

**IN THE HIGH COURT OF JUDICATURE AT PATNA****Civil Writ Jurisdiction Case No. 7910 of 2024**

Subrat Kumar Jena Son of Sri Hara Mohan Jena, Resident of Flat No. 405, D Block, Sai Enclave Apartment, Vijay Singh Yadav Path, P.O.- Khagaul, P.S.- Khagaul, District- Patna, Bihar-801105, permanent resident of- Village- Balijhati, P.O.- Ramakrishnapur, P.S.- Bhuban, District- Dhenkhal, Odisha- 759017, Lastly posted as Deputy Chief Electrical Engineer (Loco), East Central Railway, Hajipur, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin- 110001.
2. The Secretary, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin-110001.
3. The Director (Establishment), Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin- 110001.
4. The Member, Traction, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin-110001.
5. The Member (Staff), Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin- 110001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Sr. Adv.
Mr. Praseon Shekhar, Adv.
Mr. Avinash Kr. Singh, Adv.
For the Respondent/s : Dr. K.N. Singh, Sr. Adv. (ASG)
Mr. Subhodh Kr. Jha, Sr. CGC
Mr. Ram Tujabh Singh, CGC
Mr. Shivaditya, Adv.
Mr. Abhinav, Adv

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**and****HONOURABLE MR. JUSTICE PRAVEEN KUMAR****CAV JUDGMENT****(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)****Date: 28-04-2026**

The present writ petition has been filed against the judgment dated 22.02.2024, passed by the learned Central





Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the “Ld. CAT”) in OA/051/01130/2019, whereby and whereunder the original application filed by the petitioner has been disposed off with liberty to the petitioner herein to file representation against the order of his compulsory retirement within three weeks and the Representation Committee has been directed to examine and pass a reasoned and a speaking order on the representation of the petitioner within three months.

2. At the outset, it may be relevant to mention here that a Coordinate Bench of this Court, vide judgment dated 20.07.2024 had allowed the present writ petition and quashed the impugned orders dated 06.12.2019 and 03.12.2019, challenged in the aforesaid original application as also had directed to reinstate the petitioner forthwith while extending all service and monetary benefits for the entire intervening period. The respondents had challenged the said judgment dated 20.07.2024, passed in the present writ petition as also the order dated 13.08.2025 passed in Civil Review No. 320 of 2024 before the Hon’ble Apex Court, by filing SLP (C) Nos. 31677-78 of 2025 (converted into Civil Appeal Nos. 13326-13327 of 2025) and the Hon’ble Apex Court, by an order dated 03.11.2025 has quashed and set aside the impugned judgment dated 20.7.2024, passed in CWJC No.





7910/2024 and the order dt. 13.8.2025, passed in Civil Review No. 320/2024 & has remanded the matter back to this Court for consideration afresh. This is how the present case is before this Court. It may be relevant to reproduce herein below the relevant portion of the order dated 03.11.2025, passed by the Hon'ble Apex Court in Civil Appeal Nos. 13326-13327 of 2025:-

“3. Having heard learned counsel for the parties, we are of the considered view that the impugned judgment dated 20.07.2024 in CWJC No.7910/2024 and order dated 13-08-2025 in CR No.320/2024 need to be quashed and set aside for the reason that no reason stands assigned therein, while allowing the writ petition preferred by the instant respondent. As such, we quash and set aside the impugned judgment dated 20-07-2024 in CWJC No.7910/2024 titled “Subrat Kumar Jena vs. Union of India & Ors.” and order dated 13-08-2025 in CR No.320/2024 in CWJC No.7910/2024 titled “Subrat Kumar Jena vs. State of Bihar & Anr.” passed by the High Court of Judicature at Patna and remand the matter for consideration afresh before the High Court.”

3. The brief facts of the case, according to the petitioner are that the petitioner was initially appointed in Railway service on a Group ‘C’ post on 13.6.1989. Subsequently, the petitioner was inducted in Indian Railway Service of Electrical Engineers (hereinafter referred to as the “IRSEE”), Group ‘A’ on





04.03.2004, upon the recommendation made by the Union Public Service Commission. The petitioner was promoted to the post of Executive Electrical Engineer on 11.3.2009, to the post of Senior Divisional Electrical Engineer on 27.12.2013 and finally to the post of Dy. Chief Electrical Engineer on 10.5.2018 (notionally with effect from 01.01.2016), whereafter the petitioner was granted selection grade with effect from 01.01.2016, vide order dt. 10.05.2018.

4. The Ld. Senior Counsel for the petitioner has next referred to the sheets pertaining to periodical review of service under Rule 1802(a)/1803(a)/1804(a) of Indian Railway Establishment Code (hereinafter referred to as the "IREC"), Vol-II 1987 Edition and Railway Board's letter No. E(P&A)I-2015/RT-38 dt. 10/12.11.2015 (RBE No. 143/2015), whereby the services of the petitioner was reviewed by the Zonal Screening Committee for the period till the year 2018-19 (up to 31.3.2020 i.e. first quarter of 2020) on account of the petitioner having attained the age of 50 years and he was found fit to be continued. Accordingly, the file was processed qua the petitioner and recommendation was made for his continuation in service, which was approved by the General Manager, vide his note dated 1.10.2019. Then again, such periodic review under Rule





1802(a)/1803(a)/1804(a) of IREC, Vol-II, 1987 Edition was made in the month of September, 2019 and out of 168 officers, whose services were reviewed, 150 officers were found fit for continuation in service, however 18 officers were shortlisted for review by the Review Committee and the petitioner was one amongst them. Thereafter, the case of the petitioner and others was placed before the Review Committee, which vide notes dated 26.9.2019 had noted that performance wise all the said 18 officers including the petitioner have been graded outstanding/ Very Good/ Good and their integrity as reflected in the integrity column in their APARs also appears to be satisfactory, however since their vigilance history shows multiple substantiated cases, which casts a shadow on their integrity, it was observed that the Review Committee may like to associate PED / Vigilance while reviewing the services of the said officers. Thereafter, the file was put up to the CRB for convening Review Meeting, whereupon as regards the vigilance cases, a note was appended against the name of the petitioner to the following effect:- “irregularities in acceptance of open tender, counselling issued on 17.1.2018”.

5. The Review Committee had then met on 14.11.2019 to review the services of IRSEE Officers including the petitioner





and inputs of Principal Executive Director/ Vigilance were taken into account during the deliberations, whereafter the findings of the said Review Committee was put before the Railway Board, comprising of its Chairman and two Members, who undertook the review by considering the report of internal committee and the entire service records of the officers including performance of the Officer as reflected in the APARs for the entire career, vigilance history of the officers, integrity as reflected in the APARs, the assessment of PED / vigilance and integrity / general reputation as ascertained from the officers with whom he had worked during his entire service period and it was decided that the petitioner is fit to be retired prematurely /compulsorily in public interest in keeping with the Government's policy of improving efficiency by dispensing with public servants, who are no longer found useful to the administration. The said decision dated 19.11.2019 can be found at running page no. 678 of the brief.

6. Thereafter, an order dated 3.12.2019 was issued under the signature of Under Secretary, Estt.(s) Railway Board, Ministry of Railway, Government of India, wherein it has been stated that the President is of the opinion that it is in the public interest to do so, hence in exercise of power conferred by Rule 1802(a) of





the Indian Railway Establishment Code Vol. II, the president hereby retires Sri J.K. Jena, IRSEE, East Central Railway from service from the date on which this order is served on him, he having already attained the age of 50 years on 29.4.2016 and the President also directs that the petitioner shall be paid a sum equivalent to the amount of his pay + allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement in lieu of the notice and if he so desires he may represent in writing within three weeks from the date the order is served on him. A notice dated 06.12.2019 was then issued under the signature of Deputy CPO / Gaz., Eastern Central Railway / HJP, wherein it has been mentioned that in exercise of powers conferred by Rule 1802(a) of the Indian Railway Establishment Code Vol. II, the President has decided to relieve Sri S.K. Jena, IRSEE, currently Deputy CEE/LOCO/ECR/HQ/HJP from service in public interest from the date the order to this effect is served on him. It was further mentioned in the said notice dated 6.12.2019 that the said order was attempted to be served upon the petitioner in his office on 6.12.2019, however the officer was not found in his office. The petitioner appears to have received the said order dated 3.12.2019 on 10.12.2019 under protest with a noting made by





him to the effect that the said order shall be challenged under due process of law at appropriate forum.

7. The petitioner had then filed an original application bearing OA/051/01130/2019 before the Ld. CAT, challenging the order of compulsory retirement dated 3.12.2019 as also the notice dated 6.12.2019 on the ground that the analysis of the petitioner's service record by the Review Committee has not been done objectively, no APARs gradings have been examined, no adverse materials have been identified, no reasons have been recorded to the effect that the petitioner is not fit to be continued in service, no bonafide opinion has been recorded by the appointing authority under Rule 1802(a), RBE No. 130 / 2019 has not been complied with, the proceedings of the Review Committee contains no individualised reasoning for selecting three officers to be compulsorily retired, there is non-application of mind and lastly, the conclusion that the said three officers including the petitioner should be compulsorily retired is not supported by any comparative or distinct evaluation.

8. The respondents had filed a written statement before the Ld. CAT in the aforesaid original application filed by the petitioner, wherein a preliminary objection was raised with regard to the maintainability of the original application in lieu of





RBE No. 130 /2019, which postulates that an officer who has been served with a notice/order of permanent retirement, may submit a representation within three weeks from the date of service of such notice/order and then the final order is required to be passed by the authority superior to the authority which issued the order of premature retirement, only after obtaining approval of the Ministry of Railways. In case the order of premature retirement has been issued by the President, the final order on the representation shall be passed by the Minister-in-charge of the Ministry/ Department concerned. Hence, it was contended by the Respondents before the Ld. CAT that since there is a specific remedy of filing representation against notice / order relating to premature retirement, the petitioner should first exhaust this remedy. Reference was made to Rule 1802(a)/ 1803(a)/ 1804(a) of Indian Railway Establishment Code Vol. II, 1987 Edition and OMs dated 21.3.2014 and 11.9.2015 as also to RBE No. 143/2015 dated 10/12.11.2015. It was also stated that compulsory retirement does not amount to dismissal or removal from service within the meaning of Article 311 of the Constitution of India and it is neither punishment nor is visited with loss of retiral benefits nor it casts stigma and the officer would be entitled to pension that he has actually earned, as such





there is no diminution of the accrued benefits. It was also contended by the respondents that if the appropriate authority finds in a bonafide manner that an officer is required to be compulsory retired in public interest, the correctness thereof cannot be challenged before the Courts. Reference was made to a judgment rendered by the Hon'ble Apex in the case of ***Union of India vs. J.N. Sinha***, reported in ***1971 (1) SCR 791***, wherein it has been held that the order retiring a Government servant compulsorily can only be challenged on the ground that either the order is arbitrary or it is not in public interest, however no other ground is available. Reference was also made to a judgment rendered by the Hon'ble Apex Court in the case of ***Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripada & Anr.***, reported in ***(1992) 2 SCC 299***. It was also contended that there was consistent decline in the performance of the petitioner and remark was made against him in a vigilance case regarding irregularity in acceptance of open tender for which he was counselled on 17.1.2018, hence there is nothing wrong in the order by which the petitioner has been compulsory retired in public interest.

9. The Ld. CAT, after hearing the parties, has by the impugned judgment dated 22.2.2024, passed in OA/051/01130/





2019, disposed off the original application filed by the petitioner herein with liberty to him to file a representation against the order of his compulsory retirement within three weeks and the Representation Committee has been directed to examine and pass a reasoned and a speaking order on the representation of the petitioner within three months.

10. The Ld. Senior Counsel for the petitioner has submitted that the Ld. CAT has committed a grave error by holding that the petitioner has filed the original application without exhausting the remedy of filing representation, available in terms of RBE No. 130/2019 and accordingly has erroneously disposed off the original application filed by the petitioner granting him liberty to file representation against the order of his compulsory retirement within three weeks, inasmuch as RBE No. 130/2019, dated 08.08.2019, containing the salient points of the various instructions on the subject relating to retiring a Railway servant in public interest before the normal date of his retirement, postulates that a Railway Employee, who has been served with a notice/order of premature retirement, may submit a representation within three weeks from the date of service of such notice/order. Thus, it is submitted that the word used in RBE No. 130/2019 is “may”, making the said remedy of filing





representation purely directory and not mandatory. It is further submitted that the IREC Code Vol.-II, especially Rule 1802(a) thereof, pertaining to the provisions regarding compulsory retirement does not contain any statutory requirement of filing a representation. It is contended that it is a well-settled law that Executive instructions (RBE No. 130 /2019) cannot override a statutory rule i.e. Rule 1802(a), hence there is no statutory prescription provided for under the IREC Code Vol. II (Chapter-XVIII) for filing a representation, thus admittedly no alternative statutory remedy is available to the petitioner under the Rules, thus the Ld. CAT has committed a grave error by relegating the petitioner to the remedy of filing a representation before the Respondents, against the order/notice of compulsory retirement.

11. At this juncture, reference has been made to Section 20 of the Administrative Tribunals Act, 1985 to submit that the same also postulates that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service Rule with regard to redressal of grievances. Thus, it is submitted that firstly, the relevant service Rules do not provide for any alternative statutory remedy by way of filing representation against the notice/order of compulsory retirement and secondly,





the Ld. CAT retains discretion to entertain an original application in such cases where other remedies have not been exhausted. In the instant case, the Ld. CAT had exercised its discretion when it had issued notice to the respondents in the aforesaid original application on 10.12.2019 and had heard the matter at length for a period spanning over four years, hence the Ld. CAT ought not to have relegated the petitioner to the remedy of filing a representation, thus it is submitted that on this score alone, the impugned judgment dated 22.2.2024, passed by the Ld. CAT is fit to be set aside. It is also submitted that relegating the petitioner to the remedy of filing a representation at this stage would be an empty formality, devoid of remedial value, for the following reasons:-

“a. the authority deciding the representation is the very same authority that has passed the order of compulsory retirement;

b. the respondents have already filed detailed counter affidavits, expanding and altering grounds at different stages, including assertions in paras 23-25 of the Written Statement branding the Petitioner as "deadwood," thereby creating a risk of post facto rationalization.

c. RBE No. 130/2019 (paras 6(a) & 6(b)) indicates that a representation is meaningful only if the employee has access to the material, data and reasoning that weighed





with the Review Committee and the Competent Authority.

d. Para 6(b) contemplates representation based on "new facts or aspects not hitherto taken into consideration." Premature retirement orders, however, are communicated in a standard, innocuous form that discloses no reasons. The decision's foundation lies entirely in the internal notings & committee deliberations are never supplied to the employee.

e. Without access to these materials, it is impossible for the employee to demonstrate "new facts not hitherto considered." The representation becomes structurally incapable of addressing undisclosed reasons. One cannot rebut grounds that are not communicated. Such a remedy is illusory and cannot be treated as an efficacious or alternative remedy so as to bar writ jurisdiction.

f. Para 6(h) of RBE 130/2019 expressly states that when a court grants a stay, the representation "is not to be considered by the administration nor set up before the Committee until disposal of the court case." This shows that the rule-makers themselves treated representation as non-essential within the framework of FR 56(j)/Rule 1802(a) and once judicial proceedings commence, the representation mechanism becomes inoperative.”

12. On merits, the Ld. Senior Counsel for the petitioner has submitted that an order of compulsory retirement under Rule 1802(a) must withstand scrutiny on the touchstone of public interest, supported by a comprehensive and objective evaluation





of the entire service record. The Review Committee has listed four criteria's, i.e. performance as reflected in the APARs of the entire career, vigilance history, integrity, and general reputation, however no analysis correlating these criteria to the Petitioner was undertaken. No APAR gradings were examined, no adverse material was identified and no reasons were recorded. The Committees merely reproduced headings such as "Performance", "Vigilance History", and "Integrity", without demonstrating how those parameters were applied in the Petitioner's case, thereby failing to satisfy the requirement of a reasoned and an individualized assessment.

13. The Ld. Sr. Counsel for the petitioner while assailing the order of compulsory retirement dated 3.12.2019 submits that the same is vitiated on the following grounds:-

“1. Absence of a bona fide, recorded opinion under Rule 1802(a) - The Appointing Authority was required to form and record a genuine opinion that compulsory retirement was in public interest. The review file, however, contains only cursory endorsements without any recorded bonafide opinion. This omission constitutes a jurisdictional defect.

2. Non-compliance with the prescribed review procedure:

a. The Zonal Screening Committee's positive recommendation dated 01.10.2019 finding the Petitioner fit to continue was discarded without any





fresh adverse material. A "subsequent review" was initiated barely two months later contrary to RBE instructions, which permit such review only upon emergence of exceptional circumstances.

b. Assertions that the Petitioner had "multiple substantiated vigilance cases" are contradicted by the vigilance history card, which contains no such substantiated case. No particulars were supplied in the original review file and later reliance was made on documents not forming part of the file.

c. The Review Committee recommended retirement of three officers collectively without individualised reasoning or evaluation of complete service records, contrary to RB instruction dated 15.11.1979 and RBE 130/2019.

3. Criteria for review of Services has been considered in RBE No. 130/2019. Clause 4(c) provides that no employee should ordinarily be retired where employee has been promoted to a higher post during 5-year period and his/her service in the highest post has been found satisfactory. It is an admitted case that for the year 2016-17 the Petitioner has been graded "Good", for the year 2017-18 the Petitioner has been graded "Outstanding", for the year 2018-19 the Petitioner has been graded "Outstanding" and for the year 2020 the Petitioner has been graded "Outstanding".

4. The authorities have isolated a single "Average" APAR (2015-16) while ignoring subsequent improved gradings and the Petitioner's promotion to Selection Grade w.e.f.





01.01.2016 contrary to Para-5(j) and Para-4(c)(1) of RBE No. 130/2019.

5. A lone average entry cannot sustain compulsory retirement where the overall record after promotion is satisfactory. The point system for the last five years places the Petitioner above the retention threshold.

6. The Petitioner was not paid full three months' pay and allowances (shortfall of 9 days), further vitiating the impugned order.

7. The Committee reviewed 168 officers, shortlisted 18, and compulsorily retired 3, including the Petitioner. Yet, the proceedings contain no individualized reasoning for selecting these 3 officers. Thus, the decision is arbitrary, mechanical and without any application of mind.

8. The conclusion that three officers should be compulsorily retired is unsupported by any comparative or distinct evaluation, rendering the decision arbitrary.

9. The Order dated 13.08.2025 reinforces that the Petitioner's service record was never analysed at all, thereby vitiating the Committee's report and the consequent retirement order.”

14. The Ld. Senior Counsel for the petitioner has relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripada & Anr.***, reported in ***(1992) 2 SCC 299*** to contend that the Hon'ble Apex Court has in paragraph No. 34 summarised





the principles governing the cases of compulsory retirement, paragraph No. 34 whereof is reproduced herein below:-

“34(i). An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(ii). The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii). Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv). The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v). An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”





15. The Ld. Senior Counsel for the petitioner has also relied upon the following judgments rendered by the Hon'ble Apex Court:-

(i) *The Registrar, High Court of Madras vs. R. Rajiah*, reported in (1988) 3 SCC 211;

(ii) *SMT. S.R. Venkataraman vs. Union of India & Anr.*, reported in (1979) 2 SCC 491;

(iii) *Baldev Raj Chadha vs. Union of India & Others*, reported in (1980) 4 SCC 321;

(iv) *Baldev Raj, Ex-Constable vs. State of Punjab & Others*, reported in 1984 (Supp) SCC 221.

16. *Per contra*, the learned Additional Solicitor General of India appearing for the Respondents has submitted, by referring to RBE No. 130 / 2019 that the petitioner was first required to exhaust the alternative remedy by way of filing a representation against the notice / order of compulsory retirement, hence since the petitioner has not exhausted the said alternative remedy available to him, the original application filed by the petitioner before the Ld. CAT was / is not maintainable. Reference has also been made to Rule 1805 of the Indian Railway Establishment Code Vol. II to buttress the stand being taken by the Respondents. It is further submitted that despite the Ld. CAT having given opportunity to the petitioner, by the impugned





judgment dated 22.2.2024, to file a representation before the Respondents, the petitioner has directly filed the present writ petition, challenging the judgment of the Ld. CAT dated 22.2.2024 as also the order of his premature retirement. It is stated that on perusal of file bearing No. E(O)I/2019/SR-10-P/04, dealing with premature retirement of Group A officers, who would be attaining 50 years of age by March, 2020 and those who have already attained 50 years of age, it is evident that initially review of 168 officers was carried out by an Internal committee, headed by Secretary/Railway Board, as approved by the CRB/ Railway Board, however the said Internal committee found 150 candidates fit for continuance in service while it had shortlisted 18 officers including the petitioner for review by the review committee. The Internal Committee undertook scrutiny based on performance of the officer as reflected in the APARs of the entire career, while giving special attention to the performance during the last 5 years (i.e., upto APAR year 2017-18), vigilance history, integrity as mentioned in the APARs, the assessment of PED/Vigilance and integrity and general reputation as ascertained from the officers he has worked with/under, during his entire service period. The review committee had met on 14.11.2019 and vide minutes dt.





19.11.2019 (Annexure R/5), the review committee found three officers including the petitioner fit to be retired compulsorily in public interest, in keeping with the Government's policy of improving efficiency by dispensing with public servants who are no longer found useful to the administration. The aforesaid minutes of the review Committee was approved by the Hon'ble Minister of Railways on behalf of the President.

17. It is further submitted by the Ld. Additional Solicitor General of India appearing for the Respondents that the performance of the petitioner during the immediate past i.e. from the year 2014 up to 2017 has not been up to the mark, since there are several adverse remarks, which are reproduced herein below:-

| Year | Grading | Remarks |
|-------------|----------------|--|
| 2014 | Good | <i>In APAR, there are remarks like 'quality of work is manageable'. In his APAR, 6 of his attributes (attitude towards work; ability to guide, inspire and motivate; interpersonal relations, team work & coordination ability; safety consciousness; innovation new technology progression and cos & expenditure control) have been graded as 'Average' and rest of the attributes have been graded as 'Good'. He never refuted such remarks. Further, while disposing off his representation against the said APAR grading, it has been recorded that CEE/Con. had counselled Shri Jena on several occasions over phone. There were also</i> |





| | | |
|------|---------|--|
| | | <i>charges of misbehavior on the part of Shri Jena and in that connection his explanation was also called by CEE/Con. on 07.03.2014.</i> |
| 2015 | Good | <i>In APAR, there are remarks like 'progress of work is poor', 'average knowledge and not following written instructions to attend work at Bhubaneswar for 02 days in a week and quality of output is not satisfactory. Further, 04 of his attributes (ability to guide, inspire and motivate; inter-personal relations, teamwork and co-ordination ability; approach customers; and cost & expenditure control) have been graded as 'Average' and rest of the attributes have been graded as 'Good'. Verbal warning issued several times and counselled in Chamber.</i> |
| 2016 | Average | <i>In APAR, there are remarks like 'level of Knowledge is commensurate to the post he is occupying', 'competency is substituted by complacency, there is scope of improvement (in quality of output), he cannot get along with the colleagues, full of recklessness, adverse remarks communicated, lacking decency, he has knowledge but did not put up his best efforts. In his APAR, 08 of his attributes (attitude towards work: decision making ability and judgment; ability to guide, inspire and motivate; inter-personal relations, team work and co-safety ordination ability; consciousness; innovation-new technology progression; human resource development; cost and expenditure control) have been graded as 'Average' and rest of attributes have been graded as 'Good'.</i> |
| 2017 | Good | <i>In APAR, there are remarks like I agree in general except that cable indent for projects placed very late and that too for wrong specifications i.e. PVC instead of XL PE resulting in delay. Material planning for actual work involved in NGP-KVP not done correctly. Power line crossing clearances sent to CRS were found different for many</i> |





| | |
|--|---|
| | <p><i>locations during joint check by Mr. Jena and Sr. DEE/G/NGP. Mr. Jena has not filled short fall column para 3 at page no.3 and filled NA in para 5', He has been given remarks-'Average'. He can improve 'Average'. He needs to involve in work against task relevant knowledge and quality of output'. In his APAR, 05 of his attributes (attitude towards work; initiative; innovation-new technology progression; environment improvement; & aptitude towards research and development) have been graded as 'Average' and rest of the attributes have been graded as 'Good'. In general assessment, it has been mentioned-'He should concentrate in work with a view to complete task in time and with good quality'.</i></p> |
|--|---|

Thus, it is submitted that the Review Committee, considering the performance of the petitioner came to the conclusion that his continuance in service is no longer useful for the administration, as such he is fit to be retired compulsorily in public interest, in keeping with the Government's policy of improving efficiency by dispensing with public servants who are no longer found useful to the administration. It is next submitted that the petitioner was prematurely retired under Rule 1802(a) of the Indian Railway Establishment Code, Volume-II, on the basis of his Annual Performance Appraisal Reports (APARs) for the years 2013-2014, 2014-2015, 2015-2016 and 2016-2017.

18. It is further submitted by the Ld. Additional Solicitor General of India appearing for the Respondents that as far as





annual performance assessment report (hereinafter referred to as the “APAR”) of the petitioner for the period 2013-14 is concerned, it has been assessed to be good, however the petitioner had filed a representation dated 23.3.2015 for upgrading his overall grading from good to outstanding but the same was rejected, vide letter dated 16.6.2015. As far as the APAR for the period 2014-15 is concerned, the same was also assessed to be good and again the petitioner had filed a representation for upgrading his overall grading from good to outstanding, however the same was rejected, vide letter dated 8.10.2015. During this period, verbal warning was issued several times and the petitioner was counselled in the chamber. As far as the APAR for the period 2015-16 is concerned, the same had been assessed as “average” against which the petitioner had filed a representation dated 12.9.2016 for up-gradation of APAR for the period 2015-16, however the same was rejected by the accepting authority and average grading was directed to be retained, which was communicated to the petitioner, vide letter dated 22.3.2017. As far as the APAR for the period 2016-17 is concerned, the same had been assessed to be good, while the petitioner’s overall grading as per APAR for the period 2017-18 had been assessed as 8.95.





19. Thus, it is submitted by the Ld. Additional Solicitor General of India appearing for the Respondents that the APAR dossiers and vigilance history of the petitioner has been minutely scrutinized by the Review Committee and the minutes of the Review Committee has been approved by the Hon'ble Minister of Railways on behalf of the President. It is stated that the entire service records of the petitioner, with reference to his performance, have been duly considered and though his integrity, reflected in the integrity column of his APARs appears to be satisfactory, however his performance during the immediate past i.e. from the year 2014 to 2017 has not been up to the mark, inasmuch as there are several adverse remarks. Reference has also been made by the Ld. Additional Solicitor General to the judgment rendered by the Hon'ble Apex Court in the case of *Bakhuntha Nath Das* (supra) and it is submitted that the principles laid down in paragraph no. 34 of the said judgment rendered by the Hon'ble Apex Court, in fact buttress the stand of the Respondents since neither the order of compulsory retirement has been passed in a malafide manner nor it is based on no evidence nor the same is arbitrary, hence no interference is required with the same.

20. We have heard the learned counsel for the parties and





perused the materials on record. At the outset, we would reproduce Clause 6 (a) (b) and (h) of the salient points consolidated together and appended to RBE No. 130 /2019, dated 08.08.2019, herein below:-

“6(a). A Railway employee, who has been served with a notice/order of premature retirement, may submit a representation within 3 weeks from the date of service or such notice/order.

(b). On receipt of the representation, the administration would examine the same to see if it contains any new facts or any aspect not hitherto taken into consideration. Examination to be completed within 2 weeks from the date of receipt. Thereafter, it should be placed before the appropriate Committee for consideration.

(h). In case the employee gets a stay order from court, representation is not to be considered by the administration, nor sent up to the Committee until disposal of the court case. Thereafter, the cases may be examined taking into account any material of substantive nature that may feature in court's judgement.”

21. It would also be relevant to reproduce Rule 1802(a), 1803(a), 1804(a) and 1805(1) of the Indian Railway Establishment Code, Vol. II, herein below:-

“1802(a). Notwithstanding anything contained in this Rule, the appointing authority shall if is of the opinion that it is in the public interest to do so, 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 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 55 years.

(Authority:- Railway Board's letter No. E(P&A)1-88/JCM/NC-2 dated 6.7.89)

(b)(1). Any railway servant 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 Group 'A' or Group 'B' service or post (and had entered Government service before attaining the age of 35 years) and in all other cases after he has attained the age of 55 years.

1803(a). *Notwithstanding anything contained in these rules, or any other rule or order for the time being in force, the appointing authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right to retire a railway servant governed by any pension Rules after he has completed thirty years service qualifying for pension after giving a notice in writing in this behalf to the railway servant at least three months before the date on which he is required to retire or three months pay and allowances in lieu of such notice.*

1804(a). *Notwithstanding anything contained in Clause (a) of Rule 1802, the appointing authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right to retire a railway servant in Group 'C' service or post who is not governed by any pension Rules 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.*

1805(1). *If on a review of the case referred to in Rule 1802(a), 1803(a) and 1804(a) either on representation from the railway servant retired prematurely or otherwise, it is decided to reinstate the railway servant in service the authority ordering reinstatement may regulate the*





intervening period between the date of premature retirement and the reinstatement as duty or as leave of the kind due and admissible, including extra-ordinary leave, or by treating it as depending upon the facts and circumstances of the case.

22. A bare perusal of Rule 1802(a), 1803(a), 1804(a) and 1805(1) would show that the same provides for premature retirement of a Government servant if the appointing authority is of the opinion that it is in the public interest to do so by giving him notice not less than three months in writing and three months' pay and allowances in lieu of such notice, however the same does not postulate filing of representation against an order of compulsory retirement. As far as Rule 1805(1) of the Indian Railway Establishment Code is concerned, the same only provides that the authority ordering reinstatement of a railway servant retired prematurely or otherwise may regulate the intervening period between the date of premature retirement and the reinstatement as duty or as leave of the kind due and admissible, including extra-ordinary leave, or by treating it as depending upon the facts and circumstances of the case, however the same nowhere mandates filing of a representation against an order of compulsory retirement by such a Government servant. Thus, the argument advanced by the Ld. Additional Solicitor General on this score is not tenable in the





eyes of law, inasmuch as the provision contained in Rule 1805(1) of the Indian Railway Establishment Code nowhere postulates a statutory remedy of preferring a representation against notice / order of premature retirement under Rule 1802(a), 1803(a) & 1804(a) of the Indian Railway Establishment Code, Vol. II. As far as RBE No. 130/2019 is concerned, the same is first of all an executive instruction, which cannot in any view of the matter override statutory Rules i.e. Indian Railway Establishment Code, which in any view of the matter does not provide for filing of a representation against notice / order of compulsory retirement, apart from the fact that the expression used thereunder is “may submit a representation” which makes the said remedy purely directory and not mandatory. In this regard, reference be had to a judgment rendered by the Hon’ble Apex Court in the case of *Bachahan Devi & Anr. vs. Nagar Nigan, Gorakhpur & Anr.*, reported in (2008) 12 SCC 372, paragraph no. 21 whereof is reproduced herein below:-

“21. The ultimate rule in construing auxiliary verbs like “may” and “shall” is to discover the legislative intent; and the use of the words “may” and “shall” is not decisive of its discretion or mandates. The use of the words “may” and “shall” may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have





further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed.”

23. We may also gainfully refer to yet another judgment rendered by the Hon’ble Apex Court in the case of ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd.***, reported in (2022) 8 SCC 352, paragraph nos. 62 to 64 whereof are reproduced herein below:-

“62. As pointed out by Mr Gupta, legislature has, in its wisdom, chosen to use the expression “may” in Section 7(5)(a) IBC. When an adjudicating authority (NCLT) is satisfied that a default has occurred and the application of a financial creditor is complete and there are no disciplinary proceedings against proposed resolution professional, it may by order admit the application. Legislative intent is construed in accordance with the language used in the statute.

63. The meaning and intention of Section 7(5)(a) IBC is to be ascertained from the phraseology of the provision in the context of the nature and design of the IBC. This Court would have to consider the effect of the provision being construed as directory or discretionary.

64. Ordinarily the word “may” is directory. The expression “may admit” confers discretion to admit. In contrast, the use of the word “shall” postulates a mandatory requirement. The use of the word “shall”





raises a presumption that a provision is imperative. However, it is well settled that the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.

24. In fact, Section 20(1) of the Administrative Tribunal Act, 1985 also reserves discretion with the Ld. CAT in exceptional circumstances to admit an application where an alternative remedy exists and in the present case, the Ld. CAT while exercising the said discretion was pleased to issue notice to the respondents by an order dated 10.12.2019. Thus, we find that the Ld. CAT while passing the impugned judgment dt. 22.2.2024 has erred by holding that the petitioner has filed the original application without exhausting the remedy of representation and consequently, has wrongly granted liberty to the petitioner to file representation against the order of his compulsory retirement within three weeks, instead of adjudicating the matter on merits.

25. The question, therefore, as to whether the order dated 3.12.2019, issued by the Under Secretary, Estt.(s) Railway Board, Ministry of Railway, Govt. of India, whereby the petitioner has been retired from service, in exercise of power conferred by Rule 1802(a) of the Indian Railway Establishment Code Vol. II, and the notice dt. 06.12.2019, issued by the Deputy





CPO/Gaz., Eastern Central Railway/HJP, wherein it has been mentioned that the President has decided to relieve the petitioner from service, are supported by any comparative or distinct evaluation, whether the analysis of the petitioner's service record by the Review Committee has been done objectively and whether the said orders are sustainable in the eyes of law are required to be investigated and adjudicated by the Ld. CAT. Thus, we find it necessary to remit the matter back to the Tribunal for recording its findings on these facts as the same would form the foundation of the exercise of power or otherwise for upholding or setting aside of the said orders retiring the petitioner prematurely. We, accordingly, partly allow this writ petition and quash the impugned judgment dated 22.02.2024, passed by the learned Central Administrative Tribunal, Patna Bench, Patna in OA/051/01130/2019 and remit the matter back to the Tribunal to take a decision afresh on merits.

26. The Tribunal shall decide all the issues that have been referred to in the argument of the respective parties on the basis of the material available on record or such other material that may be made available to the Tribunal. In view of the fact that the pleadings are complete in the original application, filed by the petitioner before the Ld. CAT i.e. OA/051/01130/2019, we





request the Ld. CAT to dispose off the said OA/051/01130/2019 within a period of three months from today, considering the fact that the impugned notice / order of compulsory retirement is of the year, 2019. In order to facilitate prompt disposal of the said original application filed by the petitioner, we deem it fit and proper to direct the parties to appear before the Ld. CAT through their counsel on 6th of May 2026, on which day the said OA/051/01130/2019 shall be listed before an appropriate Bench.

27. Accordingly, the present writ petition stands partly allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

(Praveen Kumar, J)

Ajay/-

| | |
|-------------------|------------|
| AFR/NAFR | AFR |
| CAV DATE | 13.01.2026 |
| Uploading Date | 28.04.2026 |
| Transmission Date | NA |

