Case Citation: (2023) taxcode.in 82 SC

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6161 OF 2022

CAPTAIN PRAMOD KUMAR BAJAJ ..... APPELLANT

Versus

UNION OF INDIA AND ANOTHER ..... RESPONDENTS

J U D G M E N T

HIMA KOHLI, J.

1. The appellant is aggrieved by the judgment dated 31st May, 2022 passed by the High Court of Judicature at Allahabad, Lucknow Bench upholding the order dated 9th December, 2020 passed by the Central Administrative Tribunal[1], Principal Bench, that had turned down the challenge laid by him to an order dated 27th September, 2019, passed by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India communicating the decision of the President of India to compulsorily retire him, in exercise of powers conferred under Rule 56(j) of the Fundamental Rules[2].

1 For short 'Tribunal'
2 For short 'FR 56(j)'

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FACTS OF THE CASE

2. The present case has a chequered history with multiple rounds of litigations spewed between the appellant and the respondents. To have an overview of the matter, we may briefly refer to some facts relevant for deciding the present Appeal. The appellant was a Permanent Commissioned Officer in the Indian Army, inducted in the year 1980. Due to a physical disability suffered by him in the course of Army operations, he was demobilized and released from service. In the year 1989, the appellant qualified the Civil Services Examination. He was appointed as an Officer and allocated to the 1990 Batch in the Indian Revenue Service. In due course of his service, the appellant was promoted to higher posts and on 12th January, 2012, he was promoted to the rank of Commissioner, in the Department of Income Tax. On 7th July, 2014, the appellant was selected and empanelled for appointment as a Member of the Income Tax Appellate Tribunal[3] by the Selection Committee headed by a sitting Judge of the Supreme Court nominated by the then Chief Justice of India. On 15th July, 2015, the respondents forwarded the name of the appellant to the Appointments Committee of the Cabinet[4] along with his vigilance clearance for appointment as Member (Accountant), ITAT. In the year 2016, the appellant was empanelled by the ACC for appointment as Joint Secretary to the Government of India. From the year 2017 onwards, started a saga of litigations between the appellant and the respondents, as a result whereof, his appointment as a Member of the ITAT, did not mature.

3. The first hurdle he faced was an adverse Intelligence Bureau[5] report. This made the appellant approach the Tribunal for relief. *Vide* judgment dated 10th February, 2017, the Tribunal disposed of the Original Application filed by the appellant with a direction issued to the respondents to resubmit his adverse IB Report to the Selection Committee for it to take a final

3 For short 'ITAT'
4 For short 'ACC'
5 For short 'IB'

view on his appointment to the subject post. The said judgment passed by the Tribunal was assailed by the respondents in a writ petition before the High Court, which came to be dismissed on 30th May, 2017, with further directions issued to make the entire process of reconsideration of the appellant's candidature by the Selection Committee, timebound. The Petition for Special Leave to Appeal preferred by the respondent – Union of India against the order dated 30th May, 2017 passed by the High Court, was also dismissed by this Court on 15th November, 2017.

4. On 29th November, 2017, a vigilance inspection was carried out in the office of the appellant. Based on the said vigilance inspection, the respondents issued a show cause notice to him on 31st January, 2018. Ten days before that, on 21st January, 2018, the vigilance clearance earlier granted in favour of the appellant, was withheld by the respondents. Both the aforesaid orders were assailed by the appellant by filing separate Original Applications before the Tribunal. Initially, an interim order was passed by the Tribunal observing that the show cause notice issued by the respondents would not impede the appellant's consideration for appointment to the post of Member, ITAT. On 4th May 2018, another interim order was passed by the Tribunal, observing that withholding of the vigilance clearance of the appellant will not come in his way for appointment to the subject post. In the interregnum, on 11th April, 2018, the appellant was placed in the "Agreed List", which is a list of Gazetted Officers of suspect integrity prepared by the Department. Pertinently, a second Petition for Special Leave to Appeal filed by the respondents against the interim relief granted by the Tribunal in favour of the appellant and duly confirmed by the High Court in WP (C) No. 22179-22187 of 2018 on 06.08.2018, was dismissed by this Court on 29.03.2019.

5. Aggrieved by the aforesaid action taken by the respondents of placing his name in the Suspect List, the appellant approached the Tribunal for a third time and in the said proceedings, an interim order was granted in his favour. Finally, *vide* common judgment dated 6th March, 2019,

the Tribunal allowed two Original Applications filed by the appellant [O.A. No.137 of 2018 and O.A. No.279 of 2018], quashing inclusion of his name in the "Agreed List" and the consequential proceedings as also the decision taken by the respondents to deny him vigilance clearance. The Tribunal also directed the respondents to forward the name of the appellant to the appropriate Authority for selection/appointment to the post of Member, ITAT. However, the respondents did not comply with the said order and filed a writ petition before the High Court. Admittedly, no interim order was passed by the High Court staying the operation of the judgment dated 06th March, 2019, passed by the Tribunal.

6. Aggrieved by the non-compliance of the order dated 30th May, 2017, passed by the High Court in his favour, the appellant filed a contempt petition before the High Court. *Vide* order dated 13th August, 2019, the High Court permitted impleadment of the then Chairman of the Central Board of Direct Taxes[6] in the contempt petition and issued him a notice to show cause as to why he should not be punished for wilful disobedience of the order dated 30th May, 2017, passed in the writ proceedings.

7. Similar notices were issued by the Tribunal on two contempt petitions filed by the appellant against the respondents for non-compliance of the orders dated 30th May, 2017 and 6th March, 2019. In the meantime, the respondents initiated disciplinary proceedings against the appellant by issuing him a chargesheet on 17th June, 2019. In July 2019, a Departmental Promotion Committee[7] was convened by the Union Public Service Commission[8] to consider promoting the appellant to the post of Principal Commissioner but the decision taken *qua* him, was placed in the sealed cover due to the pending disciplinary proceedings. The appellant had filed a writ petition before the High Court against the charge memorandum issued to him wherein

6 For short 'CBDT'
7 For short 'DPC'
8 For short 'UPSC'

the High Court granted stay orders in his favour. While the said proceedings were still pending, the respondents proceeded to compulsorily retire the appellant on 27th September, 2019, which was about three months short of the date of his superannuation in January 2020. The list of promotions made to the post of Principal Commissioner was declared on 11.11.2019, by which date the appellant was no longer in the reckoning.

8. It may be noted here that the mechanism in place within the department for arriving at a conclusion as to who amongst the Group-A Officers in the CBDT deserve to be prematurely retired, starts with an assessment to be conducted by the Internal Committee that identifies and recommends the names of the officers and places it before the Review Committee. The next stage is before the Review Committee that includes the Chairman, CBDT and the Revenue Secretary as Members. If satisfied by the records and comments forwarded by the Internal Committee that the pre-mature retirement of a Group-A Officer is desirable in public interest, the Review Committee makes a recommendation to the Appointing Authority in this regard. The Appointing Authority is then required to examine the recommendations of the Review Committee and if satisfied, pass an order of pre-mature retirement of the concerned Officer. Once the Competent Authority passes an order of pre-mature retirement under FR 56(j), the aggrieved Officer is entitled to submit a representation to the Representation Committee. As per the records, the appellant had submitted a representation to the Representation Committee, which was turned down on 2nd January 2020.

9. The appellant challenged the final order of compulsory retirement issued against the appellant on 27th September, 2019 and the subsequent order dated 2nd January, 2020, passed by the Representation Committee declining to interfere in the order of compulsory retirement, before the Tribunal. The said petition was dismissed, *vide* judgment dated 9th December, 2020 and upheld by the High Court by the impugned judgment dated 31st May, 2022.

THREEFOLD CHALLENGE

10. A threefold challenge has been laid by the appellant to the impugned judgment. Firstly, on the ground of serious prejudice caused to him due to the active participation of the Additional Director General (Vigilance) as a Member of the Internal Committee when he had a bias against the appellant and the participation of the then Chairman of the CBDT in the meeting of the Review Committee, convened to examine the recommendations of the Internal Committee for pre-maturely retiring him, when he ought to have recused himself knowing that he was facing three contempt notices, one issued by the High Court on 13th August, 2019 [Contempt Petition No.2681/2017] and two notices issued by the Tribunal [CCP No.15/2019 and CCP No.25/2019] for failing to forward the appellant's vigilance clearance required for processing his case for appointment as Member, ITAT, to the Selection Committee. Secondly, it has been argued that the impugned order of his pre-mature retirement is punitive in nature and has been passed solely to deprive him of an opportunity to be appointed as Member ITAT, a post for which he was selected by the Selection Committee headed by a sitting Judge of the Supreme Court and his name was placed at Serial No.1 in the All India Ranking, as long back as in the year 2014. This selection of the appellant was reiterated by a subsequently constituted Selection Committee in the year 2018, but did not reach fruition due to persistent obstructions created by the respondents, who withheld his vigilance clearance without a valid reason and subsequently placed his name in the "Agreed List", followed by initiation of a disciplinary enquiry against him on baseless charges which was not taken to its logical conclusion, as he was prematurely retired in September, 2019. Lastly, it was urged that the High Court has completely overlooked the fact that all the Annual Performance Assessment Reports[9] of the appellant over the past 30 years were blemishless. In fact, the appellant was graded as *'Outstanding'* and his integrity was assessed as *'Beyond Doubt'* for the

9 For short 'APAR'

immediately preceding 10 years' APARs, after he was promoted to the post of Commissioner, Income Tax in the year 2012.

SUBMISSIONS MADE BY THE COUNSEL FOR THE UNION OF INDIA

11. Refuting the allegations levelled by the appellant and defending the impugned judgment, Mr. Sanjay Jain, learned Additional Solicitor General[10] who appeared for the respondents – Union of India urged that the impugned judgment is a well-reasoned one and does not deserve interference; that the order of compulsory retirement was passed in the case of the appellant after duly considering his entire service record; that the material relied upon by the respondents for passing an order under FR 56(j), was carefully considered by the Tribunal before dismissing the Original Application filed by the appellant, as meritless and that the allegations of institutional malice and bias levelled by the appellant are ill-founded. Learned ASG contended that unlike departmental enquiries, the scope of an enquiry under FR 56(j) is fairly limited and the standard of adjudication is *prima facie* a subjective opinion as to the suitability of an officer to continue in service, keeping in mind public interest. No stigma can be attached to an employee who is compulsorily retired, as compulsory retirement does not amount to dismissal or removal. The appellant is still entitled to all retiral benefits and also entitled to be considered for other appointments. It was stated that a chargesheet was pending against the appellant for major penalty proceedings which had been unsuccessfully challenged by him before the Tribunal. Citing several decisions of this Court on the limited scope of interference in an order of compulsory retirement, it was submitted on behalf of the respondents – Union of India that courts should ordinarily refrain from returning findings on merits of the allegations against the concerned officer. Once an order of compulsory retirement has been passed *bona fide* and without any extraneous motive, there is no justification for interference.

10 For short 'ASG'

ANALYSIS AND CASE LAWS RELATING TO COMPULORY RETIREMENT

12. We have given our thoughtful consideration to the arguments advanced by learned counsel for the parties, perused the records and the judgments cited by both sides.

13. The provision of Fundamental Rule 56(j) reads as under:

> "FR 56(j) :- The Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice :-
>
> (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
>
> (ii) In any other case after he has attained the age of 55 years.

14. As is apparent from a perusal of the aforesaid provision, it takes in its fold two elements – the first one is the absolute right of the Government to retire an employee and the second is the requirement of meeting the condition of public interest for doing so. The provision also provides for a prior notice of at least three months to the outgoing employee and mandates that the said provision can be invoked to retire a government servant only after he has attained the age of 55 years.

15. We are conscious of the fact that the scope of judicial review in respect of an order of compulsory retirement from the service, is fairly limited. The law relating to compulsory retirement has been the subject matter of discussion in a number of cases where certain settled legal principles have been laid down which are being elucidated hereinbelow.

16. The object of compulsory retirement of a government servant was highlighted by this Court in **Allahabad Bank Officers' Association and Another vs. Allahabad Bank and Others**[11] in the following words: -

11 1996(4) SCC 504

"5. **The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the deed wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration**. Generally speaking, Service Rules provide for compulsory retirement of a government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held – and there is no duty to hold an enquiry – is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in *Shyam Lal v. State of U.P.* and *State of Bombay v. Saubhagchand M. Doshi*. Thus, by its very nature the power to compulsorily retire a government servant is dismissal etc. for misconduct. A government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences."

"…….

17. The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the Government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the Government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether

> the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it."
> [*emphasis added*]

17. In **Union of India v. Col. J.N. Sinha and Another**[12] it has been observed that :

> "Fundamental Rule 56(j) does not in terms require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. It says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. If that authority *bona fide* forms that opinion the correctness of that opinion cannot be challenged before courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

18. On similar lines were the observations made by this Court in **Swami Saran Saxena v. State of U.P.**[13] :-

> "3. Several contentions have been raised in this appeal by the appellant, who appears in person. In our judgment, one of them suffices to dispose of the appeal. The contention which has found favour with us is that on a perusal of the material on the record and having regard to the entries in the personal file and character roll of the appellant, it is not possible reasonably to come to the conclusion that the compulsory retirement of the appellant was called for. This conclusion follows inevitably from the particular circumstances, among others, that the appellant was found worthy of being permitted to cross the second efficiency bar only a few months before. Ordinarily, the court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a government servant. And we would have been even more reluctant to reach the conclusion we have, when the impugned order of compulsory retirement was made on the recommendation of the High Court itself. But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second efficiency bar the appellant was considered to have worked with distinct ability and with integrity beyond question yet within a few months thereafter he was found so unfit as to deserve compulsory retirement. The entries in between in the records pertaining to the

12 (1970) 2 SCC 458

13 (1980) 1 SCC 12

> appellant need to be examined and appraised in that context. There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed. The appellant will be deemed to have continued in service on the date of the impugned order.

19. In **Baldev Raj Chadha v. Union of India**[14]**,** emphasizing the fact that exercise of powers under Fundamental Rule 56(j) must be *bona fide* and promote public interest, this Court observed that : -

> "25. The whole purpose of Fundamental Rule 56(j) is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. But under the guise of 'public interest' if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. The exercise of power must be *bona fide* and promote public interest."
>
> 26. "An officer in continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement cannot be compulsorily retired on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms."

20. In **Ram Ekbal Sharma v. State of Bihar and Another**[15] it was observed that in order to find out whether an order of compulsory retirement is based on any misconduct of the government servant or the said order has been made *bona fide*, without any oblique or extraneous purpose, the veil can be lifted. Following are the pertinent observations made in the said decision:

> "32. **On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant**

14 (1980) 4 SCC 321
15 (1990) 3 SCC 504

> **who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes**. Mere form of the order in such case cannot deter the court from delving into the basis of the order if the order in question is challenged by the concerned government servant as has been held by this Court in 'Anoop Jaiswal case'. This being the position the respondent-State cannot defend the order of compulsory retirement of the appellant in the instant case on the mere plea that the order has been made in accordance with the provisions of Rule 74(b)(ii) of the Bihar Service Code which prima facie does not make any imputation or does not cast any stigma on the service career of the appellant. But in view of the clear and specific averments made by the respondent-State that the impugned order has been made to compulsorily retire the appellant from service under the aforesaid rule as the appellant was found to have committed grave financial irregularities leading to financial loss to the State, the impugned order cannot but be said to have been made by way of punishment. As such, such an order is in contravention of Article 311 of the Constitution of India as well as it is arbitrary as it violates principles of natural justice and the same has not been made bona fide.
>
> [*emphasis added*]

21. In **State of Orissa and Others vs. Ram Chandra Das**[16] this Court observed as follows: -

> "It is needless to reiterate that the settled legal position is that the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or who are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking the decision to retire a government employee compulsorily from service, has to consider the entire record of the government servant including the latest reports."

22. In **State of Gujarat and Another vs. Suryakant Chunilal Shah**[17], a case where the State Government had challenged the judgment of the Division Bench of the High Court of Gujarat that

16 (1996) 5 SCC 331

17 (1999) 1 SCC 529

had held that the order of compulsory retirement passed against the respondent therein was bad, as there were no adverse entries in his Confidential Report and his integrity was not doubtful at any stage, this Court held thus : -

> "28. There being no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries, the integrity was not doubted at any time, the character roll subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) were not available, it could not come to the conclusion that the respondent was a man of doubtful integrity nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily from service. The order, in the circumstances of the case, was punitive having been passed for the collateral purpose of his immediate removal, rather than in public interest."

23. In **State of Gujarat vs. Umedbhai M. Patel**[18], this Court has delineated the following broad principles that ought to be followed in matters relating to compulsory retirement : -

> "11. The law relating to compulsory retirement has now crystallized into a definite principle, which could be broadly summarized thus:
>
> (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
> (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
> (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having the regard to the entire service record of the officer.
> (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
> (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
> (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
> (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
> (viii) Compulsory retirement shall not be imposed as a punitive measure.

18 (2001) 3 SCC 314

24. In **Nand Kumar Verma v. State of Jharkhand and Others**[19] this Court has once again highlighted the permissibility of ascertaining the existence of valid material by a Court for the authorities to pass an order of compulsory retirement and observed thus: -

> "34. **It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based**. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy……."
> [emphasis added]

25. In a recent judgment in the case of **Nisha Priya Bhatia v. Union of India**[20]**,** confronted with the question as to whether action taken under Rule 135 of the Research and Analysis Wing (Recruitment Cadre and Service) Rules, 1975 is in the nature of "a penalty or a dismissal clothed as compulsory retirement" so as to attract Article 311 of the Constitution of India, this Court has held that "*the real test for this examination is to see whether the order of compulsory retirement is occasioned by the concern of unsuitability or as a punishment for misconduct".* For drawing this distinction, reliance has been placed on the judgment in **State of Bombay v. Saubhag Chand M. Doshi**[21], where a distinction was made between an order of dismissal and order of compulsory retirement in the following words :

> **"**9 … Under the rules, an order of dismissal is a punishment laid on a government servant, when it is found that he has been guilty of

19 (2012) 3 SCC 580
20 (2020) 13 SCC 56
21 AIR 1957 SC 892

> misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the rules would have accrued in respect of the service already put in.
>
> An order of removal also stands on the same footing as an order of dismissal, and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment, one who is removed is. **An order of retirement differs both from an order of dismissal and an order of removal, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit."** [emphasis added]

EXAMINATION AND ANALYSIS OF THE CASE ON HAND

26. We may now proceed to examine the facts of the case in hand in the light of the case laws discussed above in order to find out as to whether the order of compulsory retirement passed by the respondents in respect of the appellant was based on valid material and was in public interest. First, we propose to examine the personal file and character roll of the appellant. As per the material placed on record, the APARs of the appellant reflect that over the past several years, his integrity was being regularly assessed as "*Beyond doubt*" and this remained the position till as late as 31st July, 2019, when his work performance was assessed for the period from 1st April, 2018 to 31st March, 2019 and found to be upto the mark. In his APARs for the past one decade, till the period just prior to the order of his premature retirement, the respondents were consistently grading the appellant as "*Outstanding*". No adverse entries were made by his superiors in the APARs of the appellant insofar as his work performance was concerned. No aspersion was cast either on his conduct or character during all this period. As per the service records, his efficiency and integrity remained unimpeachable throughout his career. The inference drawn from the above is that the appellant's service record being impeccable could not have been a factor that went against him for the respondents to have compulsorily retired him.

27. Coming next to the stand taken by the respondents that several complaints were received against the appellant that had cast a cloud on his integrity, it is noteworthy that the respondents have referred to nine complaints against the appellant, stated to be pending in the Vigilance Directorate that have been pithily summarized by the Tribunal in a tabulated format in para 30 of its judgment dated 6th March, 2019. Juxtaposed against the said tabulated statement of complaints listed by the respondents, is a separate tabulation of the response of the appellant to each of the said complaints. For ready reference, the two tables of contents are extracted below :-

S. No.	Name of officer		Status
1	Sh. P.K. Bajaj Addl CIT, Range 6 (2), Mumbai	Shri O.P. Jangre	Charges of harassment & interference in work by subordinate officer Shri Jangre on Shri P.K. Bajaj Under Examination.
2	Sh. P.K. Bajaj, CIT E, Lucknow		**Closed dated 03.05.2018**
3	Sh. P.K. Bajaj, CIT E, Lucknow	Complaint made by Driving Training and Scientific Research Lucknow in January 2016	Under examination
4	Sh. P.K. Bajaj, CIT E, Lucknow	Sh. Dharam Veer Kapil IFS Retd Dated 17.10.2017	ID issued dated 13.11.17. ID responded dt. 18.11.17 under examination
5	Sh. P.K. Bajaj, CIT E, Lucknow	Sh. Balesh Singh, through PMOPG/E2017/0597795 dated 17.11.17	ID issued dated 27.12.17
6	Sh. P.K. Bajaj, CIT (Exemption), Lucknow	Shri Ashok Verma, Lucknow	ID issued dated 08/04/16. Reminder dated 11.05.16. ID neither responded nor received back date. **Closed dated 19.07.16**

7	Sh. P.K. Bajaj, CIT E, Lucknow	Sh. Jagat Pandey, 28/42, Civil Lines, Bareilly, U.P. Dated 29.06.16	ID issued dated 03.08.16 Reminder dated 09.09.16 letter received back undelivered till date. **Closed dated 07.10.16.**
8	Shri Pramod Bajaj, CIT (Exemption), Lucknow	Sh. Ashish Rastogi, A 70, Gandhi Nagar, Prince Road Muradabad, U.P.	ID issued dated 25.02.16. Reminder dated 11.05.16. ID Neither received back nor responded. **Closed dated 29.08.16.**
9	CAPT. P.K. Bajaj Addl. CIT	Smt. Renu Bajaj W/o Capt P.K. Bajaj	Letter dated 28.01.15 to CIT, Ajmer for providing information on case in court matter. A letter to Pr. CCIT, Jaipur for status report dated 20.01.16 & reminder dated 28.09.16 sent.

Response of the Appellant

S. No.	Name of officer		Status	5. Facts as per petitioner
1	Sh. P.K. Bajaj Addl. CIT,	Sh. O.P. Jangre		No explanation ever called for from petitioner in last 13 years in this regard. Shri S.K. Jangre was arrested by ACB/CBI on 12.12.15, and is under suspension. (Annexure No.A1).
2	Sh. P.K. Bajaj CIT (E), Lucknow	Blank/	**Closed dated 03.05.18**	No details mentioned
3	Sh. P.K. Bajaj CIT (E), Lucknow	Complaint made by Driving Training and Scientific Research Lucknow in January 2016	Under Examination	File taken for inspection on 03.02.2016 returned after 17 months on 09.08.2017 with the remarks that this record is no longer required and matter closed by ADG(VIG)(NZ on 10.02.16. (Annexure no.A2) (ii) NBW issued by Ld. CJM Lucknow against complainant

				(Annexure no.A3)
4	Sh. P.K. Bajaj CIT (E), Lucknow	Sh. Dharam Veer Kapil IFS Retd Dated 17.10.2017	ID issued dt. 13.112017 ID responded dt. 18.11.17. under examination	Father in Law of Mrs. Naina Kapil So in, IRS posted earlier in DG(V) office Delhi. (ii) Application rejected because even PAN was not provided in spite of two opportunities given (copy of order as Annexure No.A4)
5	Sh. P.K. Bajaj CIT (E), Lucknow	Sh. Balesh Singh, through PMOPG/E2017/0597795 dated 17.11.17	ID issued dt. 27/12/17	No details provided by Respondents. No query ever raised till date.
6	Sh. P.K. Bajaj CIT (Exemption), Lucknow	Shri Ashok Verma, Lucknow	ID issued dt. 08/04/16 Reminder dt. 11.05.16 ID neither responded nor received back undelivered till dated **Closed dt./19.7.16.**	Fictitious/Pseudo anonymous complaint. Still connected files taken during inspection on 29.11.2017.
7	Sh. P.K. Bajaj CIT (Exemption), Lucknow	Sh. Jagat Pandey, 28/42, Civil Lines, Bareilly, U.P. Dated 29.06.16	ID issued dated 03.08.16 Reminder dt. 09.09.16. ID letter received back undelivered. **Closed/dt.07.10.16.**	Fictitious/Pseudo anonymous complaint still connected files taken during inspection on 29.11.2017
8	Sh. P.K. Bajaj CIT (Exemption), Lucknow	Sh. Ashish Rastogi, A 70, Gandhi Nagar, Prince Road Muradabad, U.P.	ID issued dated 25.02.16 reminder dated 11.05.16. ID neither received back nor	Fictitious/Pseudo anonymous complaint still connected files taken during inspection on 29.11.2017.

			responded. **Closed Dt/29.08.16**	
9	Sh. P.K. Bajaj Addl. CIT	Smt. Renu Bajaj W/o Capt P.K. Bajaj	Letter dt. 28.01.15 to CIT, Ajmer for providing information on case in court matter. A letter to Pr. CCIT Jaipur for status report dt. 20.1.16 & reminder dt. 28.09.16 sent	Divorced on 31.05.2008. No query ever raised by DGIT (V) till date but copies of Hon'ble SC/HC orders handed over to DGIT (V) on 21.03.2018 (old settled matrimonial dispute), but still kept pending by DGIT (V) (copy as Annexure No. A5)

28. As can be seen from the above, out of the aforesaid nine complaints, four complaints mentioned at Sr. Nos. 2, 6, 7 and 8 had already been closed by the department in the year 2016-2017. With regard to the complaint listed at Sr. No.1, is stated to have been levelled by another officer of the department against the appellant, relating to harassment and interference in work. The Tribunal has noted the submission of the appellant, which has gone unrefuted that the Anti-Corruption Bureau of the Central Bureau of Investigation[22] had at a later date, arrested the said officer on charges of corruption. The appellant has also stated in the remarks column that no explanation had ever been called for from him on the said complaint, status whereof is shown as "Under examination". In respect of the complaints at Sr. Nos. 3 and 4, the respondents have stated that they are "Under examination". In reply, the appellant has stated that the complaint at Sr. No.3, of the year 2016 was closed by the ADG (Vigilance)(NZ) on 10th February, 2016 and the complaint at Sr. No.4, made by a relative of an officer within the Department, was rejected because the complainant did not provide his PAN number despite being afforded two

22 For short ' CBI'

opportunities. There is no rebuttal to the said assertions. Coming to the complaint at Sr. No. 5, the Review Committee constituted by the respondents has recorded the status of the said complaint as having been closed on 22nd January, 2019. This is apparent from a perusal of para 26 of the judgment dated 09th December, 2020, passed by the Tribunal. Now remains the complaint at Sr. No.9, which was made by the appellant's ex-wife alleging bigamy, moral turpitude etc. against the appellant. In the remarks column, the respondents have stated that necessary information in respect of the said court proceedings between the parties was sought by the department. The appellant has clarified that a decree of divorce was granted to the parties by the concerned Court and a copy of the said order was duly supplied to the department against receipt on 21st March, 2018.

29. Insofar as the matrimonial dispute of the appellant is concerned, the material placed on record reveals that the same had attained quietus by virtue of a settlement arrived at between him and his estranged wife, *vide* Settlement Agreement dated 18th June, 2016 recorded by the learned Mediator appointed by the Delhi High Court Mediation and Conciliation Centre. The said Settlement Agreement was duly taken on record by the Division Bench of the High Court of Delhi *vide* order dated 14th July, 2016 passed in MAT. APP. (F.C.) Nos.148 of 2014, 34 of 2016 and 36 of 2016. Both the parties had agreed that they would take joint steps to get their marriage dissolved by filing a petition before the concerned Family Court. One of the terms and conditions of the Settlement was that the appellant would arrange a residential flat for his wife, which his brother had agreed to purchase in her name, as a one-time settlement towards all her claims of maintenance, alimony, *stridhan,* etc. This condition was subsequently complied with and is borne out from the Sale Document of the flat dated 3rd October, 2016 that records the fact that a sum of ₹ 6,00,000/- (Rupees six lakhs) was paid by the appellant's brother to the seller towards the sale price of the flat.

30. Once the parties had arrived at a settlement and a decree of divorce by mutual consent was passed by the concerned Court, the allegations of bigamy etc. levelled by the appellant's wife loses significance since the case was never taken to trial for any findings to be returned by the Court on this aspect. In the above backdrop, there appears no justification for the respondents to have raised the spectre of a series of complaints received against the appellant during the course of his service that had weighed against him for compulsorily retiring him, more so, when these complaints were to the knowledge of the respondents and yet, his service record remained unblemished throughout. Nothing has been placed on record to show a sudden decline in the work conduct of the appellant so as to have compulsorily retired him.

31. We may now proceed to examine the background in which vigilance clearances were initially given to the appellant and subsequently withheld by the respondents. It is not in dispute that in the year 2013, the appellant had applied for the post of Member, ITAT and in the year 2014, the Selection Committee had placed him on the top of the list of 48 selected candidates. Based on the vigilance clearance issued by the department in August, 2013 and once again on 15th July 2015, the appellant was recommended by the respondents to the ACC for his appointment to the subject post.

32. However, sometime later, the respondents withheld the vigilance clearance given earlier on the ground that there was an adverse IB Report against the appellant. It is not out of place to mention here that the aforesaid adverse IB report had also arisen from the complaint received from the appellant's wife during the very same matrimonial dispute which had already been amicably settled in Court. The factum of the said settlement was well within the knowledge of the respondents, who had stated in O.M. dated 15th July, 2015 that "*the alleged acts of bigamy against Shri Bajaj emanating from matrimonial dispute is not established*". Aggrieved by the withholding of his vigilance report, the appellant had approached the Tribunal for relief in OA

No.95 of 2016. *Vide* interim order dated 10th February, 2017, the Tribunal directed the respondents to resubmit the adverse IB report in respect of the appellant before the Selection Committee within one month for the said Committee to take a view in the matter. As noted earlier, the aforesaid order dated 10th February, 2017, passed by the Tribunal was upheld by the High Court, on 30th May, 2017 and affirmed by this Court, *vide* order dated 15th November, 2017.

33. Undeterred by the aforesaid judicial orders, the respondents continued to withhold the vigilance clearance of the appellant, this time claiming that there were some adverse findings against him in an Inspection Report dated 20th April, 2018 stated to have been prepared on the basis of an inspection of the office of the appellant conducted on 29th and 30th November, 2017 which was done within a few days of this Court upholding the order dated 10th February, 2017 passed by the Tribunal, calling upon the respondents to place his adverse IB report before the Selection Committee, for it to take a view in the matter. It is rather ironical that the irregularities noticed by the respondents in the Inspection Report dated 20th April, 2018, that made them withhold the vigilance clearance of the appellant were to their knowledge ten days before and yet they had issued a letter dated 11th April, 2018, giving him vigilance clearance.

34. It is noteworthy that the appellant had challenged the proceedings initiated against him by the respondents on the basis of the inspections conducted on 29th and 30th November, 2017 in OA No.77 of 2018. In the said proceedings, the Tribunal had passed an interim order on 2nd February, 2018 directing that the said proceedings will not come in the way of promotion, appointment and deputation prospects of the appellant. Regardless of the above directions, the respondents not only denied vigilance clearance to the appellant on 20th April, 2018 they went a step ahead and proceeded to place his name in the “Agreed List” i.e., the list of suspected officers. This act of the respondents was also assailed by the appellant before the Tribunal in O.A. No. 279 of 2018. Ultimately, both the captioned Original Applications were collectively decided by the Tribunal in

favour of the appellant by a detailed judgement dated 6th March, 201, which has not been stayed by any superior Court.

35. Aggrieved by a separate Memo dated 30th January 2018 issued by the respondents on the basis of the aforesaid inspection of his office conducted on 29th and 30th November, 2017 calling for his explanation in respect of some orders passed by him in his judicial/quasi-judicial capacity as Commissioner of Income Tax (Exemption), the appellant had to file O.A. No.332 of 2018 that was decided by the Tribunal in his favour *vide* judgment dated 28th May, 2019. In its judgment, the Tribunal relied on the order dated 15th May 2018, passed by the High Court in W.P. No.13390 of 2018 (SB), declaring that the inspection conducted by the Department was without jurisdiction and that there was no justification for withholding the vigilance clearance of the appellant on the basis of the said inspection. Noting that the Memo dated 30th January 2018 issued by the respondents calling for an explanation from the appellant was premised on the very same inspection conducted by the Department, the Tribunal reiterated the string of findings returned by it in favour of the appellant in its earlier common judgment dated 6th March 2019 [passed in O.A. No. 137 of 2018 and O.A. No. 279 of 2018] and proceeded to quash the Memo dated 30th January 2018 issued by the respondents. It was further held that the said order will not adversely impact forwarding of the name of the appellant as Member, ITAT, in terms of the recommendations made by the Selection Committee in its meeting held on 26th August 2018.

36. In the teeth of the series of orders passed by the Tribunal and the High Court in favour of the appellant, the respondents elected to withhold his vigilance clearance, thereby compelling the appellant to file contempt petitions against the concerned officers for non-compliance of the orders passed. Both, the High Court as well as the Tribunal, issued notices for wilful disobedience of the orders passed. In the proceedings before the High Court, on the one hand, the respondents kept seeking adjournments on the ground that steps were being taken to forward the appellant's

name to the ACC for being processed for his appointment as Member, ITAT, till as late as on 31st May 2019 on which date they were granted one last opportunity for making compliances and at their request, the matter was adjourned to 9th July 2019 and on the other hand, the respondents slapped the appellant with a Charge Memorandum dated 17th June 2019 and suspended him on 1st July, 2019.

37. Having regard to the fact that the respondents did not take the disciplinary proceedings initiated against the appellant to its logical conclusion and instead issued an order compulsorily retiring him, this Court does not deem it expedient to delve into the allegations levelled in the said Charge Memorandum; all the same, we have cursorily gone through the Charge Memorandum that mentions three charges – one alleging that the appellant failed to seek permission from the department to purchase a flat in relation to the matrimonial dispute between him and his estranged wife and the second one is in respect of the allegation of bigamy levelled against him by his estranged wife. We have already noted earlier that during the course of the matrimonial dispute, the parties had arrived at a settlement and the flat that was agreed to be given to the wife, was not purchased by the appellant but by his brother, which fact is amply borne out from the documents placed on record. The matrimonial dispute between the parties stood closed on a decree of divorce being granted on the basis of mutual consent. That the respondents were also cognizant of the said fact, is apparent from the contents of O.M. dated 15th July, 2015 which records *inter alia* that the said allegations levelled by the wife had not been established. The third charge was relating to the appellant having attended Court hearings without sanctioned leave. However, the disciplinary proceedings initiated against the appellant on 17th July, 2019 were abandoned by the respondents on the order of compulsory retirement being passed against him in less than three months reckoned therefrom, on 27th September, 2019.

38. The appellant has made allegations of institutional *bias* and malice against the respondents on the plea that the Chairman, CBDT who was a Member of the Review Committee, was facing three contempt proceedings relating to the appellant's service dispute, wherein notices had been issued by the High Court as well as the Tribunal. There is no doubt that rule of law is the very foundation of a well-governed society and the presence of bias or *malafides* in the system of governance would strike at the very foundation of the values of a regulated social order. The law relating to *mala fide* exercise of power has been the subject matter of a catena of decisions [Refer: ***S. Pratap Singh v. State of Punjab***[23]***; Jaichand Lal Sethia v. State of W.B***[24]***; J.D. Srivastava v. State of M.P And Others***[25]***;*** *and* ***Express Newspapers Pvt. Ltd. And Others v. Union of India And Others***[26]***]***. It has been repeatedly held that any exercise of power that exceeds the parameters prescribed by law or is motivated on account of extraneous or irrelevant factors or is driven by malicious intent or is on the face of it, so patently arbitrary that it cannot withstand judicial scrutiny, must be struck down. In the instant case, though the appellant has levelled allegations of institutional *bias* and prejudice against the respondents, particularly against the then Chairman, CBDT who was a Member of the Review Committee, the said officer was not joined by the appellant as a party before the Tribunal or the High Court, for him to have had an opportunity to clarify his stand by filing a counter affidavit. Hence, these allegations cannot be looked into by this Court.

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

23 AIR 1964 SC 72
24 AIR 1967 SC 483
25 (1984) 2 SCC 8
26 (1986) 1 SCC 133

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

40. In view of the above discussion, it is deemed appropriate to reverse the impugned judgment dated 31st May, 2022 and quash and set aside the order dated 27th September, 2019 passed by the respondents, compulsorily retiring the appellant. Resultantly, the adverse consequences if any, flowing from the said order of compulsory retirement imposed on the appellant, are also set aside. The appeal is allowed and disposed of on the aforesaid terms while leaving the parties to bear their own costs.

..... J
[A.S. Bopanna]

.....J
[Hima Kohli]

NEW DELHI,
MARCH 03, 2023