



2026:AHC-LKO:7314-DB

A.F.R.

**Reserved on 29.10.2025
Delivered on 02.02.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 2736 of 2023

Alok Kumar Mitra

.....Petitioner(s)

Versus

Union of India Thru. Secy. Finance Deptt. of Revenue Govt. of India ,
New Delhi and another

.....Respondent(s)

Counsel for Petitioner(s) : Shobhit Mohan Shukla, Manoj Kumar Chaurasiya, Vatsala Singh
Counsel for Respondent(s) : A.S.G.I., Devrishi Kumar

Court No. - 2

**HON'BLE MRS. SANGEETA CHANDRA, J.
HON'BLE AMITABH KUMAR RAI, J.**

(Delivered by Hon'ble Amitabh Kumar Rai,J.)

1. Heard Shri J. N. Mathur, learned Senior Advocate assisted by Shri Shobhit Mohan Shukla, learned counsel for the petitioner and Shri Devrishi Kumar, learned counsel for the respondents.
2. The instant writ petition arises from the judgment and order dated 20.02.2023 passed by the learned Central Administrative Tribunal, Lucknow in Original Application No.332/00450/2019 "Alok Kumar Mitra vs. Union of India", whereby the petitioner had challenged before the learned Tribunal the order dated 10.06.2019, by which he was compulsorily retired from the post of Commissioner of Income Tax in the Indian Revenue Service by invoking Fundamental Rule 56(j) as well

as the order dated 16.08.2019, by which his representation against the order of compulsory retirement was rejected.

3. The petitioner was an officer of the Indian Revenue Service, 1992 Batch. After selection through the Union Public Service Commission, he was initially appointed to the post of Assistant Commissioner (Income Tax). Upon completion of his training, he was posted in the Income Tax Department and served there from 1995 to 2014. From 2014 to 2017, he was on deputation to the Government of Uttar Pradesh as Chief Executive Officer of the State Agency for Comprehensive Health and Integrated Services (SACHIS). Thereafter, the petitioner was promoted to the post of Commissioner of Income Tax (Senior Administrative Grade) vide order dated 16.09.2015.

4. The petitioner was compulsorily retired from the post of Commissioner of Income Tax (Appeals)-III, Kochi (Kerala) vide order dated 10.06.2019, which was challenged before the learned Central Administrative Tribunal, Lucknow. The said order was served upon the petitioner on 11.06.2019. He submitted a representation dated 30.06.2019 against the order of compulsory retirement in terms of paragraph 5 of the Office Memorandum dated 11.10.1976, which was rejected vide order dated 16.08.2019.

5. Learned counsel for the petitioner contends that the order of compulsory retirement dated 10.06.2019 passed under Fundamental Rule 56(j) is perverse, inasmuch as it is contrary to the guidelines contained in the Office Memorandums dated 10.05.1974, 21.03.2014 and 11.09.2015. It has been submitted that the due process prescribed therein was not followed and the petitioner's representation was rejected by a non-speaking and unreasoned order, without adhering to the timeline provided in the Office Memorandum dated 11.10.1976.

6. It has further been submitted that neither approval from the Appointments Committee of the Cabinet (ACC) was obtained nor the Central Vigilance Commission was consulted before passing the order

of compulsory retirement dated 10.06.2019, which is contrary to the Office Memorandum dated 10.05.1974.

7. It has also been submitted that the Government of India issued Office Memorandum dated 21.03.2014 providing for periodical review under Fundamental Rule 56(j). Paragraphs 4 and 5 thereof prescribe the criteria to be followed by the Review Committee while making recommendations for compulsory retirement.

8. It has been submitted that as per the Office Memorandum dated 21.03.2014, only those officers whose integrity is doubtful or who have become ineffective in the discharge of their duties ought to be considered for compulsory retirement. For this purpose, only the immediate preceding five years of the service record or the service record post-promotion is required to be taken into consideration. In the specific case of the petitioner, both his past service record and his record after promotion are stated to be excellent.

9. It has also been submitted that the Office Memorandum dated 11.09.2015 issued by the Government of India makes reference to the judgment rendered by the Hon'ble Supreme Court in **State of Gujarat vs. Umedbhai M. Patel** reported in **(2001) 3 SCC 314**. Paragraph 2 of the said Office Memorandum details the circumstances under which the candidature of an officer may be scrutinized for compulsory retirement.

10. It is the case of the petitioner that the guidelines contained in the Office Memorandum dated 11.09.2015 were also violated while considering his case for compulsory retirement by the Review Committee.

11. It has further been submitted that the petitioner was promoted to the post of Commissioner of Income Tax on the basis of merit-cum-seniority vide order dated 16.09.2015. His promotion itself is sufficient to indicate that his merit was beyond doubt. Prior to his promotion, vigilance clearance was granted and the recommendation of the Departmental Promotion Committee was duly scrutinized by the Appointments Committee of the Cabinet (ACC) and only thereafter the

petitioner was promoted. As such, there was no adverse material available before the Review Committee to justify recommending compulsory retirement.

12. It has also been submitted that the remarks recorded in the Annual Confidential Reports of the petitioner consistently indicate that he was considered an officer of outstanding category, whose integrity was beyond doubt and whose general reputation was appreciated at various levels.

13. It has been submitted that a combined reading of the Office Memorandum dated 10.05.1974, 21.03.2014 and 11.09.2015 provides that screening under Fundamental Rule 56(j) is to be undertaken only in cases where the services of an officer are no longer useful to the general administration and for the purpose of weeding out “dead wood.” For arriving at such a conclusion, due regard must be given to the entire service record of the officer. Adverse material prior to promotion loses its significance and greater weightage is required to be given to the service record post-promotion. It has further been submitted that if an officer is promoted despite adverse entries, such promotion operates in his favour and compulsory retirement in such circumstances cannot be used as a tool for punishment.

14. It is further submitted that after the petitioner’s promotion to the post of Commissioner of Income Tax, his services were placed on deputation as Chief Executive Officer of the State Agency for Comprehensive Health and Integrated Services, where he remained posted in that capacity up to November 2017. During the period of deputation, his Annual Confidential Reports indicate that he was consistently graded as an outstanding officer.

15. On the contrary, the respondents, while denying the claims of the petitioner, have drawn attention to the minutes of the Review Committee, which form the sole basis for recommending compulsory retirement of the petitioner, as indicated in paragraph 7 of the counter

affidavit filed along with the application for dismissal of the Original Application No.332/00450/2019.

16. It has been submitted that the Review Committee took into consideration the entire service record of the officer including his Annual Confidential Reports (ACR)/Annual Performance Appraisal Reports (APAR) and the charge sheets issued against the petitioner and only after recording its satisfaction recommended the petitioner's compulsory retirement.

17. Learned counsel for the respondents has further submitted that the Representation Committee duly considered the representation filed by the petitioner in accordance with the procedure prescribed in the various Office Memoranda against the order of compulsory retirement dated 10.06.2019. The Committee examined the entire service record of the petitioner and held that there was no illegality in the order of compulsory retirement. While taking the decision, the Office Memoranda issued from time to time on the subject were duly considered and after following the prescribed procedure of law, the petitioner was compulsorily retired.

18. With regard to the argument of learned counsel for the petitioner that no approval from the Appointments Committee of the Cabinet (ACC) was obtained, learned counsel for the respondents submitted that at the time of joining government service the petitioner was appointed by the President. His promotion to the Senior Administrative Grade was also made under the orders of the President after empanelment by the ACC. This does not mean that the ACC is the appointing authority; rather, the appointing authority of the petitioner continues to be the President. Thus, it has been argued that the petitioner's claim that he was not compulsorily retired after obtaining approval from the competent authority is misconceived.

19. In rejoinder submission, learned counsel for the petitioner contended that the Review Committee relied upon adverse material which, in fact, did not exist. In particular, the charge sheet dated

15.07.2013 initiating disciplinary proceedings against the petitioner was quashed by the learned Central Administrative Tribunal, Lucknow, vide judgment and order dated 09.04.2018 passed in Original Application No.332/00353/2013. The said order attained finality and was accepted by the department itself.

20. It has been submitted that once the charge sheet was quashed, the allegations contained therein could not have been taken into consideration by the Review Committee for forming an adverse opinion against the petitioner and could not have been made the basis for action under Fundamental Rule 56(j).

21. To sum up, learned counsel for the petitioner submitted:

(i) The petitioner has been targeted and the order of compulsory retirement has been passed in an arbitrary manner, inasmuch as when the department failed to take any action in the disciplinary proceedings, it adopted the course of compulsory retirement under Fundamental Rule 56(j) and compulsorily retired the petitioner.

(ii) The decision to invoke Fundamental Rule 56(j) against the petitioner was not taken in public interest. The Hon'ble Supreme Court, in **S. Ram Chandra Raju vs. State of Orissa** reported in (1994) 3 SCC 424, explained the expression "public interest" to mean that the conduct and reputation of an officer must be such that his continuance in service would be a menace to public service and injurious to public interest. No such pleading has been made by the respondents in the counter affidavit. The Hon'ble Supreme Court in **State of Gujarat and another vs. Suryakant Chunilal Shah** reported in (1999) 1 SCC 529; **Union of India vs. Col. J. N. Sinha** reported in (1970) 2 SCC 458; and **Gian Singh Mann vs. High Court of Punjab and Haryana** reported in (1980) 4 SCC 266, has further explained the expression "public interest" in the context of compulsory retirement to refer to cases where the interest of public administration requires the retirement of a government servant who, with the passage of time, has prematurely ceased to possess the standard of efficiency and utility expected in government service.

(iii) The order of compulsory retirement dated 10.06.2019 is based upon non-existent material and the opinion of the Review Committee cannot supersede the satisfaction of the appointing authority.

(iv) The opinion to compulsorily retire the applicant was formed by the Review Committee, however, the approval of the prescribed “Appropriate Authority” i.e., the Appointments Committee of the Cabinet (ACC) was not obtained. Since the petitioner is an ACC appointee, such approval was mandatory under Fundamental Rule 56(j). Consequently, the opinion was not formed by the appropriate authority, rendering the action illegal.

(v) The Office Memorandums dated 10.05.1974, 21.03.2014 and 11.09.2015 mandate that an officer may be considered for screening only at the age of 50/55 years. For consideration at any other age, the Hon’ble Supreme Court in **State of U.P. vs. Chandra Mohan Nigam** reported in **(1977) 4 SCC 345** (paragraph 29) has held that there must be fresh or new material (post 50 years) relating to integrity. By operation of law and as per the mandatory scheme of Fundamental Rule 56(j), as clarified by the Hon’ble Supreme Court in various decisions, the fact that the petitioner continued in service till the age of 52.5 years clearly establishes that he had successfully cleared the mandatory screening at the age of 50 years, which is necessarily undertaken for all government servants as a statutory requirement.

(vi) While passing the judgment and order dated 20.02.2023, the learned Tribunal did not return any finding on the issues raised by the petitioner. Instead, it relied upon the judgment in **Captain Pramod Kumar Bajaj vs. Union of India and another** passed by the Hon’ble High Court on 31.05.2022 in Writ-A No.24856 of 2020, which was subsequently set aside by the Hon’ble Supreme Court on 03.03.2023 in Civil Appeal No.6161 of 2022. Thus, the judgment of the learned Tribunal is based upon a decision that stands overruled by the Hon’ble Supreme Court.

(vii) The impugned order of compulsory retirement dated 10.06.2019 lacks approval of the “Appropriate Authority”, as defined in Note-1 to

Fundamental Rule 56(j). On this ground alone, the order of compulsory retirement is void ab initio and in any case, deserves to be quashed as being vitiated by legal malice.

22. Having heard learned counsel for the parties, we proceed to examine the decision taken by the respondents to compulsorily retire the petitioner in the light of the statutory provisions governing compulsory retirement of a Government servant.

23. Fundamental Rule 56(j) is reproduced herein below :

CHAPTER IX

RETIREMENT

Fundamental Rule 56(a)

(j) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interests 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;

(1) 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:

Provided that nothing in this clause shall apply to a Government servant referred to in clause (c), who entered Government service on or before the 23rd July, 1966.

(j) (i) If on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority

ordering reinstatement may regulate the intervening period between the date of premature 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.

(ii) 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."

24. Fundamental Rule 56(j) provides that the appropriate authority has the absolute right to compulsorily retire a government servant. The term "Appropriate Authority" has been defined as the authority which has the power to make substantive appointments to the post or service. The Office Memorandum dated 30.05.2016, annexed as Annexure No.17 to the writ petition, issued under the subject "Strengthening of Administration-Periodical Review" clarifies that under Fundamental Rule 56(j), the "Appropriate Authority" is the authority competent to make substantive appointments. The Office Memorandum dated 30.05.2016 is reproduced herein below :

"DoP&T vide their O.M. dated 11.09.2015 has directed all the Ministries/Departments to conduct periodical review under FR 56 (j) and Rule 48 of

CCS (Pension) Rules to ascertain whether the Government servant should be retained in service or retired from Services in the Public interest.

1. FR 56 (j) and Rule 48 of CCS (Pension) Rules, 1972 provide as under :

FR 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, he has attained the age of 50 years.

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

Under FR 56, the "Appropriate Authority" has been defined as the authority which has the power to make substantive appointments to the post or service."

25. It is not disputed that the appointing authority of the petitioner is the President and the order of compulsory retirement has been issued by the President. Hence, the claim of the petitioner that no approval was taken from the competent authority before passing the order of compulsory retirement, is misconceived, as the President, being the appointing authority of the petitioner, has passed the order dated 10.06.2019.

26. Thus, the contention of learned counsel for the petitioner that approval of the Appointments Committee of the Cabinet (ACC) was required before passing the order of compulsory retirement dated 10.06.2019 is misconceived, as there is no such requirement stipulated in the Office Memorandum dated 11.09.2015 regarding approval of the ACC.

27. The contention of the petitioner that the procedure prescribed under the Office Memorandums dated 10.05.1974, 21.03.2014 and 11.09.2015 has not been followed is also misconceived. The Office Memorandum dated 11.09.2015, annexed as Annexure No.16 to the writ petition, provides in paragraph 3 that during every review, the entire service record of the concerned officer is required to be considered and the review should not be confined merely to the ACRs/APARs.

28. Paragraph 7 of the Office Memorandum dated 11.09.2015 further provides that the Secretaries of the Cadre Controlling Authorities shall constitute Review Committees consisting of two members at the appropriate level. It also stipulates that in the case of officers holding Group 'A' posts, the Review Committee may be headed by the Secretary of the concerned Ministry/Department, being the Cadre Controlling Authority, particularly in respect of ACC appointees. In the present case, the Review Committee which considered the petitioner's case for compulsory retirement was a two member committee headed by the Secretary (Revenue) and another member who was Chairman, Central Board of Direct Taxes in conformity with the requirements of paragraph 7 of the Office Memorandum dated 11.09.2015 governing the process of compulsory retirement. The Review Committee was assisted by Internal Committee members comprising of Pr. DGIT (HRD) as Chairperson, ADG (HRD-1 and ADG (Vig)-1 as member as required Paragraph 9 of Circular dated 11.09.2015. The Review Committee considered the entire service record of the petitioner including his ACRs/APARs, charge memos communicated as well as uncommunicated remarks, disciplinary cases etc. and recommended the compulsory retirement of petitioner which was accepted by the Appropriate Authority i.e. the President.

29. The contention of the petitioner that he has been targeted and victimized while passing the order of compulsory retirement dated 10.06.2019 is also misconceived. While undertaking the exercise of compulsory retirement, action was taken against 67 officers along with the petitioner by the Union of India. It is, therefore, not a case where the petitioner alone was singled out for such action. The due process was

followed, the matter was initially examined by the Review Committee, whose recommendation was considered and accepted by the Appointing Authority and thereafter the decision to compulsorily retire the petitioner was taken. The matter was again examined by the Representation Committee constituted by the Cabinet Secretary comprising of officers of the level of Secretary to Government of India, an officer of the level of Addl. Secretary/Joint Secretary to the Government of India and one Officer nominated from the Cadre-Controlling Authority of the officer concerned, which affirmed the order of compulsory retirement and rejected the petitioner's representation. The O. M. No.25013/01/2013-Estt. A-IV dated 01.03.2016 provides for the composition of Representation Committee which was duly adhered to while constituting the Representation Committee in the case of the petitioner. In these circumstances, it cannot be said that any malice was harboured against the petitioner. The allegation of arbitrariness is also misconceived, as the order of compulsory retirement was passed after following the due procedure prescribed under the Office Memorandum dated 11.09.2015 and in accordance with the statutory requirements contained in Fundamental Rule 56(j).

30. With regard to the satisfaction recorded by the Review Committee, we are of the opinion that as per the details contained in paragraph 7 of the written statement/counter affidavit filed before the learned Tribunal by the Union of India, which sets out the minutes of the decision-making process of the Review Committee, it cannot be said that the Review Committee arrived at its decision without any material basis. The Review Committee duly recorded its satisfaction before recommending the petitioner's compulsory retirement. The minutes of the Review Committee, as contained in paragraph 7 of the written counter affidavit, are reproduced herein below:

"Para-7 - At the outset it is submitted that the Review Committee had passed a reasoned order after examining the entire service records of the Applicant.

The Committee took note of the following facts and passed its reasoned order:

(i) On perusal of File F. No. DGIT(V)/EZ/COM/62/03 it was seen that a complaint was processed against the Applicant and which resulted in issuance of a charge sheet (DGIT(V)/DP/483/2013) dated 15.07.2013 for major penalty under Rule 14 of CCS (CCA) Rules. The Applicant was charged with carrying out a shoddy investigation in Tax Evasion Petition (TEP) relating to Sahara Group, while functioning as DDIT (inv. II), Lucknow. The Applicant was charged with sending a report to Higher Authorities even when the Inquiries were not concluded) The said report dated 30.05.2002 could have resulted in undue benefit to Sahara Group as the applicant had given a clean chit to the group. The investigation conducted by the Dept. showed that the officer had handled TEP in a shoddy manner and had not completed the inquiries diligently. However, the charge sheet was later quashed by CAT, Lucknow bench on technical grounds such as delay in processing the case. The manner in which the TEPS were taken up on priority by the Applicant raises suspicions about the whole episode. Thus, the committee was of the view that integrity of Shri Alok Kumar Mitra is doubtful.

(ii) The perusal of file F. No.DGIT(V)/NZ/COM/64/03 shows that a complaint received on 24.02.2003 from Ms. Rajlakshmi Verma, MLA, U.P. against Shri Alok Kumar Mitra, the then DDIT (Inv.), Lucknow and another officer was processed. It was alleged in the complaint that the applicant, the then Dy. Director of Income-tax (Inv.), Lucknow and another officer Ms.

Archana Chaudhary, the then Addl. Director of Income-tax (Inv.), Lucknow had misused their office and had been handling files in an improper manner. Allegations of lavish holidays abroad, possession of Benami properties in NOIDA/Delhi and illegal withdrawals from secret funds of Search Wing had been made in the complaint. It was alleged that the applicant and Ms. Chaudhary had managed their posting at Lucknow for more than nine years continuously. Hon'ble MLA also forwarded a report of the Director of Income Tax (Inv.), Kanpur dated 10/11/12.2002, addressed to DGIT(Inv.), North, Lucknow, wherein findings of both these officers of having misused their office were recorded.

(iii) The Review Committee had further noted that Six Tax Evasion Petition (TEP) cases, which were handled by these officers, were examined by the Department. In its report dated 10/11.12.2002, DIT (Inv.), Kanpur had stated that the TEPs in these six cases were not even entered in the Register and nor were forwarded to the Director of Income-tax (Inv.), Kanpur for categorisation as was required at that time. The TEPs in these six cases were taken up for enquiry out of turn while a large number of TEPs were pending unattended in the office of the Addl. DIT (Inv.), Lucknow for a long time at that moment. The report categorically pointed out the possibility of creating of these TEPS in the office of the Addl. DIT (Inv.), Lucknow with some ulterior motives. The manner in which the TEPs were dealt with clearly show malafide intention on the part of these two officers. Since both these officers were Group-A officers, DIT (Inv.) recommended to make a reference

to the DIT (Vig.) for taking necessary action at its end.

(iv) The DIT(Vig.), North & Dy. CVO, New Delhi, furnished a report to DGIT (Vig.) vide letter dated 23.09.2002 forwarded by Shri Ravi Gautam, the then Minister U.P. and complaint dated Nil by Mrs. Rajlakshmi Verma the then MLA UP. The allegations in the first complaint were found general in nature and found to be based on hearsay. Regarding the second complaint, the records of the TEPS were requisitioned and an inspection thereof indicated serious irregularities in handling of the said TEPS, which are listed as under :

(a) Failed to enter these TEPS in the TEP Register in complete defiance of the prescribed procedure/guidelines and also did not report these TEPS in the Prescribed format in the monthly report. Thus sought to hide the existence of these TEPS from higher authorities/CBDT;

(b) Issuance of inquiry letter/notice u/s 133(6), 135 and 136 of the Income Tax Act, 1961 without seeking approval of the competent authority in blatant contravention of the Income Tax Act, 1961.

(c) Directing the Assessee for personal appearance which was not required;

(d) Not processing the complaints of alleged undisclosed black money under the appropriate section of the IT Act or seeking the direction or guidance of the superior authority;

(e) Instead of conducting enquiry in secretive manner to unearth black money deliberately made the assessee aware of the inquiry with a malafide intention;

(f) Not taking any action for a considerable time after having received all the requisite information.

(v) Accordingly, the case was referred to CVC for its first stage advice on 13.07.2004 with a recommendation for initiation of major penalty proceedings against both these officers. The CVC, vide OM dated 28.07.2004, advised initiation of major penalty proceedings against the applicant and Ms. Chaudhary and also nominated Inquiry Officer in the case.

(vi) During that time, CBDT vide order dated 06.05.2004 transferred the jurisdiction of the cases pertaining to CCIT, Lucknow Charge to DIT(Vig.), East. Therefore, DIT(Vig), North recommended to delink both the complaints and open a new file for further investigation of the complaint of Mrs. Rajlakshmi Varma, the then MLA UP by DIT(Vig.), East who then held Jurisdiction over the case. In light of the fresh facts gathered in the subsequent investigation, the Minister of State for Finance (Revenue) gave approval to refer the case for reconsideration to the CVC with the recommendation for closure of the case against the applicant and for taking administrative action against the other officer. The complaint against the officer was closed on 09.05.2008 as per CVC'S OM No.004/ITX/086-65406 dated 17.08.2007.

(vii) Though the complaint was closed the committee noted that as per DOPT OM No.25013/01/2013-Estt. A-IV dated 11.09.2015 while considering the integrity of an employee, the action or decision taken by the employee which do not appear to be above board, complaints made against him, or suspicious property

transactions, for which there may be sufficient evidence to initiate departmental proceedings, may be taken into account. The committee noted that though the complaint was closed on the grounds that though the complaint did not specifically mention demand for illegal gratification and the applicant was transferred out before the finalisation of the TEP cases, the manner in which the TEPS were taken up on priority raises suspicions about the whole episode

(viii) The committee also examined the file F. No.DGIT (V)/NZ/VCR/01/18 wherein a complaint dated 24.01.2011 made by Shri Zubair, Partner M/s Metro Cargo Carriers, Lucknow, against the applicant, Addl. CIT, Lucknow and Ms. Ranu Biswas, DCIT, Lucknow was processed. It was alleged that the assessment was getting barred on 31.12.2010 but Ms. Ranu Biswas obtained signatures of his Advocate Shri K.S. Rastogi on a bank acknowledgement slip on 21.12.2010. It was alleged that Ms. Ranu Biswas demanded Rs.50 lacs to complete the case of without any tax demand. The complainants advocate was shown a copy of the unsigned assessment order mentioning an addition of Rs.38.06 crores. It was also alleged that Ms. Ranu Biswas conveyed the same to the complainant by using the mobile phone of the advocate Shri K.S. Rastogi. It was alleged that when the complainant expressed his inability to pay Rs.50 lacs Ms. Ranu Biswas offered that this amount could be split in two Installments. When the assessee expressed his inability to pay even in two installments. Ms. Ranu Biswas advised the advocate to file a rectification application, which she will accept in case the complainant is able to pay.

(ix) *An inspection of the file was done by Addl. CIT, Range 5, who commented adversely about the quality of the order. It was noted that the addition made were legally untenable, poorly investigated and did not deal with the assessee's submissions. It was found that the additions made by Ms. Ranu Biswas were based on incomplete investigation. It was also noted that during appellate proceedings, the case was remanded to the AO for verification and the AO conducted necessary enquiries and verified the claims of the assessee and found the same in order as per the evidences and books of account. Thus the allegation regarding high pitched assessments in this case, without any valid reasons, was found to be true. Both the above noted additions have been deleted by CIT(A) and ITAT as the additions were found to be not sustainable as per law.*

(x) *It was also noted that the matter was brought to the notice of the Addl. CIT being the applicant, who failed to supervise the AO in ensuring proper investigation and appreciation of facts and evidences filed by the assessee. It was held that the Applicant failed in his supervisory duty. The matter was referred to CVC and no action has been recommended by the CVC in their advice tendered vide CVC OM No.018/ITX/041-415794 dated 09.04.2019.*

(xi) *The committee was of the view that when an irregularity of his subordinate was brought to the notice of the applicant, it was his responsibility to ensure that the assessment order was passed as per the provisions of IT Act.*

(xii) *The Committee also noted that the applicant failed to act on a complaint of bribery against his*

subordinate Ms. Ranu Biswas which resulted in a high-pitched assessment order being passed and caused undue harassment to the taxpayer. Thus, the applicant proved to be an ineffective supervisory officer and the complaint raises serious doubts about his integrity. The committee observed that even though the disciplinary proceedings and the complaints against the applicant have been closed, the facts on record raise serious doubts about his integrity. Further he has also proved to be ineffective as brought out by his inaction in the complaint of bribery against Ms. Ranu Biswas,"

31. In the case of **Baikuntha Nath Das vs. District Medical Officer** reported in **(1992) 2 SCC 299**, Hon'ble Supreme Court summarized the principles governing compulsory retirement. The same are recorded in Paragraph 34 of the judgment, which is reproduced herein below :

"34. The following principles emerge from the above discussion:

(1) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(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.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."

32. The contention of learned counsel for the petitioner that the charge sheet could not have been taken into consideration by the Review Committee as it had been quashed by the learned Central Administrative Tribunal, Lucknow vide judgment and order dated 09.04.2018 passed in Original Application No.332/00353/2013, is also misconceived. The learned Central Administrative Tribunal, Lucknow quashed the charge sheet primarily on the ground of delay of issuance of charge sheet after 11 years and on merits, it has been observed by learned Central Administrative Tribunal, Lucknow that to maintain any charge sheet against a quasi judicial authority, something more has to be alleged than a mere mistake of law and an inquiry would be a farcical exercise. This Court is of the view that the Review Committee is required to scrutinize

the entire service record and can not be precluded from looking into the allegations which may from the basis of the charge sheet, even though the charge sheet has been quashed in relation to disciplinary proceedings. It is open for the Review Committee to consider such allegations while scrutinizing the service record of the petitioner for the purpose of compulsory retirement. The Paragraphs 5 and 6 of Office Memorandum dated 11.09.2015 are relevant in these circumstances and are reproduced herein below :

“5. As far as integrity is considered, the following observations of the Hon'ble Supreme may, while upholding compulsory retirement in a case, may be kept in view :

The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest.

S. Ramachandra Raju vs. State of Orissa

[1994] 3 SCC 424]

Thus while considering integrity of an employee, actions or decisions taken by the employee which do not appear to be above board, complaints received against him, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, may be taken into account.

Judgment of the Apex Court in the case of Shri K. Kandaswamy I.P.S. (TN: 1966) in K Kandaswamy vs Union Of India & Anr. 1996 AIR 277, 1995 SCC (6) 162 is relevant here. There were persistent reports of Shri Kandaswamy acquiring large assets and of his

getting money from his subordinates. He also indulged in property transactions which gave rise to suspicion about his bonafides. The Hon'ble Supreme Court upheld his compulsory retirement under provisions of the relevant Rules.

6. *Similarly, reports of conduct unbecoming of a Government servant may also form basis for compulsory retirement. As per the Hon'ble Supreme Court in State Of U.P. And Others vs Vijay Kumar Jain, Appeal (civil) 2083 of 2002:*

If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest.”

33. Upon going through the minutes of the Review Committee as recorded hereinabove, we are satisfied that the decision taken by the Review Committee is based upon the subjective satisfaction of the Review Committee and it cannot be said that the same is based on no evidence. The Review Committee scrutinized the entire service record of the petitioner, as required under the Office Memorandum dated 11.09.2015. The earlier service record of the petitioner outweighed the later part of his service record, favouring him.

34. The reliance placed by the petitioner on the judgment rendered by Hon'ble Supreme Court in the case of **Captain Pramod Kumar Bajaj vs. Union of India and another**, decided on 03.03.2023 in Civil Appeal No.6161 of 2022, is also of no avail. In the said case, the Hon'ble Supreme Court took into consideration the fact that Captain Pramod Kumar Bajaj (Supra) was due to retire within one year at the time the order of compulsory retirement was passed. The said decision, therefore, turned on its own facts and is distinguishable from the present case.

35. The facts of the present case are distinguishable as the petitioner has been compulsorily retired after following due process and well before attaining the age of superannuation. Therefore, the judgment in **Captain Pramod Kumar Bajaj (Supra)** cannot be of any assistance to the petitioner.

36. The judgment rendered by Hon'ble Supreme Court in the case of **Suryakant Chunilal Shah (Supra)** is also of no help to the petitioner, as the minutes of the Review Committee, recorded hereinabove, reflect that there was sufficient material before the Review Committee for its subjective satisfaction to reach the conclusion recommending the compulsory retirement of the petitioner.

37. Learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in **Suryakant Chunilal Shah (Supra)** to contend that there was no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries. Reliance was also placed on paragraph 11 of the judgment of Hon'ble Supreme Court in **Umedbhai M. Patel (Supra)**, wherein the law relating to compulsory retirement has been summarized, to contend that adverse entries prior to promotion cannot be taken into consideration for compulsory retirement.

38. The aforesaid contention of the petitioner is misconceived, as Hon'ble Supreme Court in the case of **Umedbhai M. Patel (Supra)** has held that such a factor operates in favour of the officer, meaning thereby that it is not absolute principle of law that adverse material prior to promotion cannot be taken into consideration by the Review Committee.

39. A three judge Bench of Hon'ble Supreme Court in the case of **State of Punjab vs. Gurdas Singh** reported in **(1998) 4 SCC 92** 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. Hon'ble Supreme Court has held as under :

"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."

40. Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation and others vs. Babu Lal Jangir** reported in **(2013) 10 SCC 551** has observed that :

"22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [(2000) 8 SCC 395: 2001 SCC (L&S) 13: (2000) 6 Scale 618] is not correct and the observations of this Court in Gurdas Singh ((1998) 4 SCC 92: 1998 SCC (L&S) 1004: AIR 1998 SC 1661) to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [(2010) 10 SCC 693: (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the

case of the government employee is to be considered for further promotion. However, this "washed-off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant."

(Emphasis supplied by us)

41. Hon'ble Supreme Court in the case of **Ram Murti Yadav vs. State of Uttar Pradesh and another** reported in **(2020) 1 SCC 801** has held that the scope for judicial review of an order of compulsory retirement, based on the subjective satisfaction of the employer, is extremely narrow and restricted and the Court, in judicial review, cannot sit in judgment over the same as an appellate authority. Paragraph 6 of the said judgment is quoted herein below :

"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."

42. Thus, we are of the opinion that the judgment and order dated 20.02.2023 passed by the learned Central Administrative Tribunal, Lucknow in Original Application No.332/00450/2019 "Alok Kumar Mitra vs. Union of India" as well as the order dated 10.06.2019 whereby the petitioner was compulsorily retired from the Indian Revenue Service by invoking Fundamental Rule 56(j) from the post of Commissioner of Income Tax and the order dated 16.08.2019 rejecting the petitioner's representation against the order of compulsory retirement, do not suffer from any illegality or infirmity. The petitioner has been compulsorily retired after following the due process of law and in accordance with the recommendation of the Review Committee.

43. This Court is of the view that there was sufficient material before the Screening/Review Committee to record its subjective satisfaction, which cannot be substituted by this Court while exercising the power of judicial review under writ jurisdiction, as held by the Hon'ble Supreme Court in a catena of judgments. Accordingly, the writ petition is liable to be dismissed.

44. The writ petition is **dismissed**.

45. No order as to costs.

(Amitabh Kumar Rai,J.) (Mrs. Sangeeta Chandra,J.)

February 02, 2026

Mahesh