



2026:DHC:4355-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 29.04.2026
Judgment pronounced on: 16.05.2026

+ **W.P.(C) 248/2025, CM APPL. 1175/2025, CM APPL. 32128/2025, CM APPL. 33881/2025 & CM APPL. 28523/2026**

DR VIRENDER BABORIAAppellant
Through: Mr. S N Pandey & Ms. Poonam,
Advs.

versus

UNION OF INDIA AND ANRRespondents
Through: Dr. Vijendra Singh Mahndiyan,
CGSC with Mr. Rudra Paliwal,
GP

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

AMIT MAHAJAN, J.

1. This petition has been filed challenging the Order dated 05.11.2024 passed by Respondent No.1 and Order dated 06.12.2024 passed by Respondent No.2 (hereinafter '**impugned orders**'), by which the Petitioner was sought to be pre- maturely retired in terms of FR-56(j) and Rule 42 read with 34 of CCS (Pension) Rules, 2001.

2. Briefly stated, the Petitioner is currently serving as the Commandant (NFSG)/(CMO) at 43rd Battalion of Assam Rifles, Dimapur, Nagaland. The Petitioner's service record was subjected to review upon his attaining 50 years of age under FR 56(j). Based on the service review conducted by the competent authorities and



recommendations of the Screening Committee and Review Committee, the Ministry of Home Affairs ordered the Petitioner's premature retirement *vide* the impugned orders.

3. Aggrieved, the Petitioner has filed the present writ petition challenging the said orders.

4. The Petitioner had also made a representation before the authorities dated 07.01.2025 for review of his case, however, the same has been kept pending on account of a stay order granted by this Court *vide* order dated 13.01.2025.

5. The learned counsel for the Petitioner submitted that that the Petitioner is being victimised and the impugned orders are a result of *mala fide* because the Petitioner filed a writ petition against the Respondents, seeking promotion, which was allowed by the learned Single Judge, High Court of Meghalaya. He submitted that the order passed by the learned Single Judge was upheld by the Division Bench but still the Petitioner was not promoted. Thereafter, the Petitioner filed contempt petition and the order was implemented.

6. He submitted that the Petitioner has discharged his duties with utmost sincerity and professionalism throughout his service. He submitted that the Petitioner secured an A+ grade in the Medical Officers Basic Course (MOBC) and has consistently received "Good" and "Very Good" gradings in his APARs from 2009 onwards. He submitted that earlier adverse or "average" entries from 2004–2012 were never communicated to the Petitioner, thereby depriving him of an opportunity to represent against them.



7. The Petitioner submits that the invocation of FR 56(j), premised on two “Displeasure (Recordable)” entries, is factually and legally unsustainable. He submitted that the alleged unauthorized absence occurred during the peak COVID-19 period when the Petitioner had tested positive and was under medical supervision. He submitted that the allegations of alcohol dependency, unprofessional conduct, and obesity, against the Petitioner, are baseless and unsupported by any evidence.

8. He submitted that the Petitioner, while on official attachment with the 12th Bn., Assam Rifles for a period of one month, rendered medical services and was commended for his outstanding performance through an Appreciation Letter dated 21.10.2024 addressed to his Commandant, however, within three days thereof, arbitrary and vindictive action was initiated against him.

9. *Per Contra*, the learned counsel for the Respondents submitted that the impugned orders of premature retirement have been passed strictly in accordance with the applicable rules and established procedure, and in *bona fide* exercise of powers under FR 56(j) in public interest and does not warrant interference by this Court.

10. He submitted that the Petitioner’s service record reflects repeated indiscipline, including unauthorized absence from 20.12.2021 to 03.01.2022 and 05.01.2022 to 07.01.2022, and failure to follow prescribed sickness reporting procedures. Further, despite being a Medical Officer, he engaged in self-medication in violation of applicable instructions. These acts led to disciplinary proceedings and



the award of “Displeasure (Recordable)” on 02.08.2023, in addition to an earlier similar censure dated 10.10.2022.

11. He submitted that the Petitioner has portrayed a consistent pattern of unsatisfactory conduct. Despite repeated verbal and written counselling regarding indiscipline, absenteeism, and alcohol consumption, the Petitioner failed to improve, and his conduct remained below the standards expected of a Medical Officer.

12. He submitted that the decision to prematurely retire the Petitioner was taken after a comprehensive and multi-tiered evaluation process. He submitted that all the allegations of *mala fide* against the Respondent are false and made without any credible evidence to substantiate such claims. He submitted that the mere fact that the Petitioner had previously initiated litigation against the Respondents does not render the impugned action retaliatory.

Analysis

13. At the outset, it is pertinent to underscore that the scope of judicial review in matters of compulsory retirement under FR 56(j) is exceedingly narrow. It is well settled that such an order is founded on the subjective satisfaction of the competent authority, and the Court does not sit in appeal over such satisfaction. Interference is warranted only in limited circumstances, namely where the decision is demonstrated to be arbitrary, capricious, *mala fide*, or based on no material, or where relevant material has been ignored. Reference in this regard is drawn to the judgment in ***Ram Murli Yadav v. State of U.P.*, (2020) 1 SCC 801** where the Hon’ble Apex Court held as under:



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

14. Similarly, in the case of ***Union of India v. Col. J.N. Sinha*** : (1970) 2 SCC 458, the Hon’ble Apex Court held that under FR 56(j), the competent authority has an absolute right to retire a government servant in public interest upon forming a *bona fide* opinion based on the entire service record. Such opinion cannot be interfered with by courts unless it is shown to be *mala fide*, based on no material, or arbitrary. The Hon’ble Apex Court further clarified that compulsory retirement is not a punishment, involves no stigma, and may be ordered even on the basis of overall performance and suitability, including past adverse material, to ensure administrative efficiency in public interest. The relevant paragraphs of the said judgment are reproduced hereinbelow:

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



that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead wood. It is, in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.”

(emphasis supplied)

15. The Hon'ble Apex Court in ***State of Gujarat v. Umedbhai M. Patel : (2001) 3 SCC 314*** has crystallised the principles governing compulsory retirement under FR 56(j), holding that an officer may be prematurely retired in public interest when found no longer useful for administration, and such retirement is not punitive in nature. The relevant paragraphs of the said judgment are reproduced hereinbelow:

*“11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:
(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.*



- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.”

16. It thus follows that this Court may interfere with an order passed under FR 56(j) read with Rule 42 and Rule 34 of the CCS (Pension) Rules, 2001 only where the decision is vitiated by arbitrariness, *mala fides*, non-consideration of relevant material, or is otherwise based on no evidence.

17. It is the case of the Petitioner that the impugned orders are arbitrary and vitiated by *mala fides*, having been passed as a retaliatory measure following his filing of a writ petition. He contends that his service record does not justify premature retirement, highlighting his A+ grade in the Medical Officers Basic Course and consistent “Good” and “Very Good” APAR gradings since 2009, while alleging that the adverse entries in his record were never communicated to him.

18. It is settled law that authorities while making the decision to retire an employee prematurely are required to consider the whole record of service and the same can include any uncommunicated adverse entries as well. Reference in this regard is made to the judgment



in *State of Punjab v. Gurdas Singh*, (1998) 4 SCC 92 where the Hon'ble Apex Court held as under:

*“11. The facts in the present case are quite similar to that in Union of India v. V.P. Seth [1994 SCC (L&S) 1052 : (1994) 27 ATC 851 : AIR 1994 SC 1261] . Here also the only ground on which the order prematurely retiring Gurdas Singh was set aside was that two adverse entries after his promotion from the rank of Assistant Sub-Inspector to Sub-Inspector were not communicated to him and earlier adverse entries could not be taken into account because even when those existed Gurdas Singh had earned his promotion. It is not necessary for us to again reiterate the principles where the Court will interfere in the order of premature retirement of an employee as these have been accurately set down by various pronouncements of this Court and particularly in Baikuntha Nath Das case [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] . **Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well.**”*

(emphasis supplied)

19. In the present case, though it has been contended that the Petitioner has consistently received “Good” and “Very Good” APAR gradings since 2009 and was also issued an Appreciation Letter dated 21.10.2024 for his services during his attachment with 12th Bn., Assam Rifles for a period of one month, however, the same cannot be viewed in isolation.

20. A perusal of the Petitioner's service record reveals *inter alia* that he has been awarded two “*Displeasure (Recordable)*” entries dated 10.10.2022 and 02.08.2023. The first instance pertains to unauthorized absence coupled with intoxication while on *bona fide* duty, reflecting a serious lapse in discipline, particularly in view of his role as a Medical



Officer. The second instance, culminating in the award dated 02.08.2023, arises out of further acts of misconduct, *inter alia*, as detailed hereinbelow:

- i. The petitioner failed to adhere to the procedure for obtaining leave during the intervening period with effect from 20.12.2021 to 03.01.2022 and 05.01.2022 to 07.01.2022.
- ii. The petitioner has failed to report sick during the period with effect from 20.12.2021 to 03.01.2022 and 05.01.2022 to 07.01.2022 as prescribed procedure.
- iii. That being a Medical Officer, petitioner carried out self-medication which is contrary of Government of India, Ministry of Health letter No 14025/74/MC dated 04 August 1975.

21. Though the Petitioner has sought to contend that the aforesaid “*Displeasure (Recordable)*” entries were wrongly awarded, it is an admitted position that the same have not been independently challenged. In the absence of any such challenge, the said entries have attained finality and continue to form part of the Petitioner’s service record. Consequently, this Court, while exercising limited jurisdiction of judicial review in the context of FR 56(j), cannot embark upon an examination of the correctness or merits of those disciplinary actions, and the scope of scrutiny must remain confined to the decision-making process rather than a reappreciation of the underlying material.

22. A perusal of the Minutes of the Administrative Review Committee meeting dated 16.10.2024 reveals that the competent authorities undertook a detailed assessment of the Petitioner’s overall service record before recommending his premature retirement. The



Committee observed that the Petitioner had persistently displayed a lack of professional attitude and commitment towards his duties, had repeatedly absented himself from service, and had failed to show any improvement despite repeated counselling and opportunities afforded to him. The Committee further noted that the Petitioner had violated and flouted established rules and regulations governing service discipline. In view of the aforesaid conduct, the Administrative Review Committee concurred with the recommendations of the Board of Officers and recommended that the Petitioner was not fit for continued retention in service upon attaining the age of 50 years on the ground of ineffectiveness. The relevant observations of the Review Committee read as under:

“3. The Review Committee after going through the service records of Comdt Virender Baboria, CMO(NFSG) and recommendations of the Board of Officers has observed that the Comdt Virender Baboria, CMO(NFSG) of Assam Rifles persistently displayed lack of professional attitude and behaviour towards his job. Comdt Virender Baboria, CMO(NFSG) has also been absenting himself from duty on several occasions and despite of a number of counselling to improve his behaviour/conducts, there has been no improvement noticed on the same. He has also been found violating and flouting rules and regulations. As such, the Board of Officers recommended not for further retaining of Comdt Virender Baboria, CMO(NFSG) in service on attaining 50 years of age, on ground of ineffectiveness.”

23. The aforesaid proceedings clearly demonstrate that the decision to prematurely retire the Petitioner was neither mechanical nor arbitrary, but was preceded by due consideration of his entire service profile and founded upon cogent and relevant material available on record.



24. This Court has also carefully perused the Confidential Reports of the Petitioner placed before it. The said records reveal that adverse observations concerning the Petitioner's conduct and performance had been consistently recorded by superior officers over a prolonged period extending from the year 2005 onwards. The reports repeatedly note concerns regarding the Petitioner's physical fitness, including issues relating to obesity, and further disclose persistent problems relating to alcoholism.

25. In the considered opinion of this Court, the material forming part of the Petitioner's service record cannot be said to be insufficient or irrelevant for the purposes of forming an opinion regarding compulsory retirement in public interest. The impugned decision is founded upon objective consideration of the Petitioner's overall service record.

26. Significantly, apart from making bald and unsubstantiated allegations of *mala fides*, the Petitioner has failed to place on record any cogent material to demonstrate that the decision-making process was actuated by bias, extraneous considerations, or any oblique motive. Mere assertion of *mala fides*, without specific pleadings and supporting evidence, cannot suffice to displace the presumption of *bona fides* that ordinarily attaches to administrative action, particularly where the decision is taken upon due consideration by multiple independent authorities.

27. It is also pertinent to note that, during the pendency of the present petition, the Petitioner was again awarded a "Displeasure" (Recordable) by the IG AR (North) *vide* order dated 16.01.2026. The said order records that the Petitioner had indulged in conduct unbecoming of an



officer of the Assam Rifles by directly addressing seven grievance-related emails to senior dignitaries, including the Director General, Assam Rifles, in deliberate violation of the prescribed channel of correspondence of the Assam Rifles Regulations, 2016. The communications were found to contain insubordinate and derogatory language questioning the functioning and authority of senior officers, contrary to the discipline, propriety, and decorum expected from an officer of the Force.

28. This Court, therefore, finds that the service record of the Petitioner portrays a doleful picture. The Petitioner has failed to establish that the impugned orders suffer from arbitrariness, irrationality, *mala fides*, or non-application of mind so as to warrant interference of this Court in exercise of its writ jurisdiction.

29. The present petition is dismissed. Pending applications also stand disposed of.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

MAY 16, 2026
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