

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 14949/2020

Kumar Indu Bhushan,

earlier working As Addl. Director General of
Police, Rajasthan. (Compulsorily Retired).

----Petitioner

Versus

1. Union Of India, through The Secretary, Ministry Of Home Affairs, Government of India, North Block, Central Secretariat, New Delhi-110001
2. State Of Rajasthan through Chief Secretary, Government Secretariat, Jaipur-302005 (Raj)
3. Secretary, Department of Personnel, Government Of Rajasthan, Secretariat, Jaipur-302005 (Raj.).
4. Ajit Singh, the then Director General Of Police Rajasthan (since retired),

----Respondents

For Petitioner(s)	:	Petitioner present in person
For Respondent(s)	:	Mr. Anand Sharma with Mr. Namandeep Singh Mr. S.S. Raghav-learned AAG

**HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

Order

Date of Reserve	:	April 12 th , 2022
Date of Pronouncement	:	April 27 th , 2022

Reportable

(Per: Anoop Kumar Dhand,J.)

By filing instant petition the petitioner has prayed to
quash and set aside the order dated 07.8.2020 passed by the

Central Administrative Tribunal, Jaipur Bench, Jaipur (for short 'the Tribunal'), to struck down the order dated 29.3.2018 issued by the Under Secretary to the Government of India, Ministry of Home Affairs (Police-I Division), New Delhi and also prayed to direct the respondents No.1 to 3 to reinstate him in service w.e.f. 06.04.2018 with all consequential benefits.

The facts giving rise to the instant petition are that the petitioner joined Indian Police Service (for short 'the IPS') on 21.8.1989. After completing the institutional and practical training, the petitioner was confirmed on the post of Assistant Superintendent of Police (for short 'ASP') on 18.11.1991. Thereafter, the petitioner was promoted to the post of Superintendent of Police (Senior Scale) on 27.7.1993. Thereafter, the petitioner was promoted to the rank of Superintendent of Police (Junior Administrative Grade) on 18.3.1998. Thereafter, he was promoted to the rank of Superintendent of Police (Selection Scale) on 28.3.2005. Then he was promoted from the post of Superintendent of Police (Selection Scale) to the post of Dy. Inspector General of Police on 5.4.2007 and on 5.7.2008 he was promoted to the rank of Inspector General of Police and on 31.12.2013 he was promoted to the rank of Addl. Director General of Police.

The petitioner was given compulsory retirement on 29.3.2018 under Rule 16(3) of the All India Services (Death-cum-Retirement Benefit) Rules, 1958 (for short 'the Rules of 1958').

Aggrieved by the order of his compulsory retirement dated 29.3.2018, the petitioner approached the tribunal by filing Original Application No.552/2018 which was dismissed vide order

dated 07.8.2020 by upholding his order of compulsory retirement dated 29.3.2018.

Feeling dissatisfied with the impugned order dated 07.08.2020 passed by the tribunal and as also the order dated 29.3.2018 passed by the Under Secretary to the Government of India, Ministry of Home Affairs (Police-I Division), New Delhi, the petitioner has preferred instant petition.

The petitioner has challenged these orders by saying that the order dated 29.3.2018 has been issued without following the guidelines prescribed by the DoPT dated 28.6.2012. The petitioner submitted that under these guidelines, only persons of doubtful integrity or those who have outlived their utility, can be given compulsory retirement. The guidelines also provide that no-one who is to retire within one year should be given compulsory retirement under these rules. The petitioner also submitted that a list of persons was considered by the Review Committee including some persons who were going to retire within one year, which shows total non-application of mind of the respondents. The Review Committee has ignored the guidelines i.e. the conduct should be unsatisfactory for immediate 5-6 years but the Committee considered the 'good' and 'very good' ACRs of the petitioner as 'average' and 'weak'. ACRs of others were compared and even then the impugned order was passed against the petitioner alone. The petitioner further submitted that the Competent Authority has followed the advice of the Review Committee without any independent application of mind which amounts to delegating the satisfaction of the Competent Authority to the Reviewing Committee, which is not correct. The petitioner

further submitted that the Review Committee was prejudiced against the petitioner which is clear from the fact that there were number of cases before the Committee but it examined the case of the petitioner alone in detail while proposing action against him.

The petitioner further submitted that there were serious cases of criminal misconduct / misconduct/ corruption against number of persons but no action was taken against them with regard to their compulsory retirement. Petitioner further submitted that the Review Committee has taken into consideration the FIRs lodged against him and out of four FIRs, two cases were closed with Final Negative Reports and no charge-sheet was submitted in third FIR and the fourth FIR was still pending. Petitioner submitted that no house rent allowance was due against him as he was not in possession of any government accommodation, as alleged by the authorities. The allegations of misconduct i.e. misbehaviour with the Governor of Telangana were not correct as the authorities have relied upon a news item published in a newspaper. He further submitted that the grounds taken by the Review Committee for recommending his premature retirement is stigmatic in nature. He further submitted that the respondent No.4-Ajit Singh, the then Director General of Police, was having personal ill-will and malice against him and he stood in his way. Hence, the impugned action has been taken against the petitioner out of those malafides.

In support of his contentions, the petitioner has placed reliance upon the following judgments:-

1. Shyamlal v. State of Uttar Pradesh & Ors., reported in AIR 1954 SC 369;
2. Brij Mohan Singh Chopra v. State of Punjab, reported in AIR 1987 SC 948;
3. State of Uttar Pradesh v. Chandra Mohan Nigam & Ors., reported in AIR 1977 SC 2411;
4. Union of India & Ors. v. M.E. Reddy & Ors., reported in AIR 1980 SC 563;
5. Baldev Raj Chadha v. Union of India & Ors., reported in AIR 1981 SC 70;
6. Baikunth Nath Das & Ors. v. Chief District Medical Officer, Baripada, reported in AIR 1992 SC 1029;
7. M.P. State Co-op. Dairy Federation Ltd. & Ors. v. Rajnesh Kumar Zamindar & Ors., reported in (2009) 15 SCC 221;
8. State of Gujarat v. Umedbhai M. Patel, reported in AIR 2001 SC 1109;
9. Sakinala Hari Nath & Ors. v. State of Andhra Pradesh & Ors., reported in 1993 (3) ALT 471;
10. L. Chandra Kumar v. Union of India & Ors., reported in AIR 1997 SC 1125;
11. Gian Singh Mann v. The High Court of Punjab & Haryana & Ors., reported in AIR 1980 SC 1894;
12. Union of India v. Col. J.N. Sinha & Ors., reported in AIR 1971 SC 40;
13. Allahabad Bank Officers Association & Ors. v. Allahabad Bank & Ors., reported in AIR 1996 SC 2030;
14. High Court of Judicature at Patna v. Ajay Kumar Srivastava & Ors., reported in AIR 2017 SC 548;
15. A.M. Chauhan v. Union of India & Ors., reported in 2006 (92) SLJ 303 (CAT);
16. Nand Kumar Verma v. State of Jharkhand & Ors., reported in 2006 (4) JCR 560 (Jhr);
17. Shamim Ahmad Laherwal v. State of J&K, reported in 2017 (2) JKJ 473;
18. Pyare Mohan Lal v. State of Jharkhand & Ors., reported in AIR 2010 SC 3753;

19. R.L. Butail v. Union of India & Ors., reported in Civil Appeal Nos. 1614 to 1616 of 1968, decided on 08/09/1969;
20. S.R. Venkataraman v. Union of India & Ors., reported in AIR 1979 SC 49;
21. Anoop Jaiswal v. Government of India & Ors., reported in AIR 1984 SC 636;
22. Ram Ekbal Sharma v. State of Bihar & Ors., reported in AIR 1990 SC 1368;
23. Dr. S.M. Thirunavukkarasu v. The Secretary to Government & Ors., reported in W.P. (MD) No. 10742 of 2007, decided on 31/10/2008;
24. E.P. Royappa v. State of Tamil Nadu & Ors., reported in AIR 1974 SC 555;
25. Union of India & Ors. v. Mahendra Kumar, reported in (1985) IILLJ 108 AP;
26. Bodu Tarmamad v. Dt. Supdt. Of Police, Jamnagar & Ors., reported in (1988) 1 GLR 101;
27. The State of Gujarat & Ors. v. Suryakant Chunilal Shah, reported in (1999) 1 SCC 529;
28. Ghulam Mohammad Lone v. State of J&K, reported in SWP No. 2166/2016, J&K High Court, decided on 05/10/2018;
29. Golam Mohiuddin v. State of West Bengal & Ors., reported in AIR 1964 Cal 503;
30. A.K. Kraipak & Ors. v. Union of India & Ors., reported in AIR 1970 SC 150;
31. Naresh Chandra Sharma v. State of UP & Ors., reported in (2006) 3 AWC 2743 All;
32. Ram Murti Yadav v. State of Uttar Pradesh & Ors., reported in AIR 2020 SC 227;
33. Secretary, Managing Committee, BSMPG College, Roorkee v. Samrat Sharma & Ors., reported in (2019) 16 SCC 56;
34. Roop Singh & Ors. v. Union of India & Ors., reported in RLW 2006 (4) Raj. 3323;
35. Rajasthan High Court v. Ved Priya & Ors., reported in AIR 2020 SC 2811;
36. Brij Behari Lal Agarwal v. Hon'ble High Court of Madhya Pradesh & Ors., reported in AIR 1981 SC 594;

37. J.D. Shrivastava v. State of M.P. & Ors., reported in 1984 AIR 630;
38. Jagdish Mitter v. Union of India, reported in Civil Appeal 718/1962, SC, decided on 20/09/1963;
39. Ram Chander v. State of Haryana, reported in CWP No.26726/2016, P&H HC, decided on 01/03/2018;
40. Arun Kumar Gupta v. State of Jharkhand, reported in CWP No. 190/2018, SC, decided on 27/02/2020;
41. Rajendra Singh Verma v. Lt. Governor of NCT of Delhi, reported in C.A. No. 7781/2011, SC, decided on 12/09/2011;
42. Union of India v. V.P. Seth, reported in AIR 1994 SC 1261;
43. K. Kandaswamy v. Union of India, reported in 1996 AIR 277;
44. Laxmi Das Shetty & Anr. v. State of Tamil Nadu, reported in 1988 AIR 1274;
45. Surinder Singh v. Central Govt. & Ors., reported in 1986 AIR 2166;
46. Smt. Kabootara Devi v. State of UP, reported in Service Single No. 30385/2017, All. HC (Lucknow Bench), decided on 03/09/2019;
47. K.M. Shanmugam v. The S.R.V.S. Pvt. Ltd. & Ors., reported in 1963 AIR 1626;
48. Rampur Distillery Co. v. Company Law Board, reported in 1970 AIR 1789;
49. Ranjit Singh etc. v. Union of India, reported in 1981 AIR 461;
50. Dr. S.P. Kapoor etc. v. State of H.P., reported in 1981 AIR 2181;
51. Y.N. Krishna Murthy v. Karnataka Silk Industries Corp., reported in ILR 1997 KAR 1768;
52. S.R. Upadhyaya v. State, reported in WPS No. 2488/2015, Chattisgarh HC, decided on 02/03/2017; and
53. Kamta Singh v. State of UP, reported in WP No. 6487/1992 (S.B.), All. HC, decided on 23/03/1993.

On the basis of the aforesaid decisions, it is submitted by the petitioner that before the Review Committee all the material was not placed. The Review Committee must have

sufficient material to pass the order of compulsory retirement, which is lacking in the present case. Lastly, the petitioner argued that the impugned order dated 7.8.2020 passed by the tribunal be quashed and set aside and the members of the tribunal should be taken to task and action be taken against them.

Per-contra, counsel appearing for the respondents submitted that no error has been committed by the tribunal while dismissing the Original Application No.552/2018 preferred by the petitioner vide order dated 7.8.2020 and also, no error has been committed by the respondents while passing the impugned order dated 29.3.2018 by which premature retirement was given to him.

It is further submitted by the counsel for the respondents that the order of compulsory retirement passed by the respondents is an independent decision taken by the Review Committee after considering the entire service record of the petitioner, the Committee was of the opinion that the petitioner is no longer useful into the service of the respondents.

It is also submitted by the counsel for the respondents that in the present circumstances, it cannot be said that the continuation of the services of the petitioner with the respondents is in public interest. The conduct of the petitioner has shaken the confidence of the Department to post him to any public post which involves public dealing or is sensitive in nature. Thus, the Review Committee held that his continuation in the services will not be useful to the public and also in the general administration. The conduct of the petitioner is unbecoming of a Government servant and is injurious to public interest and obstructs the efficiency in public services.

It is also submitted that the order of premature retirement is absolutely independent decision taken by the Review Committee based on entire service record of the petitioner and the Review Committee had arrived at a subjective satisfaction that the petitioner must be retired under Rule 16(3) of the Rules of 1958 in public interest.

It is also submitted by the counsel for the respondents that this Court is not sitting in an appeal against the decision of the Review Committee and that there is neither any *malafides* on the part of the respondents nor there is any arbitrariness on the part of the respondents while passing the order of compulsory retirement.

It is also submitted by the counsel for the respondents that the order of compulsory retirement of the petitioner is neither stigmatic nor does it entail any civil consequences and, therefore, compulsory retirement does not prejudice a Government servant nor there is violation of the fundamental right of the petitioner.

Counsels further submitted that the petitioner was an Officer of Indian Police Service and was holding the post of Additional Director General of Police at the time of passing the order of his compulsory retirement dated 29.3.2018. His repeated unnatural conduct has compelled the government to pass such an order, as the petitioner wrote a letter to the Chief Minister by which he gave threats of committing suicide when he was transferred from the post of Superintendent of Police, Dungarpur. Counsel for the respondents further submitted that the petitioner used unparliamentary language against the Governor of Telangana and this fact was reported in a National Newspaper on 21st

November in 'Times of India'. Apart from above, the petitioner used unparliamentary language against the then D.G. Jails, when he was asked to come to the Office on time. And even during the arguments of this petition, the petitioner has made a submission that the Presiding Officers of the Tribunal have not applied their mind while passing the impugned order, so, they should be put to task. Lastly, the counsel for the respondents have argued that this petition may not be entertained by this Court and the same may kindly be dismissed with cost.

In support of their submissions, learned counsel for the respondents have relied upon the decisions rendered by Hon'ble Supreme Court in ***K. Kanda Swamy v. Union of India, reported in (1995) 6 SCC 162, Nisha Priya Bhatiya v. Union of India, reported in (2020) 13 SCC 56*** and Ram Murti Yadav (supra).

On the basis of the aforesaid decisions, it is submitted by the counsel for the respondents that no error has been committed by the Tribunal while dismissing the Original Application No.552/2018 vide order dated 7.8.2020 and rightly the Tribunal has not interfered with the order of compulsory retirement passed by the respondents on 29.3.2018.

We have heard the petitioner who is present in person, learned counsel appearing for the respondents and also gone through the entire material made available to us including the judgments cited above.

It may be mentioned that the issue of compulsory retirement has been considered in catena of judgments by the Hon'ble Supreme Court, particularly in Baikunthnath Das and Ors.

(supra), wherein it has been held that the order of compulsory retirement is not a punishment but it implies no stigma nor any suggestion of misbehaviour. The order of compulsory retirement is in public interest and is passed on the subjective satisfaction of the Government and the same is not liable to be quashed by this Court merely for the reason that the promotions were granted to the employee.

It has been held by the Hon'ble Supreme Court in Baikuntha Nath Das (supra) in para-12, 33, 34 and 36 as under:-

"12. As far back as 1970, a Division Bench of this Court comprising J.C. Shah and K.S. Hegde, JJ. held in [Union of India v. J.N. Sinha](#) [(1970) 2 SCC 458 : (1971) 1 SCR 791] that an order of compulsory retirement made under F.R. 56(j) does not involve any civil consequences, that the employee retired thereunder does not lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant. It was pointed out that the said rule embodies one of the facets of the pleasure doctrine embodied in [Article 310](#) of the Constitution and that the rule holds the balance between the rights of the individual Government servant and the interest of the public. The rule is intended, it was explained, to enable the government to energise its machinery and to make it efficient by compulsorily retiring those who in its opinion should not be there in public interest. It was also held that rules of natural justice are not attracted in such a case. If the appropriate authority forms the requisite opinion bona fide, it was held, its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision. It is significant to notice that this decision was rendered after the decisions of this Court

in *State of Orissa v. Dr Binapani Devi* [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] and *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150] . Indeed, the said decisions were relied upon to contend that even in such a case the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action. The contention was not accepted as stated above. The principles enunciated in the decision have been accepted and followed in many a later decision. There has never been a dissent -- not until 1987.xxx xxx xxx

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* [(1970) 2 SCC 458 : (1971) 1 SCR 791] 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.

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36. So far as the appeals before us are concerned, the High Court which has looked into the relevant record and confidential records has opined that the order of compulsory retirement was based not merely upon the said adverse remarks but other material as

well. Secondly, it has also found that the material placed before them does not justify the conclusion that the said remarks were not recorded duly or properly. In the circumstances, it cannot be said that the order of compulsory retirement suffers from mala fides or that it is based on no evidence or that it is arbitrary.

Compulsory retirement involves no civil consequences.

The Government servant does not lose any of the rights acquired by him before retirement while a minimum service is granted to the Government Servant, the Government is given power to energize its machinery and make more efficient by compulsory retiring those who in its opinion should not continue in the service of the Government in public interest.

It has been held by the Hon'ble Supreme Court in Union of India v. Col. J.N. Sinha (*supra*) in para-8, 9 and 10 as under:-

8. Fundamental Rule 56(i) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in [Article 310](#) of the Constitution. But this —pleasure doctrine is subject to the rules or law made under [Article 309](#) as well as to the conditions prescribed under [Article 311](#). Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in [A.K. Kraipak v. Union of India](#) [(1969) 2 SCC 262 : AIR 1970 SC 150] —the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other

words they do not supplant the law but supplement it. It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

9. Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala fide. But that ground has failed. The High Court did

not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. 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. 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.

10. 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 the ***State of Punjab Vs. Gurdas Singh reported in 1998 (4) SCC 92***, the Hon'ble Supreme Court observed as under :-

"Before the decision to retire a government servant prematurely is taken, the Authorities are required to consider the whole record of service. The over all performance of the employee during the whole of his tenure of service is required to be seen whether it is in public interest to retain him in service. The whole record of service of the employee will include any uncommunicated adverse entries as well."

In ***State of U.P. and Anr. v. Bihari Lal, reported in 1994 (Supp.) 3 SCC 593***, the Hon'ble Supreme Court observed as under:-

"It is overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a government servant. The Court has to see whether before the

exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any malafide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by a Court."

In *State of Gujarat and Ors. Vs. Suryakant Chunnilal Shah* (supra), the Hon'ble Supreme Court observed that when an appropriate authority forms bonafide opinion that compulsory retirement of the Government employee is in the public interest, then the Court would not interfere with such order.

In ***Rajat Baran Roy & State of West Bengal & Others, Writ Petition No.578/1998 (Diary No.16843/1998) decided on 13.04.1999***, the Hon'ble Supreme Court has held that the power of compulsory retirement should be exercised in public interest and for that, the Authority must be satisfied that there was sufficient material particulars to pass such an order.

In ***Central Industrial Security Force v. HC (GD) Om Prakash, Civil Appeal No.5428 of 2012, decided by Hon'ble Apex Court on 4.2.2022***, it has been held as under:-

"6. After the judgment in *Baikuntha Nath Das*, a three Judge Bench in a judgment reported as *Posts and Telegraphs Board v. C.S.N. Murthy* held that the courts would not interfere with the exercise of the power of compulsory retirement if arrived at bonafidely and on the basis of material available on record. The Court held as under:

"5. 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 bona fide and on the basis of material available on the record. No mala fides have been urged in the present case. The only suggestion of the High Court is that the record discloses no material which would justify the action taken against the respondent. We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable."

7. A three Judge Bench of the Hon'ble Apex Court, in the case of Union of India v. Dulal Dutt reported in 1993 (2) SCC 179, examined the order of compulsory retirement of a Controller of Stores in Indian Railway. It was held that an order of compulsory retirement is not an order of punishment. It is a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government and that it is not required to be a speaking order. This Court held as under:

"18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of R.L. Butail v. Union of India [(1970) 2 SCC 876] and Union of India v. J.N. Sinha [(1970) 2 SCC 458] that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the

Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law."

In Union of India v. V.P. Seth (supra), relying upon Baikuntha Nath Das and other judgments, it was held by the Hon'ble Apex Court as under:

"3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the rule of audi alteram partem has no application since the order of compulsory retirement in such a situation is not penal in nature. The position of law having thus been settled by two decisions of this Court, we are afraid that the order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said two decisions."

This petition has been preferred by the petitioner against the impugned order dated 7.8.2020 passed by the tribunal as well as against the order dated 29.3.2018 passed by the respondents. The petitioner has been compulsorily retired under Rule 16(3) of the Rules of 1958 by the respondents. This order

has not been interfered with by the tribunal, hence, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

The petitioner is an Officer of 1989 batch of Indian Police Service. In exercise of powers conferred under Rule 16(3) of the Rules of 1958, the respondents have compulsorily retired the petitioner vide order dated 29.3.2018. For ready reference, the said order is reproduced hereunder:-

"In Exercise of the powers conferred under sub-rule 3 of Rule 16 of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958, the President in consultation with the State Government of Rajasthan hereby requires Shri Indu Kumar Bhushan, IPS (RJ: 1989), a member of the Indian Police Service, borne on the cadre of Rajasthan, who has completed 25 years of qualifying service, to retire in public interest with immediate effect by giving three months' pay and allowances in lieu of notice.

2. A cheque for a sum equivalent to the aggregate amount of his pay and allowances for a period of three months, calculated at the same rate at which he was drawing immediately before the date of this order is enclosed.

By order and in the name of the President.

(Mukesh Sawhney)

Under Secretary to the Government of India"

The aforesaid order was challenged by the petitioner before the tribunal and the tribunal dismissed the original application filed by the petitioner vide order dated 7.8.2020.

All the aforesaid orders have been challenged by the petitioner in this writ petition.

Before proceeding further with the matter, it is relevant to quote Rule 16(3) of the Rules of 1958, which reads thus:-

"The Central Government may in consultation with the State Government concerned, require a Member of the Services to retire from Service in public interest, after giving such Member at least three month's previous notice in writing or three month's pay and allowances in lieu of such notice:-

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

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

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

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

The Review Committee was constituted and before the Review Committee, all the facts about the petitioner including his

entire service record and entries in Annual Confidential Reports were presented. After considering the entire facts and material available on the record, a subjective decision was arrived at by the Review Committee and a recommendation was made for compulsory retirement of the petitioner in public interest, which was accepted by the respondent No.1 and the petitioner was compulsorily retired in public interest.

The order of compulsory retirement is not a punishment nor it attaches any stigma on an employee-petitioner. The subjective decision of the government in public interest arrived at after considering entire service record of the petitioner, where the principles of natural justice, are not required to be observed while passing the order of compulsory retirement because the order of compulsory retirement does not amount to a punishment.

The petitioner has been compulsorily retired vide order dated 29.3.2018. Complete service record of the petitioner was placed before the Review Committee. The Review Committee examined the entire record and submitted following report:-

"Committee examined APAR dossiers, personal files and other available records/documents of all the officers. On perusal of APARs of Shri Indu Kumar Bhushan, it was found that overall grading of Shri Indu Kumar Bhushan ranges from "Good" to "Very Good" and was quite weak compared to other Officers. After perusal of all the available record, Committee especially thought it appropriate to check records related to Shri Bhushan in detail in view of his average performance as reflected in his ACR/APAR as well as other documents. From the records, the Committee noticed some of the incidents

reflecting the improper, unusual & unwarranted behaviour of Shri Indu Kumar Bhushan as follows:-

(1) He used unparliamentary language with the GAD Officers and the then Special Secretary, GAD sought an apology from him.

(2) Vide Order dated 06-07-1999, he was transferred out from the post of S.P. Dungarpur. On his transfer from Dungarpur he wrote a letter to Hon'ble C.M. threatening to commit suicide.

(3) Shri Indu Bhushan prematurely repatriated to Rajasthan Cadre from ITBP and the request of Rajasthan Govt. to post him at some other post on Central Deputation was also turned down by GoI.

(4) Unparliamentary language used against the then D.G.Jails, when asked to come office in time.

(5) Shri Indu Bhushan was posted as ADG (Jails) from 22/06.2015 to 07.09.2015 during this tenure serious reports of misconduct & misbemeanour against him were sent D.B. Jails.

(6) He was repatriated to the State from the SVPNPA during the MCTP Phase V training from reasons of indiscipline as he used unparliamentary language with the Governor of Telangana. (Times of India, Sep.21).

(7) He did not pay House Rent while staying in Government accommodation in RPA from 26 Dec. 2011 to 29 Feb.2016. A recovery order of Rs. 1, 45,323/- was issued which has not paid till now. He also unauthorisedly occupied an extra house in RPA and did not pay rent for over 13 years.

Though there is no official record, but the news published in various newspapers about his behaviour from time to time also reflect the unusual and irresponsible behaviour of Mr. Indu Bhushan and gives an insight into the mind and personality traits of the Officer. The details of these are as under:

(1) Threatened a person with a revolver weapon at Police Station, Sindhi Camp, Jaipur.

(2) Abused & levelled baseless allegations against a fellow IPS officer, during a presentation on social media being given by a Delhi firm which tarnished image of IPS officers in front of media as well as other colleagues. (Times of India, June 16, 2017, Rajasthan Patrika June, 2016 Page-2).

(3) Recently he also conducted a Press Conference which is violation of Circular No.F.3(I)DOP/Inq/2004 dated 12.10.2017.

Further the Committee was informed that following criminal cases have been registered against him:-

(a) 25 Aug 2015 – FIR 813/15 u/s 504 IPC, 3(i) (x) SC/ST Act, PS, Vaishali Nagar, Jaipur (South) (Misbehaving with Dr. Kamlesh Kumar, I/C Central Jail, Jaipur) – In this case FR has been given but the complainant has filed a protest petition.

(b) 21 April 2015 – FIR 325/15 u/s 374, 384 IPC, PS, Vaishali Nagar, Jaipur (South) (Took away vehicle and misbehaved with Labour who was working at his house) – Closes.

(c) 10 May 2015 – FIR 591/14 u/s 341, 323, 34 IPC, PS, Behrampore, Distt. Murshidabad, WB (Harassing and injuring workers who were carrying out election rally with due permission(. Chargesheet has been filed in this case.(d) 22

July 2013 – FIR 202/13 u/s 341, 323, 504, 379 IPC, 3 SC/ST Act, PS, Shastri Nagar, Jaipur (North) regarding misbehaving, beating and injuring Ct. Driver Gopal Meena 5372). In this case order for charge sheet has been issued.

After examining all records of the above officers the Committee recommends as follows:-

"The Committee is of the opinion that Shri Indu Kumar Bhushan has on many occasions exhibited behaviour unbecoming of an office, and had strained relations with seniors and as well as juniors, and his performance has not been up to the mark. So the Committee found that Shri Indu Kumar Bhushan, IPS (RR:89) is unfit to continue in the service. The committee found the remaining twenty 92)) IPS officers fit to continue in the service."

The decision of the Review Committee is absolutely an independent proceeding and looking to over all service record of the petitioner, a subjective decision was recorded by the Review Committee and matter was recommended for premature retirement of the petitioner and on the basis of the same, the respondent No.1 took a decision to give premature retirement to the petitioner.

Compulsory retirement has various facets. Compulsory retirement order can be passed looking to the overall service record of the Government employee. Compulsory retirement order can also be passed in public interest with a view to improve efficiency of the administration.

After certain minimum prescribed services and after the prescribed age as per rules, there is no right vested in the employee to continue into the services. It depends upon the pleasure of the Government to continue him into the services or not, looking to his entire service record and his usefulness into the services and his overall performance during the later years. In overall assessment of a Central Government employee, even if

final report is submitted by the police in two FIRs, the respondent No.1 can always arrive at a conclusion that looking to the entire service record and looking to the usefulness of the Petitioner into the services, he can be compulsorily retired from the services. This is a complex decision and varieties of factors are to be kept in mind by the Review Committee. Those who are not obeying the orders of the Government during their service tenure, can be retired from the service. This power is given to the Government to energize its machinery and to make it more efficient by compulsorily retiring those, who in its opinion, should not be into the services, in public interest.

What is to be seen is overall assessment of the performance of an employee and his usefulness into the services and not one or two matters and decisions in those matters. This opinion is a subjective satisfaction of the Review Committee. In the present case, there is no procedural error committed by the Review Committee while taking the decision under Rule 16(3) of the Rules of 1958.

There is no arbitrariness on the part of the Review Committee while taking the decision of the compulsory retirement of the Petitioner. The decision is based upon the entire service record, performance of the Petitioner and the usefulness of the Petitioner into the service of the Union of India and looking to the totality of the facts and circumstances of the Petitioner, subjective satisfaction has been arrived by the Review Committee. We are not sitting in an appeal against the subjective satisfaction of the Review Committee.

There is no perversity in the order of the Review Committee. Review Committee has seen the entire record of service of the Petitioner including the conduct of the Petitioner and Review Committee was of the opinion that the continuation of the services of the Petitioner was no longer required and he should be compulsorily retired.

Thus, there is no malafide, no arbitrariness and no perversity on the part of the Review Committee while arriving at a subjective satisfaction of compulsory retirement of the Petitioner. It ought to be kept in mind that compulsory retirement is not a punishment. Such compulsory retired Government servant does not lose any benefits earned by him till the date of his retirement.

Though the petitioner has levelled the allegations of malice and mala fides against the respondent No.4, but he has failed to establish the same by producing any cogent evidence in support of his allegations.

The Hon'ble Supreme Court in the case of **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Ors., reported in (2005) 7 SCC 764** has held that the burden of proving *mala fide* is on the person making the allegations and the burden is "very heavy". There is every presumption in favour of the administration that the power has been exercised *bona fide* and in good faith. It is to be remembered that the allegations of *mala fide* are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J has said in **Gulam Mustafa v. State of**

Maharashtra, reported in 1976 (1) SCC 800 para 2): "It (mala fide) is the last refuge of a losing litigant."

It is settled law that allegations of malafides are easy to be made than to actually make out. The allegations of malafides need to be corroborated with concise statements of material facts which inspire confidence. Here in this case the petitioner has made allegations of malafides against the respondent No.4 but no substantial material has been submitted, which inspires any confidence.

The Review Committee has formed bonafide opinion under Rule 16(3) of the Rules of 1958 without any malafides, arbitrariness and perversity. Hence, the correctness of the decision which is a subjective satisfaction of the Review Committee, on merits, cannot be challenged before this court. It has been held by Hon'ble Supreme Court in Nisha Priya Bhatia (supra) in paragraphs 54 and 71, as under

"54. Given the factual matrix of the present case, we deem it proper to carve out some important events from the aforementioned chain. The aforementioned sequence of events reveals the chain of internal communications in the aftermath of which the order dated 18-12-2009 was eventually passed. The secret note sent by the Secretary (R) to PMO, dated 11-5-2009, opinion of the then Solicitor General of India by Letter dated 21-7-2009, opinion of the Department of Legal Affairs, Union Ministry of Law and Justice and the PMO note in which the invocation of Rule 135 was determined as the only viable option, constitute together a complete chain of inquiry revealing due application of mind by the respondents into the

question of compulsory retirement. It is settled law that the scope of judicial review is very limited in cases of compulsory retirement and is permissible on the limited grounds such as non-application of mind or mala fides. Regard can be had to Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] . The abovequoted set of events are so eloquent that it leaves us with no other conclusion but to hold that the action of compulsory retirement was the just option. Assuming that some other option was also possible, it would not follow that the decision of the competent authority to compulsorily retire the appellant was driven by extraneous, malicious, perverse, unreasonable or arbitrary considerations. The prerequisite of due application of mind seems to be fulfilled as the decision has been reached in the aftermath of a series of discussions, exchanges and consultations between the Organisation and the PMO over the course of 15 months from 22-9-2008 to 18-12- 2009."

It has been held by Hon'ble Supreme Court in Ram Murti Yadav vs. State of U.P. (supra), in paragraph - 6 as under:-

"6. The service records of the appellant have been examined by the Screening Committee, the Full Court as also by the Division Bench of the High Court. The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of

natural justice have no application in a case of compulsory retirement."

It has been held by Hon'ble Supreme Court in ***State of Orissa Vs. Ram Chandra Das reported in (1996) 5 SCC 331***

in para-7 as under:-

"7..... The object always is public interest. The material question is whether the entire record of service was considered or not? It is not for the court/tribunal to see whether the decision of the Government to compulsorily retire the government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. As stated earlier, it is settled law that the Government is required to consider the entire record of service. Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after promotion and not earlier to promotion. Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits."

There is no force in the arguments of the petitioner that his compulsory retirement order dated 29.03.2018 was issued without following the guidelines of DoPT dated 28.06.2012. There is no force in this argument that any person of doubtful integrity only can be given premature retirement who have lost their utility. And also there is no force in this argument also that the person who has less than one year in retirement, should not be compulsorily retired because the petitioner was having more than one year in his retirement. After following the guidelines of DoPT, the order impugned was passed by the authorities. The impugned order dated 29.03.2018 is a result of decision making process of the authorities and no fault has been found in that process. There is no force in the argument of the petitioner that his ACRs were 'good' and 'very good' in comparison with the 'Average' and 'weak'. ACRs of others and their conducts were also unsatisfactory, but no such adverse orders have been passed against those persons by the authorities. The petitioner cannot claim any negative equality in such cases by applying the doctrine of equality. It is also incorrect on the part of the petitioner to say that the competent authority has not applied its mind before passing the impugned order dated 29.03.2018. It is also incorrect on the part of the petitioner to say that the competent authority has taken the impugned decision simply on the basis of the recommendations made by the Review Committee. After considering the entire material available on the record and unsatisfactory work performance and conduct of the petitioner against the Chief Minister, the Governor, the DIG (Jail) and the unparliamentary languages used by the petitioner on various

occasions and looking to the report of the higher responsible officers and members of the Review Committee, the decision was taken by the Competent Authority to compulsorily retire the petitioner. The petitioner has failed to prove the malice and malafides of the respondent No.4 against him. He has simply raised the allegations of malice but failed to prove the same by leading cogent evidence in support of his allegations. Mere filing of final reports in two FIRs lodged against him, does not give clean chit to him. One after another, four FIRs were lodged against him and even protest petitions were submitted against the petitioner by the complainant in those cases in which Final Negative Reports were submitted.

There is no force in the arguments raised by the petitioner that in all, cases of 21 Police Officers were sent to the Review Committee and the Review Committee has selected only the petitioner and given him premature retirement but no action has been taken against rest of 20 persons.

The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and Ors. Vs. Rajit Singh in Civil Appeal Nos. 2049-2050 of 2022 decided on 22nd March 2022***, has held that there cannot be any claim of any negative equality in such cases by applying the doctrine of equality. Therefore, the tribunal has not committed any error in dismissing the original application filed by the petitioner. Thus, the findings of the tribunal are based on sound reasoning.

The standard of yardstick for judging the conduct of the higher police officer has necessarily to be strict. Discipline in

uniformed services can never be compromised. But here in this case, there are series of unwarranted and unwanted instances against the petitioner, who was a higher officer in the Indian Police Services i.e. conduct of threatening of committing suicide to the Chief Minister and unwarranted repeated acts of using unparliamentary languages against the GAD officers, the then D.G. (Jails), the Governor of Telangana. Threatening a person with revolver at police station, abusing and levelling baseless allegations against the fellow IPS officers, conducting 'Press Conference' against the Department Circular, repeated involvement in four criminal cases, brought the Review Committee to a conclusion that the conduct of the petitioner has exhibited his behaviour for unbecoming officer as he had strained relations with senior and junior officers and his performance was not up to the mark. Hence, the Committee was right and correct in reaching to the conclusion that the petitioner is 'unfit' to remain continue in service. Even during the course of arguments, the petitioner requested this Court to take action against the members of the Tribunal, who rejected his Original Application. Such argument shows his conduct that he has least regards towards the authority of the Tribunal/Courts.

In view of these decisions and looking to the conclusion arrived at by the Respondents of compulsorily retirement of the Petitioner, it cannot be said that the Respondents were driven by extraneous, malicious, perverse, unreasonable or arbitrary considerations.

There was no procedural error committed by the Review Committee and the authorities while taking decisions under Rule 16(3) of the Rules of 1958. There is no perversity and arbitrariness in the order of the Review Committee.

The decision is based upon the entire service record, performance of the petitioner and usefulness of the petitioner into the service of the respondents and looking to totality of the facts and circumstances against the petitioner, subjective satisfaction has been arrived at by the Review Committee. We are not sitting in appeal against the subjective satisfaction of the Review Committee.

The Review Committee was composed of high and responsible Officers. The power is vested in the government alone and not in the minor officials. Therefore, the government after taking into consideration all the facts and circumstances of the case, has rightly passed the order of premature retirement of the petitioner under Rule 16(3) of the Rules of 1958 in exercise of the rights conferred on the government to retire a government servant after he has served for a certain period to the government.

Thus, in this view of the matter, the petitioner was given compulsory retirement by the authorities, after due application of mind, in public interest under Rule 16(3) of the Rules of 1958, after considering the report of the Review Committee and the entire material available on record, with subjective satisfaction. It is also evident from the record that the conduct of the petitioner was not good and his work performance

was not upto the mark throughout his service tenure, which warranted his compulsory retirement under Rule 16(3) of the Rules of 1958. Thus, it cannot be said that the order of compulsory retirement of the petitioner was passed without application of mind or insufficient material on record or not in public interest.

We are in full agreement with the reasons given by the tribunal in the order dated 7.8.2020.

In view of the aforesaid facts, reasons and judicial pronouncements, the judgments relied upon by the petitioner are of no help to the petitioner.

Hence, there is no substance in this writ petition and the same is, therefore, dismissed, along with the pending application(s).

(ANOOP KUMAR DHAND),J

(PANKAJ BHANDARI),J

Sharma NK/59

सत्यमेव जयते