding five years to Ministry of Defence as proof of excellent and unblemished service records of the petitioner.

21. It is his case that it was established before the Tribunal that the grounds laid down for compulsory retirement under FR 56 (j), i.e., „doubtful integrity" and „non-performance", were not applicable to the petitioner. The Tribunal"s order clearly stated that *"the order shall not be construed as reflecting lack of integrity or efficiency on the part of the applicant."* On non-observance of the procedures by the respondent to invoke FR 56(j), the Tribunal stated that it did not find the same in the pleadings even though the same had been sufficiently explained.

Thus, the Tribunal upheld an unlawful order on an irrelevant/extraneous and false premise that the petitioner lacked full „inclination to work" with the respondent. Therefore, the impugned order passed by the Tribunal violates the very principle of rule of law, on which our entire constitutional edifice

rests. (Ref. ***S G Jaisinghani v. Union of India and Ors., 1967 SCC OnLine SC 6 and connected matter***).

22. He submitted that the petitioner‟s excellent and unblemished service records manifest from the following facts:- timely promotion to every rank; absence of a single DE/PE during entire service; most of his APARs being „Outstanding‟ and none less than „Very Good‟.

23. It is his submission that the respondent had seized all files/papers of the petitioner while retiring him and made no inventory of the same and continue to retain most of them. In its counter-affidavit filed before the Tribunal, the respondent declined to provide details of work performed by the petitioner citing secrecy clauses but submitted many false information.

24. He submitted that instead of rebutting charges of manipulation of the petitioner‟s service records before the Tribunal, the respondent filed an MA, citing irrelevant grounds and prayed for in camera hearing. Moreover, during hearing before the Tribunal, the respondent skirted charges of forgery of records and took the plea that:- a) it had retired the petitioner in pursuance of his persistent efforts to exit the organisation and b) retirement order under FR 56 (j) is not stigmatic. The respondent took same position in this Court until November 20, 2019.

25. He submitted that on November 20, 2019, before this Court, the petitioner offered to forego all the benefits of service, if the respondent withdraw its unlawful order dated January 17, 2018 and allow the petitioner to proceed on VRS under FR 56 (k). As such, this Court directed the petitioner to make a representation for VRS within a week. After taking additional time twice before this Court, the respondent rejected the petitioner‟s request vide its letter dated March 17, 2020, despite FR 56 (jj)(i) allows the same.

26. It is his submission that the respondent has suddenly brought a secret report after a gap of 5+ years, claiming it, as the basis to retire the petitioner. FR 56 (j) is clear inasmuch as, it states that *“the order of compulsory retirement shall not be passed as a shortcut to avoid departmental enquiry”.* If ever there was a secret report against the petitioner, the respondent should have initiated departmental proceedings. Subsequent to the claimed duration of this report (200912), the petitioner received *„Uttam Sewa Praman Patra‟* Award (2011), promoted to rank of JS (2012), appointed as Head of Training (2013) and nominated to NDC (2015). Therefore, such report is clearly fake.

27. He submitted that FR 56 (j) clearly states that the decision to retire a Government officer under the aforesaid rule *“should not be an arbitrary*

decision or should not be based on collateral ground". Thus, an infructuous secret report, even if bona fide, is irrelevant/extraneous in this matter. If respondent wished to retire the petitioner on basis of a secret report, it could have invoked Rule 135 of the Research and Analysis Wing (Recruitment Cadre and Services) Rules, 1975 as held by the Supreme Court in the case of ***Ms. Nisha Priya Bhatia v. Union of India and Another, (2020) 13 Supreme Court Cases 56***.

28. Therefore, the respondent has arbitrarily and unlawfully retired the petitioner with a premeditated agenda under the guise of FR 56 (j). The respondent has neither followed the due process (schedule of review) laid down under the aforesaid Rule nor any of the grounds stipulated for retirement under FR 56 (j)– *"doubtful integrity and nonperformance"*- were ever applicable even remotely to the petitioner. The respondent has clearly forged/manipulated service records of the petitioner to retire him. An abrupt, arbitrary and stigmatic retirement followed by media defamation as per respondent‟s own threat to the petitioner while the latter was in service, crippled the economic security, harmed the dignity of the petitioner and his family as well as jeopardised their safety. Cascading /collateral damages are far higher for the petitioner due to secrecy/suspicion associated with his former profession. As such, the petitioner became unemployable and unsafe universally. Amidst a wider trend of serious attrition of in-house rigorously trained officers of R&AW, the respondent has abused its secrecy cover/covert resources to torment the petitioner and did not spare even his family.

29. As such, the petitioner has filed the present petition with the following prayers:-

"It is, therefore, most respectfully prayed that by an appropriate Writ order or direction this Hon'ble Court may graciously be pleased to:

i) Quash and set aside the impugned judgment and final order dated 15/02/2019 passed in Original Application No. 1052/2018 by the learned Central Administrative Tribunal, Principal Bench New Delhi, and ii) Direct the respondent to grant pension related benefits admissible to premature retirees of R&AW including admissible rehabilitation package and fixation of pension in such cases under RC&S Rules 135 of R&AW; and iii) Pass any other or such further order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case in order to secure the ends of justice."

SUBMISSIONS ON BEHALF OF THE RESPONDENT

30. Whereas, on the other hand, it is the case of the respondent and so contended by Mr. Kirtiman Singh, learned CGSC, that according to instructions contained in OMs dated March 21, 2014 and September 11, 2015, a two-member Review Committee was constituted in the year 2017 for reviewing the services of Group 'A' officers of the organization of the rank of Under Secretary and above who had attained the age of 50 years on August 15, 2016 under the provision of FR 56(j) and Rule 48 of CCS (Pension) Rules 1972. The services of the petitioner, who had attained the age of 50 years as on August 15, 2016 was also taken up for review by the said committee along with 169 other eligible officers as per the Rules.

31. He submitted that the entire records of service of the officers whose services were being reviewed were placed before the Review Committee. The Review Committee had gone through all materials including those related to the professional competence and performance of the officers under review. The review committee in its report, *inter alia* recommended the compulsory retirement of the petitioner along with 03 other Officers. The said recommendations of the Review Committee were placed before the Appointing Authority which accepted the same. The petitioner was accordingly compulsorily retired from service vide order dated January 17, 2018. The appointing authority is vested with the power under FR 56 (j), to retire an employee if it is felt that his continuance in the service would not be in the interest of the organization. It is also re-iterated that the compulsory retirement under FR 56 (j) cannot be treated as a measure of punishment and the procedure prescribed in OM dated September 11, 2015 issued by the DOP&T was followed and that no illegality has crept into the proceedings.

32. Moreover, in the hearing dated November 20, 2019, it was submitted by the petitioner that the order of compulsory retirement passed under FR 56 (j) is stigmatic in nature as it is only relied upon in case of certain circumstances of suspicion and when there is a doubt over the integrity of the petitioner. It was also submitted that without prejudice to the stand so taken, the petitioner was willing to submit his papers for voluntary retirement and in fact he would not claim any benefit for the period from the date when the order under FR 56 (j) was passed. This Court, as a result, directed that the representation be submitted to the department and the department would consider the same in accordance with law.

33. The application dated November 27, 2019 seeking VRS under FR 56 (k) from immediate effect, i.e.. November 27, 2019 was submitted by the

petitioner. The application of the petitioner was examined in consultation with DOP&T, wherein it clarified vide its ID Note dated February 14, 2020, that a notice of VRS is to be given by serving employee and not by a retired employee. Further, there is no provision under the relevant rules of premature retirement i.e., [FR 56 (j)/(l)] and Rule 48 of CCS (Pension Rules), 1972 and voluntary retirement under FR 56 (k) and Rule 48/48A of CCS (Pension Rules), 1972, which allows a Government Employee to convert his premature retirement into voluntary retirement after his retirement from Government Service. Also, there is no rule/provision to reinstate a retired Government employee into Government service after retirement. A reply based on the above clarification of DOP&T and in compliance of directions of this Court dated November 20, 2019 was sent to the petitioner vide letter no. 3/Pers.1A11993(33)-2114 dated March 17, 2020.

REJOINDER SUBMISSIONS OF THE PETITIONER

34. In the rejoinder submission it has been reiterated by the petitioner that the statutory power conferred upon the competent authority has not been exercised in the same manner as laid down in the OMs of 2014 & 2015. To contend the same, reliance has been placed upon the judgments of the Supreme Court in the cases of ***Singhara Singh (supra)*** & ***A.K. Roy (supra).***

35. There was nothing in the petitioner's service records at any point of time to merit a retirement under FR 56 (j). The petitioner had been promoted to the rank of Joint Secretary in the year 2012. The Criteria for this promotion was a minimum of 3/6 „Outstanding" APARs in preceding 5/10 years, with none less than „Very Good", besides vigilance/disciplinary clearance.

36. Para 5 (c) of the OM of 2014 clearly states that *"while the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness of his service (if) during the preceding 5 years or where he has been promoted to a higher post (and) during that 5 year period, his service in the highest post has been found satisfactory"*. It further adds that *"consideration is ordinarily to be confined to the preceding 5 years or to the period in the higher post ... "*. Moreover, OM dated September 11, 2015 also states, *"if the officer was given promotion, despite adverse entries made in the confidential record, that is a fact in favour of officer."*

37. It is his submission that the Tribunal in its impugned order has stated that the retirement order dated January 17, 2018 under FR 56 (j) was passed in the background of consistent efforts by the petitioner to exit the

organization since 2012. The Tribunal observed, *"whatever may be desirability or otherwise of continuing an officer even after he expressed his desire to move out, it is not at all advisable to ignore such developments in an organization like RAS (R&A W). Not only full dedication to serve but also complete inclination to work is needed. Even the slightest of disinclination to work in the organization is prone to be detrimental to the nation."* However, the Tribunal has overlooked the law and failed to appreciate the context. It is a well-settled law that only an unconditional and specific letter of resignation/VRS can be accepted to retire a government official (conditional letters of resignation are invalid for this purpose). Here, the petitioner was pleading for assistance to exit the organization as the concerned leadership of R&A W had failed to protect the former from sustained machinations by a cartel of senior officers. The petitioner had no other option to escape such persecution but to seek exit. Since, RAS is not part of central staffing scheme, the petitioner could not have gone on deputation. Simultaneously, as a career intelligence officer of India, the petitioner had zero prospects of employability in any international organization or even most domestic corporate organizations, given the distrust associated with his profession.

38. Moreover, the Tribunal in its impugned order never stated that the respondent had invoked/applied FR 56 (j) against the petitioner lawfully. The respondent also failed to establish that it had followed the laid down procedure prescribed under the aforesaid Rule. On the petitioner's submissions on non-observance of the procedure by the respondent, the Tribunal in its order stated: *"though the applicant made an attempt to contend his case was not processed in accordance with the procedure prescribed for exercise of power under clause (j) of Rule 56 of Fundamental rules, we do not find any pleading in that behalf."* However, the petitioner had clearly mentioned that *“in view of petitioner's excellent service record and nomination to NDC programme (besides various other factors and judgments of the Hon'ble Supreme Court on this subject), no ground existed for the petitioner's retirement under CCS Rule FR 56 (j)”.* Also, since the order was reserved for 8 days, the petitioner had no opportunity to clarify the same.

39. It is his case that the impugned order passed by the Tribunal is contradictory and bad in law, as neither the laid down procedure was observed correctly nor the identified grounds for retirement under FR 56 (j) were applicable in the case of the petitioner. Therefore, the Cabinet Secretariat's order dated January 17, 2018, retiring the petitioner under FR 56 (j), should have been quashed right away. Even if this order did not

specifically cast aspersion on integrity/efficiency of the petitioner, a retirement under FR 56 (j), by default implies *'nonperformance'* and/or *'doubtful integrity'* (as reflected in the service records) as the ground for such retirement. It is not only a life-long stigma but also a legal barrier to most career opportunities within and outside the government.

40. He submitted that the conclusion of the Tribunal that the petitioner was retired under FR 56 (j) over his disinclination to continue in service is grossly erroneous. R&AW has a separate rule viz. Rule 135 of the Research and Analysis Wing (Recruitment Cadre and Services) Rules, 1975, that gives powers to Secretary (R&AW) to retire any officer even without assigning a reason. This rule came to the notice of the Supreme Court in the case of ***Ms. Nisha Priya Bhatia (supra)***. Simultaneously, nothing prohibited the respondent to let petitioner go on deputation or waive the NDC bond to facilitate his voluntary retirement to help him fade out from the profession.

41. It is his case that the Tribunal has erroneously concluded that a voluntary retirement and a compulsory retirement under FR 56 (j) are one and the same thing. A stigmatic retirement that was imposed with elements of deception, surprise and coercion has severely disrupted the lives of the petitioner and his family. It has harmed the petitioner's social reputation, dignity, physical-financial security and destroyed all prospects of his post-retirement employability. It has compounded the negative impact for the petitioner given the secrecy associated with his work and even service records.

42. It is his submission that the Tribunal, while upholding the unlawful order, has also overlooked the fact, which has been repeatedly asserted by the Supreme Court in its various judgments that our entire governance edifice/constitutional system rests on the principle of rule of law. In ***S G Jaisinghani (supra)***, which has been consistently upheld/cited in various judgments until now, the Supreme Court has held that *"it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law by this point of view means that decision should be made by the application of known principles of rules and, in general, such decision should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is anti-thesis of a decision taken in accordance with rule of law."*

43. He submitted that unlawful retirement order and its flawed endorsement by the Tribunal also violates the petitioner's fundamental right to equality as guaranteed under Article 14 of the Constitution. Going by the premise that *'equals ought not to be treated unequally'* and *'unequals ought not to be treated equally',* the petitioner has been unlawfully treated in the same way as those officials whose service records reflected doubtful integrity and/or non-performance, for purposes of retirement under FR 56 (j). Since the petitioner's service records had remained excellent and unblemished, unlawful application of stigmatic FR 56 (j) amounts to direct assault on the petitioner's right under Article 14 of the Constitution.

44. He also submitted that the Supreme Court has repeatedly held that exercise of powers under FR 56 (j) is open to judicial review. The Supreme Court**,** in ***S Ramachandra Raju v. State of Orissa, 1994 Supp (3) Supreme Court Cases 424****,** *has* held" ***...*** *the court has the power and duty to exercise the power of judicial review not as court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by malafide or actuated by extraneous consideration or arbitrary in retiring the Govt officer compulsorily from service"*. Similarly, in ***Baldev Raj Chadha v. Union of India and Others, 1980 (4) SCC 321***, it has been held that *"We must emphatically state that under the guise of "public interest", if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. The exercise of power must be bonafide and promote public interest".*

45. It is his case that the concerned leadership/members of the respondent organization appears to have indulged in even some criminal conspiracy like actions as preparatory measures unlawfully retiring the petitioner. There was a strange burglar in the Government quarter of the petitioner in 2014 during which the petitioner's personal papers/files/bank statements etc of 2009-12 were stolen. The respondent has admitted in its counter that it had retained personal papers of the petitioner on the day of his retirement on January 17, 2018, by claiming that "*all his personal papers have been returned after scrutiny and under proper acknowledgment."* This is incorrect. The acknowledgment pertains only to those papers that were returned. The respondent deliberately did not create a list of papers that were retained / seized on the aforesaid day, despite insistence of the petitioner for the same. The petitioner, in his rejoinder before the Tribunal had rejected the

respondent‟s claim that it had returned all the personal papers of the petitioner. A wishy-washy acknowledgment of personal papers of the petitioner seized from his briefcase was provided by the concerned Joint Secretary (Security & Personnel)**.** He submitted that not a single paper out of this, figures in the list of returned papers submitted by the respondent. The entire episode compels the petitioner to conclude that the same set of officers had engineered the theft of the petitioner's papers even in April 2014 to potentially find something to frame the petitioner.

46. He submitted that the petitioner's letter dated October 21, 2014, had expressed apprehension of 'revengeful action from some invisible quarters' over his professional initiatives during 2009-12. Such apprehensions turned correct when two of the same set of officers under-rated the petitioner „Very Good‟ in two part- APARs during 2016 and 2017, besides psychologically assaulting the petitioner on several pretexts, as stated in the letters dated February 10, 2017, June 28, 2017 and September 21, 2017. Apart from performance, which remains secret in the respondent‟s organization, the petitioner was also under rated on personality and bearing, professional knowledge, reading habits, intelligence and articulation etc, where a quick rise or decline is not possible. In this connection, he has relied upon the comments/ grading of previous four officers, including a Secretary (R), in APARs of the petitioner. He has also relied on the contents at Sl. No.5 of Annexure A-2, of the rejoinder that mentions of a letter containing names of 191 books borrowed by the petitioner in the preceding 3 years from the Training Academy of R&AW (the letter, like all other documents seized from the briefcase of the petitioner was never returned). He has also enclosed the copies of three letters regarding return of 75 books to Training Academy Library at Annexure A-3. He has enclosed at Annexure A-4, the certificate of his M Phil degree in First Class with Distinction from University of Madras earned during the NDC programme in 2016. The petitioner has challenged these two „Very Good‟ grading even though these APARs were neither in the reckoning for a lawful review of the petitioner's services under FR 56 (j) (due in 2016), nor were „Very Good‟ gradings sufficient to justify the petitioner's retirement under this Rule.

47. He also submitted that the respondent has not been respectful to even this Court as this Court had directed them on November 20, 2019, in pursuance of the submissions made by the petitioner's counsel, to consider the petitioner's request for VRS under FR 56 (k) as per law. This court had found merit in the submissions by the petitioner's counsel that the retirement

order dated January 17, 2018 under FR 56 (j) against the petitioner was bad in law in view of the latter's excellent and unblemished service records. Hence, instead of dismissing the writ or embarrassing the Government, this Court gave an opportunity to the respondent to withdraw its unlawful order and consider the petitioner's request for VRS under FR 56 (k). This court was fully aware that already retired officers cannot apply for VRS and hence the order dated November 20, 2019 had implied that legality of the retirement order dated January 17, 2018 be reviewed and if it was unsustainable as per the law, the same should be withdrawn to consider the petitioner's request for VRS. Therefore, the petitioner in his letter dated December 2, 2019, addressed to Secretary (R) had requested for withdrawal of this (unlawful) retirement order and consider his request for VRS under FR 56 (k). However, the respondent did not accede to the request of the petitioner.

48. It is his submission that this Court may be pleased to award full salary and all other consequential benefits to the petitioner since the date of his unlawful retirement in 2018 and write off the pension amount paid to the petitioner insofar as, to mitigate the sufferings of the petitioner and his family arising out of this abrupt, unlawful and stigmatic retirement order, and accompanying acts of unlawful harassment to harm the petitioner, despite the petitioner's dedicated, selfless and faceless services, with the highest levels of integrity, towards security of the nation.

49. He submitted that the respondent has arbitrarily and unlawfully retired the petitioner, with a premeditated agenda under the guise of FR 56 (j). The respondent has neither followed the due process (schedule of review) laid down under the aforesaid rule nor any of the grounds stipulated for retirement under FR 56 (j)– „doubtful integrity" and „nonperformance"- were ever applicable even remotely to the petitioner.

50. Hence, on the aforementioned grounds, the petitioner has sought the reliefs as prayed for in the present petition.

ANALYSIS

51. Having heard the learned counsel for the parties and perused the record, the short issue that arises for consideration is whether the Tribunal was justified in dismissing the OA filed by the petitioner for the reasons already reproduced in paragraph 1 above.

52. The grounds on which the order of the Tribunal has been challenged have been delineated in the submissions of the counsel for the petitioner.

53. Broadly, the impugned order dated January 17, 2018 has been challenged by the petitioner by stating that the petitioner had „outstanding"

gradings for the years 2012-2015 and his integrity is beyond doubt; he was awarded „*Uttam Seva Praman Patra*‟ by the Hon‟ble Prime Minister in 2009; he was nominated to NDC programme in the year 2016; it is not case of the respondent that the integrity of the petitioner is doubtful; as per the OMs dated March 21, 2014 and September 11, 2015, the services of the petitioner could be reviewed only in January – March quarter of 2016, i.e., before the petitioner attaining the age of 50 years on August 15, 2016; in the present case, it is an admitted position that the review committee was constituted in the year 2017. Hence, the criteria laid down in the OMs of 2014 and 2015, which states that case of a government servant under FR 56(j), should be reviewed six months before he/she attains the age of 50/55 years, has not been followed; Therefore, review carried out in the year 2017 is bad in law and cannot be sustained.

54. Insofar as, the plea of the petitioner that the review should have been carried out before the petitioner attained the age of 50 years is concerned, the same is not appealing. In this regard, reference may be made to the OM dated August 28, 2020, issued by the respondent, though the same came into effect after passing of the impugned order of January 17, 2018, paragraph 6 thereof, clearly clarifies the rule position in respect of adherence to the time schedule in case of review as far as invocation of FR 56(j) by the respondent is concerned. Paragraph 6 of the OM dated August 28, 2020, is reproduced as under for ready reference:-

“6. Government may, at any time after a Government servant has attained the age of 50/55 years or completed 30 years of service, as the case may be, retire him pre-maturely in public interest. ***However, non-adherence to the time-lines as indicated in para 4 above due to certain administrative exigencies shall not take away the powers of Appropriate Authority to pre-maturely retire a Government servant under FR 56(j), 56(l) and Rule 48 of CCS (Pension) Rules, 1972. Therefore, review of a Government servant for the purposes of these Rules can be undertaken even after he has attained the age of 50/55 years in cases covered by FR 56 (j) or after he has completed 30 years of qualifying service under FR 56(l) / Rule 48 of CCS(Pension) Rules, 1972****.”*

(emphasis supplied)

55. The underlined portion of paragraph 6 of the OM of 2020, clearly contemplates that non-adherence to the time-lines due to certain administrative exigencies shall not take away the power of appropriate

authority to pre-maturely retire a government servant under FR 56(j), 56(l) and Rule 48 of CCS (Pension) Rules, 1972. It is further clarified that review of a government servant can also be undertaken even after he has attained the age of 50/55 years in cases covered by FR 56 (j).

56. There is no dispute to the fact that the petitioner had attained the age of 50 years on August 15, 2016. It is only 5 or 6 months thereafter that the review committee was proposed to be constituted to review the case of the petitioner under FR 56 (j). However, the plea that such a review committee should have been constituted six months before the petitioner had attained the age of 50 years would not hold good in view of paragraph 6 of the OM of 2020 as reproduced in paragraph 60 above.

57. Even otherwise, the law as stood then i.e., as laid down by the Supreme Court in the case of ***Rajendra Singh Verma (Dead) through L.Rs. v. Governor of NCT of Delhi and Ors., MANU/SC/1071/ 2011***, also contemplates that FR 56 (j) gives absolute right to the appropriate authority to retire any government servant who entered the service before attaining the age of 35 years, after he has attained the age of 50 years. So, it necessarily follows that even if the review committee was not constituted before the petitioner attained the age of 50 years, still under FR 56 (j), the appropriate authority/ respondent, had an absolute right to compulsorily retire the petitioner once he had attained the age of 50 years on August 15, 2016. The relevant paragraphs of the judgment of the Supreme Court in the case of ***Rajendra Singh Verma (Dead) through L.Rs. (supra)*** are reproduced as under for ready reference:-

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

27. In this connection it is relevant to notice certain facts emerging from the record of the case. Rule 27 of the Delhi Higher Judicial Service Rules, 1970 provides that in respect of matters regarding the conditions of service for which No. provision or insufficient provision has been made in those rules, the rules, directions or orders for the time being in force, and applicable to

the officers of comparable status in the Indian Administrative Service and serving in connection with the affairs of the Union of India, shall regulate the conditions of such service. Thus Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 ('the Rules of 1958' for short) would be applicable to the officers of the Delhi Higher Judicial Service. Clause (3) of Rule 16 of the Rules of 1958 was substituted in 1972 specifying the age of premature retirement to be 50. Rule 16(3), after its substitution, reads as under:-

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

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

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

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

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

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

(ii) in any other case after he has attained the age of fifty-five years. Provided that nothing in this clause shall apply to a Government servant referred to in Clause (e), who entered Government service on or before the 23rd July, 1966.

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

(emphasis supplied)"

58. Insofar as the plea of the petitioner that he was awarded the *„Uttam Seva Praman Patra"* for the year 2009 by the then Hon"ble Prime Minister of India; he had „outstanding" gradings in his APARs for the years 2012-2015; his integrity was beyond doubt; he was nominated to NDC programme in the year 2016; he was promoted to the rank of Joint Secretary in the year 2012; no disciplinary proceedings have ever been initiated against him and there was no material before the review committee for recommending the case of the petitioner for compulsory retirement is concerned, it is a settled position of law that while considering the case of a government servant under FR 56 (j), entire record of a government servant needs to be taken into consideration. In order to make sure whether the review committed in the case of petitioner had taken into consideration the entire service record of the petitioner and then came to the conclusion of compulsorily retiring the petitioner, we had called for the record of the petitioner including review proceedings, which also included the recommendations of the review committee.

59. After carefully perusing the proceedings of the review committee as well as it recommendations, we are of the view that there is proper application of mind by the review committee while recommending the case of the petitioner for compulsory retirement in public interest under FR 56 (j). In this regard, reference may be made to the judgment of the Supreme Court in the case of ***Arun Kumar Gupta v. State of Jharkhand and another, MANU/SC/0231/2020***, wherein, the Supreme Court, in paragraphs 15 to 18, has held as under:-

"Washed-off theory

15. One of the main arguments raised by the petitioners is that since the petitioners have been promoted to various higher posts, their record prior to the promotion will lose its sting and is not of much value. Reliance is placed on the observations of this Court in D. Ramaswami v. State of T.N. [D. Ramaswami v. State of T.N., MANU/SC/0185/1982 : (1982) 1 SCC 510 : 1982 SCC (L&S) 115] wherein this Court held as follows : (SCC p. 513, para 4)

"4. In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his promotion. We do not say that the previous history of a government servant should be completely ignored, once he is promoted. Sometimes, past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past."

16. Reference may also be made to the judgment of this Court in Pyare Mohan Lal [Pyare Mohan Lal v. State of Jharkhand, MANU/SC/0696/2010 : (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] in which while dealing with the concept of washedoff theory, this Court after dealing with the entire case law on the subject held as follows : (SCC pp. 704-706, paras 24 & 29)

"24. In view of the above, the law can be summarised to state that in case there is a conflict between two or more judgments of this Court, the judgment of the larger Bench is to be followed. More so, the washed-off theory does

not have universal application. It may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being assessed by the reviewing authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his "entire service record".

***

29. The law requires the authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides."

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

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

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

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

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

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

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

18. It is in the light of the aforesaid law that we will now consider the factual aspects of the present case."
(emphasis supplied)

60. Reference may also be made to one of the latest judgments of the Supreme Court in the case of ***Central Industrial Security Force v. Om Prakash, MANU/SC/0145/2022*** on the issue of compulsory retirement under FR 56(j) wherein in the relevant paragraphs it has been held as under:
"12. In the judgment reported as Rajasthan SRTC v. Babu Lal Jangir [Rajasthan SRTC v. Babu Lal Jangir, MANU/SC/0940/2013 : (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219], the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that Brij Mohan Singh Chopra v. State of Punjab [Brij Mohan Singh Chopra v. State of Punjab, MANU/SC/0615/1987 : (1987) 2 SCC 188] was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the "washed-off theory" i.e. the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three-Judge Bench judgment of this Court reported as Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, MANU/SC/0696/2010 : (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] and it was observed that : (Babu Lal Jangir case [Rajasthan SRTC v. Babu Lal Jangir, MANU/SC/0940/2013 : (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219], SCC pp. 563-64, paras 22-23)

"22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [Badrinath v. State of T.N., MANU/SC/0624/2000 : (2000) 8 SCC 395 : 2001 SCC (L&S) 13] is not correct and the observations of this Court in Gurdas Singh [State of Punjab v. Gurdas Singh, MANU/SC/0256/1998 : (1998) 4 SCC 92 : 1998 SCC (L&S) 1004] to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, MANU/SC/0696/2010 : (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this "washed-off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant."

13. ***There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very***

serious matter. This Court in Ram Murti Yadav v. State of U.P. [Ram Murti Yadav v. State of U.P., MANU/SC/1710/2019 : 2019:INSC:1354 : (2020) 1 SCC 801 : (2020) 1 SCC (L&S) 245] held as under : (SCC p. 805, para 6)

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

14. Thus, we find that the High Court has not only misread the judgment of this Court in Baikuntha Nath Das [Baikuntha Nath Das v. District Medical Officer, MANU/SC/0193/1992 : (1992) 2 SCC 299: 1993 SCC (L&S) 521] but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned above. There is also a factual error in the order [Om Prakash v. Central Industrial Security Force, MANU/DE/4167/2011] of the High Court that there are no adverse remarks and that the ACRs. for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs. as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

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

(emphasis supplied)

61. Furthermore from the perusal of paragraph 16 of the impugned order passed by the Tribunal, it is clear that the petitioner had desired to take VRS on several occasions that included his meetings with the superior officers. In that given background, the Tribunal was of the view that if the impugned order came to be passed, no prejudice has been caused to the petitioner. We are also in agreement with the said conclusion arrived at by the Tribunal for the

reason that when the petitioner himself was so keen to take VRS, no prejudice can be said to have been caused to the petitioner when the respondent has prematurely retired him under FR 56(j), which also cannot be construed as a stigmatic order [**Ref*. Baikuntha Nath Das & Anr vs. Chief District Medical Officer Saripada & Anr*., *(1992) 2 SCC 299***].

62. In this regard, reference can be made to the order passed by this Court on November 20, 2019, wherein learned Sr. Counsel then appearing for the petitioner had stated that though the order of compulsorily retiring the petitioner is stigmatic in nature for the reason that FR 56 (j) is only relied upon in case of certain circumstances of suspicion and when there is a doubt over the integrity of a government servant, without prejudice to the stand so taken, the petitioner is willing to submit his papers for voluntary retirement and in fact he would not claim any benefit for the period from the date when the order under FR 56 (j) was passed. As such, pursuant thereto, the petitioner had made a request to the respondent for voluntary retirement under FR 56 (k), vide application dated December 02, 2019. However, the request made by the petitioner was rejected by the respondent vide order dated March 17, 2020 by stating as under:

"May kindly refer to your application dated 02.12.2019 on the above subject.

2. *The matter has been examined in consultation with DoP&T and* ***it is stated that a notice of VRS is to be given by a serving employee and not by a retired employee. Further, there is no provision under the relevant rules of premature retirement [i.e. 56 (j)(1) and Rule 48 of CCS (Pension) Rules, 1972] and voluntary retirement [FR 56(k) and Rule 48/48A of CCS (Pension) Rule] which allows a Government employee to convert his premature retirement into a voluntary retirement after his retirement from Government service. Nor there is any rule provision to reinstate a retired Government employee into Government service after retirement.***

3. *This issues with the approval of Competent Authority."*

(emphasis supplied) 63. We agree with the said stand taken by the respondent for the reason as the petitioner had already stood retired in view of order dated January 17, 2018, there existed no question of submission of VRS application thereafter.

64. Though a reference has been placed by the petitioner on the provision of FR 56 (jj) (i) to contend that if on a review of the case either on a representation from a government servant retired prematurely or otherwise,

it is decided to reinstate a government servant in service, the authority ordering the reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement by the grant of leave of the kind due and admissible including extraordinary leave or by treating it as *dies non* depending upon the facts and circumstances of the case, however, it is clear from the order dated November 20, 2019, passed by this Court that it was the case of the petitioner himself that he was willing to submit his papers for voluntary retirement and also that would not claim any benefit for the period from the date when the order under FR 56 (j) was passed. In other words, it was the case of the petitioner himself that he wanted to take VRS and as such, the only request made by him vide application dated December 02, 2019, was confined to opt for VRS and not for reinstatement as contemplated in FR 56 (jj) (i). Even otherwise, FR 56 (jj) (i), on which reliance has been placed, contemplates reinstatement only in the eventuality if on a review of the case either on representation of a government servant retired prematurely or otherwise, the competent authority decides to reinstate a government servant. In other words, it is only on the review by the competent authority holding that an order of premature retirement is not justified in a given facts and circumstances of a case or if the order of premature retirement is set aside by a Court, reinstatement can be ordered. In the present case, none of the eventualities exist. Moreover, as noted from above, it is clear that the stand of the petitioner on November 20, 2019 was simpliciter converting the order of compulsory retirement into voluntary retirement and not for reinstatement. Hence, reliance placed by the petitioner on FR 56 (jj) (i), shall also not help his case.

65. Suffice to state that Mr. Sharma has relied upon the judgments of the Supreme Court in the cases of ***Nazir Ahmad (supra), Singhara Singh (supra)*** and ***A.K. Roy (supra)*** to contend that where a power is given to do certain things in a certain way, the thing must be done in that way and as such, other methods of performance are forbidden.

66. He also relied upon the judgment in the case of ***S G Jaisinghani (supra)*** to contend that in a system governed by rule of law, discretion when conferred upon executive authorities, must be confined within clearly defined limits. If a decision is taken without any principle or without any rule, such a decision is anti-thesis of a decision taken in accordance with rule of law.

67. Similarly, reliance has been placed upon the judgment in the case of ***S Ramachandra Raju (supra)*** to contend that a Court has the power and duty to exercise the power of judicial review not as court of appeal but in its

exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by *mala fide* or actuated by extraneous consideration or arbitrary in retiring the Government servant compulsorily from service.

68. Similarly, he has relied upon the judgment in the case of ***Baldev Raj Chadha (supra)*** to contend that under the guise of *"public interest"*, if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. Therefore, the exercise of power must be *bona fide* and promote public interest.

69. Likewise, reliance has been placed on the judgment in the case of ***Captain Pramod Kr. Bajaj (supra)*** to contend that the action under 56(j) necessarily has to be invoked in public interest, otherwise the order becomes punitive in nature and at the same time, it cannot be passed as a shortcut to the disciplinary proceedings.

70. Reliance has also been placed upon the judgment in the case of ***Ms. Nisha Priya Bhatia (supra)*** to contend that the respondent could have invoked Rule 135 of the Research and Analysis Wing (Recruitment Cadre and Services) Rules, 1975, if the action of the respondent to compulsory retire the petitioner was based on a secret report and having not done that, the termination is bad in law.

71. He has also relied upon the judgment of this Court in the case ***P.D. Jharwal and Ors. vs. Union of India (UOI) and Ors. MANU/DE/2043/2002***, to contend that the grounds which are ordinarily available to a court for interfering with an order of compulsory retirement are the following:- (a) non-application of mind; (b) perversity and (c) malafide.

72. Though Mr. Sharma, has relied upon the aforementioned judgments for the propositions stated above, we are of the view that in light of the latest opinion of the Supreme Court in the cases of ***Om Prakash (supra)*** and ***Arun Kumar Gupta (supra)*** and also in view of the considered recommendation of the review committee, none of the judgments as relied upon by the petitioner shall help his case seeking setting aside of the order dated January 17, 2018 passed by the respondent.

73. It is also pertinent to rely upon the judgment of the Coordinate Bench of this Court in the case of ***S.S. Das v. Union of India, MANU/DE/0339/2024***, in which one of us (V. Kameswar Rao J.) was a member, wherein, an issue relatable to compulsory retirement of an officer of Indian Trade Service/ petitioner therein was involved. The Coordinate Bench of this Court, after

referring to various judgments of the Supreme Court as well as this Court has held as under:-

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

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

156. Suffice to state, that though there is not an iota of doubt on the above stated principles of law as laid down by the Supreme Court, however, in the facts of the present case, it cannot be said that the State has not complied with the aforesaid principles. This we say so, for the reason, that the petitioner herein has been given fair opportunity to file his representation against the order of compulsory retirement. Moreover, the First Review Committee, the Representation Committee as well as the Second Review Committee have gone through the entire service record of the petitioner. In fact, when the representation dated June 1, 2018, was in depth examined by the respondent, it remanded the case of the petitioner back to the review committee for a fresh consideration and only thereafter, the Second Review Committee, came to the conclusion that the service of the petitioner, was no more required. Therefore, the said judgment shall also have no applicability in the facts of the present case.

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

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

74. Therefore, in view of the above conclusion of ours which has been arrived at after properly perusing the recommendation of the review committee, it is to be held that the decision of the respondent to compulsory retire the petitioner, who, on the date of compulsory retirement had further eight years of service, by invoking FR 56 (j), is not illegal or arbitrary.

75. It is a settled position of law that scope of judicial review in a case of this nature, more particularly, when the Officer/petitioner was working in an organization like the respondent, is very limited. It is also a settled position of law that the Court cannot substitute the view of the Review Committee / Competent Authority, only to hold that in the given facts, the order passed by the respondent compulsorily retiring the petitioner is not justified, more particularly, when the review committee has acted in conformity with the OMs of 2014 and 2015.

76. In view of our above discussion, we do not see any merit in the petition, the same is dismissed. No costs.

CM APPLs. 15677/2019 & 30205/2023 Dismissed as infructuous.