



NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 9001 of 2023**

**Judgment Reserved On : 22.01.2026**

**Judgment Delivered On : 28.02.2026**

Kamal Kishor Shondilya S/o Late Shri Balaram Shondilya, Aged 50 Years, R/o Bungalow No.31, Dolphin Plaza, Daldalseoni Road, Mowa, Raipur, District Raipur (C.G.) 492014.

**... Petitioner(s)**

**versus**

**1** - Food Corporation Of India Through The Chairman Cum-Managing Director, Head Quarter 16-20, Barakhamba Road, New Delhi- 110001.

**2** - Review Committee, through the Chairman Cum-Managing Director, Food Corporation Of India, 16-20, Barakhamba Road, New Delhi- 110001.

**3** - Representation Committee Through The Chairman Cum-Managing Director, Food Corporation Of India, 16-20, Barakhamba Road, New Delhi- 110001.

**4** - General Manager (Region) Food Corporation Of India, Vidhan Sabha Road, Kapa, Raipur, District Raipur (C.G.) 492005.

**... Respondent(s)**



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For Petitioner(s) : Mr. Sudeep Johri and Mr. JK Gupta,  
Advocates

For Respondent(s) : Mr. RS Patel, Advocate

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**SB: Hon'ble Mr. Justice Amitendra Kishore Prasad**  
**C A V Order**

1. The petitioner seeks to challenge the order dated 1.5.2023 (Annexure P/1) passed by the Managing Director, Food Corporation of India, Establishment No.1, Headquarters, New Delhi. By the impugned order, in exercise of powers conferred under Regulation 22 (2) of the FCI (Staff) Regulations, 1971 (in short "the Regulations, 1971"), the Petitioner was pre-maturely/compulsory retired from service, with a direction that he be paid a sum equivalent to the amount of his pay and allowance for a period of 03 (three) months calculated at the same same rate at which he was supposed to be drawing them immediately before his retirement.
2. The Petitioner has sought for the following relief(s) in this petition :-
  - 1- That the Hon'ble court may be kind enough to call the record of the petitioner.
  - 2- That the Hon'ble Court may be kind enough to issue a writ/ writs, order/orders, direction/directions and to command the respondents by appropriate writ /order/ direction to quash the premature retirement order Annexure P-1 & P-2.



3-That the Hon'ble Court may be kind enough to issue any other writ, order or direction to the respondents to reinstate the petitioner in his original post with all back wages and consequential benefits attached to his post.

3- That the Hon'ble Court may be kind enough to issue any writ/order/ direction as deemed fit in the circumstances of the case an pass such orders in accordance with law.

3. The case of the Petitioner, as projected by him, is that he was selected and appointed on the post of Manager (Trainee) in the year 2005 through a formal recruitment process. He was subsequently confirmed in the post of Manager (Depot) in 2006. The Petitioner served at various depots of the Food Corporation of India (in short "the FCI") and was lastly posted as the Divisional Manager, FCI, Bareilly (U.P.). During his tenure at the said place, certain anonymous complaints were lodged against the Petitioner alleging fake procurement of food grains. The said complaints were investigated by a Committee headed by the Chief General Manager (CGM) of the FCI at Noida. In the enquiry, the Committee found the complaints to be either incorrect or non-verifiable. Despite this, a re-investigation was ordered by Respondent No.1. This subsequent investigation conducted by the CGM and the Assistant General Manager (AGM), similarly concluded that the complaints were frivolous and incorrect. Respondent No.1- Chairman-cum-Managing Director, FCI, nurtured a grudge against the Petitioner. Consequently, instead of



exonerating the Petitioner based on the investigation findings, Respondent No.1 handed over the matter to the CBI. Subsequently, disciplinary proceedings were initiated and a memorandum of charge sheet dated 15.6.2021 was issued, alleging that the Petitioner caused a financial loss of Rs.46,05,045/- to the FCI. In the Departmental Enquiry also, the Enquiry Officer exonerated the Petitioner of all the charges vide a report dated 5.1.2022. However, notwithstanding the said exoneration, the Disciplinary Authority and the Chairman-cum-Managing Director (Respondent No.1) disagreed with the Enquiry Officer's findings. Ultimately, they passed a penalty order dated 17.6.2022, directing a reduction to a lower stage in the time-scale of pay by three stages for a period of three years. The order further stipulated that the Petitioner would not earn increments to his pay during the said period, however, the reduction would not have the effect of postponing his future increments of pay. Being aggrieved by the aforesaid order 17.6.2022, the Petitioner preferred an appeal, which is pending for consideration before the Appellate Authority . Furthermore, the CBI filed a Closure Report before the CBI Court at Lucknow and this report was duly accepted by the said Court, effectively exonerating the Petitioner. The CBI Court observed that no criminality was established and subsequently closed the investigation.

4. Learned counsel for the petitioner would submit that the impugned order of premature retirement/compulsory retirement is ex-facie illegal and arbitrary, as it was passed in violation of Rule 56(j) of



the Fundamental Rules. Pursuant to Rule 56(j), as amended in accordance with the guidelines and amendments by the Ministry of Personnel, Public Grievances and Pensions (Office Memorandum dated 28.8.2020), it is mandatory to serve a three month prior notice or pay three months pay and allowances in lieu thereof, to the concerned officer before passing an order of premature/compulsory retirement. Due to non-compliance with this statutory requirement, the impugned order dated 1.5.2023 as well as the subsequent rejection order (representation) dated 6.7.2023, are vitiated and non-est in the eyes of the law. Since these orders are contrary to the express statutory rules governing the Petitioner's service, they are liable to be quashed on this ground alone. Learned counsel for the petitioner further submits that for officers in Group 'A' and Group 'B' services, the power to invoke premature/compulsory retirement cannot be exercised until the officer has attained the age of 50 years. The Petitioner's date of birth is 17.5.1973, as such on 1.5.2023 i.e the date of issuance of the impugned order, the Petitioner has not reached the mandatory age threshold. Under Rule 22(2) of the Regulations, 1971 and Fundamental Rule 56(j), the completion of 50 years of age is a condition precedent for exercise of such power. Since the Petitioner has not attained the requisite age on the date of the impugned order and was furthermore not served with the mandatory three-month prior notice, the impugned order is illegal and contrary to the statutory Rules.

5. The petitioner is having an unblemished service record of 18



years. His Annual Confidential Appraisal Reports (APAR) have been consistently rated as “Very Good” or “Outstanding” from 2005 to 2022. He was granted two special increments in addition to this regular salary as performance awards and received a letter of appreciation for his work. While the concerned respondent authority issued 13 charge-sheets against the Petitioner during his service period, none of these instances necessitated a Departmental Enquiry; they pertained to a minor conduct where no such enquiry was required. After submission of replies by the Petitioner, several penalties were imposed vide orders dated 29.6.2013, 28.6.2014, 21.7.2014, 16.7.2014, 18.7.2014, 20.8.2014, 27.8.2014, 27.8.2014, 5.9.2014, 16.9.2014, 16.9.2014, 16.9.2014 and 18.9.2014. All the aforementioned orders were duly challenged by the Petitioner before the competent higher authorities. Upon review, these penalties were either reduced, modified or set-aside. Subsequently, vide order dated 09.12.2015, the Petitioner was promoted from the post of Manager to Assistant General Manager. After promotion, the Petitioner was transferred from Raipur to the Regional Office of the FCI in Lucknow and subsequently posted as the Divisional Manager of the FCI, Bareilly Division. His service continued with successive transfers to Aligarh to Kapurthala and again to Motihari (Bihar). Throughout the eight year period, not a single charge sheet or punishment order was issued; conspicuously, none of these transfers were punitive in nature. A perusal of the Petitioner’s Annual Confidential Appraisal Reports clearly



demonstrate that he has consistently been an efficient officer and at no point he was considered 'deadwood' by the Department. Since the Petitioner was prematurely/compulsory retired vide the impugned order, he submitted a representation dated 29.4.2023. However, without addressing the merits or the specific grounds therein, the concerned respondent authority summarily rejected the representation vide order dated 6.7.2023 (Annexure P/2), while affirming the order of pre-mature/compulsory retirement. Hence, this petition.

6. Learned counsel for the petitioner submits that even on merits, the Petitioner has a good case. His Annual Performance Appraisal Reports are exemplary and on that basis alone, the Petitioner cannot be prematurely/compulsorily retired, as there is absolutely no adverse material on record against him. Though certain enquiries were previously initiated against the Petitioner, however, he was not found guilty of any charges in any of those proceedings. Furthermore, even in the investigation initiated by the CBI, no criminality or misconduct was established against the Petitioner. Hence, the order of premature retirement has no factual basis and stands in direct contravention of the settled principles of law regarding compulsory retirement. He also submits that there is nothing material on record to suggest that the Petitioner's continued service was detrimental to the interests of the Department or that his professional efficiency had diminished. The impugned order of premature retirement disregards an entire unblemished career and was passed without any justifiable cause,



thereby suffering from the vices of bias and arbitrariness.

Furthermore, the respondent authority has failed to produce any evidence to demonstrate that the Petitioner has become 'deadwood' or that his utility to the Department has been exhausted. Since the impugned order is per se illegal and contrary to both the Regulations, 1971 and Fundamental Rule 56(j), it deserves to be quashed and the Petitioner is liable to be reinstated in service.

7. Conversely, learned counsel for the respondent-FCI submits that the order of premature retirement was passed in consonance with the Fundamental Rules and the Regulations, 1971. He submits that several enquiries were previously also conducted resulting in various penalties. While some of these were modified in appeal to the punishment of 'Censure', one instance included a recovery of Rs.1,50,000/- from the Petitioner. He further submits that the Petitioner was involved in multiple instances of misconduct throughout his service period. Lastly, some irregularity was discovered during the procurement process while the Petitioner was serving as Divisional Manager at FC Bareilly. Consequently, a penalty was imposed vide order dated 1.6.2021, which led to reduction of one increment in the time-scale of pay for a period of one year, without cumulative effect and without adversely affecting his pension. Subsequently, during his tenure as the Area Manager, Bareilly, the Petitioner was issued a charge sheet dated 15.6.2021, which detailed the following charges :



**Article I** – Anomalies observed in operating Paddy Procurement Centers (PPCs) and in appointment of Handling and Transport Contractors (HTCs): irrational allocation of paddy and settlement of transportation charges against the conditions of HTC during KMS 2017-18 and irregularities in obtaining and processing undertakings from the rice miller.

**Article II-** Fake paddy procurement in connivance with HTCS/Rice Millers during KMS 2017-18 in Bareilly Division of FCI.

On the basis of the aforesaid charges, a penalty was imposed vide order dated 17.6.2022, directing a reduction to a lower stage in the time-scale of pay by three stages for a period of three years. The said punishment order was challenged by the Petitioner, however, the appeal is pending for final adjudication.

8. Learned counsel for the respondents further submits that the impugned order of pre-mature/compulsory retirement is not a punishment order. According to Fundamental Rule 56(j), the FCI is empowered to review the performance of its employees and in appropriate cases, issue orders for premature retirement. Since an order for premature/compulsory retirement is not a punishment but is based on the subjective satisfaction of the employer, the scope of judicial interference is limited. Judicial interference in such orders is permissible only upon showing of non-application of mind, malafide, perversity or arbitrariness, however, none of these elements is present in the instant case. He submits that the in the case of the Petitioner, the mandatory provisions were duly



followed and the order of premature/compulsory retirement was passed in accordance with law. Such an order does not warrant interference under Article 226 of the Constitution of India, as judicial review in such orders is very minimal and normally, the Courts are reluctant to interfere with the employer's subjective satisfaction. He further submits that so far as the Petitioner's age is concerned, he had completed 50 years at the time of issuance of the impugned order, rendering that challenge meritless. Furthermore, the requirement for notice was fully satisfied; the rules provide for either three months' notice or three months pay in lieu thereof. He submits that as the Petitioner was granted three months salary vide the impugned order, this ground of challenge is also inapplicable. Accordingly, the petition devoid of merits is liable to be dismissed at threshold.

9. I have heard learned counsel for the parties and also perused the documents annexed with the petition with utmost circumspection.
10. From a bare perusal of record as well as the impugned order, it is evident that the case of the Petitioner is governed by clause 22(2) of the Regulations, 1971, which reads as under :

**“22. Superannuation and retirement:**

(2) (A) (i) Notwithstanding anything contained in this Regulation, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Corporation employee by giving him notice of not less than three months in writing or three



months' pay and allowances in lieu of such notice:

(a) If he is, in Category I & II service or post in a substantive, quasi-permanent or temporary capacity and had entered Corporation service before attaining the age of 35 years, after he has attained the age of 50 years;

(b) In any other case after he has attained the age of fifty-five years;

(ii) If on a review of the case either on a representation from the Corporation employee retired prematurely or otherwise, it is decided to, reinstate the Corporation employee in service, the authority ordering reinstatement may regulate the intervening period between the date of pre-mature retirement and the date of reinstatement by the grant of leave of the kind due and admissible, including extraordinary leave or by treating it as dies non depending upon the facts and circumstances of the case:

Provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or, if the order of premature retirement is set aside by a Court of Law.

(iii) Where the order of premature retirement is set aside by a Court of Law with specific directions in regard to regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the Court.



(B) (i) Any Corporation employee may, by giving notice of not less than three months in writing to the Appropriate Authority retire from service after he has attained the age of fifty years, if he is in Category I or II service or post, (and had entered the Corporation service before attaining the age of 35 years), and in all other cases after he has attained the age of 55 years:

(a) It shall be open to the Appropriate Authority to withhold permission to a Corporation employee under suspension who seeks to retire under this clause.

(b) A Corporation employee referred to in sub-clause (2)(B) (i) may make request in writing to the Appointing Authority to accept notice of less than three months giving reasons therefor;

(c) On receipt of a request under sub-clause (b), the Appointing Authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Corporation employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(B) (ii) A Corporation employee, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the



specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.

(C) Notwithstanding anything contained in Clause (2)(A)(i), the Appropriate Authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a Corporation employee in Category III & IV service or posts, after he has completed thirty years" service by giving him notice of not less than three months in writing or three months" pay and allowances in lieu of such notice.

(D) A Corporation employee in Category III or IV service or posts, may, by giving notice of not less than three months in writing to the Appropriate Authority, retire from service after he has completed thirty years" service.

Note: In computing the notice period of 3 months referred to above, the date of serving of the notice and that the date of its expiry shall be excluded."

11. Further, the case of the petitioner also governs under Rule 56(j) of the Fundamental Rules, which reads as follows :

**F.R. 56:**

(j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) If he is, in Group 'A' or Group 'B' service or post in a



substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years;

12. The moot question for consideration is whether, pursuant to the aforementioned Regulations and Rules, the Petitioner had attained 50 years of age, thereby enabling the respondents to invoke the provisions governing premature/compulsory retirement in the instant case.
13. Admittedly, the date of birth of the Petitioner is 17.5.1973 and as such, on 1.5.2023, the date the impugned order of premature retirement was issued, the Petitioner had not yet completed 50 years of age. Since attaining the age of 50 years is a condition precedent for invoking the power of premature retirement under the relevant Rules and Regulations, the impugned order is legally unsustainable on this count alone.
14. Now, the second question for consideration is whether the Petitioner can be classified as 'deadwood' for the Department. While punishment orders were previously issued against the Petitioner, it is pertinent to note that upon appeal, all such orders were modified to minor penalty of 'Censure'. Furthermore, in the instant matter, the Enquiry Officer initially exonerated the Petitioner of all the charges and even in the subsequent enquiry, the Petitioner was found to be innocent and duly exonerated.



Furthermore, even a CBI enquiry directed against the Petitioner, culminated in an exoneration. Despite this, the respondents proceeded to pass a punishment order, which the Petitioner subsequently challenged before the Appellate Authority. During the pendency of the departmental appeal, the impugned premature/compulsory retirement order was passed on 1.5.2023. The Petitioner alleges that Respondent No.1 has acted with malafide intent and personal bias. This is evident from the fact that when after the initial enquiry, the Petitioner was not found guilty, Respondent No.1 directed a re-enquiry. When that re-enquiry similarly failed to establish guilt, a CBI investigation was initiated. However, in the CBI enquiry also, when nothing was found, the concerned respondent authority, without there being any case, proceeded to pass a punishment order against the Petitioner. The said order is presently the subject of an appeal before the Appellate Authority, which is pending final adjudication.

15. An overall view of these facts shows that the respondents are intent on penalizing the Petitioner and ensuring his removal from service by any means necessary. It is evident that the respondents, anticipating that the pending punishment might be set-aside by the Appellate Authority, acted with undue haste and in a preemptive manner. Instead of awaiting the outcome of the statutory appeal, the respondents chose to issue the order of premature retirement. It emerges from the record that the service of the Petitioner has been consistently meritorious. His Annual Performance Appraisal Reports reflect 'Outstanding', 'Very Good'



and 'Good' remarks. When the service record is viewed cumulatively, it is evident that the the Petitioner does not, by any stretch of imagination, constitute 'deadwood' for the Department whose removal would be in the public interest.

16. The Hon'ble Supreme Court has time and again held that the power to order premature/compulsory retirement must be exercised with procedural and substantive reasonableness. In a judgment rendered by the Hon'ble Supreme Court in the matter of **Baikuntha Nath Das and another Vs. Chief District Medical Officer Baripada and another**, reported in **(1992) 2 SCC 299**, the following was observed in para 12 :

“12. As far back as 1970, a Division Bench of this court comprising J.C. Shah and K.S. Hegde, JJ. held in [Union of India v. J.N Sinha](#), [1971] 1 S.C.R. 791, that an order of compulsory retirement made under F.R. 56 (j) does not involve any civil consequences, that the employee retired thereunder does not lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant. It was pointed out that the said rule embodies one of the facts of the pleasure doctrine embodied in [Article 310](#) of the Constitution and that the rule holds the balance between the rights of the individual Government servant and the interest of the public. The rule is intended, it was explained, to enable the Government to energise its machinery and to make it efficient by compulsory retiring those who in its opinion should not be there in public interest. It was also held that rules of natural justice are not attracted in such a case. If



the appropriate authority forms the requisite opinion bonafide, it was held, its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision. It is significant to notice that this decision was rendered after the decisions of this court in [State of Orissa v. Dr. Binapani Dei](#), [1967] 2 S.C.R. 625 and [A.K.Kraipak v. Union of India](#), A.I.R. 1970 S.C. 150. Indeed, the said decisions were relied upon to contend that even in such a case the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action. The contention, was not accepted as stated above. The principles enunciated in the decision have been accepted and followed in many a later decision. There has never been a dissent - not until 1987.”

17. In a judgment rendered in the the matter of **Central Industrial Security Force Vs. HC (GD) Om Prakash** reported in **(2022) 5 SCC 100**, the following was held in para 4, 6, 7, 9, 10 and 13 :

4. This Court approved the earlier judgment of this Court in *Union of India v. M.E. Reddy* [*Union of India v. M.E. Reddy*, (1980) 2 SCC 15 : 1980 SCC (L&S) 179] 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.”

6. After the judgment in *Baikuntha Nath Das* [*Baikuntha Nath Das v. District Medical Officer*, (1992) 2 SCC 299 : 1993 SCC (L&S) 521] , a three-Judge Bench in a judgment reported as *Posts and Telegraphs Board v. C.S.N. Murthy* [*Posts and Telegraphs Board v. C.S.N. Murthy*, (1992) 2 SCC 317 : 1993 SCC (L&S) 710] held that the courts would not interfere with the exercise of the power of compulsory retirement if arrived at bona fide and on the basis of material available on record. The Court held as under : (*C.S.N. Murthy case* [*Posts and Telegraphs Board v. C.S.N. Murthy*, (1992) 2 SCC 317 : 1993 SCC (L&S) 710] , SCC p. 321, para 5)

“5. ... Whether the conduct of the employee is such



as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. No mala fides have been urged in the present case. The only suggestion of the High Court is that the record discloses no material which would justify the action taken against the respondent. We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable.”

7. A three-Judge Bench of this Court reported as *Union of India v. Dulal Dutt* [*Union of India v. Dulal Dutt*, (1993) 2 SCC 179 : 1993 SCC (L&S) 406] 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* [*R.L. Butail v. Union of India*, (1970) 2 SCC 876] and *Union of India v. J.N. Sinha* [*Union of India v. J.N. Sinha*, (1970) 2 SCC 458] that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law.”



9. In *Union of India v. V.P. Seth* [*Union of India v. V.P. Seth*, 1994 SCC (L&S) 1052] , relying upon *Baikuntha Nath Das* [*Baikuntha Nath Das v. District Medical Officer*, (1992) 2 SCC 299 : 1993 SCC (L&S) 521] and other judgments, it was held as under : (*V.P. Seth case* [*Union of India v. V.P. Seth*, 1994 SCC (L&S) 1052] , SCC p. 1054, para 3)

“3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the rule of audi alteram partem has no application since the order of compulsory retirement in such a situation is not penal in nature. The position of law having thus been settled by two decisions [*Baikuntha Nath Das v. District Medical Officer*, (1992) 2 SCC 299 : 1993 SCC (L&S) 521] , [*Posts and Telegraphs Board v. C.S.N. Murthy*, (1992) 2 SCC 317 : 1993 SCC (L&S) 710] of this Court, we are afraid that the order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said two decisions.”

10. A three-Judge Bench of this Court in a judgment reported as *State of Punjab v. Gurdas Singh* [*State*



*of Punjab v. Gurdas Singh*, (1998) 4 SCC 92 : 1998 SCC (L&S) 1004] considered the argument that the order of compulsory retirement was based on material which was non-existent inasmuch as there were no adverse remarks against him and if there were any such remarks, it should have been communicated to him. This Court held as under : (SCC p. 99, para 11)

“11. ... Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well.”

**13.** There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in



discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in *Ram Murti Yadav v. State of U.P.* [*Ram Murti Yadav v. State of U.P.*, (2020) 1 SCC 801 : (2020) 1 SCC (L&S) 245] held as under : (SCC p. 805, para 6)

“6. ... The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.”

18. In the matter of **Captain Pramod Kumar Bajaj Vs. Union of India and another**, reported in **(2023) 11 SCC 466**, the following was held in para 39 :

“**42.** *Dehors* the aforesaid allegations of institutional bias and malice, having perused the material placed on record, we find merit in the other grounds taken by the appellant. It is noticed that though FR 56(j) contemplates that the respondents have an absolute right to retire a government servant in public interest and such an order could have been



passed against the appellant any time after he had attained the age of fifty years, the respondents did not take any such decision till the very fag end of his career. The impugned order of compulsory retirement was passed in this case on 27th September, 2019 whereas the appellant was to superannuate in ordinary course in January, 2020. There appears an apparent contradiction in the approach of the respondents who had till as late as in July, 2019 continued to grade the appellant as 'Outstanding' and had assessed his integrity as 'Beyond doubt'. But in less than three months reckoned therefrom, the respondents had turned turtle to arrive at the conclusion that he deserved to be compulsorily retired. If the appellant was worthy of being continued in service for little short of a decade after he had attained the age of 50 years and of being granted an overall grade of 9 on the scale of 1 - 10 on 31st July, 2019 it has not been shown as to what had transpired thereafter that made the respondents resort to FR 56(j) and invoke the public interest doctrine to compulsorily retire him with just three months of service left for his retirement, in routine. In such a case, this Court is inclined to pierce the smoke screen and on doing so, we are of the firm view that the order of compulsory retirement in the given facts and circumstances of the case cannot be sustained. The said order is punitive in nature and was passed to short-circuit the disciplinary proceedings pending against the appellant and ensure his immediate removal. The impugned order passed by the respondents does not pass muster as it fails to

satisfy the underlying test of serving the interest of the public.”



19. Furthermore, in a judgment rendered in the matter of **Nand Kumar Verma Vs. State of Jharkhand**, reported in **(2012) 3 SCC 580**, the following was held in para 34 & 36 :

**34.** It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACR's. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACR's which were obtained by him from the High Court under the [Right to Information Act, 2005](#) and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

**36.** The material on which the decision of the Compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not



considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service.”

20. In the matter of **Pyare Mohan Lal Vs. State of Jharkhand and others**, reported in **2010 (10) SCC 693**, the following was held in para 22 & 23.

“22. In [Vijay Kumar Jain](#), (supra), this Court held that the vigour or sting of an entry does not get wiped out, particularly, while considering the case of employee for giving him compulsory retirement, as it requires the examination of the entire service records, including character rolls and confidential reports. “Vigour or sting of an adverse entry is not wiped out” merely it relates to the remote past. There may be a single adverse entry of integrity which may be sufficient to compulsorily retire the government servant.

***The larger Bench’s judgment***

23. In [State of U.P. Vs. Ram Chandra Trivedi](#), AIR 1976 SC 2547, this Court observed that it must be borne in mind that in cases where there is any conflict between the views expressed by larger and smaller Bench of this Court, the court cannot disregard or skirt the views expressed by the larger Bench. In [Triveniben Vs. State of Gujarat](#), (1989) 1 SCC 678, this Court considered the issue and observed as under:



"35.....The practice over the years has been that a larger bench straightway considers the correctness of and if necessary overrules the view of a smaller bench. This practice has been held to be a crystallised rule of law in a recent decision by a Special Bench of seven learned Judges. In [A. R. Antulay v. R. S. Nayak](#), AIR 1988 SC 1531, Sabyasachi Mukharji, J., speaking for the majority said :

‘The principle that the size of the bench whether it is comprised of two or three or more judges- does not matter, was enunciated in *Young v. Bristol Aeroplane Ltd.*, (1944-2 All ER 293 (CA) (supra) and followed by Justice Chinnappa Reddy in [Javed Ahmad Abdul Hamid Pawla v. State of Maharashtra](#), (AIR 1985 1 SCC 275), where it has been held that a Division Bench of three judges should not overrule a Division Bench of two judges, has not been followed by our Courts.

44..... The law [laid down by](#) this Court is somewhat different. There is a hierarchy within the Court itself here, where larger benches overrule smaller benches. See the observations of this Court in [Mattulal v. Radhe Lal](#), (1974) 2 SCC 365, *Union of India v. K. S. Subramanian*, (1976) 3 SCC 677; and [State of U.P. v. Ram Chandra Trivedi](#), AIR 1976 SC 2547 at p. 2555. This is the practice followed by this Court and now it is a crystallised rule of law.’

36.The answer to the question posed in [Javed Ahmad](#) case, (1985) 1 SCC 275 thus stands concluded and it is now not open to any one to contend that a bench of two judges cannot be overruled by a bench of three judges. We must regard this as a final seal to the controversy."

21. The settled principle governing compulsory retirement is that such an order must be necessitated by the public interest. To invoke



this power, the concerned authority must establish that the delinquent's performance has deteriorated to the extent that his continued service is no longer beneficial to the administration effectively rendering him 'deadwood' for the Department. This is the sole criteria upon which an employee may be prematurely retired before reaching the prescribed age of superannuation.

22. Considering the facts and circumstances of the case and in light of the principles laid down in the aforementioned judgments, this Court is of the view that the requisite subjective satisfaction was not recorded by the respondent authorities before passing the order of compulsory retirement. On the contrary, the impugned order was passed in a hurry and haste manner, dehors the settled principles of law. Such an order, actuated by the whims and caprices of the officers concerned, is legally unsustainable and cannot be permitted to operate.
23. For the foregoing, reasons, the impugned order dated 1.5.2023 (Annexure P/1) and the rejection order (representation) dated 6.7.2023 (Annexure P/2) are hereby quashed/set-aside. The Respondent Authorities are directed to reinstate the Petitioner in service with immediate effect, however, such reinstatement shall be without back wages.
24. With the aforesaid observations/directions, the Petition is disposed of.

Sd/-

**(Amitendra Kishore Prasad)**  
Judge



The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
22.01.2026	28.02.2026	-----	28.02.2026