2026 INSC 980

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3215 OF 2026
[ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 1265/2025]

S.S. DAS **... APPELLANT**

VS.

UNION OF INDIA **... RESPONDENT**

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

1. In this appeal, by special leave, the appellant [a former Indian Trade Service (ITS) officer] has mounted a challenge to the judgment and order dated 18th January, 2024[1] of a Division Bench of the High Court of Delhi[2] declining interference with the judgment and order dated 2nd July, 2021 of the Central Administrative Tribunal, Principal Bench, New Delhi[3]. The order passed by the competent authority of the respondent, compulsorily retiring the appellant from service a little less

[1] impugned judgment
[2] High Court
[3] CAT

than 5 (five) years prior to his date of superannuation, was upheld by the CAT.

FACTS

2. A brief narration of facts, falling within a short compass, will throw light on the real issue that emerges for our decision. At the centre of the controversy is the order of compulsory retirement dated 10th May 2018, issued under purported exercise of power conferred by Fundamental Rule[4] 56(j). The legality, correctness and propriety of such order is questioned by the appellant, by referring to the events antecedent thereto woven around the tapestry of his service records.

3. A glimpse of the service career of the appellant would reveal that he was appointed to the Indian Trade Service[5] in the year 1989. He was promoted as Deputy Director General of Foreign Trade in 1994 and, thereafter, as Joint Director General of Foreign Trade in 2001. In 2006, he was granted promotion on a non-functional Selection Grade basis. He was selected for Central deputation under the Central Staffing Scheme in 2008 and was accorded a further non-functional upgradation in 2011. In 2014, he was appointed as an Additional Director in the Directorate General of Anti-Dumping[6]. He was posted as Regional Joint Director General of Foreign Trade, Guwahati and Shillong, in 2017. On 16th November, 2017, he was placed in the Senior

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[4] FR
[5] ITS
[6] DGAD

Administrative Grade of the ITS at the level of Joint Secretary and was promoted thereto on a regular basis on 27th February, 2018.

4. This being the appellant's track record, he claims that the order dated 10th May, 2018 of compulsory retirement came without any forewarning. The competent authority directed his premature retirement from service in exercise of the power under FR 56(j), before he attained the age of superannuation without any complaint of worth. A detailed representation dated 1st June, 2018, preferred by him, challenging the order 10th May, 2018 partially succeeded. The matter was remanded by the Representation Committee to the Review Committee, which maintained the earlier order and rejected the appellant's challenge on 13th June, 2019. Such order upon being placed before the Representation Committee once again was not disturbed.

PROCEEDINGS BEFORE THE CAT AND THE HIGH COURT AND THE OUTCOME

5. Appellant challenged the order compulsorily retiring him as well as the order of rejection of the representation by instituting an original application[7] before the CAT. By its judgment and order dated 2nd July, 2021[8], the CAT dismissed the original application. While so dismissing, the CAT relied on decisions of this Court holding that once there exists some material before the competent authority warranting the exercise of power under FR 56(j), judicial review does not extend to an examination of the adequacy or sufficiency of such material. The CAT

[7] Original Application No. 2640 of 2019
[8] order of the CAT

took note of the undisputed position that the appellant had never been subjected to disciplinary proceedings, had earned promotions at regular intervals, and had consistently received commendable performance appraisals throughout his service career. However, it then adverted to the findings of the Review Committee which recorded, *inter alia*, that the appellant's handling of official files and his dealings with clients had been obstructive, that his reputation for integrity was not beyond reproach, and that he had, on one occasion, been proceeded against for insubordination. According to the CAT, these observations assumed significance having regard to the sensitive nature of the post held by the appellant and the serious national implications attached thereto. Proceeding further, the CAT observed that the remarks of the Review Committee were neither casual nor abstract. It reasoned that the very object underlying FR 56(j) is to enable the administration, in appropriate cases involving sensitive assignments, to retire an officer in public interest even where misconduct may not be capable of being established. The CAT also placed reliance on the averments contained in the counter-affidavit of the respondent, wherein allegations were made that the appellant, while serving in the Directorate General of Anti-Dumping, had sought certain favours. Although it acknowledged the absence of proof substantiating such allegations, the CAT held that the standard of proof applicable to disciplinary proceedings is not attracted in proceedings under FR 56(j). The challenge to the order rejecting the appellant’s representation was also repelled, the CAT observing that the grounds urged by the appellant had duly been considered before affirming the decision of premature retirement. Consequently, the original application came to be dismissed.

6. Aggrieved by the same, the appellant challenged the order of the CAT by presenting the writ petition which too has failed.

7. Before the High Court, the appellant assailed the order of compulsory retirement on diverse grounds, placing reliance on various Office Memorandum[9] issued from time to time and contending that the essential preconditions for invocation of FR 56(j) had not been satisfied. It was further urged that the decision was unsupported by any credible material and that the process stood vitiated by bias with respect to the composition of the committees. The High Court examined these contentions in the backdrop of the OM dated 11th September, 2015, which governed the field at the relevant time. Noticing that the appellant was an officer appointed through the Appointments Committee of the Cabinet[10], the High Court observed that the Review Committee was required to be headed by the Secretary of the concerned Ministry, being the cadre controlling authority. The Court found substance in the appellant's contention that the Secretary of the concerned Ministry had not been a part of the Review Committee. However, save and except this objection, the

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[9] OM
[10] ACC

remaining submissions advanced on behalf of the appellant were rejected, each being considered separately and on its own merits.

8. Since some of these findings have a direct bearing on the controversy before us, it would be appropriate to notice them in brief. The High Court first repelled the contention that the Second Review Committee, constituted to reconsider the recommendation of the First Review Committee, substantially comprised the same set of officers and, therefore, lacked independence. According to the High Court, the participation of the concerned officers was necessitated by the requirements of the 2015 OM, they being representatives of the cadre controlling authority and the Secretary of the concerned Ministry.

9. The High Court next considered the challenge to reliance placed upon a confidential note prepared by Shri *** during his brief tenure as Additional Secretary and DGAD. It was argued that the note was founded on unverified allegations, lacked corroboration and, at best, constituted hearsay material which ought not to have influenced the decision-making process. The High Court did not accept this submission. It observed that the confidential note drew upon complaints received against the appellant as well as allegations voiced by representatives of the domestic industry. Coupled with the adverse entries recorded in the appellant's Annual Performance Appraisal Reports[11], particularly the APAR for the year 2014–2015, the note

[11] APAR

constituted relevant material which could legitimately be taken into account.

10. The High Court also noticed that, while reconsidering the matter, the Second Review Committee had interacted with Shri *** to better appreciate the contents of his note before reiterating its earlier recommendation. The High Court further recorded that the Second Review Committee had examined the entirety of the relevant material, including certain APARs wherein observations had been made casting doubt on the appellant's integrity. Particular emphasis was placed on the APAR for the year 2014–2015, wherein it had been remarked in the integrity column that "there was room for improvement". The High Court attached significance to the fact that such remark had never been challenged by the appellant. In the view of the High Court, the Committee was justified in concluding that an officer occupying a position of such responsibility must possess integrity that is beyond reproach and that, in the larger public interest, the recommendation for compulsory retirement deserved reaffirmation.

11. The High Court also rejected the appellant's contention that his subsequent promotion to the post of Joint Secretary rendered the order of compulsory retirement unsustainable. The Court observed that the considerations governing promotion and compulsory retirement operate in distinct fields. While promotion ordinarily involves an assessment of the officer's performance during the immediately preceding years, compulsory retirement requires a holistic evaluation of the officer's entire service record. Consequently, the appellant's promotion could not, by itself, dilute the relevance of the material considered for the purpose of FR 56(j) or invalidate the recommendation for compulsory retirement.

12. Based upon these cumulative reasons, the High Court ultimately dismissed the writ petition. Aggrieved by the same, the appellant has carried it in appeal before us which we propose to dispose of by this judgment.

CRUX OF THE LIS

13. This takes us to the crux of the *lis*, *viz.,* whether on the peculiar facts of the case, bearing out demonstrably striking chronology, the power to compulsorily retire under FR 56(j) was exercised on the basis of a material capable of sustaining the satisfaction and whether the record discloses a rational nexus between the material relied upon and the conclusion that the appellant's compulsory retirement was warranted in furtherance of the public interest.

14. Rival contentions now fall for being considered.

CONTENTIONS OF THE PARTIES

15. Mr. Ghose, learned senior counsel for the appellant, has urged multiple points to have the impugned order of compulsory retirement nullified, and by extension, the order of the CAT as well as the impugned judgment upholding the same. For brevity, we refrain from cataloguing each of the points urged. If the point we propose to consider hereafter does commend acceptance, the need to deal with the other points may not arise.

16. *Per contra*, Mr. Kaushik, the learned Additional Solicitor General[12] representing the respondent, has vehemently argued that the scope of interference with an order of compulsory retirement passed under FR 56(j) is very narrow and limited; and, this particular case is not such that the impugned judgment as well as the judgment of the CAT can be assailed and interdicted on any of the points raised by his adversary.

17. A detailed written note of submissions was placed on record by the learned ASG. His submissions *qua* each of the propositions advanced are extracted *seriatim:*

a. **FR 56(j) IS ADMINISTRATIVE AND NON-PUNITIVE IN CHARACTER AND IS INTENDED TO ENSURE EFFICIENCY, INTEGRITY AND UTILITY IN PUBLIC ADMINISTRATION**

> "2. At the outset, it is important to note that this Hon'ble Court has consistently held that there is a difference between compulsory retirement and dismissal/removal, with the former having *'no stigma or implication of misbehaviour or incapacity'.*
> 3. In this *regard*, dealing with a provision similar to FR 56(j), the Constitution Bench of this Hon'ble Court in *Shyam Lal v State of UP* (1955) 1 SCR 26 concluded that compulsory retirement '*does not attract the provisions of Article 311'*, observing that:
>
> > *'…There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twenty-five years' service and that it is in the public interest to dispense with his further services. It is true that <u>this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct</u>*

[12] ASG

> *which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to Article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity.'* (emphasis added)

This Hon'ble Court went further to explain that:

> *'…It is said that compulsory retirement, like dismissal or removal, deprives the officer of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get an enhanced pension and that is certainly a punishment. It is true that in that wide sense the officer may consider himself punished but there is a clear distinction between the loss of benefit already earned and the loss of prospect of earning something more. In the first case it is a present and certain loss and is certainly a punishment but the loss of future prospect is too uncertain, for the officer may die or be otherwise incapacitated from serving a day longer and cannot, therefore, be regarded in the eye of the law as a punishment. The more important thing is to see whether by compulsory retirement the officer loses the benefit he has earned as he does by dismissal or removal. The answer is clearly in the negative. The second element for determining whether a termination of service amounts to dismissal or removal is, therefore, also absent in the case of termination of service brought about by compulsory retirement.'*

Residuary rule: for times when allegations cannot be substantiated

4. Importantly, as highlighted above, this Hon'ble Court acknowledged a core purpose underlying provisions like FR 56(j), i.e. the authority to act in circumstances where there are reasons but not sufficient evidence to discontinue the services of employee: '*this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action*'.

5. Similarly, in *Union of India v. M.E. Reddy*, (1980) 2 SCC 15, this Hon'ble Court acknowledged that: '*17. …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 from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys…*'.

6. This Hon’ble Court repeated similar observations in *Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)*, (2011) 10 SCC 1: ‘…*Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest…’*.”

b. PRINCIPLES OF NATURAL JUSTICE CANNOT BE READ INTO FR 56(j)

“10. This Hon’ble Court *in Baikuntha Nath Das v. District Medical Officer*, (1992) 2 SCC 299 clarified that principles of natural justice cannot be read into FR 56(j) or similar provisions:

> ‘***34****… (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.’*

Uncommunicated Adverse Entries can be relied upon

11. As discussed above, these decisions can be based on material which might not be sufficient to justify disciplinary proceedings. In the same vein, these decisions can also be based on uncommunicated adverse entries. In this regard, this Hon’ble Court has clarified that:

a. the appointing authority could rely on uncommunicated adverse entries in support of its decision;

b. promotion ‘*does not wipe out earlier adverse entry’*[13] and that the entire record must be considered.

12. It further observed that ‘*[c]ompulsory 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’*.”

[13] Paragraph 183 of *Baikuntha Nath Das* seems to be a printing error; Paragraph 183 does not exist. Also, see Paragraph 17 of *Arun Kumar Gupta v State of Jharkhand* (2020) 13 SCC 355.

c. THE "WASHED-OFF" THEORY DOES NOT APPLY TO COMPULSORY RETIREMENT – RECENT PROMOTION DOES NOT RESULT IN ADVERSE REMARKS BEING EFFACED

"17. The submission of the appellant that the recent promotion to the Senior Administrative Grade (SAG) in 2017/2018 wiped his service record clean, preventing the authorities from relying on the 2017 Confidential Note or previous adverse APAR entries is not tenable.

18. While old adverse entries may lose their relevance when considering an officer for *further promotion*, they remain completely relevant when the Government is assessing whether an officer is fit to be retained in public service, inasmuch as FR 56(j) mandates a holistic evaluation of the *entire* service record.

19. In this regard, a 3-Judge Bench of this Hon'ble Court in ***Pyare Mohan Lal v. State of Jharkhand* (2010) 10 SCC 693,** after examining the conflicting judgments in this regard, was pleased to observe as under:

> *'24. ... 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'.'*

20. The Court in *Pyare Mohan Lal* further clarified that even a single adverse entry regarding integrity from the past is sufficient to justify compulsory retirement. Therefore, the Review Committee was fully justified in considering the Appellant's 2014-15 APAR which explicitly noted 'room for improvement' in integrity alongside the 2017 Confidential Note detailing unprofessional/unacceptable conduct.

21. Moreover, the appellant was a senior officer of the Indian Trade Service (ITS) holding the Senior Administrative Grade (SAG) and occupied a position of substantial public trust, economic sensitivity, and administrative importance. At such high position of Public Interest, the standards of integrity, efficiency, and professional conduct are exceptionally stringent. A recent promotion cannot operate as a blanket amnesty to efface past adverse entries, particularly those casting doubt on an officer's integrity or professional demeanour. The overarching public interest demands that the

entire service record of such senior officials remains open for a holistic evaluation under FR 56(j) to ensure they remain fit to discharge their critical public duties."

d. THE PURPOSE OF FR 56(j)] IS TO "CHOP OFF" THE DEADWOOD

"22. The fundamental objective of FR 56(j) is to maintain high standard of efficiency, integrity, and vitality in public administration. The rule functions as a mechanism empowering the Government to chop off 'dead wood' i.e., such officers whose continued retention would have an adverse impact on public interest. It is an administrative tool designed not to punish, but to ensure that the administrative machinery remains robust and strictly aligned with the public good and as such orders of compulsory retirement do not entail any stigma.

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24. At the outset, it submitted that the Appellant's contention that the review should have occurred upon his attaining the age of 50 or 55years, and conducting the review at 55.6 years was statutorily impermissible, is untenable in as much as it follows from a plain statutory language. FR 56(j), that attaining the age of 50 or 55years merely triggers the eligibility for periodic review, but it does not place an outer time limit on the Government's power to exercise its discretion on a subjective satisfaction that the continuation in service of an officer would not be in public interest. [***Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)*** **(2011) 10 SCC 1**, paragraph 60; ***Union of India v. M.E. Reddy, (1980) 2 SCC 1, paragraph 8 - 12***]".

e. AN ORDER UNDER 56(J) DOES NOT ATTACH ANY STIGMA

"25. Compulsory retirement under FR 56(j) is not a punishment. It is a purely administrative mechanism designed to maintain efficiency and integrity in public administration by chopping off dead wood.

26. Since it is not a penal/punitive action, the retired officer does not lose any of their earned pensionary or retiral benefits. Therefore, the action does not carry any civil consequences. This principle was clearly laid down by this Hon'ble Court in ***Union of India v. Col. J.N. Sinha*** **(1970) 2 SCC 458:**

> *'9. ... 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'."*

f. UNDISPOSED OR PENDING REPRESENTATIONS DO NOT INVALIDATE THE ORDER UNDER FR 56(J)

> "28. The Appellant has further alleged that his comprehensive representation dated 30.08.2018 was not considered and that this procedural lapse vitiates the entire retirement process and violates the principles of natural justice. It is submitted that the law in this regard is well-settled that an authority can pass an order of compulsory retirement even if a representation against an adverse entry is pending, undisposed, or if the opportunity to make one was denied. Principles of natural justice do not apply in the context of FR 56(j).
>
> ***
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> 30. Furthermore, the Representation Committee in this matter acted with the utmost fairness. By initially remanding the case back for a fresh second review instead of mechanically affirming the decision, the Committee demonstrated independent application of mind and a complete absence of institutional bias."

g. PRIOR APPROVAL OF THE ACC AND CONSULTATION WITH CVC ARE NOT REQUIRED

> "34. The Appellant's reliance on an archaic Office Memorandum (OM) of 1974 to claim that approval from the Appointments Committee of the Cabinet (ACC) and consultation with the Central Vigilance Commission (CVC) were mandatory for his retirement.
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> 35. On the date of the Appellant's retirement (10.05.2018), the consolidated DoPT OMs dated 21.03.2014 and 11.09.2015 were in vogue. The 2014 and 2015 OM streamlined the procedure and deliberately omitted any requirement for prior ACC approval to retire an officer.
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> 36. The above position further fortified by the *Government of India (Transaction of Business) Rules, 1961*, which explicitly outlines the functions of the ACC. These functions are limited to appointments, empanelment, and upgradations. They do not extend to administrative retirements. The competent Appointing Authority (the President, exercised through the Union Minister) is the final authority for FR 56(j).
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> 37. As regards vigilance scrutiny, the 2015 OM modernized the safeguard by replacing external CVC consultation with internal association. It requires the Chief Vigilance Officer (CVO), acting as the CVC's representative, to be associated directly

with the Review Committee. In the Appellant's case, the CVO actively participated in the Review Committee meetings, ensuring complete compliance with the prescribed vigilance procedure."

h. THE COMPOSITION OF THE REVIEW AND REPRESENTATION COMMITTEES IS NOT VITIATED

"38. It is submitted that that the presence of common members in the successive Review Committees and the Representation Committee does not vitiate the decision-making process nor does it establish any legally sustainable inference of bias. The composition of these committees was strictly in conformity with the consolidated instructions of the 2015 OM, which governed the field at the time.

39. As mentioned afore, under the 2015 OM, the Review Committee for Group 'A' officers and ACC appointees is required to be headed by the Secretary of the concerned Ministry/Department acting as the Cadre Controlling Authority. The instructions further stipulate that the CVO and a representative of the cadre management authority must be associated with the Review Committee.

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41. In any case, departmental bias cannot be countenanced for the simple reason that the Representation Committee, despite the presence of the DGFT, initially acted in the appellant's favour by remanding the case for fresh consideration rather than mechanically affirming the retirement. Furthermore, the committees only provide recommendations; the final decision was taken by the Union Minister of Commerce & Industry as the Appointing Authority. The appellant has raised no allegations against the Minister, who exercised independent mind in approving the retirement in the public interest. The High Court, at paras 105, 123, and 125, affirmed their presence in the Review and Representation Committees, dismissing the allegations of bias contended by the appellant."

i. THE SCOPE OF JUDICIAL REVIEW UNDER FR 56(J) IS LIMITED

"42. The *locus classicus* on Rule 56(j) is this Hon'ble Court's judgment in *JN Sinha* (1970) 2 SCC 458, which held that:

a. '*If that authority bona fide forms that opinion* [that it is in public interest to compulsory retire the officer], *the correctness of that opinion cannot be challenged before courts'*;

b. *'It is open to an aggrieved party to contend that the requisite opinion has not been farmed or the decision is based on collateral grounds or that it is an arbitrary decision.'*

43. Based on *JN Sinha*, this Hon'ble Court noted *that '[w]hether the order is correct or not is not to be gone into by the court*"[14] and that an '*aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court: (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision*'[15].

44. The Appellant's challenge proceeds on the erroneous *premise* that judicial review of a decision taken under FR 56(j) entails reassessment of the sufficiency or correctness of the material considered by the competent authority, which is contrary to the law settled by this Hon'ble Court.

45. The power conferred under FR 56(j) authorizes the Appropriate Authority to retire a Government servant in the public interest upon forming a *bona fide* opinion regarding his continued utility in service. The satisfaction of the competent authority is essentially subjective, and judicial review is strictly confined to examining whether the decision is vitiated *by mala fides*, arbitrariness, or is based on no material.

46. The scope of interference in such administrative acts has come up for consideration in several judgments of this Hon'ble Court. For ease of reference, the view taken by this Hon'ble Court in ***Ram Murti Yadav v. State of U.P.*** **(2020) 1 SCC 801**, is reproduced hereunder:

> *'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.'*

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48. Unlike departmental enquiries, the scope of enquiry under FR 56(j) is limited. An enquiry under FR 56(j) is predicated on public policy and the standard of adjudication is *prima facie* subjective opinion as to his suitability for continuing in service the requirement of the officer in public interest; it is for this

[14] Paragraph 8 of *Mayongbam Radhamohan Singh v. Chief Commr.* (1976) 4 SCC 709.
[15] Paragraph 8 of C.D. *Ailawadi v. Union of India* (1990) 2 SCC 328.

> reason that no stigma is attached to an employee who is compulsorily retired, such employee is entitled to all retiral benefits and is also entitled to be considered for such other appointments.
>
> 49. In the present case, the Review Committee meticulously examined the Appellant's complete service dossier, including APARs, vigilance inputs, confidential reports, and integrity-related material. Following the Appellant's representation, the matter was remitted for fresh consideration, whereupon the Second Review Committee independently reassessed the entire record before reiterating its recommendation. Therefore, the decision was founded on relevant material, reflects independent application of mind at multiple stages, and satisfies the legal threshold of a *bona fide* subjective satisfaction."

18. In substance, therefore, learned ASG submitted that the challenge to the order dated 10th May, 2018 seeks, under the guise of judicial review, a reassessment of the service record and a substitution of the Court's view for that of the competent authority. Such an exercise, according to him, would run counter to the settled parameters governing judicial review of an order passed under FR 56(j). He, accordingly, urged that the challenge be rejected.

ANALYSIS AND REASONS

19. Before we venture to consider the erudite arguments advanced before us and look into the canvas of precedents cited as well as a few of those, not cited, we need to put the matter in perspective by seeing, verifying and ascertaining how the appellant was graded by his superiors while he continued in service for nearly two dozen of years.

20. The relevant file produced before us by the learned ASG contains the appellant's Annual Confidential Report[16] booklets from 1994-95 to 2008-09 and APAR booklets from 2009-10 to 2015-16 (drawn on 9th January, 2017). The ACR booklets required grading of an officer as either Outstanding/Very Good/Good/Average/Below Average with an instruction that an *"officer should not be graded as outstanding unless exceptional qualities and performance have been noticed; grounds for giving such a grading should be clearly brought out"*. The booklet on APAR required *"(N)umerical grading to be awarded by reporting and reviewing authority which should be on a scale of 1-10, where 1 refers to the lowest grade and 10 to the highest"*.

21. Culled out from the original service records submitted before us by the learned ASG, the following table bears out the gradings of the appellant's performance as given by his reporting officer as well as his reviewing officer:

Year	Grading/Remarks by the Reporting Officer	Grading/Remarks by the Reviewing Officer
1994-95	Outstanding	Agreed
1995-96	Outstanding	Agreed
1996-97	Outstanding	Agreed
1997-98	Outstanding	Agreed
1998-99	Outstanding	Agreed
1999-2000	Outstanding	Agreed
2000-01	Outstanding	Agreed
2001-02	Outstanding	-
2002-03	Under Training	-
2003-04	Outstanding	Agreed
2004-05	Outstanding	Agreed
2005-06	Outstanding	Agreed

[16] ACR

2006-07	Part- I: Feb 06 to Sept 06 – Outstanding Part- II: Oct 06 to March 07 – Very Good	Agreed **Disagreed; graded "outstanding"**
2007-08	Very Good	Agreed
2008-09	Outstanding	Agreed
2009-10 01.08.2009 to 31.01.2010	7.9	**8.23**
2010 to 31.03.2011	8.0	**8.5**
01.04.2011 to 31.12.2011	8.0	**8.06**
Jan to March 2012	8.5	Review could not be recorded
01.04.2012 to 31.01.2013	8.6	Review could not be recorded
2013-14	9.8	Agreed
2014-31.03.2015	8.75 ("There is room for improvement")	Agreed
2015-16	9.6	Agreed
2016-17	8.12	7.28

(emphasis ours, to signify the reviewing officer's disagreements with the reporting officer)

22. For all the OUTSTANDING gradings given to the appellant, the reporting and the reviewing officers indicated special reasons therefor. The reporting year 1998-99, as the discussion unfolds, would assume some importance. That was the period when the appellant had completed barely 5 (five) years in service. Against Sl. No.3A requiring comment on the appellant's knowledge of sphere of work, the remark of the reporting authority read *"Encyclopaedic knowledge of rules, regulations, related instructions and their applications"*. The reviewing officer did not take a different view. The same trend continued.

23. What does not escape our notice is that the order compulsorily retiring the appellant was passed on May 10th, 2018 despite the assessment as borne out from the table hereinabove and a couple of months after he earned a regular promotion on February 27th, 2018 as Joint Secretary. As things stood thus, the question does emerge, could the appellant's record preceding the order of compulsory retirement be fairly characterised as one of persistent ineptitude, deteriorating performance or recurring misconduct? This provided the reason for us to call for and look into the two decisions of the Review Committee and those of the Representation Committee. Undisputedly, the material adduced before us records repeated assessments *qua* various heads including competence, knowledge, leadership and integrity, as well as high gradings of OUTSTANDING/VERY GOOD coupled with gradings of 8+ on all but one occasion and high assessments of 9.8 and 9.6 on two occasions, and also a favourable assessment in the realm of anti-dumping, in which the alleged professional misconduct is now said to have occurred.

24. As noted above, the appellant was found suitable for promotion to Senior Administrative Grade upon acceptance of the recommendation of the Union Public Service Commission[17] and with the approval of the ACC, was promoted on November 16th, 2017. His promotion was later regularised in February 2018.

[17] UPSC

25. The Review Committee met shortly after the selection and consequent promotion: on 27th November, 2017, to be precise. There is no identifiable intervening alleged act of misdemeanour occurring between the promotion and the retirement, which could reasonably explain this dramatic reversal. The relevant findings of the Review Committee dated 27th November, 2017, *qua* the appellant, bears out as follows:

> "f. Shri S. S. Das (ITS-1989) — The Committee noted that intent and conduct of Shri Das, while dealing with files as well as with clients, has been obstructive and questionable. **He does not hold a good reputation in terms of integrity. This fact is borne out by entries in his APAR dossier**. On few occasions, **during different spells of his posting in DGAD, his unprofessional conduct has been taken on record also**. In one case **Shri Das was charged with insubordination**. In other case, it has been reported that the **officer's approach in handling the cases has been unprofessional and of questionable integrity**.
> The **Committee noted** that the **officer was recently promoted** to the post of Additional DG. However, **it was observed that as at the time of the promotion, the officer was technically clear from vigilance angle (in terms of extent instructions of DoP&T on granting vigilance clearance for promotion), the officer was promoted**.
> The **Committee recommended premature retirement** of the officer **in public interest, taking into account the questionable reputation arid conduct of the officer**."
>
> (emphasis ours)

26. Based on such recommendation, the appellant was informed by a communication dated 10th May, 2018 of the Joint Director General of Foreign Trade, Department of Commerce, Government of India as follows:

> WHEREAS the President is of the opinion that it is in the public interest to do so;

> NOW THEREFORE, in exercise of the powers conferred by clause (j) pof the Fundamental Rules, the President hereby retires Shri S.S. Das, Development Commissioner, with immediate effect, he having already attained the age of 50 years. The President also directs that Shri Das shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement.

27. Appellant submitted a detailed representation on 1st June, 2018 urging several grounds. Sub-paragraphs (37) and (38) of paragraph 2, *inter alia*, capture the essence of the appellant's contentions; hence, they are quoted hereunder:

> 37. All the APARs, including the last one in December, 2017, show that my integrity for the entire period has been beyond doubt. Nothing adverse has been recorded by any reporting officer in any of the APARs.
>
> 38. It appears that the Review Committee has completely disregarded the brilliant track record as outlined above and treated me as deadwood. It may be appreciated from the above records placed before the Representation Committee, neither incompetency or integrity can be a reason for the action against me under 56(j), whereas these are the only two grounds for action under this provision.

28. At this juncture, we may notice that the veracity of the averments made by the appellant in the representation, extracted hereinabove, can be inferred in light of the ACRs and APARs, over the years spanning his service, a part whereof is extracted in the table in paragraph 34 (infra).

29. The Representation Committee in its meeting dated 7th September, 2018 proceeded to consider the appellant's representation. Relevant findings of the Representation Committee *qua* the appellant are set out as follows:

> 7.1. The Representation Committee perused the representation of Shri S.S. Das along with other relevant records including his personal

life, confidential note from the Director General of Anti-Dumping & Allied Duties (now DGTR) and overall APAR grading. The Committee has noted that, in a Confidential Note dated 30.03.2017, Shri Inder Jit Singh, former AS & DGAD, has highlighted the 'unprofessional' approach of Shri Das in handling cases with calculations and conclusions varying several times and pushing for some principles which as per existing rules/conventions of DGAD are not allowed. The Committee was informed that the applicant does not hold a good reputation in terms of integrity. However, the Committee noted that Shri Das had been recently promoted to the post of Additional Director General of Foreign Trade on 16.11.2017, based on the recommendation of UPSC.

8. In view of the above detailed examination of the representations, the Representation Committee decided to uphold the decision of the Department of Commerce for premature retirement in respect of Shri ***, Shri *** and Shri *** under FR 56(j), as it does not find any merit in the representation of these officers.

9. However in the case of Shri S.S. Das, the Representation Committee recommends that the case be remanded back to the Department for taking it back to the designated Review Committee for re-examination of their recommendation and then placing it before the competent authority for appropriate decision.

(emphasis ours)

30. The decision was entirely justified, having regard to the appellant's brilliant track record. Post the remand by the Representation Committee, the Review Committee was re-convened on 3rd May, 2019 with two common and two new members. The Review Committee, after making certain introductory remarks in the first 5 (five) paragraphs noted the grounds urged by the appellant in paragraph 6. Paragraphs 7 to 9 were devoted to consideration of circulars issued by the Department of Personnel & Training[18]. Thereafter, in paragraphs 10 to 15, this is what the Committee recorded:

"10. The Committee examined the APAR dossier of Shri Das and noted that in a few APARs of Shri Das, there are remarks that cast

[18] DoPT

doubts on the integrity of the officer. In APAR of 1998-1999, the reporting officer has recorded in Integrity column that *"a few complaints received - no substance found"*. In APAR of 2014-15, the reporting officer has recorded in the integrity column that *"There is room for improvement"*. The APAR of 2014-15 was disclosed to the officer. However, Shri Das did not submit any representation.

11. The Committee noted that during the posting of Shri Das as Addl DGFT in DGAD (now DGTR), a Confidential Note dated 30.03.2017 from the then Additional Secretary & DGAD was received by DGFT, through the Commerce Secretary, which, inter alia, stated as under, in respect of Shri Das:

> *'His overall approach in handling a recent case was unprofessional, with calculations and conclusions varying several times. During the processing of this case, he tried to push for some principles, which, as per existing rules/conventions of DGAD, are not allowable, and have not been allowed in the past in any other case.*
>
> *Yesterday (29.03.2017), some of the representatives of domestic industry applicants in this case met me and made serious allegations against Shri Das, including demand of some favours in return for doing something in this case. However, considering the nature of allegations, they were reluctant to give written complaint regarding this.*
>
> *Notwithstanding that there is no evidence in support of the allegations, and not even a written complaint, considering various aspects, and the way Sh. Das has been handling this case, in the interest of organization, and in public interest, it appears desirable that not only he is disassociated from this cases investigations, but immediately transferred out of DGAD and posted in some non sensitive post. I understand Sh. Das is one of the longest serving officers in DGAD.'*

12. To corroborate the context of the above mentioned confidential note, the concerned file of DGAD was also examined. It was noted by the Committee that in a particular case of anti-dumping investigation, Shri Das had presented his calculations based on certain principles, which were inconsistent with established norms/conventions. The then AS&DGAD had then noted on the file, as under:

> *'Freight Adjustments - we go by existing practice. The issue will be examined separately as a general issue and then whatever decision is taken will be followed for all cases……'*

13. The Committee also interacted with the said former AS & DGAD, to further understand the case referred to in his confidential note. He observed that while the general reputation of the officer was anyway not good in terms of integrity, in the case under reference, the industry representatives confided before him in person that Shri Das demanded certain favours from industry for dealing the case in a particular manner. He stated that it is on record that the officer deviated from the existing rules/conventions, and submitted a proposal in favour of the firm, on a principle, which is neither allowable and nor has been allowed in the past. He observed that, prima facie, the noting of Shri Das in the file on this case was motivated to favour few firms.

> 14. The Committee noted that in the year 2014-15, the then reporting officer of Shri Das had explicitly observed in the integrity column "*there is room for improvement".* As mentioned in the above paragraphs, the then AS & DGAD also questioned the integrity of Shri Das in 2017 through his confidential note. The Committee noted that Shri Das, thus, did not improve his conduct, even after he was made aware of the impression about his integrity, through the remarks in the "integrity column" in APAR of 2014-15.
> 15. The Committee noted that, it was also a fact that, the officer had been promoted to the post of Additional DG in November 2017. The Committee examined the issue and noted that, as the officer was technically clear from vigilance angle in terms of the extant instructions of DoPT, on granting vigilance clearance for promotion (DoPT OM No. 22011/4/91-Estt (A) dated 14.09.92), the officer could not have been denied the promotion."
>
> (italics in original)

Thereafter, the Review Committee reverted and referred to circulars of the DoPT as well as decisions of this Court, viz. ***State of Gujarat v. Umedbhai M. Patel***[19], ***S Ramachndra Raju v. State of Orissa***[20], ***Shri K. Kandaswamy v. Union of India***[21], ***State of UP & Others v. Vijay Kumar Jain***[22], ***Shyam Lal v State of UP***[23], ***Baikuntha Nath Das v. District Medical Officer***[24], ***Col. J.N. Sinha*** (supra) and ***Shivcharan Singh v. State of Mysore***[25], in paragraphs 16 to 23; and ultimately, it recorded its findings in paragraphs 24 and 25, reading as follows:

> "24. In view of the reasons given above, the Committee did not find the contentions of Shri Das tenable. Further, the Committee did not find any new fact, which could have a bearing on changing the earlier recommendation on compulsory retirement, notwithstanding the claims made by Shri Das in his representation, including the fact that he had been promoted to a higher post recently. On the other hand, the Committee strongly felt that at senior levels of bureaucracy, the

[19] (2001) 3 SCC 314
[20] (1994) 3 SCC 424
[21] (1995) 6 SCC 162
[22] Civil Appeal No. 2083 of 2002
[23] (1955) 1 SCR 26
[24] (1992) 2 SCC 299
[25] AIR 1965 SC 280

> integrity of the officer in terms of his conduct and action is of paramount importance. The Committee noted that the instructions of DoPT and judgments of the Supreme Court also emphasize on the integrity of the officer in review under FR 56(j).
>
> 25. The Committee, after careful consideration of the representation of Shri Das and all the relevant facts presented before the Committee, observed that integrity of a public servant and, that too, at such high levels of decision-making, has to be above board. The Committee observed that continuation of the officer in the Government would be injurious to public interest. The Committee, therefore, decided in public interest to reaffirm the earlier recommendation of compulsory retirement in respect of Shri S.S Das, ITS."

31. The matter, thereafter, was once again placed before the Representation Committee in its meeting held on 28th May, 2019. One of the members of the Representation Committee happened to be the officer who had issued the order of compulsory retirement dated 10th May, 2018, on behalf of the President. It was recorded *inter alia* in the decision as follows:

> "22. The Committee was informed that the Review Committee did not find any new fact, which could have a bearing on changing the earlier recommendation on compulsory retirement, notwithstanding the claims made by Shri Das in his representation, including the fact that he had been promoted to a higher post recently. On the other hand, the Review Committee strongly felt that at senior levels of bureaucracy, the integrity of the officer in terms of his conduct and action is of paramount importance. The Committee noted that the instructions of DoPT and judgments of the Supreme Court also emphasize on the integrity of the officer in review under FR 56(j).
>
> 23. The Committee was informed that, in view of the reasons given above, the Review Committee did not find the contentions of Shri Das tenable and after careful consideration of the representation of Shri Das and all the relevant facts, the Review Committee observed that integrity of a public servant and, that too, at such high levels of decision-making, has to be above board. The Committee was informed that the Review Committee observed that continuation of the officer in the Government would be injurious to public interest and, therefore, decided in public interest to reaffirm the earlier recommendation of compulsory retirement in respect of Shri S.S. Das, ITS.
>
> 24. The Committee was informed that the competent authority in the Department of Commerce has accepted the recommendation of

> the Review Committee to uphold, in public interest, the compulsory retirement of Shri S.S. Das, under FR 56(j).
> 25. The Committee, after detailed deliberations on all the facts relating to the dubious integrity of Shri Das, the instructions of DoPT and court judgments thereon, the relevant records of Shri Das and the considered view of the Department after re-examination of the case, decided to uphold the decision of the Department of Commerce on premature retirement of Shri S.S. Das (ITS:89). The representation of Shri Das was rejected as being devoid of merit."

32. The Review Committee, on remand, appears not to have left any stone unturned to maintain its earlier decision. As is evident, on a bare reading thereof, the Review Committee referred to and drew support from several decisions of this Court to *ex post facto* justify its conclusion. The Representation Committee though had applied its mind on the first occasion while ordering a remand, with two common members and a new member (the officer who passed the impugned order) mechanically upheld the decision of the Review Committee without proper application of mind which would be apparent from the discussions to follow.

33. An officer of doubtful integrity ought not to be retained in service. We had, thus, specifically called upon the learned ASG to point out from the ACR and the APAR booklets the instances when either the Reporting Officer or the Reviewing Officer of the appellant commented adversely against his integrity. Candidly, he submitted that apart from what are recorded in paragraphs 10 to 14 of the decision of the Review Committee, on remand, there is no other adverse comment.

34. To satisfy our conscience, we once again looked into the ACR and APAR booklets. Our scrutiny reveals the following startling results:

Year	Remarks on Integrity by the Reporting Officer	Remarks on quality of output by the Reporting Officer
1994-95	Nothing adverse known/reported	The quality of output was excellent
1995-96	Nothing adverse known/reported	The quality of output was excellent
1996-97	Very honest	The performance has been excellent both quantitatively as qualitatively.
1997-98	Above doubt	The quality of his output has been of very high standard at all times.
1998-99	A few complaints received – no substance found.	Consistently high quality of output
1999-2000	Nothing against	Generally of very high order.
2000-01	No complaints	Excellent at all times.
2001-02	Nothing against	The quality of his work has been consistently high.
2002-03	Under Training – No ACR required	Under Training – no remarks
2003-04	Integrity beyond doubt.	The work load has been increasing in the DGAD. Sri Das's quality of performance was of a very high order. All the findings finalised by him were approved.
2004-05	Integrity beyond doubt.	He has demonstrated his abilities and high standard of work during the period of reporting. He has completed all the investigation work entrusted to him. The quality of the analysis and findings was excellent.

1.4.2005-3.1.2006	Integrity is beyond doubt.	The quality of work done by Mr. Das is of a very high standard. He has fulfilled all the objectives within the time frame without any dilution of quality. Very commendable work was done during this period.
2006-07	Part- I: Feb 06 to Sept 06 – Very Good Part- II: Oct 06 to March 07 – Nothing serious has come to my knowledge. Hence integrity is certified.	Excellent. The officer is very hard-working and his standard of work is excellent. The quality of his output has been very good inspite of time constraints.
2007-08	His integrity is certified.	I rate him as very good for quality of his output.
2008-09	Integrity is beyond doubt.	Shri Das has demonstrated his abilities and high standards of work during this period. He has been able to collect, collate, analyse and present all suggestions, views and data on various issues in respect of financial crisis and provided effective assistance to the committee of officers in its day-to-day work.
2009-10 01.08.2009 to 31.01.2010	Sound	Overall grading on work output: 8
2010-11	Nothing adverse has come to my notice, so integrity certified.	Overall grading on work output: 8

01.04.2011 to 31.12.2011	Nothing adverse came to my notice, so integrity certified.	Overall grading on work output: 8
Jan to March 2012	Nothing adverse has come to my notice	Overall grading on work output: 8.6
01.04.2012 to 31.01.2013	Nothing adverse has come to my notice, hence certified.	Overall grading on work output: 8.9
2013-14	Nothing adverse came to notice during the period under report. Beyond doubt.	Overall grading on work output: 9.75
2014-31.03.2015	There is room for improvement. **To be noted: all other comments hitherto were handwritten; this comment is pasted after printing.**	Overall grading on work output: 8.7
2015-16	Heard nothing against him.	Overall grading on work output: 9.75
2016-17	Heard nothing adverse against him	Overall grading on work output: 8.25

(emphasis ours, signifying a departure from earlier and future entries)

35. Having taken note of the recommendations/observations from the relevant departmental file, it is appropriate to remind ourselves that the scope of judicial review in matters of compulsory retirement is limited and the Court is duty bound to examine in each case as to what extent such order is justiciable. We consider the stage to be ripe to draw guidance from precedents in this behalf.

36. We begin with the granular proposition, positioned beyond the pale of any controversy, that compulsory retirement in public interest is not *per se* punitive. The authorities, including ***Shyam Lal*** (supra) and ***Col. J.N. Sinha*** (supra), heavily relied upon by the ASG for the respondent, map out the broad contours of that power.

37. ***Baikuntha Nath Das*** (supra) is a three-Judge Bench decision, reliance whereon has been placed both by the learned ASG and the Review Committee. The controversy mainly related to the effect of reliance placed on uncommunicated adverse remarks; whether it is fatal to the sustainability of an order of compulsory retirement. This appeal does not involve uncommunicated adverse remarks because hardly any adverse remark is traceable in the appellant's ACR/APAR. However, this decision highlights to what extent judicial review of an order of compulsory retirement is permissible. It also adumbrates the effect of a promotion earned on merit, and not seniority, resulting in taking the sting out of previous adverse remarks. Relevant passages from such decision capturing the law on the point read as follows:

> **32.** We may not be understood as saying either that adverse remarks need not be communicated or that the representations, if any, submitted by the government servant (against such remarks) need not be considered or disposed of. The adverse remarks ought to be communicated in the normal course, as required by the rules/orders in that behalf. Any representations made against them would and should also be dealt with in the normal course, with reasonable promptitude. All that we are saying is that the action under F.R. 56(*j*) (or the rule corresponding to it) need not await the disposal or final disposal of such representation or representations, as the case may be. In some cases, it may happen that some adverse remarks of the recent years are not communicated or if communicated, the representation received in that behalf are pending consideration. On this account alone, the action under F.R. 56(*j*) need not be held back. There is no reason to presume that the Review Committee or the government, if it chooses to take into consideration such uncommunicated remarks, would not be conscious or cognizant of the fact that they are not communicated to the government servant and that he was not given an opportunity to explain or rebut the same. Similarly, if any representation made by the government servant is there, it shall also be taken into consideration. We may reiterate that not only the Review Committee is generally composed

of high and responsible officers, the power is vested in government alone and not in a minor official. It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided by Article 226 of the Constitution is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action.

33. At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is *adverse* remarks — not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(*j*) or a rule corresponding to it. The object and purposes for which this power is to be exercised are well stated in *J.N. Sinha* and other decisions referred *supra*.

34. The following principles emerge from the above discussion:

(*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.
> Interference is permissible only on the grounds mentioned in (*iii*) above. This aspect has been discussed in paras 30 to 32 above.
>
> (emphasis ours)

38. Another three-Judge Bench in ***State of Punjab v. Gurdas Singh***[26] considered whether uncommunicated adverse entries in service records could be relied on by the employer to compulsorily retire an employee. Answering in the affirmative, the Bench held:

> **11.** … It is not necessary for us to again reiterate the principles where the Court will interfere in the order of premature retirement of an employee as these have been accurately set down by various pronouncements of this Court and particularly in *Baikuntha Nath Das case*. Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well.
>
> (emphasis ours)

39. Soon followed the decision of a coordinate Bench in ***Umedbhai M. Patel*** (supra), which had the occasion to observe that the law relating to compulsory retirement had crystallised into definite principles. The relevant passage reads as follows:

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

[26] (1998) 4 SCC 92

> (*iii*) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
> (*iv*) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
> (*v*) Even uncommunicated entries in the confidential record can also be taken into consideration.
> (*vi*) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
> (*vii*) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
> (*viii*) Compulsory retirement shall not be imposed as a punitive measure.
>
> (emphasis ours)

40. Moving further, we observe that another coordinate Bench in ***Rajasthan SRTC v. Babu Lal Jangir***[27] was of the following opinion:

> **23.** … 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.
>
> (emphasis ours)

41. Our understanding of the law is this. The proposition that an order of compulsory retirement in public interest is non-punitive does not elevate itself into a mantra which, by its mere invocation, can validate

[27] (2013) 10 SCC 551

such order and repel all challenges laid to it. Exercise of power, which is non-punitive, nevertheless remains bound by the precincts of a public power. The object of compulsory retirement is to enable the administration to dispense with the services of public servants who, when viewed in the prism of public interest, have been rendered dead wood and, thus, outlived their utility. Either the public servant who is ordered compulsory retirement has, by passage of time, become inefficient to perform the duties and functions entrusted to him or his integrity is doubtful – these are the prime criteria triggering the need for such an order. However, a promotion earned on merits, and not by dint of seniority alone, immediately prior to such order of compulsory retirement being made would, by itself, render the order susceptible to invalidity. This is for the reason that the merit-based promotion, not long ago, would stand as proof of a recent and objective assessment of the entire service record and a finding that the servant is fit for shouldering higher responsibilities, which is irreconcilable with the finding and thus negates the very foundation of the order, namely, that the servant has become dead wood, or is of doubtful integrity, and has outlived his utility. Any order of compulsory retirement partaking the character of a backdoor disciplinary proceeding, clandestinely avoiding the safeguards embodied in Article 311 of the Constitution, would be indefensible.

42. The sentiment which animates our consideration herein finds eloquent and prescient expression in the judgment of Hon'ble Krishna Iyer, J. in

Baldev Raj Chadha v. Union of India[28], where the learned Judge aptly observed:

> **9.** We will consider this question to the extent disclosed by the record and in the light of the submissions made by both the parties. The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. After all, Administration, to be efficient, must not be manned by drones, do nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation, in a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed but paperlogged processes and callous cadres are the besetting sin of the Administration. It is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making. The appropriate authority, not the court, makes the decision, but, even so, a caveat is necessary to avoid misuse.

(emphasis ours)

43. Learned ASG submitted, on the anvil of the rulings in ***Pyare Mohan Lal v. State of Jharkhand***[29] and ***Central Industrial Security Force v. Om Prakash***[30] that the "washed-off" theory does not automatically apply in cases of compulsory retirement and that the entire service record may be considered even subsequent to promotion. This proposition is unexceptionable. However, there is a difference between saying that earlier material may be considered and saying that earlier isolated materials must necessarily yield to a consistent and long-

[28] (1980) 4 SCC 321
[29] (2010) 10 SCC 693
[30] (2022) 5 SCC 100

standing stellar record. The following passage from ***Pyare Mohan Lal*** (supra), as relied upon by the respondents, illumines the position as thus:

> **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".

44. The passage extracted hereinbelow from the decision in ***Om Prakash*** (supra) lends clarity to the proposition sought to be enunciated herein:

> **13.** There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in *Ram Murti Yadav* v. *State of U.P.* [*Ram Murti Yadav* v. *State of U.P.*, (2020) 1 SCC 801 : (2020) 1 SCC (L&S) 245] held as under : (SCC p. 805, para 6)
> "*6*. … The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. <u>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</u>. 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 … wrongly applied the principles laid down therein. <u>The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned above</u>. …
> **15.** <u>The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion</u>. <u>The order of premature retirement is required to be passed on the basis</u>

> <u>of entire service records, though the recent reports would carry their own weight</u>.
>
> (emphasis ours)

45. The common thread which runs through all the precedents is not that a promotion wipes out the past; rather, while the promotion on its own footing does not *simpliciter* erase the past, yet, the past must be posted in the prism of the entire service record, with appropriate accord being ascribed to the immediate past.

46. We hasten to observe that the authorities, referred to and/or relied upon by the Review Committee, as detailed in paragraph 30, however, appear to have been invoked with a degree of selectivity that is difficult to reckon with the wider body of jurisprudence governing the exercise of the power of compulsory retirement. The Review Committee placed its reliance upon those propositions which supported the power to take into account past adverse material, thereby skirting from meaningfully engaging with the equally material limitations and qualifications embedded in the same line of authority, particularly the requirement that the entire service record be considered, that the immediate past be accorded due weight, and that promotion notwithstanding earlier adverse material is a factor inuring in favour of the officer. Such a selective bureaucratic reliance only on a particular subset of precedents favouring the department, divorced from the qualifications and balancing principles which accompany the propositions relied upon, cannot furnish a rational basis for the exercise of power under FR 56(j). The vice, therefore, is not in the propositions canvassed by the Review Committee, but rather, in their selective invocation and application, to justify, *ex post facto*, a decision already taken.

47. Even assuming, for the sake of argument, that the submissions advanced by the respondent are correct, the same falter considerably when tested on the very principles so canvassed *qua* the case of the appellant.

48. Respondent-department was certainly entitled to review the services of the appellant, notwithstanding his promotion. But where the very same departmental machinery had, after consideration of his record, found him fit for a higher post of Joint Secretary, the subsequent conclusion that his continuance was no longer in public interest required more than a general invocation of the expression "questionable integrity". The question, therefore, is not whether promotion offers *carte blanche* immunity against review of earlier service records, rather the question is whether the promotion, coupled with the subsequent record, constitutes relevant material which the reviewing authority has to meaningfully weigh. In our considered view, it does.

49. The order retiring the appellant compulsorily taking the aid of FR 56(j) suffers from a manifest contradiction and is not sustainable, being thoroughly vitiated by malice in law. We may again refer to the decision in ***Baikuntha Nath Das*** (supra) wherein this Court held that while judicial review is generally impermissible against the orders of compulsory retirement, nevertheless, where the order evinces manifest arbitrariness, perversity or *mala fides*, judicial review would not be foreclosed. We deem it fit to observe that this is a fit case, in which, the order smacks of arbitrariness, perversity and *mala fides*, warranting the case for judicial interference in full force.

50. As the gradings in his dossiers reflect, the appellant was consistently graded as OUTSTANDING/VERY GOOD right from 1994 till 2008-09. The system changed from ACR to APAR in due course. From 2009-10 onwards, the gradings bore assessment in figures out of a maximum 10. Here too, the appellant never fell below 8 out of 10, except on one occasion and that too on review. A grading of 8+, if considered equivalent to OUTSTANDING, the question of any adverse entry in the APARs may not have arisen. Despite repeated reading, we have not noticed any adverse comment. To repeat, the appellant was found fit for promotion by none other than the UPSC and granted promotion to the post of Joint Secretary barely two months prior to the order of retirement with the approval of the ACC. Such grant of promotion was an unequivocal recognition by the department concerned that the appellant's service was not only highly satisfactory and meritorious but that he was an officer who should be entrusted higher responsibilities. Having promoted the appellant, barely a couple of months later, the superior officers in the department could not have branded him, so to say, 'dead wood' to justify weeding him out in purported public interest. The two actions are mutually destructive and cannot co-exist.

51. Law is well-settled that FR 56(j) can neither be invoked as a shortcut to avoid regular proceedings nor as a device to retire an officer either without material or to wreak vengeance or to satisfy vested interests. When 'OUTSTANDING' gradings are followed by a promotion, a subsequent subjective satisfaction that the service is not up to the required mark, without any intervening adverse material, could be declared *ex facie* arbitrary, perverse and a colourable exercise of power.

52. Let us now consider each of paragraphs 10 to 14 which form the base of the decision of the Review Committee, on remand, for compulsorily retiring the appellant.

53. Consideration of paragraphs 10 and 14 are taken up together, since they are inter-linked. Paragraph 10 starts with the observation that examination of the APAR dossier of the appellant reveals remarks in a few APARs which cast doubts on the appellant's integrity. The opening statement of paragraph 10, if viewed in isolation, could be a damning statement for the appellant. However, fortunately for the appellant, this statement stands qualified by reference being made to the appellant's APAR of 1998-99 (it was not the APAR then, but the ACR that the members of the Review Committee were referring to) and the APAR of 2014-15. Apart from these two instances referred to by the Review Committee, there is not even a slight hint of the appellant's integrity being questionable.

54. Reverting to the column on 'Integrity' in the appellant's ACR of 1998-99, where the Reporting Officer recorded having received complaints but not finding substance in such complaints, the question that we posed to the learned ASG was whether this at all a relevant consideration? Apart from the fact that the ACR related to a period 20 (twenty) years prior to the order of compulsory retirement, no importance was given by the Review Committee to the comment that the complaints lack substance; on the contrary, what appeared to be important to the members was that complaints were received, not that such complaints lacked substance. If this does not amount to arbitrariness, we wonder what would!

55. Next, what appears to have weighed with the members of the Review Committee was the reporting officer's remark in the column on Integrity in the APAR of 2014-15 that *"there is room for improvement"* and the appellant's omission in not submitting any representation thereagainst. Several questions were posed, which remain unanswered because a befitting reply was simply not available. Would any officer be graded as high as 8.75 if the said comment were regarded as an adverse remark of the reporting officer? Could this remark, by itself, evince a lack of integrity on the part of the appellant? Regrettably, the Review Committee failed to consider that during 2014-15, the appellant was graded 8.75. Since 10 was the highest grade, effectively what it could mean is that the range for improvement was between 8.75 and 10, i.e., the appellant fell short by 1.25. Having been graded as high as 8.75, could there be any real reason for an officer to make a representation? Did the members of the Review Committee notice that in the previous year, i.e., 2013-14, the appellant was graded 9.8 which fell to 8.75 in 2014-15? Could this not have been the reason for the reporting officer to record that there was room for improvement? Is the sincerity of the appellant too not evident from the facts that when his grading fell from 9.8 in 2013-14 to 8.75 in 2014-15, instead of making a representation, the appellant took the criticism in the right spirit, introspected and raised his performance to secure a grading of 9.6 in the very next year, i.e., 2015-16? The materials on record bear true reflection of what can be associated with the appellant, that is, nothing short of an exceptional and blemish less track record. Since the entire service record has to be seen with greater emphasis on the ACRs/APARs of the years immediately preceding the order of compulsory retirement, bare perusal of the ACRs/APARs for the last twenty years would vouch for the fact that, except for 2002-03 when there was no grading since the appellant was undergoing training and for 2 periods [1st October, 2006 till 31st March, 2008 and April to July of 2009] when the appellant was graded as VERY GOOD, he has consistently been graded as OUTSTANDING for all the remaining years. Having regard thereto, we have no hesitation to record that malice is writ large on the decision of the Review Committee while maintaining its earlier recommendation.

56. Paragraphs 11 to 13 dealt with the confidential note of the then Additional Secretary & DGAD, quoted by the Review Committee. The said note is not only bizarre, but sinister in its design. The immediate and inevitable question that arises on its perusal is, was the then Additional Secretary acting to protect the interest of the department or to espouse the cause of the representatives of the domestic industry? Had the appellant asked for any favour from the representatives of the domestic industry, yet, they were not prepared to lodge any written complaint, did such oral accusation deserve cognisance, let alone credence? Was there any material before the said Additional Secretary that the principles which the appellant was allegedly pushing for which, according to such officer, were not allowable as per rules/conventions of DGAD, were not intended to subserve public revenue, but to promote private interest? Did the appellant act in any manner involving the barest possibility of loss in revenue generation? Was the appellant, having encyclopaedic knowledge of the rules, regulations and departmental instructions, more competent than his superior and posed a risk which infuriated him? If indeed, the appellant was known for his independence, impeccable integrity and courage of conviction, and, as we presume, was a hard nut to crack and, therefore, an officer whom the representatives of the domestic industry found extremely inconvenient, much unlike his superiors, did he deserve such treatment for committed service much to the prejudice and detriment of national interest? Learned ASG was duly questioned on these aspects. Burdened as he was with the onerous task of defending the indefensible, *albeit* ably presenting the case of the respondent, he could offer no satisfactory answer to these core questions.

57. We conclude this part of our discussion by holding that the confidential note of the said Additional Secretary - the basis for the impugned order of compulsory retirement - was not worth the paper it had been written on. One cannot help but feel aghast that such a note, bereft of any credibility, was given credence and made the foundation for showing the door to an excellent public servant who, by dint of his independence, integrity and courage, stood tall to ward off pressures from the domestic industry to protect the interest of the revenue. It does not require great intelligence to fathom the why and what of it, and as to who orchestrated the move for the marching orders to be given to such an officer. If the Court were to adopt a hands-off approach despite noticing the egregious misuse and abuse of official power in a matter such as this, judicial non-interference would not be restraint but abdication. The casualty would be both justice and public interest.

58. What remains to be dealt with is the event of promotion of the appellant as Joint Secretary (a promotion that presupposes unblemished record and approval of his integrity), roughly a few months before the impugned order struck him. Having perused this part of the discussion of the Review Committee, we plainly entertain doubts in respect of the integrity of its members as well as the members of the Representation Committee, which endorsed the decision to compulsorily retire the appellant. One is sure to gain an impression, reading the Review Committee’s observations, of a very unusual, narrow and exceptionable outlook that promotion to such high office is earned only because of clearance from the vigilance and that merit, performance appraisals, seniority, integrity, assessment by the Departmental Promotion Committee, reputation, etc. have no place. A promotion to a high office is earned, brick by brick, by decades of unblemished service. The attempt of the Review Committee to trivialise the issue of promotion not only leaves a bitter taste in the mouth; it manifestly betrays a determined resolve to somehow ease the appellant out of service.

59. We need to remind the administrative officers that discretion is not a charter for arbitrariness. Discretion vests an officer empowered to decide fate of his subordinates with a choice between alternatives. When the statute, rule or regulation provides guidance for its exercise, the action must conform to it. When the statute, rule or regulation is silent, the power cannot be exercised whimsically or arbitrarily; it must be informed by reasonableness and fairness, as abuse or unfair use is never the legislative intent. It is, indeed, sad and unfortunate that these salient principles governing exercise of discretion were either not present to the mind of the officers concerned or, even if present, were consciously given a complete go-bye for extraneous considerations.

60. The manner of decision making in course whereof 'OUTSTANDING' gradings are completely ignored, grant of promotion is looked upon as if it were a ministerial exercise, followed by a vague and omnibus finding that it is not desirable in public interest to retain the appellant in service, discloses that the officers, entrusted to take a decision, were determined to ensure the appellant's ouster at any cost and invented reasons to sustain a pre-decided conclusion. Such an exercise, instead of being in public interest, is a sheer abuse of the high offices such officers held.

61. To brand an officer like the appellant – who dedicated the best years of his life to the service of the nation – as dead wood and to weed him out from service by invoking the specious ground that it is necessary to do so in public interest smacks of a high degree of malice and colourable exercise of power. One would strain the eyes in vain to find out anything to show that the impugned order of compulsory retirement is, indeed, passed in public interest!

62. It must be remembered by all and sundry that reputation is not built overnight. It is built by years of dedicated and selfless service. It comes at a great cost, often at the cost of family life and personal comfort. Such a reputation earned by sweat and toil over decades can, however, be marred by a single stroke of a pen. That is why recourse to FR 56(j) should not be exercised lightly or in a casual manner. It must be founded on material which is credible, cogent and worthy of being acted upon, and not on mere suspicion and conjecture. An order passed without supporting material would be vulnerable to being criticised as a high-handed exercise of power.

63. In fact, had the appellant arrayed the senior officers who acted in concert with malice to prematurely retire him from service were impleaded as respondents *eo nomine*, we would have definitely questioned them as to whether it is in public interest that they should continue in service and why should they not be held accountable for their actions. Fortunately for them, neither did the appellant implead them nor do they seem to be in service any longer having regard to the time lapse since the impugned order of retirement dated 10th May, 2018 was passed. The matter, thus, ought to rest.

64. Before parting, we need to advert to one other aspect which we noticed upon perusal of the file after the judgment was reserved. The officer at the level of Joint Director General of Foreign Trade, who had issued the order of compulsory retirement dated 10th May, 2018 on behalf of the President, was also a member of the Representation Committee which, in the second round, endorsed the decision of the Review Committee reaffirming the recommendation for compulsory retirement. It is possible that the appellant, while laying his challenge on the ground of *nemo judex in causa sua*, was not aware of this factual position. Learned ASG, having had no occasion to address this aspect, could not be expected to respond to it. We notice this circumstance only for the sake of completeness, but clarify that this circumstance does not form the basis for our interference with the impugned action, which is premised on the reasons already recorded hereinabove.

CONCLUSION AND RELIEF

65. The High Court, in our considered opinion, erred in not appreciating that every matter has to be viewed from the appropriate perspective. As a constitutional court, it had the requisite authority to look into the records and form a view as to the acceptability of the arguments advanced by the appellant. In such pursuit, it failed. We have no hesitation in setting aside the impugned judgment together with the impugned order of the CAT and the impugned order of compulsory retirement dated 10th May, 2018, which we hereby order.

66. In his writ petition before the High Court, the appellant *inter alia* sought the relief of *mandamus* commanding the respondent to reinstate him in service w.e.f. 10th May, 2018 with all benefits including continuity of service, seniority, pay and allowances, etc. Appellant having attained the age of superannuation, reinstatement in service is not possible at this distance of time.

67. However, in view of the conclusion reached by us on the first point itself, as argued by Mr. Ghose, we mould the relief by directing that the appellant shall be entitled to all such service benefits as per law had he not been fastened with the impugned order of compulsory retirement dated 10th May, 2018. This would include promotion on notional basis if any of the appellant's juniors, during the period he remained out of service, was granted promotion.

68. Also, we direct that the appellant shall be called back in office by the Director General of Foreign Trade for being bidden farewell with full honour and in like manner, which he would have received on the date of his superannuation but for the unceremonious premature severance of relationship.

69. The appeal, thus, stands allowed, with costs assessed at ₹ 6 (six) lakh to be paid by the respondent to the appellant. For the loss of reputation suffered by the appellant, we order the respondent to compensate him in a further sum of ₹ 9 (nine) lakh.

70. Extending service benefits as well as payments with regard to emoluments, compensation and costs be released in favour of the appellant, within 3 (three) months from date.

71. We grant liberty to the respondent to recover, in accordance with law, the compensation and cost component from the officers concerned who have largely been responsible in lowering the image of the respondent in the public eye by acting arbitrarily and in a high-handed manner.

72. Learned ASG's efforts and assistance are sincerely appreciated.

73. Connected applications, if pending, shall stand closed.

…………………………….J.
(SHEEL NAGU)

…………………………….J.
(DIPANKAR DATTA)

NEW DELHI;
SEPTEMBER 09, 2026.