IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.593 of 2020
Date of decision: 17.09.2020

(Heard through Video Conferencing)

Hawa Singh Bhambhu **..Appellant**

Versus

State of Haryana and another **..Respondents**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. V.K. Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate
for the appellant.

Mr. Deepak Balyan, Addl. AG, Haryana
for the respondents.

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Daya Chaudhary, J.

Appellant-Hawa Singh Bhambhu has filed the present Letters Patent Appeal (LPA) to challenge order dated 28.07.2020 passed by learned Single Judge of this Court whereby CWP No.7767 of 2020 filed by him has been dismissed.

Briefly the facts of the case as made out by the appellant are that initially, he was appointed on the post of Patwari in the year 1986 and was promoted as Kanungo on 28.11.2000. Thereafter, he was promoted as Naib Tehsildar w.e.f.28.10.2016 vide order dated 09.01.2017. He was prematurely retired vide order dated 01.04.2020 on attaining the age of 55 years w.e.f.22.07.2020 after giving three months' prior notice. As per case of the appellant, his service record was excellent and he was given

promotions on the basis of his work and conduct. He was issued a charge sheet on 21.02.2018 on account of filing appeal with delay before this Court but subsequently he was exonerated vide order dated 18.04.2019. Thereafter, he was issued another charge sheet on 13.02.2018 on account of dereliction of duty for wrong registration of mutation in the year 2009 while he was working as Kanungo.

Said order dated 01.04.2020 of premature retirement was challenged in CWP No.7767 of 2020 and the same was dismissed by learned Single Judge on 28.07.2020, which has been challenged in the present appeal.

Learned senior counsel for the appellant submits that the service record of the appellant was good /outstanding as not only he was graded as good, very good and outstanding but he was also given promotions to the higher posts. The incident of the year 2009 was made basis for retiring the appellant prematurely whereas it was not a case of moral turpitude reflecting the conduct of the appellant. Learned counsel also submits that an inadvertent mistake occurred while making entry in the mutation because of similar names. Learned counsel also submits that the impugned order of premature retirement was passed in violation of Article 144 of the Haryana Civil Services (General) Rules, 2016 (hereinafter referred to as 'the Rules, 2016'), which provides that an officer/ employee can only be retired prematurely on account of inefficiency after considering the entire service record. It is also the argument of learned senior counsel that the order of premature retirement is to be passed by considering the

public interest in case, said employee or officer has lost efficacy or is considered as dead wood and for that purpose, the entire service record is to be seen. There was no allegation of corruption, dishonesty or infamous conduct of the appellant and single punishment cannot be made the basis for invoking Rule 144 of the Rules, 2016. At the end, learned senior counsel submits that the provisions of the Rules, 2016 and relevant facts have not been taken into consideration and the judgment passed by learned Single Judge is liable to be set aside in this appeal.

Learned State counsel has opposed the submissions made by learned senior counsel for the appellant and submits that the appellant faced disciplinary proceedings under Rule 7 of the Haryana Civil Services (Punishment and Appeal), Rules, 2016 in two different cases. He was issued a charge sheet on 21.02.2018 on account of negligence on his part for delay in filing appeal before this Court. Thereafter, the appellant was issued another charge sheet on 13.02.2018 and was charged with dereliction of duty on account of wrong registration of mutation in the year 2009 as appellant had shown Ramphal S/o Risala resident of Village Garhi Sisana as deceased in mutation No.3041 of Village Garhi Sisana on 23.06.2009 whereas said person was alive and death certificate of another Ramphal S/o Chandan, resident of Ward No.7, Kharkhoda was mentioned in the mutation. Learned State counsel further submits that the appointing/ competent authority was competent to retire any Government employee/ officer in case, he/she is inefficient or he has lost his utility while in service. Learned State counsel also submits that proper procedure was followed

before passing order of premature retirement as the appellant was given three months' advance notice. Learned State counsel also submits that the appellant was also awarded major punishment of stoppage of two annual increments with cumulative effect and after that a tentative decision was taken by the department to retire him prematurely at the age of 55 years. The matter was also sent to the Secretary, Haryana Public Service Commission and the proposal sent by the Department was considered and approved. Learned State counsel as directed has also submitted photocopy of annual confidential reports for the period from 1999-2000 to 2017-2018 wherein six outstanding, one very good and three good reports are recorded. It also shows that in the last ten years 70% ACRs are good, very good or outstanding.

Heard arguments of learned counsel for the parties and we have also perused the relevant record with the assistance of learned State counsel as well as the judgment passed by learned Single Judge.

The finding record by learned Single Judge while dismissing CWP No.7767 of 2020, is as under: -

> "*The impugned orders placed on the records whereby Officers Committee headed by the Chief Secretary Haryana considered on 10.02.2020 the proposal of the Department and concurred with the decision recommending to retire the petitioner prematurely in public interest as he had already attained 55 years of ager on 04.06.2018. It is based on the records where*

reputation for corruption, dishonesty or infamous conduct was found to be clearly established by the authority and taking the same to affect moral turpitude of the officer, had decided to retire him prematurely, and therefore the arguments that have been sought to be raised that it was a stigmatic order does not augur well for the petitioner. The claim that is sought to be raised that earlier for these allegations the petitioner has been administratively dealt with and cannot be again considered for forming an opinion or arriving at a decision to prematurely retire the petitioner, does not sustain in the eyes of law and does not impress the Court much. The Commissioner has minutely perused the records and has observed that the authorities keeping in view the overall conduct of the petitioner in his service throughout which it considered that the same was not in public interest, has passed orders prematurely retiring him, and therefore cannot be termed to be stigmatic or that the same was for vexing him twice for the same very allegations. This Court does not concur with the submissions of learned counsel for the petitioner that the orders were not sustainable. More so, under Clause XVIII of the Policy of Premature Retirement, a Government employee who has been served with a

notice/order of premature retirement under these provisions, may submit a representation within three weeks from the date of service of such notice/order. However, the petitioner nowhere speaks or claims having done so and his utter failure to do so with the efflux of time also renders the impugned findings to have attained finality. In the light of what has been detailed and discussed above, there is no merit in the instant petition and the same stand dismissed."

Rule 144 of the Rules, 2016 provides that an officer/employee can only be retired prematurely on account of inefficiency after considering the entire service record and the same is reproduced as under: -

*"**144. Premature retirement after attaining the prescribed age or qualifying service. —***

The appointing authority shall, in public interest, have the absolute right to retire prematurely a Government employee of any Group, other than of Group D, on account of inefficiency after attaining the prescribed age irrespective of his length of service or after completion of twenty years' qualifying service irrespective of his age, by giving him a notice of not less than three months in writing or pay and allowances in lieu of notice period. The minimum age prescribed for the purpose, except in case of twenty years' qualifying service, is—

.....

(i) 50 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post before attaining the age of thirty five years;

(ii) 55 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post after attaining the age of thirty five years; and

(iii) 55 years for Government employees working on Group C posts:

Provided that in the case of Judicial Officer, the case for retention in service beyond the age of fifty-eight years shall be considered by the competent authority before he attains such age, irrespective of his date of entry into Government service.

Note 1.— (i)The provision of this rule may be initiated against a Government employee whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient (i.e. when a Government employee's value is clearly incommensurate with the pay which he draws) but not to such a degree as to warrant his retirement on a compassionate ground. It is not the intension to use the provisions of this rule as a financial weapon, that is to

say, the provision shall be used only in the case of Government employees who are considered unfit for retention on personal as opposed to financial grounds; and

(ii) in cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved under the Haryana Civil Services (Punishment and Appeal) Rules, 2016 or the Public Servants (Inquiries) Act, 1850 (37 of 1850).

Note 2. — Authority competent to retire under this rule shall carefully examine the record of the Government employee whether he has completed prescribed age or qualifying service, as the case may be, with particular reference to his integrity or otherwise; and if it is desirable in the public interest that he should be retired, action shall be taken accordingly.

Note 3.— The Government employee shall be given a reasonable opportunity to show cause against the proposed premature retirement under this rule. In case of gazetted Government employee, approval of Council of Ministers shall be obtained and in the case of non-gazetted Government employee the Head of Departments shall effect such retirement with the previous approval of

the Administrative Department. In all cases of such retirement the Haryana Public Service Commission or Haryana Staff Selection Commission, as the case may be, shall be consulted.

Note 4.— Heads of Departments shall report to Government in each quarter, the action taken under this rule."

On perusal of abovesaid Rule 144 of the Rules, 2016, it is apparent that an employee can be retired prematurely on attaining the specified age on the ground of inefficiency and overall service record. The object of said rule is to weed out the dead wood in public interest.

It has also come on record that the respondent-State has framed a premature retirement policy in furtherance to Rule 144 of the Rules, 2016 for which certain parameters are required to be taken into consideration. In that policy, the object of provision of premature retirement has also been mentioned. The main object of said policy decision is to provide clean administration, improving efficiency and strengthening administrative machinery at all levels and to weed out dead wood whose integrity is doubtful.

In the policy itself, one judgment rendered by Hon'ble the Apex Court in case titled as ***Union of India vs. M.E. Reddy and another, AIR 1980 SC 563*** has been relied upon. One more judgment of Hon'ble the Apex Court titled as ***Baikuntha Nath Das and another v. Chief District Medical Officer, Mayurbhanj (Orissa), 1992(2) SCC 299*** has also been relied upon,

wherein grounds for premature retirement have been given. The principles of premature retirement mentioned in the said judgment are reproduced as under: -

> *"(i) An order of premature retirement is not a punishment, it implies no stigma nor any suggestion of misbehaviour.*
>
> *(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a Government servant prematurely. The order is passed on the subjective satisfaction of the Government.*
>
> *(iii) Principles of natural justice have no place in the context of an order of premature retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.*
>
> *(iv) The Government or the Review Committee, as the case may be, shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance*

during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of premature retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above. It will thus be seen that the judicial pronouncements are clearly to the effect that premature retirement is not a punishment, does not involve a stain or stigma and that it is in the public interest."

Certain more parameters have also been mentioned in the policy of premature retirement, which are as under: -

"(a) The competent authority must apply its mind independently to the record of the employee and form an opinion about the suitability and the desirability of continuing an employee/officer in the service after completing prescribed age or qualifying service.

.....

(b) The competent authority is required to make an objective assessment/evaluation of the work, conduct and performance of the employee, as reflected in his service record, in order to determine whether he should be retired before the age of superannuation.

(c) Service record of last 10 years should be taken into account and out of this 50% ACR in case of retention beyond 50 years and 70% ACRs in case of retention beyond 55 years or on completion of 25 years qualifying service, should be 'Good' or above.

(d) A Government employee against whom disciplinary proceedings were pending but now decision has been taken and now no departmental/Vigilance enquiry is pending against him, may be considered for extension in service.

(d) A Government employee whose integrity has been doubted during last ten years of service will be retired prematurely, however, the doubtful integrity during the period of service before last 10 years will be ignored.

(e) No employee should ordinarily be retired on the grounds of ineffectiveness if his service during the preceding 5 years, or where he has been promoted to a higher post during that 5 years' period, his service in the promotional post, has been found satisfactory.

(f) Government employee, who is found to be ineffective may be considered for premature retirement. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he is holding.

(g) No employee should ordinarily be retired prematurely if he would be retiring on superannuation within a period of one year from the date of consideration of his case. This provision is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. It is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open for the competent authority to review his case for premature retirement during the last year of superannuation. The damage to public interest could be marginal if an old employee, in the last year of his service, is found ineffective; but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.

(h) When an officer/official is considered to have good reputation for integrity and honesty, the HOD or

Administrative Secretary concerned should furnish the following certificate of integrity :-

Having scrutinized in character roll and personal file of Shri/Smt./Kumari_____ and having taken into account all other relevant available information, I certify that he/she has a food reputation for integrity and honesty.

(i) In every case, where it is proposed to retire a Government employee under Rule 144 of HCS (General) Rules, 2016, the HOD/Administrative Secretary concerned should record in the case that he is of the opinion that it is necessary to retire the Government employee in pursuance of the aforesaid rule(s) in the public interest. In case of Union of India versus Col. J.N. Sinha, the Supreme Court had observed that the appropriate authority should bona fide form an opinion that it is in public interest to retire the officer in exercise of the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collateral grounds.

(j) The rules relating to premature retirement should not be used -

(i) to retire a Government employee on ground of specific acts of misconduct as a short-cut to

initiating formal disciplinary proceeding; or

(ii) for reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retrenchment."

For passing order of premature retirement, the entire service record is required to be taken into consideration as mentioned in policy against Column No.IV, which reads as under: -

"IV. <u>Perusal of entire Service Record: -</u>

The entire service record of an officer should be considered at the time of review. The term 'service record' is all-embracive and review should not hence be confined to the consideration of only the Annual Confidential Reports. In some of the Departments, Officers take action for concluding contracts, settling claims, assessing taxes, etc. Doubts may have arisen relating to the bona fide nature of action taken by the officer, but on account of inadequate proof, it may not have been possible to initiate action for a regular departmental inquiry, leading finally to a punishment of the nature that may find entry in the ACRs of the officer/official. The personal file of the officer/official may have details of the nature of doubt that arose regarding the integrity of the officer and the result of the preliminary investigation that was carried out. Matters

found on the personal file of the officer can and should also, therefore, be placed before the Administrative Department/officers' Committee and not only the ACRs of the officer/official concerned.

It is likely that each allegation that comes to notice against the integrity of the officer may have been handled on a separate file and that details thereof may not be available on the personal file of the officer, which is confined only to establishment matters, like increments, promotions, grant of benefit of ACP etc. In such a situation, well ahead of the meeting of the Officers' Committee, the Administrative Department will have to compile together all the data available in the separate files and prepare a comprehensive brief for the consideration of the Officers' Committee.

There are a number of judicial pronouncements in support of the above provision that a total assessment of the performance of the Government employee can be made. There have also been observations that have approved any measure by which the assessment by superiors, with an opportunity to watch the work and conduct of an officer, is taken into account while deciding premature retirement. In a case titled, Union of India v/s M.E. Reddy and another (AIR 1980 SC 563) the

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Supreme Court observed-

> *"It will indeed be difficult, if not impossible to prove by positive evidence that a particular officer is dishonest, but those who have had the opportunity to watch the performance of the said officer in close quarters are in a position to know the nature and character not only on his performance but also of the reputation that he enjoys."*

In another case titled, R.L. Butail v/s Union of India and another (1971) 2 SCR 55, the observation was-

> *"It may well be that in spite of work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors, such as the history of the appellant's entire service and confidential reports throughout the period of the service, upon which the appropriate authority may still decide to order appellant's retirement under FR 56(j)."*

While passing order of premature retirement, the competent authority is to ensure the application of mind to the record of the employee for making an objective analysis with a view to see whether such employee is fit to be continued in service or not. It is also to be seen whether his/her

extension in service on attaining the age of 55 years or on completion of 25 years of qualifying service is in public interest. The border-line cases or the employees, who had shown consistent improvement in their work and performance may be considered for an extension of one year provided they have not earned adverse remarks reflecting their integrity.

Judgment of case titled as ***D. Ramaswamy vs. State of Tamil Nadu, AIR 1982 SC 793*** is also relevant in the present context and in the circumstances, which are necessary to be considered while seeing the entire service record of the concerned employee. The relevant portion of said judgment is reproduced as under: -

> "*After his promotion as Deputy Commissioner there was no entry in the service book to his discredit or hinting even remotely that he had outlived his utility to the Government. If there was some entry not wholly favourable to the appellant after his promotion one might hark back to similar or like entries in the past, read them in conjunction and conclude that the time had arrived for the Government employee to be retired prematurely from Government service.....*
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> *..... 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 prior to his promotion. We do not say that the previous history of a*

.....

Government employee 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....."

Similarly relevant portion of judgment rendered in ***M.E. Reddy's case (supra)*** is reproduced as under: -

"Mr. Krishnamurthy Iyer appearing for Reddy submitted that the order impugned is passed on materials which are non-existent in as much as there are no adverse remarks against Reddy who had a spotless career throughout and if such remarks would have been made in his confidential report, they should have been communicated to him under the rules. This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the various rules on the subject, it is not every adverse entry or remark that has to be communicated to the officer concerned. The Superior Officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous or may be connected with general reputation of honestly or

integrity that a particular officer enjoys."

It has been a settled principle in various judgments of this Court as well as judgments of Hon'ble the Apex Court that compulsory/premature retirement is not a punishment as it does not leave any stain or stigma. Rule 3.26 (a) and (d) of CSR Vol. I Part I provides that every government employee shall retire from service on the last date of the month on attaining the age of 58 years. An Exception to this Rule has also been provided in sub-clause 9(d) under which the appointing Authority has an absolute right in case, it is in the public interest, other than class IV employee and that too by giving him a notice in writing of not less than three months or three months' pay in lieu thereof. The Punishing Authority has a right to review the work and conduct of the employee and total service record of the concerned employee is to be taken into consideration before taking a decision in the matter- of course attaching more importance to record and performance during the service period. The service record includes entries in the confidential records/character rolls, both favourable and adverse. The order, as such, is to be passed on the basis of subjective satisfaction by the Competent Authority on forming an opinion that it is not in public interest to keep the government employee in service or to retire him compulsorily. It is also not disputed that principles of natural justice have to be adopted and the order is not to be passed in an arbitrary manner without forming an opinion by considering the total service record. No doubt, judicial scrutiny is also permissible while granting premature compulsory retirement and in case the order is arbitrary or mala fide or is

based on no evidence, then reasons are necessary to be recorded.

Undisputedly, the State Government has an absolute right to retire the petitioner in public interest but such an opinion is to be based on subjective satisfaction and performance of the petitioner or concerned employee during his entire service record and especially the record of last 10 years before the date of passing of order of compulsory retirement. It is not disputed that sometimes un-communicated service record can also be taken into consideration. In judgment of ***Baikuntha Nath Das's case (supra)***, the Hon'ble Apex Court has also observed that interference is permissible but only in case the order passed is mala fide or is based on no evidence or found to be perverse. Same view was taken by Hon'ble the Apex Court in cases ***Union of India vs. Ajoy Kumar Patnaik, 1995 (4) SCT 692 (SC)*** as well as in ***Chandra Saikia Vs. State of Assam (2003) 4 SCC 50***. Similarly, in cases of ***Jarnail Singh vs. State of Haryana, 2007 (1) SCT 492, Baikuntha Nath Das's case (supra)*** and ***Chandra Saikia's case (supra)***, it was held that communication of adverse remarks is not necessary while considering the case for retention of an employee in service beyond 50/55 years of age. In the present case also, the case of the petitioner was reviewed and he was not found to be useful in larger public interest and the impugned order of compulsory retirement was passed. As per judgment in ***Baikuntha Nath Das's case (supra)***, the order of compulsory retirement is not a punishment and it implies no stigma. Only an opinion is to be formed which is in the public interest to retire a Government servant compulsorily and the order is passed on the subjective satisfaction of the

Competent Authority. The review Committee is to consider the entire record of the concerned employee before taking a decision in the matter.

"What is public Interest?" was explained by the Hon'ble Apex Court in case of ***Union of India vs. Col. J.N. Sinha and another, 1970 (2) SCC 458*** wherein it was held that the objective of premature retirement of a government servant was to weed out the inefficient, corrupt, dishonest employees from government service. In ***State of Gujarat vs. Surya Kant Chuni lal Shah, 1999 (1) SCT 208,*** the observations made by Hon'ble the Apex Court in para Nos. 11 to 22 are as under:-

> *"11. What is 'public interest' was explained in the classic decision of this Court in* ***Union of India vs. Col. J.N. Sinha and another, 1970 (2) SCC 458.*** *It was pointed out that the object of premature retirement of a Govt. servant was to weed out the inefficient, corrupt, dishonest employees from the Govt. service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead-wood, are to be dispensed with. The Court observed:*
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> *"Compulsory retirement involves no civil consequences. The aforementioned rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure*

doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with, the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. 'While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest..... "It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired but then as the rule provides that

such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment."

In our opinion the high Court erred in thinking that the compulsory retirement involves civil consequences.

12. This was also the view of this Court in ***H.C. Gargi v. State of Haryana, 1986 (4) SCC 158.***

13. In ***Gian Singh Mann v. High Court of Punjab and Haryana and another, 1980 (4) SCC 266,*** *it was pointed out that "the expression 'public interest' in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency competency and utility called for by the Government service to which he belongs.*

14. In ***Kailash Chandra Aggarwal v. State of M.P. and another, 1987 (3) SCC 513,*** *it was pointed out that the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment and*

that Article 311(2) of the Constitution could not be invoked, as the employee concerned was no longer fit in public interest to continue in service and, therefore, he was compulsorily retired.

15. In ***Union of India vs. M.E. Reddy and another, 1980 (2) SCC 15,*** *it was pointed out that the object of compulsory retirement was to weed out the dead-wood in order to maintain a high standard of efficiency and initiative in service. Rule 16(3) of the All India (Deathcum- Retirement) Rules, 1958, empowered the Govt. to compulsorily retire officers of doubtful integrity. The safety valve of public interest was the most powerful and the strongest safeguard against any abuse or colourable exercise of power under that rule.*

16. A three Judge Bench of this Court in ***Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another, 1992 (2) SCT 92 (SC): 1992(2) SCC 299,*** *laid down the following five principles :*

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

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

passed on the subjective satisfaction of the government.

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

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while

passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

17. This decision was reiterated by another three Judge Bench of this Court in ***Posts & Telegraphs Board and others v. C.S.N. Murthy, 1992 (2) SCC 317 : 1992(2) SCT 325 (SC),*** *in which it was laid down as under :*

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bnonafide and on the basis of material available on the record." (emphasis supplied)

18. In ***K. Kandaswamy v. Union of India, 1995 (6) SCC 162: 1995 (4) SCT 567 (SC),*** *Apex Court observed as under :-*

"While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energies its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them for service. When the appropriate authority forms bona fide opinion that compulsory retirement of the government employee is in the public interest,court would not interfere with the order."

19. The Court, however, added that the opinion must be based on the material on record otherwise it would amount to arbitrary or colorable exercise of power. It was also held that the decision to compulsorily retire an employee can, therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.

20. In ***S.R. Venkarataman vs. Union of India. (1979) 2 SCC 491****, it was held the order of compulsory retirement as a gross abuse of power as there was nothing on the record to justify and support the order.*

21. In ***Baldeo Raj Chaddha vs. Union of India, (1980) 4 SCC 321****, it was held that although the purpose of Rule 56 was to weed out worthless employees without punitive extremes, if, under the guise of "public interest", an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and "disguised dismissal".*

22. Baikuntha Nath's case (supra) was considered by this Court in ***M.S. Bindra vs. Union of India & Ors. JT 1998 (6) SC 34 : 1998 (4) SCT 325 (SC)*** *and it was laid down as under:*

"Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the conext of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into."

It was further observed as under :

"While viewing this case from the next angle for judicial scrutiny, i.e. want of evidence or material to reach such

> *a conclusion, we may add that want of any material is almost equivalent to the next situation that form the available materials no reasonable man would reach such a conclusion. In order, therefore, to find out whether any Govt. servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that Govt. servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.*

In judgment of Hon'ble the Apex Court in case of ***Rajasthan State TPT Corporation and another vs. Bajrang Lal, 2014 (2) SCT (620)*** by following judgment of case ***Municipal Committee, Bahadurgarh vs. Krishna Bihari and others, 1996 (2) SCT 508***, it was held that in cases involving corruption, there cannot be any other punishment than dismissal from service. It has also been held that any sympathy shown in such cases is totally uncalled for and contrary to public interest. By considering the total service record and the allegations levelled against him during his service record, it cannot be said that his service record was clean. While passing impugned order, the entire service record has been scrutinized and taken into consideration including the ACRs.

In the present case, while passing order of premature

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

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

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

Sr. No.	Year	Grading	Integrity	Remarks
1.	1999-2000	Good	Honest	1
2.	2000-01 i).01.04.2000 to 28.11.2000 ii).29.11.2000 to 31.3.2001	 N.A. Very Good	 N.A. Honest	 ----- 1/3
3.	2001-02	N.A.	N.A.	----
4.	2002-03	N.A.	N.A.	----
5.	2003-04	Good	Honest	1
6.	2004-05	Good	Honest	1

7.	2005-06	N.A.	As per integrity certificate nothing is adverse	----
8.	2006-07	N.A.	As per integrity certificate nothing is adverse	----
9.	2007-08	N.A.	As per integrity certificate nothing is adverse	----
10.	2008-09	N.A.	As per integrity certificate nothing is adverse	----
11.	2009-10	Outstanding	Honest	1
12.	2010-11	Outstanding	Honest	1
13.	2011-12	Outstanding	Honest	1
14.	2012-13	Very Good	Honest	1
15.	2013-14	Outstanding	Honest	1
16.	2014-15	Outstanding	Honest	1
17.	2015-16	Outstanding	Honest	1
18.	2016-17	N.A.	N.A.	----
19.	2017-18	N.A.	N.A.	----

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

The findings recorded by learned Single Judge are contrary to service record of the appellant and the object and parameters of the policy of premature retirement have not been taken into consideration while

dismissing the writ petition filed by the appellant. It appears that the entry in mutation appears to be inadvertent as the name of a person which was entered in the mutation is the same whose reference has been made. At the most, it can be said to be a negligence on the part of the appellant as he has not seen his father's name and address. There is no allegation against him that it was done for some consideration as nothing has been pointed out by learned State counsel and no such finding has been recorded by learned Single Judge.

Accordingly, we allow the present appeal and judgment dated 28.07.2020 passed by learned Single Judge is set-aside. The respondents are directed to allow the appellant to be retained in service till the age of his superannuation in case, there is no other sufficient reason for not retaining him in service.

(DAYA CHAUDHARY)
JUDGE

17.09.2020
neetu

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes