

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3614 of 2012

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RAM JATAN PAL S/O Late Raghunath Prasad Pal At Present Posted As Sub-Judge-iii, At Civil Court Supaul, District- Supaul, Under The Judgeship Of Saharsa

... .. Petitioner/s

Versus

1. The State Of Bihar
2. High Court Of Judicature at Patna through It'S Registrar General
3. Legal Remembrancer-Cum-Law Secretary Government Of Bihar, Patna

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 11139 of 2013

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Ram Jatan Pal Son Of Late Raghunath Prasad Pal, Resident Of House No. 506, Ilahi Tola, Sindhi Mill Colony, P.O.P.S. And Town- Deoria, District- Deoria U.P., Compulsory Retired Sub-Judge- iiii At Civil Court, Supaul, District- Supaul, Under The Judgeship Of Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of General Administration, Govt. Of Bihar, Patna.
3. Joint Secretary, Department Of General Administration, Govt. Of Bihar, Patna.
4. The High Court Of Judicature At Patna On Its Administrative Side through Its Registrar General.

5. The Registrar General, High Court Of Judicature at Patna on its Administrative Side, Patna.

... ... Respondent/s

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Judicial Service—Departmental proceedings—Six charges related to different title suits and demand of money were framed against Petitioner while he was posted as Sub-Judge VIII, Siwan—after conclusion of departmental proceedings, 3 charges relating to demand of money were not proved while 3 charges relating to different Title suits were found proved—punishment order of reduction of pay one stage with permanent effect was passed against Petitioner—held; a defect free departmental proceeding was conducted inasmuch as Petitioner was provided with statement of allegation, list of documents and witnesses & a sufficient opportunity to defend was granted to Petitioner-- punishment order of reduction of pay one stage with permanent effect held justified.

Bihar Service Code—Rule 74(b)(ii)—Compulsory retirement--after assessment and evaluation of Petitioner's entire service record, his retirement from service in public interest was recommended by the Standing Committee and confirmed by Full Court resolution—Held: an order of compulsory retirement on public interest is a non-stigmatic order as it is not based on any allegation of misconduct nor it is a penalty imposed—overall conduct and discharge of duties by the Officer are examined by employer to arrive at decision to compulsorily retire on public interest—decision of High Court to compulsorily retire Petitioner from service justified as only once in his entire service remark of "Good Officer" was given but thereafter, he was found to be an average officer—writ petitions dismissed.

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3614 of 2012

RAM JATAN PAL S/O Late Raghunath Prasad Pal At Present Posted As Sub-Judge-Iii, At Civil Court Supaul, District- Supaul, Under The Judgeship Of Saharsa

... .. Petitioner/s

Versus

- 1. The State Of Bihar
- 2. High Court Of Judicature at Patna through It'S Registrar General
- 3. Legal Remembrancer-Cum-Law Secretary Government Of Bihar, Patna

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 11139 of 2013

Ram Jatan Pal Son Of Late Raghunath Prasad Pal, Resident Of House No. 506, Ilahi Tola, Sindhi Mill Colony, P.O.P.S. And Town- Deoria, District-Deoria U.P., Compulsory Retired Sub-Judge- Iii At Civil Court, Supaul, District- Supaul, Under The Judgeship Of Saharsa.

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Versus

- 1. The State Of Bihar
- 2. The Principal Secretary, Department Of General Administration, Govt. Of Bihar, Patna.
- 3. Joint Secretary, Department Of General Administration, Govt. Of Bihar, Patna.
- 4. The High Court Of Judicature At Patna On Its Administrative Side through Its Registrar General.
- 5. The Registrar General, High Court Of Judicature at Patna on its Administrative Side, Patna.

... .. Respondent/s

Appearance :
(In Civil Writ Jurisdiction Case No. 3614 of 2012)
For the Petitioner/s : Mr. Mukul Sinha, Advocate
Mr.Rajesh Kumar, Advocate
Mr. Subhash Choudhary, Advocate
For the State : Mr. Ashok Kumar Dubey, AC to AAG-XI
For the Respondent/s : Mr. Satyabir Bharti, Advocate
Mr. Abhishek Anand, Advocate
Ms. Manupriya, Advocate
(In Civil Writ Jurisdiction Case No. 11139 of 2013)
For the Petitioner/s : Mr.Anju Kumari @ Anju Narain, Advocate
For the Respondent/s : Mr. K.P. Gupta, Advocate



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)**

Date : 26-02-2024

Two writ petitions have been preferred by the petitioner. The CWJC No. 3614 of 2012 has been preferred for the grant of following reliefs:-

(i) the petitioner prays for quashing the order dated 19th Sept. 2011 issued by the respondent no. 2 vide memo no. 15491 by which the petitioner has been awarded a punishment of "reduction in pay by one stage with permanent effect". This punishment has been awarded in pursuance of a departmental proceeding holding the petitioner guilty in three of the six charges;

(ii) the petitioner also prays for quashing the part of the order dated 15th September, 2011 issued by the respondent no. 2 as contained in memo no. 15080 by which the suspension has been revoked and it has been directed that the petitioner shall not be given any service/monetary benefits except the subsistence allowance during the period of suspension;

(iii) petitioner further prays for an appropriate direction to pay all



the salary and other allowances for which the petitioner is entitled during the period of suspension.

2. The second writ petition no. 11139 of 2013 has been preferred challenging his compulsory retirement and seeks relief as follows:-

(i) issuance of an appropriate writ including a writ in the nature of writ of certiorari quashing the notification dated 9.2.2012 issued by the respondent Joint Secretary, Govt. of Bihar, Patna, as contained in Annexure 14 whereby and whereunder the petitioner has been compulsorily retired from service in exercise of power under Rule 74(b)(ii) of the Bihar Service Code with effect from the date of issuance of the notification stating therein that it is based on the recommendation made in the letter no. 18274 dated 18.11.2011 issued by the respondent Registrar General, Patna High Court (Administrative side);

(ii) issuance of an appropriate writ in the



nature of writ of mandamus holding and treating the petitioner to be in service with effect from the date of the said impugned notification, i.e. 9.2.2012, and the petitioner would be treated to continue so until his due date of superannuation from service, and it would be with all consequential benefits.

3. The matrix of facts giving rise to the present writ petition is/are as follows:-

4. The petitioner was selected in the Bihar Judicial service and joined on 13.07.1988 as a Judicial Magistrate. He was subsequently promoted as the Subordinate Judge / Civil Judge Senior Division on 26.02.2006 and posted at Siwan where he continued till 31.10.2008. According to the petitioner, the confidential remarks for the period 2007-08 as communicated to him was/were as follows:

2007 1st quarter – Satisfactory
2007 2nd quarter capable of improvement
2008 1st quarter -Very good
2008 2nd quarter – Poor
2008 3rd quarter – Good

5. The case of the petitioner is that except for the years 1991, 1998 and 2001, he was never communicated with any adverse confidential remarks and as such, he naturally



presumed it to be satisfactory.

6. Further, between the year 2006 to 2008, when the petitioner was posted as the Subordinate Judge at Siwan; an inspection of the Siwan Judgeship was conducted by the Inspecting Judge and no adverse confidential remark was communicated to him. However, vide letter dated 15.09.2008 issued by the District & Sessions Judge, Siwan, the petitioner was communicated with the Annual Confidential Remarks as adverse for the period 2007-2008. It was further mentioned that there were several complaints and transfer petitions against him with allegations "touching reputation /integrity".

7. The petitioner, thereafter vide letter dated 20.09.2008 addressed to the District & Sessions Judge, Siwan, sought the details of the complaints made against him so that he is able to represent before the High Court. The District & Sessions Judge, Siwan in turn vide letter dated 26.09.2008 informed him that in all, six Miscellaneous Petitions have been filed for the transfer of cases from his Court.

8. On 29.9.2008, the petitioner preferred representation before the Registrar General of Patna High Court against the aforementioned adverse remarks for the year 2007-2008 as recorded by the learned District & Sessions Judge,



Siwan. Subsequently, vide letter dated 12.2.2009 issued by the District & Sessions Judge, Saharsa (under whose jurisdiction he was posted as the Sub-Judge - 1, Supaul), the petitioner was informed that the High Court has put him under suspension. The petitioner thereafter vide letter dated 25.3.2009 addressed to the Registrar General of the High Court submitted his representation.

9. As per the further contention, vide memo no. 6123 dated 16/17th April 2009, the Registrar General of the Patna High Court informed the proposal to hold a departmental proceeding against him with respect to the charges. The letter also included the statements of allegation/list of documents as also the list of witnesses. The petitioner was asked to submit his written statement of defence in this regard. The Judge Incharge, Siwan was appointed as the Presenting Officer while the District & Sessions Judge, Siwan, was made the Enquiry Officer. The charges related to Title suit nos. 47/1996; 153/1989; 97/1990; 296/1985; 12/2003 and 114 / 2008.

10. The petitioner submitted his written statement of defence on 5.5.2009 addressed to the Registrar General, Patna High Court through the District Judge, Saharsa denying each and every charge with reasons and materials in



support thereof.

11. Thereafter, the enquiry proceeded in course of which the Presenting Officer produced 10 witnesses as also the documents. The petitioner on his side produced 3 witnesses and some documents in his defence. He also submitted written statement under Rule 17(19) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, (henceforth for short 'the C.C.A Rules') rebutting each and every charge in following manner:

(a) regarding the charge no. 1 that while functioning as the Sub Judge VIII, Siwan and hearing T.S. No. 47 of 1996, he came in contact of one Nanhejee, the plaintiff and for accepting gratification provided him the mobile number of his younger brother, Umesh Pal living in Deoria (U.P.); the case of the petitioner is/was that the said Nanhejee never visited Deoria with any amount as alleged and further denied that there was any demand or payment of such amount. It was also pointed out that T.S. no. 47/96 was dismissed in the presence of the Hon'ble Inspecting Judge;

(b) so far as charge no. 2 which alleges to the that despite the request made by the plaintiff's Advocate, the T.S. No. 153 of 1989 was adjourned though it was running for



argument, the case of the petitioner is/was that as per the direction of the Hon'ble Court, the plaintiff in T.S no. 153 / 89 was supposed to start argument first but in spite of repeated directions, as he failed to do so, the Court finally dismissed the case in default;

(c) with regards to the charge no. 3 related to T.S. no. 97/1990, where an order fixed for argument on 29.07.2008 was decreed on the same day despite the fact that a transfer petition was to be heard by the District Judge, Siwan on 14.08.2008; the contention of the petitioner is/was that an order had already been passed on 29.07.2008 whereafter the petition was filed at 3:30 PM. Further, the defendant did not turn up during the enquiry to support his allegation;

(d) regarding charge no. 4, the allegation of causing intentional delay in disposal of T.S. no. 296/85, the contention was that as there was transfer petition pending before the District Judge, Siwan, regarding the case, it could not move further. So the allegation regarding asking for/taking bribe was denied;

(e) so far as the charge no. 5 relating to T.S. no. 12/2003 wherein also as per the allegation, the judgment was pronounced on 13.08.2008 despite the fact on 12.08.2008



and 13.08.2008, it was posted for argument; the case of the petitioner is/was that the judgment was delivered on the 13.08.2008 i.e. the day fixed for it as the order sheet and Court diary would show. However, in the cause list, the Bench Clerk made a mistake of including it under the heading "argument" instead of putting it under the heading "Judgment." This minor and *bona fide* mistake could not be detected in the rush of the work for which no motive can be attributed;

(f) with regard to the last charge (charge no. 6) pertaining to allowing substitution petition in T.S. no. 114/2008 for which money was allegedly demanded, the same has also been proved to be false and frivolous as the prosecution witness, E.W. 7 admitted that he did not remember whether he visited the petitioner's chamber or any amount paid.

12. After the conclusion of the proceeding, the Enquiry Officer submitted his report dated 16.05.2011 to the Registrar General of the High Court with his findings that the charge nos. 3, 4 and 5 have been proved while the charge nos. 1, 2 and 6 could not be established.

13. The petitioner was thereafter asked vide letter dated 14.07.2011 to submit his show cause against the Enquiry Report dated 16.05.2011 which he submitted on



23.07.2011 stating therein that even the said charges 3, 4 and 5 could not been established as the findings are not based on evidence.

14. As per the show cause submitted:

(i) the finding on charge no. 3 is based on evidence of P.W. 9, Pramod Kumar Kanaujia; recorded after recall and undue importance has been given to the cause list ignoring the order sheet and the Court diary. The order was passed in the presence of the parties and after hearing them. Further, the transfer petition was filed at the end of the day after the delivery of judgment in the pre-lunch session;

(ii) the finding on charge no. 4 also suffers from lack of evidence as E.W. 10, Ramashray Yati, the maker of the allegation stated that he did not made allegation in his petition nor he suffered any loss;

(iii) regarding the charge no. 5, the petitioner contended that the findings are based on contradictory statements in evidence. Record of the case disclosed that the plaintiff's Advocate had been heard on almost ten times and yet on his mere allegation that he was not heard properly, the Enquiry Officer gave it undue importance when the party for whom the learned Advocate was appearing had lost it on merit.



The Bench Clerk E.W. 9, Pramod Kumar Kanaujia admitted that in the Court diary dated 13.08.2008, he had recorded and entered T.S. no. 12/2003 under the heading for judgment but in the cause list dated 13.08.2008, inadvertently, no heading for judgment was made and the said suit was shown under the heading for argument. This admission of the Bench Clerk thus clearly disproved the charge.

15. Subsequently, vide memo no. 15080 15.09.2011 issued by the Registrar General of the Patna High Court, the petitioner was informed that the order of suspension dated 12.02.2009 stood revoked with immediate effect but he would not be entitled to receive any service/monetary benefit except the subsistence allowance for the period of suspension. The petitioner was further informed vide letter dated 16.09.2011 to join the post whereafter, he resumed his duty as the Sub-Judge III, Supaul.

16. Thereafter, vide memo no. 15491 dt. 19.09.2011 issued by the Registrar General of the High Court, the petitioner was informed through the District Judge, Saharsa that the Court was pleased to impose the punishment of "*reduction in pay by one stage with permanent effect*" for the charges proved against him. The petitioner was served with



letter / order dated 28.9.2011 of the District and Sessions Judge, Saharsa informing him that in terms of the High Court's letter, he has been relieved of all judicial work forthwith.

17. This followed the first writ petition vide CWJC No. 3614 of 2012 challenging the memo no. 15491 dated 19.09.2011 issued by the High Court.

18. The petitioner was thereafter served with the fax copy of the notification dated 9.2.2012 issued under the signature of the respondent Joint Secretary, Govt. of Bihar, intimating that he has been compulsorily retired from the service in exercise of power under Rule 74(b)(ii) of the Bihar Service Code, 1952 (henceforth for short 'the Service Code') with effect from the date of the notification along with salary and allowance for three months in lieu of three months' prior notice. It was further informed in the notification that the order has been passed following the recommendation made vide letter dated 18.11.2011 issued by the Registrar General, Patna High Court. According to the petitioner, the three months salary was not paid to him.

19. Against the said impugned notification dated 9.2.2012, the petitioner filed Writ petition (Civil) no. 48 of 2013 before the Hon'ble Supreme Court of India which was



heard and he was permitted to withdraw the Writ petition with liberty to approach the appropriate forum for relief by making an appropriate application.

20. Thereafter, the second writ petition vide CWJC No. 11139 of 2013 was preferred challenging the notification.

21. Learned Counsel, Mr. Mukul Sinha appearing in CWJC No. 3614 of 2012 submits that the petitioner has been punished on the charges which were definitely not proven. He submits that out of 6 charges, the Enquiry Officer himself came to the conclusion that the charge nos. 1, 2 and 6 could not be proved. He further submits that a perusal of the record sheet relating to Charge no. 3 (T.S. No. 97/1990) and Charge no. 5 (T.S. 12/2003) would show that the same were fixed for judgment and there was/were *bona fide* mistakes on the part of the Bench Clerk, recording that the cases were posted for argument. The further submission is that so far as the Charge No. 4 relating to intentional delay in disposal of T.S. No. 296 of 1985 is concerned, the same could not be taken to its logical conclusion as transfer petition was pending before the District Judge, Siwan. Learned Counsel submits that with the sole purpose to punish him, on cooked up charges, the punishment



order was passed vide memo no. 15491 of 19.09.2011 which is fit to be set aside.

22. Learned Senior Counsel, Mr. Rajendra Narain representing the petitioner in CWJC No. 11139 of 2013 submits that the impugned orders by which he has been compulsorily retired from service is cryptic and non-speaking. It is obviously based on the departmental proceeding against the petitioner pursuant to which he has already been punished. As such, he can not be punished for the second time as this will amount to double jeopardy. The petitioner cannot be termed a dead wood merely to compulsorily retire him.

23. Learned Senior Counsel contends that the petitioner was never served with the copy of the recommendation which formed the basis for the passing of the impugned order. He was earlier punished vide an order dated 19.09.2011 and after revoking the suspension order he was allowed to join and accordingly was performing his duties. There were no complaints against him in any form. In that background, there was absolutely no occasion for passing the order of compulsory retirement as no public interest has been shown either.

24. Learned Senior Counsel submits that



once the petitioner was punished following the proceedings; compulsorily retiring him when he was going to retire within a year is a harsh punishment and fit to be set aside.

25. Learned Senior Counsel, Mr. Rajendra Narain as also Mr. Mukul Sinha, learned Counsel cited the following cases of Hon'ble Apex Court in favour of their cases.

26. Learned Counsel submits that in the case of **Nand Kumar Verma vs State of Jharkhand & Ors** reported in **2012 (4) PLJR 126 (SC)**, the Hon'ble Apex Court in para **27** held that when the Standing Committee had accepted the explanation and dropped the proceedings, there was no justification in conducting another enquiry. Para 27 read as follows:

“27. After accepting his explanation, the High Court was still of the view that disciplinary proceedings requires to be initiated against the appellant for his alleged omission and commission of granting bail indiscriminately even in heinous crimes. The Charge Memo was replied by the appellant and in that he had, specifically, contended that the Standing Committee of the High Court, after accepting the explanation, had informed him that his explanation is accepted and all the



allegations made against him are closed. This aspect of the matter, though noticed by the Inquiry Officer, he does not give any finding. He, however, has observed that the charges alleged against the appellant are proved. Based on this, the High Court has passed the order of reversion whereby the appellant was reverted from the post of Chief Judicial Magistrate to that of Munsif and the same was notified by the State Government also. In our opinion, having accepted the explanations and having communicated the same to the appellant, the High Court could not have proceeded to pass the order of initiating departmental proceedings and reverting the appellant from the post of Chief Judicial Magistrate to the post of Munsif. On General Principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charges is



permissible. In the present case, a charge memo was issued and served on the appellant. A reading of the charge memo does not contain any reference to the proceedings of the Standing Committee at all. It is also not found as to whether the earlier proceedings has been revived in accordance with the procedure prescribed. In fact, after receipt of the charge memo, the appellant, in his reply statement, had brought to the notice of the enquiry officer that on the same set of charges, a notice had been issued earlier and after receipt of his explanation dated 21.12.1994, the Standing Committee, after accepting his explanation had dropped the entire proceedings and the same had been communicated to him by the Registrar General of the High Court by his letter dated 02.02.1995. In spite of his explanation in the reply statement filed, the enquiry officer has proceeded with the enquiry proceedings and after completion of the same, has submitted his report which has been accepted by the disciplinary authority. Therefore, in these circumstances, there is no justification for conducting a second enquiry on the very charges, which have been dropped earlier. Even through the principles of double jeopardy is not applicable, the law permits only disciplinary proceedings and



not harassment. Allowing such practice is not in the interest of public service. In the circumstance, we cannot sustain the impugned order reverting the appellant to the lower post.”

27. Further in para **30**, the Court held that:

“30. We are conscious of the fact that there is very limited scope of judicial review of an order of premature retirement from service. As observed by this Court in Rajiah’s case (supra) that when the High Court takes the view that an order of compulsory retirement should be made against a member of the Judicial Service, the adequacy or sufficiency of such materials cannot be questioned, unless the materials are absolutely irrelevant to the purpose of compulsory retirement. We also add that when an order of compulsory retirement is challenged in a court of law, the Court has the right to examine whether some ground or material germane to the issue exists or not. Although, the Court is not interested in the sufficiency of the material upon which the order of compulsory retirement rests.”

28. The Court also held in para **33** as such:

“33. Moreover, the District and Sessions Judge have the opportunity to watch the functioning of the appellant from



*close quarters, who have reported favourably regarding the appellant's overall performance except about his disposal, in the appellant's recent ACR for the year 1997-98 and 1998-99. In view of this, the greater importance is to be given to the opinion or remarks made by the immediate superior officer as to the functioning of the concerned judicial officer for the purpose of his compulsory retirement. The immediate superior is better placed to observe, analyse, scrutinize from close quarters and then, to comment upon his working, overall efficiency, and reputation. In **Nawal Singh vs. State of U.P.**, (2003) 8 SCC 117, this Court has observed thus:*

12. ... In the present-day system, reliance is required to be placed on the opinion of the higher officer who had the opportunity to watch the performance of the officer concerned from close quarters and formation of his opinion with regard to the overall reputation enjoyed by the officer concerned would be the basis.”

29. On the contention that what had been ordered in



the beginning cannot gets validated by additional grounds later on, learned Senior Counsel relied on the case of **Mohinder Singh Gill & Anr vs The Chief Election Commissioner, New Delhi & Ors** reported in **AIR 1978 SC 851** and para 8 read as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be



construed objectively with reference to the language used in the order itself”.

Orders are not like old wine becoming better as they grow older.

A Caveat. “

30. On the point of absence of public interest necessitating the respondents to pass the order, learned counsel relied on case of **H.C. Gargi vs State of Haryana** reported in **AIR 1987 SC 65** with specific reference to para **2** which read as follows:

2. In this case, the appellant who was an Assistant Excise & Taxation Officer, Haryana, after 35 years of service has been compulsorily retired in public interest by the State Government of Haryana by impugned order dated February 1, 1985 purporting to act under R. 3-25(d) of the Punjab Civil Service Rules, Vol. 1, Part I. From the record of service it appears that based upon the report of the Review Committee in 1979, the appellant was retained in service after he attained the age of 50 years and thereafter on the report of the second Review Committee in 1983, he was continued in service on his attainment of the age of 55 years, on the basis of his record of service which was uniformly good right from year the 1964-65 to the year 1981-82. When he



was just on the verge of retirement, the State Government directed his compulsory retirement under R. 3-25(d) of the rules on the basis of two adverse entries made by the then Excise & Taxation Commissioner. Although the appellant pleaded that he earned a good report from the Deputy Excise & Taxation Commissioner who had opportunity to watch his performance during the years in question, the State Government in the return filed before the High Court contested the writ petition on the ground that the appellant was retired under R. 3.25(d) of the rules as the adverse entries made by the Commissioner showed that he was of doubtful integrity. This however is not borne out by the two adverse entries made by the Commissioner showing that his performance in the year 1982-83 was 'average' and that in the year 1983-84 'below average' which did not pertain to his integrity. The appellant alleged that he had incurred the displeasure of the Commissioner for certain reasons. While his representation against the adverse entries made by the Commissioner was pending consideration, the Government passed the impugned order of compulsory retirement and thereafter rejected the representation. The power of compulsory retirement under R. 3.25(d) of the rules can



be exercised subject to the condition 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. The test in such cases in public interest as laid down by this Court in Union of India v. J. N. Sinha, (1971) 1 SCR 791 : (AIR 1971 SC 40). It does not appear that there was any material on the basis of which the State Government could have formed an opinion that it was in public interest to compulsorily retire the appellant at the age of 57 years. There was really no justification for his compulsory retirement in public interest. The impugned order of compulsory retirement of the appellant order R. 3.25(d) of the rules must therefore be struck down as being arbitrary.

31. The respondent-High Court is represented by Mr. Satyabir Bharti. A counter affidavit is also on record.

32. As per the stand of the High Court, the petitioner while posted as the Sub-Judge-1st, Supaul under the judgeship of Saharsa was put under suspension vide memo no. 2467 dated 12.02.2009 issued by the respondent no. 2. The charges against the petitioner were all related to the period he was posted as the Sub-Judge-VIII, Siwan between May 2006



and 31st of October, 2008.

33. The contention of Mr. Bharti is that subsequently, vide an order dated 16/17.4.2009, issued by the Patna High Court, the petitioner was served with the memorandum containing the Articles of Charges, the list of documents as also the list of Witnesses. The Judge-In-charge, Siwan was appointed as the Presenting Officer while the District Judge, Siwan was appointed as the Enquiry Officer.

34. He submits that a bare perusal of the Article of Charges would reveal that he was charged on six counts. After conducting a detailed enquiry, the District & Sessions Judge, Siwan submitted his enquiry report on 16th May, 2011 by which out of six charges framed against him, three were found proved against him while the rest three charges were found not proved.

35. Learned Counsel submits that upon receipt of the enquiry report, the Standing Committee of the Patna High Court issued notice upon the writ petitioner to show cause as to why the finding of guilt recorded by the Enquiry Officer be not accepted and he be not visited with suitable punishment for the guilt/misconduct proved against him. This followed letter dated 14th July, 2011 to the petitioner.



36. The petitioner submitted his show cause which was considered and the Standing Committee resolved vide its meeting dated 07.09.2011 that for the charges proved against the petitioner, he be visited with punishment of *reduction in pay by one stage with permanent effect*. The order of suspension was revoked and it was further resolved that for the period of suspension, he shall not be entitled to receive any service benefit/monetary benefit except the subsistence allowance.

37. The Standing Committee called for the entire service record of the petitioner to consider whether he is required to be retired from service in public interest in exercise of power conferred by Rule 74(b)(ii) of ‘the Service Code’.

38. Learned counsel for the High Court straightway took this Court to the chart relating to service career of the petitioner which read as follows:

Date of Birth	1.1.1954
Date of Retirement	31.12.2013
Home District	Deoria (U.P.)
Joined Judicial Service as Munsif	13.07.1988
Confirmed in the post of Munsif	27.06.1991
Promoted to the	24.02.2006



rank of Sub-Judge	
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Remarks recorded by District Judge:-

1990-91	An officer of average merit.
1991-92	Quarrelsome. Does not hold good reputation among the members of Bar and members of litigant public. (-) Expunged vide XXV-16-93.
1994-95	An officer of average merit. His performance, on the whole has been fair.
1996-97	An officer of average merit and reputation. He should improve his out-run.
1997-98	He had difficulties in controlling his Class IV staffs.
1998-99	He should take care of his reputation and try to improve his behaviour with the members of the Bar and the staff working with him. (-) Expunged vide file no. XXV-85-1998.
2000-01	An officer of average merit.
2001-02	Average officer. He did not enjoy good reputation regarding honesty and integrity. He may be kept under watch for such period as Hon'ble Court deem fit and proper.
2002-03	An officer of average performance.
2003-04	Good officer.
2004-05	An officer of average merit.
2005-06	An officer of average merit.
2006-07	Average officer.
2007-08	Average-Integrity doubtful.
2008-09	He has joined on 06.11.2008. Hence his report is not being submitted.



Remarks recorded by Hon’ble Inspecting Judge:-

September, 1993	Satisfactory
May, 2003	C, He is on the whole a below average Judicial Officer. Needs considerable improvement.
June, 2005	B+

39. Learned Counsel submits that it can be seen from the chart that the adverse confidential remark was recorded for the year 1991-92, 1997-98, 1998-99, 2000-01, 2001-02, 2003 and 2007-08 and he was opined to be an Officer of average merit for the remaining years except for the year 2003-04. He was also served with a major punishment by the Standing Committee decision dated 07.09.2011 on account of various allegations found proved against him while posted as the Sub- Judge-VIII, Siwan in the year 2008-09.

40. The respondents have also brought on record the Adverse Remarks recorded against the petitioner for the period 1998-99, 2000-01 and 2007-08 by the District and Sessions Judge and the remarks of the Hon'ble Inspecting Judge in the year 2003:

Column of confidential report containing Adverse Remarks recorded by the District and Sessions Judge, Saharsa for the year 1998-99 are as follows:



4	Is he an efficient Officer?	:	He requires improvement.
5	Has he maintained a reputation for honesty and impartiality during the period under report?	:	Some senior lawyers complained about his integrity and reputation. Also frequent transfer petitions were filed in respect of some cases.
6	Is he fit for the exercise of any enhanced power ? If so, which ?	:	No. His performance should be watched for one year for considering the vesting of any enhanced power to him.
7	Defects if any.	:	He does not maintain good relation with the members of the Bar. He should have control over the proceeding of the court occasioning none to complain.
8	Final assessment	:	Whenever, I heard any complaint against him regarding his reputation, I always suggested him to mend his way of working maintaining all the norms of this highest institution ‘the judiciary’. Even his previous remarks are discouraging.

Column of confidential report containing Adverse Remarks recorded by the District and Sessions Judge, Patna for the year 2000-01 are as follows:

2	Is he industrious and prompt in the disposal of cases?	:	Average, he should exert more to improve his out-turn.
4	Is he an efficient Officer?	:	He has not been able to make an impression of efficiency because of the remarks at column No. 5.
5	Has he maintained a reputation for honesty and	:	There are complaints against his reputation for honesty



	impartiality during the period under report ?		and impartiality and on confidential inquiry, it is learnt that the complaints have substance.
6	Is he fit for the exercise of any enhanced power? If so, which ?	:	Not now, in view of column No.-5, he should be kept under watch for such period as Hon’ble Court deem fit and proper.
7	Defects if any.	:	Same as column No. 4, 5 and 6.
8	Final assessment	:	Average officer. He did not enjoy good reputation regarding honesty and integrity. He may be kept under watch for such period as Hon’ble Court deem fit and proper.

Column of confidential report containing Adverse Remarks recorded by the Hon’ble Inspecting Judge of the Munger Judgeship in the year 2003 are as follows:

3	Are his judgments and orders written and clearly expressed? (Category in which the judgments are to be placed, viz. A Plus Outstanding, A-Very good B-Plus (Good), B-Average/Satisfactory, C-Below Average).	:	B. He writes average judgmetns.
5	Is he an efficient Judicial Officer?	:	No.
6	Has he maintained a reputation for honesty and impartiality?	:	He should improve his image.
7	Remarks about his attitude towards his superiors,	:	Not good. Quite temperamental.



	Subordinates and Colleagues.		
8	Behaviour towards members of the Bar and the public.	:	Not good. Quite temperamental.
9	Net result.	:	C. He is on the whole a below average Judicial Officer. Needs considerable improvement.

Column of confidential report containing Adverse Remarks recorded by the District and Sessions Judge, Siwan for the year 2007-2008 are as follows:

5	Has he maintained a reputation for honesty and impartiality during the period under report.	:	No, doubtful several complaint & transfer petitions with allegation touching reputation integrity.
7	Defect if any.	:	Integrity doubtful.

41. It is the submission of the learned counsel for Patna High Court that having considered the entire service record of the petitioner, the Standing Committee in its meeting dated 27.9.2011 resolved to recommend his retirement and the said resolution was confirmed by the Full Court resolution obtained through circulation. It was thereafter sent to the State Government for the issuance of necessary orders/notification which is further issued the necessary notification no. 7/Stha-1-05/2011Sa 2243 dated 09.02. 2012.



42. Mr. Bharti, learned counsel has cited the case of *Ram Murti Yadav vs State of Uttar Pradesh and another reported in (2020)1 SCC 801* in support of the case that scope for judicial review of order or compulsory retirements based on subjective satisfaction of employee is extremely limited unless it is found to be arbitrary or capricious, malafide, overlooking or ignoring relevant material etc. Hon'ble Apex Court held that the Court while exercising power of judicial review cannot sit in judgment over same as appellate authority. Learned counsel referred to paragraphs 14 and 15 which read as follows:

14. A person entering the judicial service no doubt has career aspirations including promotions. An order of compulsory retirement undoubtedly affects the career aspirations. Having said so, we must also sound a caution that judicial service is not like any other service. 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 akin to discharge of a pious duty, and therefore, is a very serious matter. The standards of probity, conduct, integrity that may be relevant for discharge of duties by a careerist in another job cannot be the same for a judicial officer. A judge holds the office of a



public trust. Impeccable integrity, unimpeachable independence with moral values embodied to the core are absolute imperatives which brooks no compromise. A judge is the pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing a judicial function. Judges must strive for the highest standards of integrity in both their professional and personal lives.

15. It has to be kept in mind that a person seeking justice, has the first exposure to the justice delivery system at the level of subordinate judiciary, and thus a sense of injustice can have serious repercussions not only on that individual but can have its fall out in the society as well. It is therefore absolutely necessary that the ordinary litigant must have complete faith at this level and no impression can be afforded to be given to a litigant which may even create a perception to the contrary as the consequences can be very damaging. The standard or yardstick for judging the conduct of the judicial officer therefore has necessarily to be strict. Having said so, we must also observe that it is not every inadvertent flaw or error that will make a judicial officer culpable. The State Judicial Academies undoubtedly has a stellar role



to perform in this regard. A bona fide error may need correction and counselling. But a conduct which creates a perception beyond the ordinary cannot be countenanced. For a trained legal mind, a judicial order speaks for itself.

43. He further cited the case of ***Pyare Mohan Lal versus State of Jharkhand and others reported in (2010) 10 SCC 693*** decided by the Hon'ble Apex Court with specific reference to para 29 which read as follows:

“29. The law requires the Authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a Judicial Officer is required to be examined, treating him to be differently from other wings of the society, as he is serving the State in a different capacity. The case of a Judicial Officer is considered by a Committee of Judges of the High Court duly constituted by Hon'ble the Chief Justice and



then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fide.”

44. In para 28, again the Hon’ble Apex Court held as follows:

“28. It is evident from the aforesaid service record of the petitioner that he remained an average officer throughout his service career and could never improve. His out turn had been poor; he had been given adverse entries regarding his integrity/reputation as not good in the years 1999-2000 and remarks to that effect by the Inspecting Judges in 1997 and 2001-2002. The petitioner had made a bald assertion that the adverse entries have not yet been communicated to him. It has been repeatedly submitted by him that representations made by him against the said adverse entries had not been disposed of. Indisputably, uncommunicated adverse entries could be taken into account for the purpose of assessing an officer for compulsory retirement. The petitioner has not disclosed on what dates the



representations against the adverse entries had been made. The petitioner had not challenged the said adverse entries, rather he considered it appropriate to challenge only the order of compulsory retirement which has been a consequential effect of such adverse entries.”

45. Learned counsel further cited the case of ***Rajendra Singh Verma (Dead) through LRS. And others vs Lieutenant Governor (NCT of Delhi) and others reported in (2011) 10 SCC 1*** wherein it was held that the judicial service is not a service in the sense of employment as is commonly understood. The Judges discharge their functions while exercising sovereign judicial power. Their honesty and integrity is expected to be beyond doubt. Nature of judicial review is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility. Para 82 of the order read as follows:

“82. As explained by this Court in Chandra Singh and others Vs. State of Rajasthan, the power of compulsory retirement can be exercised at any time and that the power under Article 235 in this regard is not in any manner circumscribed by any rule or order. What is explained in the said decision by this Court is that Article 235 of



the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the dead wood, and this constitutional power of the High Court cannot be circumscribed by any rule or order.”

46. In para 182 the Court further held:

182. On consideration of the rival submissions, this Court finds that there is no manner of doubt that the nature of judicial service is such that the High Court cannot afford to suffer continuance in service of persons of doubtful integrity. Therefore, in High Court of Judicature of Bombay v. Shirishkumar Rangrao Patil this Court emphasised that it is necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

47. Further, in the case of ***Central Industrial Security Force vs HC (GD) Om Prakash reported in (2022) 5 SCC 100***, Hon’ble Apex Court held that High Court erred in ruling that merely because there were positive ACRs for some period and a promotion was also granted that all negative ACRs and penalties imposed prior to the date of promotion, and uncommunicated adverse remarks were to be ignored.



48. In paras 3, 4 and 7, it held as follows:

3. In the writ petition challenging such order, the High Court set aside the order of premature retirement on the ground that the writ petitioner was promoted as Head Constable on 14.06.2000 and thus penalties imposed prior to the year 2000 have to be ignored while determining suitability of the writ petitioner to be retained in service. The two penalties of sleeping on duty and overstaying leave by two days were inflicted in the year 2005 and 2008 respectively which were minor penalties. The Annual Confidential Reports (“ACR”) grading of the writ petitioner in the preceding five years have to be considered with greater focus while noticing the fact that even earlier ACR’s had to be taken into consideration. The ACR’s from 1990 till the year 2009 were either good or very good. The ACR for the year 2010 was graded average but the same was not conveyed to the writ petitioner. Therefore, such ACR could not be taken into consideration while arriving at an opinion that the writ petitioner is a dead wood. The High Court referred to a three Judge Bench judgment of this Court in Baikuntha Nath Das v. District Medical Officer wherein it has been held



that the order of compulsory retirement is not a punishment. 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 is not liable to be quashed by the Court merely for the reason that uncommunicated adverse remarks were taken into consideration.

4. This Court approved the earlier judgment of this Court in Union of India v. M.E. Reddy wherein it was held as under: (SCC p. 22, para 12)

"12. An order of compulsory retirement on one hand causes no prejudice to the government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country, for every good cause claims its martyr."

7. A three-Judge Bench of this Court



reported as Union of India v. Dulal Dutt examined the order of compulsory retirement of a Controller of Stores in Indian Railways. 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: (SCC pp. 184-85, para 18)

"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 R.L. Butail v. Union of India and Union of India v. J.N. Sinha 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."

49. We have gone through the facts of both the writ petitions, the materials on record as also the submissions put forward by the learned Senior Counsel, Mr. Rajendra Narain as also Mr. Mukul Sinha, learned counsel for the petitioner and Mr. Satyabir Bharti representing the Patna High Court.

50. Certain charges were levelled against the petitioner while he was posted as Sub-Judge -VIII, Siwan. The then District and Sessions Judge, Siwan communicated certain adverse remarks in the Annual Confidential Record for the period 2007/08. He preferred representation before the High Court. Subsequently, the Patna High Court proposed to hold departmental proceedings against the petitioner. Six charges were framed against him relating to different title suits and allegation against him included demand of money relating to Title Suits pending in his Court as also passing of order on the dates, the case was fixed for arguments. Another charge was formed for delaying one of the title suits. Subsequently, departmental proceeding took place and while charge nos. 1,2



and 6 relating to demand of money were not proved, so far as the charge nos. 3,4 and 5 relating to Title Suit Nos. 97/1990, Title Suit No. 265/85 and Title Suit No. 12/2003 respectively are concerned, the same were found proved.

51. This followed show cause dated 14.07.2011 annexing the enquiry report dated 16.05.2011. The petitioner responded vide his show cause on 23.07.2011 whereafter memo no. 15080 dated 15.09.2011 was issued by the Registrar General, Patna High Court by which his suspension order dated 12.02.2019 was revoked with the observation that he will not be entitled to receive any service benefit/monetary benefit except the subsistence allowance for the period of suspension. He was further directed to join his post and he resumed his duty as Sub-Judge-3, Supaul on the same day i.e. 16.09.2011 itself. Further, vide letter dated 19.09.2011 issued by the Registrar General, Patna High Court, the punishment order of reduction of pay one stage with permanent effect was passed against him.

52. The petitioner challenged the said order in CWJC No. 3614 of 2012.

53. We have gone through the charges framed against him, the departmental proceeding conducted against him



as also the enquiry report. We are satisfied that a defect free departmental proceeding has been conducted against the petitioner *inasmuch* as vide memo no. 6123 dated 16/17-2009, the Registrar General, Patna High Court while informing him about the proposal of departmental proceeding provided him with the statement of allegation, list of documents as also the list of witnesses. Further, he was granted sufficient opportunity and only thereafter, the Enquiry Officer submitted his report on 16.05.2011 to the Registrar General, Patna High Court whereafter the petitioner was put on show cause on 04.07.2011 along with enquiry report dated 16.05.2011 and finally the punishment order was passed.

54. Though this Court is not required to go into the charges that were levelled against the petitioner, for our own satisfaction, we went through the order sheets of Title Suit No. 97/1990 (relating to charge no. 3) as also Title Suit No. 12/2003 (charge no.5).

55. In the order sheet dated 29.07.2008 of T.S. No. 97/1990, the order clearly showed that it was adjourned for 29.07.2008. However, surreptitiously, two additional words “FOR JUDGMENT” incorporated thereafter. Certainly, the charge that on the date for argument, hurriedly, an order was



passed for oblique reason is/was not unfounded.

56. Again regarding the charge no. 5 relating to T.S. No. 12./2003, the case was fixed for argument on 13.08.2008. However, on top of the first line, additional two words 'FOR JUDGMENT' came up. Thus, at least on charge nos. 3 and 5 which we perused, the findings arrived at by the Enquiry Officer was/were fully justified.

57. In the aforesaid circumstances, the decision taken by the respondents of passing an order for *reduction of pay one stage with permanent effect* is justified and need no interference.

58. CWJC No. 3614/2021 is without any merit and fit to be rejected.

59. After the punishment order was passed against the petitioner, his entire service record was called for to consider whether he is required to be retired from service in public interest. We have incorporated the service record of the petitioner. He joined the judicial service on 13.09.1988. The 1994-95 as also 1996-97 remarks by the District Judges show that he was an Officer of average merit and reputation. Again, in the year 2001-02, it was remarked that he was an average Officer and do not enjoy good reputation regarding honesty and



integrity and he need to be kept under watch.

60. To be fair to the petitioner, for once in the year 2003-04, the remarks of 'Good Officer' was given to him but thereafter, he was found to be an average Officer. Again, in the year 2007-08, his integrity was found doubtful.

61. So far as the remarks of the Inspecting Judge is concerned, in May, 2003, he was found to be Officer below average and the Hon'ble Inspecting Judge had remarked that he needs considerable improvement.

62. In that background, the Standing Committee upon assessment and evaluation of his entire service record in its meeting dated 22.09.2011 resolved to recommend his retirement from service in public interest in exercise of power conferred under Rule 74(b) (ii) of 'the Service Code'.

63. This was confirmed by the Full Court resolution and communicated to the General Administration Department, Bihar Patna vide office letter no. 1827 dated 18.11.2011 by the Patna High Court which followed the State Government notification no. 7/stha-1-5-05/2011 Sa 2243 dated 09.02.2012 which has been challenged in CWJC No. 11113/2019.

64. In **Ram Murti Yadav vs. The State of**



Uttar Pradesh & another (supra), the Hon'ble Apex Court clearly held that scope for judicial review of order for compulsory retirement based on subjective satisfaction of the employee is extremely limited unless it is found to be capricious, mala fide, over-looking or ignoring relevant material facts and the Court in exercise of judicial review cannot sit in judgement over the same.

65. Further, in **Pyare Mohan Lal vs. the State of Jharkhand & Others (supra)** again the Hon'ble Apex held that even a single adverse entry regarding the integrity of an Officer in a remote past is sufficient to award compulsory retirement as a Judicial Officer's case has to be treated differently from other wings of society as he is serving the State in different capacity. A decision is being taken by the committee of Judges duly constituted by Hon'ble the Chief Justice which is placed before the Full Court and after the said deliberation there cannot be any chance of non-application of mind or *mala fide*.

66. So far as the decision cited by the petitioner in the case of **Nand Kumar Verma vs. the State of Jharkhand & ors (supra)** is concerned, in that case, the Standing Committee of the High Court after accepting the



explanation have informed that the same has been accepted and the allegation stands closed. The Court noticed that though this was taken note by the Enquiry Officer, he did not gave any finding. In that background, the Court interfered in the matter. The case of the petitioner certainly does not fit in that category.

67. Again so far as the case of **Mohinder Singh Gill & Anr. vs. the Chief Election Commissioner, New Delhi (supra)** cited by the petitioner is concerned, the same also does not come to his rescue as the respondents have placed matter in the same way the departmental proceeding was conducted and/or the 'order passed'. The same has not been bettered and/or any additional ground put forward.

68. Mohinder Singh Gill also does not apply to the order of compulsory retirement. An order of compulsory retirement on public interest should not raise any allegations since it is a non-stigmatic order. It is not based on any allegation of misconduct nor it is a penalty imposed. The overall conduct of the Officer and the discharge of his duties are examined by the employer to arrive at the decision to compulsorily retire on public interest. The only requirement in that case is to substantive from the service records that, the employer was perfectly justified in so acting on public interest. The service



records in the instant case amply justify the action.

69. Again in the case of **H.C. Gargi vs. The State of Haryana (supra)**, in that case, the service record of the appellant was good right from the year 1964-65 to the year 1981-82 and on the verge of retirement, the State Government directed his compulsory retirement which did not find favour with the Hon'ble Apex Court. On the contrary, in the case of the petitioner all through his service career, either he was assessed average and/or his integrity was found to be doubtful. Only for one year, he was given good remarks. Thus, even this case does not come to his rescue.

70. We have also taken note of an order of the Hon'ble Apex Court in the case of **Union of India and Another vs. Indrajit Rajput** reported in **1990 (Supp) SCC 796** where the Hon'ble Apex Court held that the adverse record for a block of several years can be the basis for bona fide decision to compulsory retire the employee concerned and the same cannot be subject to judicial interference merely on account of a solitary good entry for the year, at the end of the said period. The relevant paragraphs found incorporated paragraph nos. 7, 8 and 9 read as follows:-

“7. In our opinion, it is the overall picture emerging from the respon-



dent's service record and particularly for the period immediately preced- ing the order of compulsory retirement on the basis of which the validity of the order of compulsory retirement has to be adjudged and the solitary good entry for the year 1985 after the end of his suspension period can- not be decisive in the above background. The above facts mentioned in the Tribunal's order on the basis of the service record clearly show that in addition to the solitary good entry for the year 1985 the adverse record for the entire period commencing at least with the adverse entry in 1980 was relevant material to support the order of compulsory retirement. In between there was also a punishment of withholding three increments in 1981 as well as strictures passed by a court against the respondent in 1982 for his conduct which he did not attempt to explain even to the departmental authorities in spite of opportunities been given for the pur- pose. In addition, there ere was his intemperate and unbecoming conduct with his superior officers giving rise to an enquiry which was dropped only when the decision to retire him compulsorily had been taken. The net result is that the good entry for the year 1985 is far outweighed by the adverse material during the relevant period in the respondent's



service record. On an overall view of the matter, the Tribunal was not, therefore, justified in quashing the order of compulsory retirement of the respondent.

8. The real question for decision by the Tribunal was: Whether, the bona fide decision of the competent authority to compulsorily retire the respondent on the basis of its opinion formed on this material was liable to be set aside by it? It is in this perspective that the Tribunal had to consider and decide the matter. Obviously, the Tribunal fell in the error of overlooking the correct perspective.

9. Consequently, the appeal is allowed. The impugned order of the Tribunal is set aside with the result that the order of compulsory retirement of the respondent stands restored.”

71. Again, this Court would like to put on record a decision of the Supreme Court of India in the case of **Rajinder Goel vs. High Court of Punjab and Haryana & Another** reported in (2021) 9 SCC in which the Hon'ble Apex Court held that Full Court of High Court recommending compulsory retirement of petitioner from post of Additional District and Sessions Judge for irregular deposits/withdrawal



from his bank account, rejecting reports of vigilance/disciplinary committee exonerating him is justified as the decision/report of Vigilance/Disciplinary Committee is not binding on the Full Court and considering the multiple transactions showing deposits and withdrawals of substantial amounts of money, the Full Court was fully justified in taking the view it did. The relevant paragraphs found incorporated in paragraph nos. 11, 12 and 13.

“11. The quoted portion from para 18 of the decision discloses that this Court accepted that for the convenience of transacting administrative business and for smooth functioning of day-to-day matters pertaining to control over the subordinate judiciary, it would be possible for the High Court to authorise and empower an Administrative Judge or an Administrative Committee of Judges to act on behalf of the Court. It was in the context of such specific authorisation in favour of the Administrative Committee in terms of Rule 1 of Chapter III of the Rules of Court, 1952, framed by the High Court, that the recommendations made by the Administrative Committee were found to be without any constitutional infirmity.

12. It does not however mean that even in the absence of Rules authorising or empowering the Committee, the decision made by



or conclusions arrived at by the Committee would be binding on the Full Court or that the Full Court would not be within its jurisdiction to take a different view in the matter. The submission advanced by Mr Swarup, therefore, must be rejected.

13. Considering the facts and circumstances on record and in view of the record indicating that there were multiple transactions showing deposits and withdrawals of substantial amounts of money, it cannot be said that the Full Court was not justified in taking the view that it did. We do not find any reason to take a different view in the matter”.

72. The aforesaid facts/materials on record as also the decisions of Hon’ble Supreme Court observed hereinabove, takes us to only one conclusion. The decision of the High Court to compulsory retire the petitioner from service is fully justified and the second writ petition too is fit to be rejected.

73. Regarding the submission put forward by the learned counsel for the petitioner he has not been paid three months notice pay, he is definitely entitled to notice pay. If the same has still not been paid, payments shall be made immediately at any rate within two months.

74. Both C.W.J.C. No. 3614 of 2012 and



CWJC No. 11139 of 2013 stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

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