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High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No.-2024:AHC-LKO:71681-DB

Reserved on: 09.07.2024

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Reserved

Case :- WRIT - A No. - 1382 of 2022

Petitioner :- Anil Kumar

Respondent :- State Of U.P.Thru.Secy.Niyukti Anubhag-
4,Lko.And Another

Counsel for Petitioner :- Sheikh Wali Uz Zaman

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per: Rajan Roy, J.)

(1) Heard Sri Sheikh Wali Uz Zaman, learned counsel for the petitioner, Sri Gaurav Mehrotra, learned counsel for the High Court, Sri M.K. Dwivedi, learned Standing Counsel for State-respondent.

(2) By means of this petition, the petitioner, a compulsorily retired judicial officer in the State of U.P., has challenged the recommendations of the Screening Committee dated 11.06.2020 and 15.06.2020, the Resolution of Full Court of the Allahabad High Court dated 25.11.2021 for his compulsory retirement as also his compulsory retirement order dated 29.11.2024. He has sought his reinstatement in service with all consequential benefits of seniority, arrears of salary etc.

(3) The facts of the case in brief are that the petitioner was appointed on the post of Munsif/ Civil Judge (Junior Division) and became a member of U.P. Nyayik Sewa on 22.03.1996. He was promoted as Civil Judge (Senior Division) on 15.12.2003. Thereafter, he was further promoted to Higher Judicial Service and was posted as Additional District Judge on 16.08.2013. For the year 2012-13, the District Judge, Badaun recorded an adverse Confidential Report and did not certify his integrity for the said period. Vide his letter dated 24.09.2016 addressed to the Registrar General, he communicated various instances of misconduct on his part requiring a full-fledged inquiry especially with regard to his integrity and the properties amassed by him. Based thereon, a vigilance inquiry was ordered by Hon'ble the Chief Justice on 11.05.2013 which was registered as Vigilance Inquiry No.28/2013. The Vigilance Officer submitted his report on 04.03.2016 wherein he found the allegations to be correct. The matter was placed before the Administrative Committee of the High Court which accepted the report in its meeting dated 14.09.2016 and 16.11.2016 and recommended a regular departmental proceeding against the petitioner, which was in fact initiated, bearing D.P. No.12/2016. The Administrative Judge did not record his comments for the A.C.R period 2013-14 on account of pendency of the vigilance inquiry at the relevant time. The compulsory retirement of the judicial officer was considered in the year 2020 by a Screening Committee of the High Court in its meeting dated 11.06.2020 and 15.06.2020. In these meetings, service records of the petitioner were also scrutinized and the Screening Committee recommended his compulsory

retirement taking into considering his entire service record. The recommendations of the Screening Committee were placed before the Administrative Committee of the High Court which in its meeting date 18.11.2021 accepted the recommendations of the Screening Committee dated 11.06.2020 and 15.06.2020 and recommended withdrawal of judicial work of the petitioner as also his compulsory retirement to the Full Court. The matter was placed before the Full Court which in its meeting dated 25.11.2021, on a consideration of entire material before it, opined in its wisdom for compulsory retirement of the petitioner.

(4) Based on the aforesaid exercise, the State Government passed the order of compulsory retirement on 29.11.2021 in exercise of its powers under Fundamental Rule 56(C). Be that as it may, for some explicable reason, the Inquiry Judge who had been assigned D.P. No.12/2016 was not intimated about the aforesaid compulsory retirement of the petitioner. Consequently, he went ahead with the inquiry and even the petitioner himself, it appears, did not inform him about the said fact and ultimately, the Inquiry Judge submitted a report on 23.12.2021 exonerating the petitioner. The inquiry report was placed before the Administrative Committee which was informed about compulsory retirement of the petitioner and accordingly, it dropped the charges against the petitioner in its meeting dated 10.01.2022 and this decision of the Administrative Committee was communicated to the District & Sessions Judge, Bulandshahr on 09.02.2022. Against the aforesaid background, the petitioner has filed this petition seeking the reliefs as mentioned earlier.

(5) The contention of learned counsel for the petitioner in nutshell was that based on the material on record, no prudent person could have arrived at the conclusion that the petitioner was a deadwood who had outlived its utility for the judicial services, therefore, the impugned compulsory retirement is liable to be quashed. Compulsory retirement could not have been resorted as a shortcut to avoid result of the disciplinary proceedings. The fact that the Inquiry Judge subsequently exonerated the petitioner of the charges leveled against him and the Administrative Committee accepted the same is itself proof of the fact that the remarks of the District Judge pertaining to the A.C.R. period 2012-13 were unfounded and a result of malafide. Therefore, this material, that is, the remarks of District Judge in this regard and the report of Vigilance Officer cannot be made the basis for sustaining the order of compulsory retirement and his subsequent exoneration itself shows that the compulsory retirement was illegal and without any factual and legal basis. Learned counsel also alleged malafide against the then District Judge. However, we find that the said District Judge has not been impleaded as an opposite party in the writ petition, therefore, the allegations cannot be looked into. The Screening Committee had taken into consideration the chargesheet issued to the petitioner in disciplinary proceedings and the report of Vigilance Officer which was the basis for initiation of disciplinary proceedings and therefore, in view of the subsequent exoneration, these material cannot form the basis for the petitioner's compulsory retirement and in fact, a shortcut method was adopted to compulsorily retire the petitioner without waiting for the result

of disciplinary proceedings. The Screening Committee did not consider the work done by the petitioner nor the entire service record but has considered irrelevant material such as entries for the year 1996-1997 and 2007-2008 which were not adverse. The order of compulsory retirement has been passed in colourable exercise of power without there being any material to sustain the same, therefore, it is liable to be quashed. Learned counsel for the petitioner relied upon various decisions in support of his contention which are reported in 1990 (3) SCC 504 '**Ram Ekbal Sharma vs. State of Bihar & anr.**'; (1993) 3 SCC 396 '**Madan Mohan Choudhary vs. State of Bihar & Ors.**'; (2001) 3 SCC 314 '**State of Gujarat vs. Umedbhai M. Patel**'; 2009 (15) SCC 221 '**Madhya Pradesh State Cooperative Dairy Federation Limited and Anr. vs. Rajnesh Kumar Jamindar & Ors.**'; 2012 (1) SCC (L&S) 663 '**Nand Kumar Verma vs. State of Jharkhand & Ors.**'; 2019 (10) SCC 640 '**Krishna Prasad Verma (D) Thr. Lrs. vs. State of Bihar**'; (2022) LiveLaw (SC) 128 '**Central Industrial Security Force vs. HC (GD) OM Prakash**' and judgment passed by Division Bench of Allahabad High Court passed in Writ-A No.33451 of 2016 '**Avinash Chandra Tripathi vs. State of U.P. & Anr.**' on 31.05.2018.

(6) On the other hand, Sri Gaurav Mehrotra, learned counsel for the High Court first and foremost invited our attention to the scope of judicial review of an order of compulsory retirement in a case involving a judicial officer. He submitted that the said scope was very limited and would be confined to cases where the order has been passed without any material or malafide. He submitted that sufficiency of material is not open for consideration for the High Court under Article 226 of the

Constitution of India and it is only the decision making process which can be seen while evaluating the validity of an order of compulsory retirement, that too, pertaining to a judicial officer. He also emphasized upon the fact that the decision has been taken firstly by the Screening Committee comprising of Hon'ble Judges of the High Court and thereafter, by the senior most Judges of the High Court who were part of Administrative Committee and then the Full Court of the High Court presided by Hon'ble the Chief Justice, therefore, due and proper weightage has to be given to the satisfaction arrived at by the High Court and also subsequently by the State Government in this regard and an order of compulsory retirement of a judicial officer is not be interfered lightly. A judicial officer has to maintain highest standards of conduct and integrity throughout his career, therefore, his evaluation has to be on a higher platform than that of an ordinary officer. The Screening Committee as also the High Court has formed a subjective satisfaction on the basis of objective material available before it and such satisfaction is not to be interfered lightly on the judicial side. It is not a case where there is no material for sustaining the order of compulsory retirement. As regards subsequent exoneration of the petitioner in the inquiry wherein the charges were similar to those referred in the remarks of the District Judge for the A.C.R. 2012-13, he submitted that once the master-servant relationship had ceased on the compulsory retirement of the petitioner then any subsequent report exonerating him would be of no consequence rather it would be without jurisdiction. As regards acceptance of the said report by the Administrative Committee, he submitted that the

Committee appears to have accepted the report presumably because the petitioner had already been retired and no punishment could be imposed upon him based on such inquiry even if the Committee took a different view that what had been taken by the Inquiry Judge. Therefore, it appears that only for this reason the report was accepted as it was veritably of no consequence so far as imposition of punishment upon the officer is concerned. He took us through the material which was considered by the Screening Committee for recommending compulsory retirement of the petitioner. He emphasized that the entire service record of the petitioner had been considered by the Screening Committee and a subjective satisfaction had been recorded based on such consideration. He also emphasized the fact that the general reputation of a judicial officer is also a factor to be taken into consideration in the matter of compulsory retirement and in every case there may not be tangible proof pointing towards lack of integrity or grave misconduct. In such cases, compulsory retirement is justified and there are catena of decisions on this aspect. A wrong judicial order may not entail disciplinary proceedings but it can certainly be taken into consideration for recording the Annual Confidential Report. He also contended that the judgments relied upon by the petitioner are not applicable as the facts in those cases were different. The Screening Committee had not taken into consideration the report of the Inquiry Judge as it was not available by then and in fact, the said report could not have been submitted after the compulsory retirement of the petitioner. The High Court was justified in compulsorily retiring the petitioner and the resolutions of the Administrative

Committee and the Full Court in this regard veritably amounted to dropping the disciplinary proceedings against the petitioner but merely because the said inquiry continued even after the petitioner's compulsory retirement will not enure to the benefit of the petitioner and he cannot be permitted to take advantage of the same. He also submitted that the adverse material which is the basis for compulsory retirement has never been challenged by the petitioner, therefore, its validity cannot be seen in these proceedings. The collective wisdom of the Full Court is to be given due respect and weightage. He took us through various decisions relied upon by him which are 'Arun Kumar Saxena vs. High Court of Judicature at Allahabad Thru' R.G. and Another' 2018 SCC OnLine All 5728; 'Raman Kumar Saxena vs. State of U.P. and Ors.' 2008 SCC OnLine All 1230; 'Ram Murti Yadav vs. State of U.P. & Another' (2020) 1 SCC 801; 'Pyare Mohan Lal vs. State of Jharkhand and Ors.' (2010) 10 SCC 693; 'Shiv Kant Tripathi vs. State of U.P. & Ors.' 2008 SCC OnLine All 70; 'Rajendra Singh Verma vs. Lt. Governor (NCT of Delhi)' (2011) 10 SCC 1; 'Ram Kumar Tripathi vs. State of U.P. and Ors.' (Judgment and Order dated 04.09.2018 in W.P. No. 10551 (S/B) of 2018); 'Rajasthan High Court vs. Ved Priya and another' 2020 SCC OnLine 337; 'Registrar General, HC of Patna vs. Pandey Gajendra Prasad and Ors.' 2012 (6) SCC 357; 'Baikuntha Nath Das & another vs. Chief District Medical Officer' AIR 1992 SC 1020; 'Arun Kumar Gupta Vs. State of Jharkhand and Anr.' [Judgment and Order dt. 27.02.2020 in W.P. (Civil) No.190 of 2018]; 'HC of Judicature, Rajasthan vs. Bhanwar Lal Lamror & Ors.' (2021) 8 SCC 377; 'State of U.P. vs. Vijay Kumar Jain' (2002) 3 SCC 641; 'Ram

Murti Yadav vs. State of U.P. and Ors.' [Judgment and order dt. 02.05.2018 in W.P. No. 17566 (S/B) of 2016]; **'Shyam Shankar-II vs. State of U.P. and Ors.'** [Judgment and Order dt. 16.03.2018 in W.P. No. 17566 (S/B) of 2016]; **'Shrirang Yadavrao Waghmare vs. State of Maharashtra and Others'** Judgment and Order dated 16.09.2019 [Civil Appeal No. 7306 of 2019]; **'Gurpal Singh Vs. High Court of Judicature of Rajasthan'** (2012) 2 SCC 94; **'R.C. Chandel Vs. High Court of Madhya Pradesh and Another'** (2012) 8 SCC 58 and **'Muzaffar Hussain vs. State of U.P. and Anr.'** 2002 SCC OnLine SC 567.

(7) Before proceeding to consider the facts and issues involved in this petition, we would first of all like to dwell upon the law on the subject of compulsory retirement of a judicial officer. An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior. The order has to be passed by the competent authority on forming an opinion that it is in public interest to retire a government servant compulsorily. The order is passed on a subjective satisfaction of the Government/ competent authority. Principle of natural justice has no place in the context of an order of compulsory retirement. The Screening Committee or the competent authority as the case may be has to consider the entire service record before taking a decision in the matter. Of course, the records pertaining to the later years may be given more importance. F.R. 56 (C) read with Explanation (ii) empowers the State Government with an absolute right to retire an employee on attaining the age of fifty years. Deadwood need to be removed to maintain efficiency in service. Integrity of a government employee is

foremost consideration in public service¹. If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has absolute right to compulsorily retire such an employee in public interest. A government's right to compulsorily retire is a method to ensure a efficiency in public service². Even uncommunicated entries in the Confidential Record can be taken into consideration for compulsory retirement. Compulsory retirement cannot be imposed as a punitive measure nor can it be passed as a shortcut to avoid departmental inquiry when such course is much desirable. Merely because the officer has been given promotions after the adverse entries/ material by itself would not attract the principle of washing off the said entries especially in a case of a judicial officer³.

(8) We may in this very context refer to certain decisions regarding scope of judicial review of an order of compulsory retirement of a judicial officer. We may in this context refer to decision of Hon'ble the Supreme Court of India in the case of **Pyare Mohan Lal (supra)** wherein it was *inter alia* held that single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement⁴. 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

1 'State of U.P. vs. Vijay Kumar Jain' (2002) 3 SCC 641.

2 'Baikuntha Nath Das And Anr vs Chief Distt. Medical Officer, Baripada' (1992) 2 SCC 299.

3 'Pyare Mohan Lal vs. State of Jharkhand and Ors.' (2010) 10 SCC 693; 'Arun Kumar Gupta Vs. State of Jharkhand and Anr.' Judgment and Order dt. 27.02.2020 in W.P. (Civil) No.190 of 2018; 'Arun Kumar Saxena vs. High Court of Judicature at Allahabad Thru' R.G. and Another' 2018 SCC OnLine All 5728.

4 HC of Judicature of Rajasthan vs. Bhanwar Lal Lamror & ors. (2021) 8 SCC 377.

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 malafide.

(9) We may in this very context refer to decision of Hon'ble the Supreme Court in the case of **Ram Murti Yadav (supra)** wherein after noticing the fact that the service records of the appellant therein had been examined by the Screening Committee, the Full Court as also by the Division Bench of the High Court it was held that 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 malafides, 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. The submission in the said case that compulsory retirement could not have been ordered for mere error of judgment in decision making was repelled with the observation that the same merited no consideration in view of the decision in **K.K. Dhawan**⁵ and **Duli Chand**⁶.

(10) In **Ram Murti Yadav (supra)**, Hon'ble the Supreme Court reiterated that a single adverse entry could suffice for an order of compulsory retirement as held in **Pyare Mohan Lal (supra)**.

5 Union of India vs. K.K. Dhawan (1993) 2 SCC 56

6 Union of India vs. Duli Chand (2006) 5 SCC 680

It referred to another decision of Supreme Court rendered in '**T.A. Naqshbandi vs. State of J&K**'⁷ regarding scope of judicial review in such matters wherein it has been held that judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which it was concerned in the said case, by going into the correctness as such of ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court. It then referred to the decision in the case of '**Rajendra Singh Verma vs. State (NCT of Delhi)**'⁸ wherein the principles laid down in '**High Court of Bombay vs. Shashikant S. Patil**'⁹ were reiterated and it was observed that in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer.

(11) It then once again referred to the observation in **Rajendra Singh Verma (supra)** that if that authority bona fide

7 (2003) 9 SCC 592

8 (2011) 10 SCC 1

9 (2000) 1 SCC 416

forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ court under Article 226 or this Court under Article 32 would not interfere with the order.

(12) It also considered the decision of Supreme Court in '**Ram Ekbal Sharma vs. State of Bihar**'¹⁰ and observed that, that was a decision where the issue was that the form of the order was not conclusive and veil could be lifted to determine if it was ordered as punishment and the said decision was not found relevant to the issues involved. It further went on to observe as under:-

"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

10 (1990) 3 SCC 504

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."

(13) In the case of **Rajendra Singh Verma (supra)**, it was observed as under:-

'191. Further, in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the judges of the High Court who go into the question and it is possible that in all cases evidence would not be forth coming about integrity doubtful of a Judicial Officer. As observed by this Court in High Court of Punjab & Haryana v.s. Ishwar Chand Jain (1999) 4 SCC 579, at times, the Full Court has to act on the collective wisdom of all the Judges and if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety much faster than the smoke. Sometimes

there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence.

192. Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be result of multiple factors simultaneously playing in the mind. Though the perceptions may differ, in the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ court under Article 226 or this Court under Article 32 would not interfere with the order.”

(14) On the same lines, a Division Bench of this Court in the case of 'Nawal Singh vs. State of U.P. & Anr.' (2003) All LJ 2491 :-

"Further, it is to be reiterated that the object of compulsory retirement is to weed out the dead wood in order to maintain high standard of efficiency and honesty to keep judicial service unpolluted. It empowers the authority to retire officers of doubtful integrity which depends upon overall impression gathered by the higher officers and it is impossible to prove by positive evidence that a particular officer is dishonest "

(15) Hon'ble the Supreme Court of India in the case of '**Union of India vs. M.E. Reddy**¹¹' observed with respect to general reputation, honesty and integrity of an officer as under:-

"17. .. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of those remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who has had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys..."

(16) In the case of '**Swatantra Singh vs. State of Haryana**¹²', similar observations were made as under:-

"5. It is sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke. Sometimes, there may not be concrete or material evidence to make it part of the record. It would, therefore, may be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported be evidence, like the remarks made by the Superintendent of Police. More often the corrupt officer manipulates in such a way and leaves no traceable evidence to be made part of the record for being cited as specific instance. It would, thus, appear that the order does not contain or the officer writing the report could not give particulars of the corrupt activities of

11 (1980) 2 SCC 15

12 (1997) 4 SCC 14

the petitioner. He honestly assessed that the petitioner would prove himself efficient officer, provided he controls his temptation for corruption. That would clearly indicate the fallibility of the petitioner, vis-a-vis the alleged acts of corruption. Under these circumstances, it cannot be said that the remarks made in the confidential report are vague without any particulars and, therefore, cannot be sustained. It is seen that the officers made the remarks on the basis of the reputation of the petitioner. It was, therefore, for him to improve his conduct, prove honesty and integrity in future in which even, obviously, the authority would appreciate and made necessary remarks for the subsequent Period."

(17) The limited scope of judicial review in such matters was emphasized by Hon'ble the Supreme Court by a three Judge Bench of Supreme Court of India in the case of '**Rajasthan High Court vs. Ved Priya & anr.**'¹³ wherein it was observed that the amplitude of such jurisdiction cannot be enlarged to sit as an 'appellate authority', and hence care must be taken to not hold another possible interpretation on the same set of material or substitute the Court's opinion for that of the disciplinary authority. This is especially true given the responsibility and powers bestowed upon the High Court under Article 235 of the Constitution. The collective wisdom of the Full Court deserves due respect, weightage and consideration in the process of judicial review. Article 235 of the Constitution of India deals with control of the High Court over subordinate courts.

(18) Again, in the case of '**Registrar General, HC of Patna vs. Pandey Gajendra Prasad and Ors.**'¹⁴, the Supreme Court observed as under:-

"23. There is nothing on record to even remotely suggest that the evaluation made, firstly by the Standing Committee and then by the Full Court, was so arbitrary, capricious or

13 2020 SCC Online 337

14 2012 (6) SCC 357

so irrational so as to shock the conscience of the Division Bench to justify its interference with the unanimous opinion of the Full Court. As regards the observation of the Division Bench on the reputation of the first respondent based on his ACRs, it would suffice to note that apart from the fact that an ACR does not necessarily project the overall profile of a judicial officer, the entire personal file of the respondent was before the Full Court when a conscious unanimous decision was taken to award the punishment of his dismissal from service. It is also well settled that in cases of such assessment, evaluation and formulation of opinion, a vast range of multiple factors play a vital and important role and no single factor should be allowed to be blown out of proportion either to decry or deify issues to be resolved or claims sought to be considered or asserted. In the very nature of such things, it would be difficult, rather almost impossible to subject such an exercise undertaken by the Full Court, to judicial review, save and except in an extraordinary case when the court is convinced that some exceptional thing which ought not to have taken place has really happened and not merely because there could be another possible view or there is some grievance with the exercise undertaken by the Committee/Full Court. [See: Syed T.A. Naqshbandi.]

(19) In a case reported in (2021) 8 SCC 377 '**HC of Judicature, Rajasthan vs. Bhanwar Lal Lamror & Ors.**', Hon'ble the Supreme Court observed that High Court on the judicial side could have interfered with the order of compulsory retirement if it found that there was absolutely no record or material whatsoever as referred to in the recommendations made by the Administrative Committee, or that the Committee relied on irrelevant material, or that apposite material was overlooked and discarded. It further observed that the High Court's view would have been acceptable if it found patent illegality, breach of procedure causing prejudice to respondent before it, or imposition of a gravely disproportionate measure. It noticed in the said case that administrative committee had

averted to entire service record including the pending disciplinary inquiry regarding integrity of the respondent and in this context, it observed that while considering the entire service record of a judicial officer even if there is a solitary remark of lack and breach of integrity, that may be sufficient for a Judicial Officer to be compulsory retired as expounded in '**Tarak Singh Vs. Jyoti Basu**' reported in (2005) 1 SCC 201.

(20) It went on to observe that it was not open to the High Court to substitute its own view for the satisfaction arrived at by the Full Court of the High Court regarding necessity or otherwise of the respondent continuing in the Judicial Services. It was also not open to the High Court to re-write the annual confidential reports by taking over the role of inspecting or confirming authority. In the said case, the disciplinary proceedings had been initiated and were pending at the time of compulsory retirement of the judicial officer and were dropped subsequent to his compulsory retirement.

(21) We may also refer to the Division Bench judgment of this Court rendered in the case of **Arun Kumar Saxena (supra)** wherein also the disciplinary proceedings were dropped subsequently but a similar contention as has been raised herein that in view of the exoneration of the petitioner subsequently, the order of compulsory retirement cannot be sustained was not accepted. It was observed that exoneration in the departmental inquiry does not completely wipe out the material on the basis of which impression was gathered by the reporting judge i.e. the District Judge concerned, as regards the integrity and general reputation of the petitioner is concerned. Reference was

made in this regard to the case of **'Nand Kumar Verma vs. State of Jharkhand & Ors.'**¹⁵ wherein it has been observed in para no.38 as under:-

"Moreover, the District and Sessions Judge had 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." (Emphasis Supplied)

(22) In this context, the Supreme Court referred to para no.193 of the judgment in the case of **Rajendra Singh Verma (supra)** wherein the earlier decision in **'M.S. Bindra vs. Union of India'**¹⁶ was considered wherein it was inter alia observed as under:-

"193. Further this Court in M.S. Bindra's case (Supra) has used the phrase 'preponderance of probability' to be applied before recording adverse entry regarding integrity of a judicial officer. There is no manner of doubt that the authority which is entrusted with a duty of writing ACR does not have right to tarnish the reputation of a judicial officer without any basis and without any 'material' on record, but at the same time other equally important interest is also to be safeguarded i.e. ensuring that the corruption does not creep in judicial services and all possible attempts must be made to remove such a virus so that it should not spread and become infectious. When even verbal repeated complaints are received against a judicial officer or on enquiries, discreet or otherwise, the general impression created in the minds of those making inquiries or the Full Court is that concerned judicial officer does not carry good reputation, such discreet inquiry and or verbal repeated complaints would constitute material on the

15 (2012) 3 SCC 580

16 (1998) 7 SCC 310

basis of which ACR indicating that the integrity of the officer is doubtful can be recorded. While undertaking judicial review, the Court in an appropriate case may still quash the decision of the Full Court on administrative side if it is found that there is no basis or material on which the ACR of the judicial officer was recorded, but while undertaking this exercise of judicial review and trying to find out whether there is any material on record or not, it is the duty of the Court to keep in mind the nature of function being discharged by the judicial officer, the delicate nature of the exercise to be performed by the High Court on administrative side while recording the ACR and the mechanism/system adopted in recording such ACR." (Emphasis Supplied)

..

195. It is a matter of common knowledge that the complaints which are made against a judicial officer, orally or in writing are dealt with by the Inspecting Judge or the High Court with great caution. Knowing that most of such complaints are frivolous and by disgruntled elements, there is generally a tendency to discard them. However, when the suspicion arises regarding integrity of a judicial officer, whether on the basis of complaints or information received from other sources and a committee is formed to look into the same, as was done in the instant case and the committee undertakes the task by gathering information from various sources as are available to it, on the basis of which a perception about the concerned judicial officer is formed, it would be difficult for the Court either under Article 226 or for this Court under Article 32 to interfere with such an exercise. Such an opinion and impression formed consciously and rationally after the enquiries of the nature mentioned above would definitely constitute material for recording adverse report in respect of an officer. Such an impression is not readily formed but after Court's circumspection, deliberation, etc. and thus it is a case of preponderance of probability for entertaining a doubt about integrity of an official which is based on substance, matter, information etc. Therefore, the contention that without material or basis the adverse entries were recorded in the ACR of the appellants cannot be upheld and is hereby rejected." (Emphasis Supplied) "

(23) Referring to the same, it was observed by the Division Bench in **Arun Kumar Saxena (supra)** that from a reading of

the said judgment it is clear that impression created in the mind of the reporting officer (which in that context was the District Judge) about the integrity of an officer placed under him is of importance and is not to be questioned ordinarily on the basis of insufficiency of material because such impression may be drawn on the basis of repeated oral complaints, enquiries, discreet or otherwise. In a departmental enquiry, the charges are to be substantiated not on the basis of impression but on the basis of cogent material. Under the circumstances, if, in a departmental enquiry, there is exoneration from the charges, the general impression that a reporting officer had gathered about an officer posted under him is not wiped out completely. Such an impression can therefore form basis as to whether integrity of the incumbent is to be certified or not. Accordingly, the Co-ordinate Bench opined in the facts of the said case that exoneration of the petitioner in the departmental enquiry, which was drawn on some of the instances cited in the ACR to draw impression about the integrity of the petitioner, cannot be made basis to hold that the ACR of the petitioner for the relevant year was rendered on no material or was now rendered worthless.

(24) Now, we proceed to consider the facts and issues involved in this case against the aforesaid legal background.

(25) We have perused the original records including the recommendation of the Screening Committee, the Administrative Committee, the Full Court of the High Court and the ultimate order passed by the State Government compulsorily retiring the petitioner. We find from a perusal of

the minutes of the Screening Committee that it has considered the case of the petitioner for compulsory retirement in the light of various Supreme Court decisions referred therein some of which have been referred hereinabove. The Committee deliberated on 11.06.2020 and 15.06.2020 and scrutinized the service record of the concerned officer. The entire service record was available before the Screening Committee and the same has also been produced before us, therefore, it was seen by the Screening Committee.

(26) After taking into consideration decisive factors, relevant record and on an objective analysis of subjective impression of record of the petitioner, it found that his continuance was no longer in public interest and that he had outlived its utility which required immediate action and accordingly, it recommended compulsory retirement of the petitioner under Fundamental Rules 56 (C). While considering the entire service record of the petitioner, it specifically mentioned the entries for the year 1996-97 and 2007-2008, the annual confidential entry for the year 1999-2000, the warning of the Administrative Judge dated 21.07.2000, the adverse Annual Confidential Report of the District Judge, Badaun for the year 2012-13 rating him as a poor officer clearly remarking that his integrity was lacking, the report of the Vigilance Officer in Vigilance Inquiry No.28/2013 which was accepted by the Administrative Committee in its meeting dated 16.11.2016, the chargesheet against the petitioner in Departmental Inquiry No.12/2016 and taking into consideration the overall service record of the officer, the Committee accordingly recommended that he be compulsorily retired. In this process, the representation of the

petitioner dated 19.04.2018 for recording an entry regarding his integrity as being certified for the year 2016-17 regarding which the Administrative Judge had not recorded the entry as the vigilance inquiry against him was pending, was rejected by the Administrative Committee itself.

(27) When we peruse the original records, we find that apart from assessment of the work and conduct of the petitioner as fair for the year 1996-97 and 2007-2008, the Screening Committee also considered a warning by the Administrative Judge, Saharanpur dated 21.07.2000 to the effect -'the officer, Sri Anil Kumar, Civil Judge (Senior Division), Deoband, Saharanpur is warned for addressing him as a VIP level officer'. The officer in some correspondence had referred to himself as a VIP level officer, therefore, the aforesaid warning was ordered to be placed by the Administrative Judge in his confidential report for the relevant year. Apart from it, for the year 1999-2000, there were adverse remarks against the petitioner regarding not taking proper interest in disposal of execution cases which was ordered by the Administrative Judge on 08.01.2000 to be communicated to him so that he may make a representation against the same. The officer submitted the said representation which was rejected by the Administrative Committee on 22.03.2002. The aforesaid warning which was placed in the confidential report and the rejection of the petitioner's representation as aforesaid was never challenged by him.

(28) While assessing the work and conduct of the officer-petitioner for the year 2012-13, the District Judge, Badaun

made adverse observations, interalia, to the effect that judgments and orders were not made in accordance with legal proposition of law whereby it revealed that the Presiding Officer did not perform his official duties sincerely and uprightly thereby yielding suspicion over his integrity and for the said reasons, integrity of the officer can well be said to be positively lacking. Copy of his report in this regard was also annexed for ready reference. There were other adverse remarks in the said A.C.R. for the year 2012-13 which are on record. For the reasons given by him as mentioned hereinabove, his private character was also not appreciated in as much as in the opinion the District Judge, it brought down the image of administration of justice. Flaws were detected in maintenance of Presiding Officer's diary and listing of cases by the officer. Flaws were detected in the judgments rendered by the petitioner wherein according to the District Judge, the points for determination under Section 354(b) Cr.P.C. were not determined by the officer and nothing had been discussed as to the credibility of the side of prosecution (whether fully credible or partly credible), nor anything had been discussed as to the place of occurrence and motive and in this manner, as per the District Judge, the decision arrived at by the officer were not sound and reasoned. He also opined that the officer had no effective control over his office and advice for deciding oldest cases which was given in the monthly meeting of the judicial officer was not followed by the officer rather it was always ignored. The report annexed with the A.C.R. is a lengthy report running into nineteen pages which was also before the Screening Committee and was taken into consideration as it

was part of the A.C.R. 2012-13. Various instances have been mentioned therein which as per the then District Judge, Badaun clearly indicated that the officer was deciding cases contrary to the settled position of law and that he was not discharging his duties sincerely and honestly which created a doubt as regards his integrity. He opined that the officer cannot be said to be fair and impartial in dealing with public and bar. The overall assessment of the petitioner by the said officer was poor. Accordingly, he recommended that a vigilance inquiry was necessary with regard to his property amassed by him and the sources used in this regard. Accordingly, he sent the said report to the Registrar General of the High Court.

(29) As already mentioned in the earlier part of the judgment, based on the aforesaid, the Chief Justice ordered vigilance inquiry on 11.05.2013. Vigilance Officer conducted the inquiry and submitted his report on 04.03.2016 wherein he found the allegations to be proved. This vigilance inquiry report was considered by the Administrative Committee in its meeting dated 14.09.2016 and 16.11.2016 and accordingly, regular disciplinary proceedings were initiated against the officer.

(30) The Screening Committee has taken into consideration the aforesaid reports to form an opinion that the petitioner was a deadwood and had outlived its utility requiring his compulsory retirement in public interest in terms of F.R.56(C). Now, the said recommendation of the Screening Committee dated 11.06.2020 and 15.06.2020 was accepted by the Administrative Committee in its meeting dated 18.11.2021 and

thereafter, the matter was placed before the Full Court which also accepted the recommendations and recorded a satisfaction that the petitioner was liable to be compulsorily retired in public interest and in pursuance thereof, issued the order of compulsory retirement of the petitioner in public interest under F.R. 56C on 29.11.2021.

(31) Once the master-servant relationship ceased then the Disciplinary proceedings bearing No.12/2016 should have been dropped and should not have continued any further as there was no provision under which such proceedings could have continued thereafter unless of course a decision was taken under Civil Services Regulation 351A for forfeiture/ withholding etc of pension etc but no such decision had been taken to continue the proceedings under the said provision. It appears that the Inquiry Officer was not informed about the compulsory retirement of the petitioner and the inquiry report was submitted subsequently on 23.12.2021 in ignorance of the fact that the petitioner had already retired. In the said report, the petitioner was exonerated of Charge No.1 and 2 which were similar to the adverse remarks made by the District Judge in the A.C.R. for the year 2012-13 and the report mentioned hereinabove. Much emphasis has been laid by learned counsel for the petitioner that this exoneration in the inquiry report which was accepted by the Administrative Committee on 10.01.2022 was itself sufficient to show that remarks of the District Judge and the report sent by him which was taken into consideration by the Screening Committee and thereafter, by the Administrative Committee and the Full Court of the High Court were unjustified and therefore, the basis for the

satisfaction recorded for compulsory retirement of the petitioner was not tenable on facts and in law. However, as already observed hereinabove, the said exoneration by the Inquiry Judge is absolutely without jurisdiction. The Inquiry report dated 23.12.2021 has no legal significance in the eyes of law as once the master-servant relationship ceased there was no way that the said inquiry could have continued which was for purpose of imposition of any punishment especially as it was not continued for the purpose mentioned in Article 351A of the Civil Services Regulation and there is nothing on record to show to the contrary. So far as the dropping of charges by the Administrative Committee meeting dated 10.01.2022 while considering the inquiry report dated 23.12.2021 is concerned, the said decision appears to have been in view of the fact that the petitioner had already compulsorily retired and no purpose would be served as punishment could not have been imposed on a retired employee. Moreover, as already discussed hereinabove, a Co-ordinate Bench of this Court in the case of **Arun Kumar Saxena (supra)** had an occasion to consider a similar plea and for the legal reasoning propounded therein, it rejected the said plea and for the same reason, this plea in this case is also liable to be rejected. Additionally, this plea is liable to be rejected because the inquiry report in this case was without jurisdiction and therefore, no advantage could enure to the petitioner on account of its submission. We have also gone through the inquiry report. Moreover, as already discussed, the subjective satisfaction arrived at by the District Judge in the A.C.R. recorded by him for the year 2012-13 and in his report which led to a vigilance inquiry does not get washed away by

this inquiry report for the reasons already given by the Coordinate Bench of this Court in the case of **Arun Kumar Saxena (supra)** and as already discussed hereinabove, this plea raised by the petitioner's counsel is therefore rejected.

(32) The Screening Committee considered the A.C.R. for the year 2012-13, the report of the District Judge and the report of the Vigilance Officer which was available before it and the report of Inquiry Judge had not come by then and, based on the aforesaid material as also the entire service record, it recommended compulsory retirement of the petitioner.

(33) It is not a case where there was no material before the Screening Committee or the Administrative Committee or the Full Court of the High Court for compulsory retirement of the petitioner. The material was very much there and based on such material, a subjective satisfaction was recorded by the Screening Committee, the Administrative Committee and the Full Court of the High Court and therefore, the opinion expressed by the said Committees which consists of sitting High Court Judges has to be given due weightage and cannot be brushed aside cursorily as stated by Hon'ble the Supreme Court in a catena of decisions which have already been discussed. As regards the malafide alleged, the District Judge has not been impleaded as a party in these proceedings, therefore, the same cannot be considered. The allegations even otherwise are vague.

(34) As regards the rating of the petitioner as 'average' by the District Judge for the year 2016-17, the Administrative Judge upgraded the said categorization to 'Good' but did not record

any opinion on the integrity of the petitioner on account of pendency of vigilance inquiry against him. The petitioner submitted a representation in this regard on 19.04.2018 which was considered and rejected by the Administrative Committee in its meeting dated 11.06.2020 and 15.06.2020 while considering compulsory retirement of the petitioner. Therefore, the Administrative Committee refused to certify the integrity of the petitioner for the said year.

(35) As regards the contention of learned counsel for the petitioner that compulsory retirement was resorted as a shortcut to avoid disciplinary proceedings without waiting for its result, we are not satisfied with this contention in view of the law already discussed hereinabove. Considering the nature of the material against the petitioner and the report of Vigilance Officer which was before the Screening Committee, merely because a chargesheet had been issued to him and a disciplinary proceeding had been initiated did not preclude the High court from considering the petitioner for compulsory retirement. The law discussed hereinabove did not preclude the High Court from doing so. In fact, once a decision to compulsorily retire the petitioner was taken, it was implied therein that the disciplinary proceedings which had been initiated for imposing a punishment stood dropped but merely because the Inquiry Judge may not have been informed about the said fact resulting in an inquiry report dated 23.12.2021 would not enure to the benefit of the petitioner as already discussed. Proceedings for compulsory retirement and disciplinary proceedings are two distinct proceedings as already discussed in the case of **Arun Kumar Saxena (supra)**. Moreover,

judicial decisions may not entail disciplinary proceedings but the same can certainly form the basis for an opinion while recording annual confidential reports and also for assessing the work and conduct of a judicial officer as was done by the District Judge, Badaun and the said exercise can culminate in a report by Vigilance Officer which was a material which could have been taken for consideration by the Screening Committee as has been done rightly so and the decision arrived at cannot be said to be one without any material or so apparently arbitrary or capricious so as to warrant our interference in the matter. A subjective satisfaction recorded by the Screening Committee, the Administrative Committee and the Full Court of this High Court does not require any interference in the facts as noticed hereinabove. The assessment of the work and conduct of a judicial officer by his immediate superior is of immense importance as has been opined by Hon'ble the Supreme Court in the case of **Nand Kumar Verma (supra)** and **Rajendra Singh Verma (supra)** especially in view of the report of the Vigilance Officer. The law is settled that a single adverse remark regarding integrity of a judicial officer is sufficient for his compulsory retirement. In this case, there is sufficient material to sustain the order of compulsory retirement and also subjective satisfaction arrived at in this regard. As observed by the Supreme Court of India, it is not always possible to have positive evidence in matters of integrity of a judicial officer and the assessment by the immediate superior officer regarding his work and conduct including his integrity should not be brushed aside lightly, unless of course, any malafide is proved which is not the case here. Therefore, the decision of the

Screening Committee, the Administrative Committee and the Full Court based on the material before it, are required to be given due weightage. Decisions relied by the petitioner do not help his cause in view of the above discussion.

(36) For all these reasons, we do not find merit in the writ petition. It is, accordingly, **dismissed**.

(37) The Bench Secretary shall return the original records pertaining to the disciplinary proceedings in question and the vigilance inquiry to Sri Gaurav Mehrotra, learned counsel for the High Court.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 24.10.2024

Shanu/-