



Reserved On : 15/07/2025

Pronounced On : 09/10/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14654 of 2008

With

R/SPECIAL CIVIL APPLICATION NO. 3875 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and

HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	

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**M S SHAIKH (MOHAMEDUSMAN SHABBIRAHMED SHAIKH),
ADDITIONAL**

Versus

HIGH COURT OF GUJARAT & ANR.

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Appearance:

**MR SUBRAMANIAM IYER(2104) with MR ROBIN PRASAD for the
Petitioner(s) No. 1**

**MR SHALIN MEHTA, SR. ADVOCATE assisted by MS
E.SHAILAJA(2671) for the Respondent(s) No. 1,2 (SCA 14654/2008)**

**MR SHALIN MEHTA, SR. ADVOCATE assisted by MR HAMESH C.
NAIDU for Respondent No.1 (SCA NO.3785/2010)**

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**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

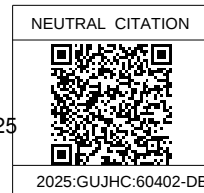
**(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. For the convenience of readers, the judgment is divided into parts as indicated in the table of contents, given hereinbelow :-

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2. The above mentioned two Writ petitions have been filed by a judicial officer who was posted as the Additional District

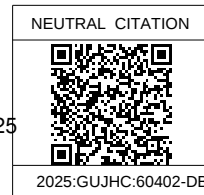


Judge, Sabarkantha at Himmatnagar, District Sabarkantha in the State of Gujarat. In the first Writ petition of the year 2008, the reliefs are :-

- (i) to declare the petitioner entitled to promotion to the cadre of the District Judge at par with other similarly situated officers of 1996 batch posted as Assistant Judges;
- (ii) to quash the communication dated 02.09.2008 issued by the Registrar (Recruitment) intimating the petitioner that the result of promotion exercise conducted for the post of District Judge, with respect to the petitioner has been kept in the sealed cover in view of the departmental inquiry initiated against him;
- (iii) to issue direction to the respondents to open the sealed cover and act in accordance with the result as contained therein.

3. In the second Writ petition of the year 2010, the challenge is to the order of compulsory retirement of the petitioner. The reliefs prayed therein are :-

- (i) to quash and set aside the notification dated 19.05.2009 and enjoin upon the respondents to reinstate the petitioner to his original post immediately with all consequential benefits;
- (ii) to quash the Departmental Inquiry No. 1/2008 being the sole basis for the impugned order of compulsory

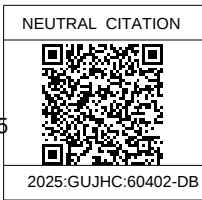


retirement;

4. By amendment brought therein with the order of the Court dated 13.10.2014, the following prayers have been added :-

- (i) to reinstate the petitioner to his original post and treat the petitioner as continued in service till the age of his superannuation and grant all the consequential benefits flowing from the said service of the petitioner, including full arrears of salary with all increments and allowances etc., as if there was no break in service;
- (ii) to readjust the seniority of the petitioner giving him all benefits as had been given to the juniors to the petitioner and further direct the respondents to pay all the retiral benefits to the petitioners.

5. The facts, in brief, relevant to decide the controversy on hand are that the petitioner was appointed as the Civil Judge, Junior Division in the year 1981 and promoted as Senior Civil Judge in the year 1990. As per the prevailing rules, after passing the written test as well as *viva voce* in the year 1995, the petitioner was appointed on the post of Assistant District Judge in the year 1996. On the Fast Track Court Scheme introduced by the Central Government, 42 Assistant District Judges were appointed as Joint District Judges vide Resolution dated 08.07.2002 of the State Government. Consequently, posting order was issued by the High Court on 27.08.2002. The petitioner had joined his new posting as the Joint District

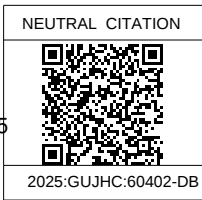


Judge under the Fast Track Court Scheme at Surendranagar with effect from 02.09.2002.

6. It is contended in the writ petition that out of 42 incumbents appointed as Joint District Judges, 18 were regularised in the cadre of District Judge purely on the basis of seniority. However, the petitioner has been left out along with few others and further had participated in the promotion exercise for selection to the post of District Judge against 50% quota in the *viva voce*, result of which was declared on 18.07.2008. As the name of the petitioner was not reflected in the final select list, he made a representation on 19.07.2008 and received the response on 02.09.2008 to the effect that his result had been kept under sealed cover in view of the departmental inquiry initiated against him.

7. The charge memo of the departmental inquiry was issued on 23.12.2008 and the petitioner was asked to tender his Statement of Defence. As with the charge memo, the copies of the documents mentioned in the "List of Documents" were not supplied, the time for furnishing Statement of Defence had been extended upto 24.08.2009. However, before the petitioner could submit his Statement of Defence, he was retired compulsorily on 20.05.2009, pursuant to the notification dated 19.05.2009 issued by the Legal Department of the State.

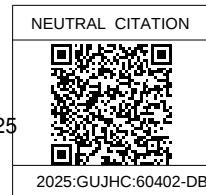
8. It is contended in the Writ petition that prior to passing of the compulsory retirement order, a show-cause notice dated 05.03.2007 was issued to the petitioner by the Registrar (Vigilance) calling upon him to submit his explanation under



the direction of the then Chief Justice. It is contended that upon reading of the said letter, the petitioner came to know that one of his judgments in Motor Accident Claims Petition No. 823 of 1998 became subject matter of consideration before the Division Bench of this Court comprising of Hon'ble Mr. Justice M.S. Shah and Hon'ble Mr. Justice K.M. Mehta (as they then were) in First Appeal No. 3401 of 2005, wherein same adverse observations were made while deciding the Civil Application No. 7745 of 2006 at the interim stage.

9. It is contended that as per the information received by the petitioner, the Division Bench directed the Registry to place its observations in the interim order before Hon'ble the then Chief Justice for action on the administrative side, though the First appeal itself was pending final hearing. The Registrar (Vigilance), thereafter, had examined various judgments of the petitioner, rendered in Motor Accident Claim cases at different districts, namely Surendranagar, Rajkot, Junagadh and Himmatnagar and sought explanation of the petitioner on law points which was duly furnished vide letters dated 17.03.2007 and 21.05.2007. The contention is that the departmental inquiry had been initiated in view of the observations of the Division Bench in the interim order passed in the aforesaid First Appeal No. 3401 of 2005. Further, a Review Committee headed by the then Hon'ble Mr. Justice M.S. Shah had recommended for compulsory retirement of the petitioner based upon which the decision was taken.

10. The contention is that since the Hon'ble Judge who was heading of the review committee himself made observations

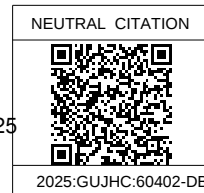


against the petitioner in his judicial order and the regular departmental inquiry had also been initiated based on the observations made in the aforesaid order, wherein no opportunity of hearing was given to the petitioner by the Division Bench by calling his explanation, the decision to retire the petitioner compulsorily cannot be said to be fair, impartial and having been taken with open mind. The submission is that the recommendation of the Review Committee being influenced by the observations made by the Hon'ble Judge heading the said Committee, the whole exercise of retiring the petitioner compulsorily is accentuated with bias. There is no adverse remark in the Annual Confidential Reports (ACRs) and the past record of service, character roll and quality of judgments of the petitioner had never been subject matter of adverse remark.

Submissions of the petitioner :-

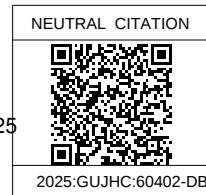
11. The grounds agitated by the learned counsel for the petitioner are being summarised as under :-

- I. The impugned order of compulsory retirement based on the Departmental Inquiry No. 1/2008 is penal in nature.
- II. The departmental inquiry having been initiated on the allegations of misconduct attributed to the judicial awards passed by the petitioner under the Motor Vehicles Act itself, was unsustainable.
- III. Not a single adverse entry was made against the petitioner in the past service records and the premature



retirement cannot be said to be in the public interest.

- IV. The competent authority failed to form requisite opinion, which may be subjective satisfaction, formed on the objective criteria based on the relevant material for premature retirement order.
- V. The requisite opinion for premature retirement in "public interest" cannot be personal or accentuated by other interests, but must be governed by the interest of public service.
- VI. Relying upon the decision of the Apex Court in **Baldev Raj Chadha v. Union of India**¹, it was vehemently argued that the right to retire is not absolute. The exercise of power must be *bonafide* and promote public interest. The order of compulsory retirement is an affirmative action. The onus, thus, is on the administration to justify its decision. When the order is challenged and its validity depends on it being supported by public interest, the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever. The test is from the standards of a reasonable man reasonably instructed in law, who finds it sufficient to sustain the grounds of "public interest", justifying forced retirement of the public servant.
- VII. Though the scope of judicial review is confined to an examination of the material merely to see whether a



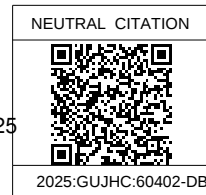
rational mind may conceivably be satisfied with the compulsory retirement of the officer concerned being necessary in the public interest and the judges cannot substitute their judgment for that of the administrator, but the Court is not absolved from the minimal review well settled in the administrative law and founded on constitutional obligation. **[Ref:- Baldev Raj Chadha¹]**

- VIII. The submission is that the departmental inquiry on the alleged misconduct based on the judicial decisions of the petitioner was pending on the date of retirement and even before the petitioner could submit his Statement of Defence in reply to the charge-sheet, the compulsory retirement order was passed and the departmental inquiry was subsequently withdrawn, which fact itself is sufficient to hold the entire exercise suffering from "malice in law".
- IX. The decision of compulsory retirement in "public interest" under service rule though excludes the protection granted under Article 311(2) of the Constitution of India, depriving the employee of right to protection, but such rule should be applied *bona fide* with honesty, without committing fraud on the rule or misdirecting oneself in law.
- X. In a series of judgements, the Apex Court and High Courts have detected the mischief and struck down the innocent looking orders of termination, dismissal and removal from service, etc. under the clothing of

apparently and ostensibly simple orders of termination by using the language of the rules. Insofar as the case of the petitioner, the observation regarding alleged misconduct in applying the judgments of the Apex Court and the High Court have been made a ground to initiate departmental inquiry and on the alleged misconduct, without any foundational material, compulsory retirement order was passed under the pretext of simplicity, which appears to be *mala fide*, passed out of vengeance, ill will and, as such, is prejudicial to the public interest. The enabling rule for action of compulsory retirement cannot be used as an outer cover or clothing or shield for the action which is in reality and in substance, a penal one.

XI. Referring to the decision of the Apex Court in **Ram Ekbal Sharma v. State of Bihar**², it was argued that in appropriate cases, the Court can lift the 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 being couched in innocuous language without making any imputations against the government servant will not deter the court from delving into the basis of the order, if challenged by the concerned government servant directed to be compulsorily retired from service.

XII. It was argued that the practice of initiation of disciplinary proceeding against officers of the



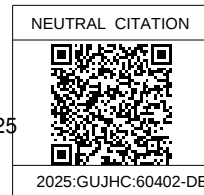
subordinate judiciary on mere ground of passing wrong orders has been disapproved by the Apex Court. **[Ref :- Ramesh Chander Singh v. High Court of Allahabad³]**

XIII. No departmental inquiry can be initiated against the judicial officer unless there is clear cut evidence of favoritism, lack of integrity, extraneous consideration, etc. **[Ref:-S.J. Pathak vs. State of Gujarat⁴]**

XIV. It was lastly argued that the Annual Confidential Reports and the disposal record of the petitioner till quarter ending the month of September 2008, had remained "good" or "very good". The order of compulsory retirement passed during the pendency of the disciplinary proceeding, which was initiated on the basis of observation of the Division Bench in an interim order passed in First Appeal filed against the judicial order of the petitioner, cannot but be said to be based on the allegations of misconduct and hence, cannot be sustained. Reference was made to the decision of the Apex Court in **High Court of Punjab & Haryana vs. Ishwarchand Jani⁵**.

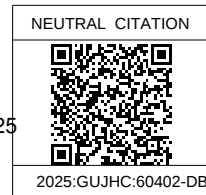
XV. Further reliance has been placed upon the following decisions to substantiate the above submissions :-

- (a) Gurdial Singh Fiji vs. State of Punjab⁶
- (b) Amarkant Chaudhary vs. State of Bihar⁷
- (c) Union of India v. E.G. Nambudiri⁸



- (d) State Bank of India vs. DC Agarwal⁹
- (e) K.P. Tiwari v. State of M.P.¹⁰
- (f) Zunjarrao Bhikaji Nagarkar vs. Union of India¹¹
- (g) High Court of Allahabad vs. Sarnam Singh¹²
- (h) Manish Dixit v. State of Rajasthan¹³
- (i) Samya Sett v. Shambhu Sarkar¹⁴
- (j) Inspector Premchand vs. Govt. of NCT Delhi¹⁵
- (k) Dev Dutt v. Union of India¹⁶
- (l) A.U. Kureshi vs. High Court of Gujarat¹⁷

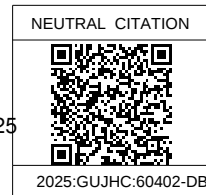
XVI. Referring to a Division Bench Judgement of the Allahabad High Court in **Desh Bhushan Jain v. State of U.P.**¹⁸, it was argued that the power of review of the administrative decision by the Court is confined to the questions; whether the decision making authority exceeded its powers; committed an error of law or breach of rules of natural justice; reached a decision which no reasonable person would have reached; or abused its powers. If the decision making body is influenced by the considerations which ought not be considered; or fails to take into account matters which it ought to take into account, the Court will interfere. While exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision making process.



XVII. The contention is that while evaluating the material recording performance of a judicial officer, the authorities though are entitled to form their opinion with regard to overall reputation enjoyed by the concerned officer, which may form the basis for recording “doubtful integrity” of the judicial officer, but the doubt that fringes on a mere hunch, should be avoided. Rumour mongering is to be avoided at all costs as it seriously jeopardises the efficient working of the officers of the subordinate courts. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of the judicial officers. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. Every error, however gross it may be, should not be attributed to improper motives.

XVIII. Referring to the decision in **M.S. Bindra v. Union of India**¹⁹, it was argued that the Apex Court has used the phrase “preponderance of probability” to be applied before recording adverse entry regarding integrity of the judicial officer. It was held that the authority which was entrusted with the duty of writing ACRs does not have the right to tarnish the reputation of the judicial officer without any basis and without any “material on record”. The adverse entry awarded to a judicial officer cannot sustain if bereft of any substance.

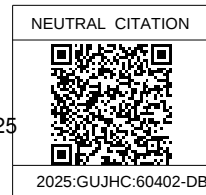
XIX. Lastly, referring to the decision of the Apex Court in **Nand Kumar Verma v. State of Jharkhand**²⁰, it was



submitted 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 exists or otherwise, on which the subjective satisfaction of the administrative authority is based. It was, thus, contended that the subjective satisfaction of the High Court in retiring the petitioner compulsorily is not based on any relevant material. The service record of the petitioner cannot be said to be unsatisfactory which would warrant premature retirement from service and the error of decision committed in law or fact on the judicial side, if any, as per the observation of the Division Bench in the First Appeal, cannot be a justification to retire the petitioner compulsorily from service. The Writ petition is, thus, liable to be allowed setting aside the compulsory retirement order, treating the petitioner having continued in service till the date of his superannuation and all consequential benefits including arrears of salary is to be paid.

Submissions of the Respondents :-

12. In rebuttal, Mr. Shalin N. Mehta, learned senior advocate assisted by Ms. E. Shailaja, learned advocate appearing for the respondents would invite the attention of the Court to the letter dated 14.10.2008 of Hon'ble the then Chief Justice of India addressed to Hon'ble the then Chief Justice of the High Court of Gujarat, in the matter of assessment of the judicial officers who had attained the age of



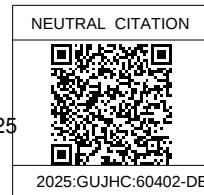
50-55 years in addition to the assessment being carried out at the age of 58 years in terms of the directions of the Apex Court in "All India Judges Association case". It was provided therein that the service rules may be suitably amended to provide for such assessment and if implemented in right earnest, the provision for premature retirement will keep deviant behaviour in check, besides getting rid of those who are found to be indolent, ineffective or of doubtful integrity.

13. It is pertinent to note, at this stage, that the entire original record of the proceedings was summoned by us in sealed cover and has been directed to be kept for perusal of the court at appropriate point of time, vide order dated 26.06.2025.

14. Mr. Shalin N. Mehta, learned Senior advocate appearing for the respondent High Court has provided a synopsis of the relevant papers from the original record to submit :-

- 1) A three member Committee (Review Committee) was constituted by the Full Court in the meeting held on 17.10.2008 for effective implementation of the provisions of Rule 21 of the Gujarat State Judicial Service Rules, 2005 (in short as the "Rules' 2005)
- 2) The Review Committee so constituted met on 27.11.2008 and after discussion on the subject, directed the Registry to furnish the following details :-

1. Adequacy or otherwise of the disposals of the concerned Judicial Officers during the last ten



years.

2. Confidential Reports files of the concerned Judicial Officers. A chart showing grading for the last ten years of the concerned Judicial Officer, along with adverse remarks, if any, communicated to them, be also prepared.

3. Complaints received against the concerned Judicial Officers (including those which were ordered to be filed) during the last ten years.

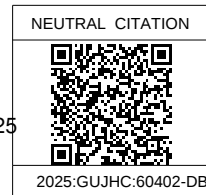
4. Vigilance Complaints received against the concerned Judicial Officers (including those which were ordered to be filed) during the last ten years.

5. Departmental enquiry, if any, pending or to be contemplated against the concerned Judicial Officers (including those who have been exonerated) during the last ten years

6. List of Judicial Officers, who have attained the age of 50 and are less than 59 years.

The next meeting was scheduled on 11.12.2008.

- 3) In compliance thereto, the In-charge Registrar General had prepared the material on collection of the papers required by the Committee and submitted to the members of the Committee for perusal on 08.12.2008, which were :-



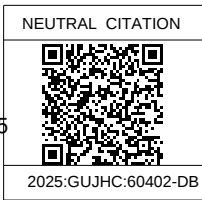
1. Letter dated 14.10.2008 of the Hon'ble Chief Justice of India, Hon'ble Supreme Court of India
 2. The Gujarat State Judicial Service Rules, 2005
 3. Adequacy or otherwise of the disposals of the concerned Judicial Officers during the last ten years
 4. Confidential Reports Files of the concerned Judicial Officers (A Chart showing grading for the last 10 years of the concerned Judicial Officer alongiwth adverse remarks, if any, communicated to them).
 5. Complaints received against the concerned Judicial Officers (including those which were ordered to be filed) during the last ten years.
 6. Vigilance complaints received, against the concerned Judicial Officers (including those which were ordered to be filed) during the last ten years
 7. Departmental Inquiry, if any, pending or to be contemplated against the concerned Judicial Officers (including those who have been exonerated) during the last ten years.
 8. List of Judicial Officers who have attained the age of 50 and are less than 59 years.
- 4) The list of the judicial officers falling within the age

group of 50-54 years comprised of 125 officers working in the Court establishment of the State of Gujarat. Placing the said list before us, it was contended that the petitioner Mr. M.S. Shaikh working as Additional District Judge, Sabarkantha at Himmatnagar was one of them and his name finds placed at Sr. No. 98.

- 5) The consolidated statement of information placed before the Committee at Item Nos. 4 to 8 of the papers submitted by the Registrar General on 08.12.2008 before the Committee, contains following information with regard to the petitioner herein :-

Sr. No.	Name & Designation	Date of Birth	Date of Completion of 50-54 years	Grading and Adverse Remarks, if any, communicated to the officer of the Confidential Reports	Vigilance complaint	Departmental Inquiry	Judicial Observation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
98.	Mr. M.S. Shaikh Additional District Judge, Sabarkantha at Himmatnagar (AD-HOC)	01/03/1954	01/03/2008	2000-Good 2002-Good 2003-Good officer 2004-Good 2005-Good 2006-Average (His integrity was doubtful and reputation was not up to the mark Note:- Adverse remark was not communicated to the officer 2007-Average (Integrity is doubtful and reputation is not up to the mark Note:- Adverse remark was not communicated to the officer.	Y (Page 47-48, Ann. "A")	Y (Page - 10 Ann-B)	Y (Page 10 & 11, Ann. "E")

- 6) Annexures 'A', 'B' and 'E' to the consolidated statement



on Point Nos. 6 to 8 with respect to the petitioner, as is evident from the above statement, contains the information with regard to vigilance complaint, departmental inquiry and judicial observations made. The details of the vigilance complaints submitted as Annexure 'A' contains the information about 9 vigilance complaints received against the petitioner over the period from 1998 to 2008. Out of all, 6 vigilance complaints from 1998 to 2004 have been consigned by the then Chief Justice of the High Court. One of the vigilance complaint No. 536 of 2004 was pending inquiry. Whereas, with regard to the vigilance complaint no. 366 of 2006, departmental inquiry viz. DI No. 1/2008 was initiated in light of the resolution of the Standing Committee dated 12.12.2007. The said departmental inquiry pertains to the observation made by the Division Bench in the order dated 17.07.2006 passed in Civil Application No. 7745 of 2006 in First Appeal No. 3401 of 2006. One more vigilance complaint No. 345 of 2008 was pending inquiry.

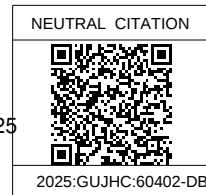
- 7) The details of the departmental inquiry submitted as Annexure 'B' to the consolidated statement pertains to the Department Inquiry No.1/2008 where charges were to be framed.
- 8) Annexure 'E' to the consolidated statement contains observations of the High Court in the order dated 10.07.2007 in Civil Application No. 2648 of 2007 in First Appeal No. 934 of 2007 and the letter issued by the High

Court dated 01.09.2007 communicated with respect to the said order of the High Court. The said annexure also contains the observation in the order dated 17.07.2006 of the Division Bench in Civil Application No. 7745 of 2006 in First Appeal No. 3401 of 2005 and the order of the then Acting Chief Justice, to direct the Registrar (Vigilance) to examine the file and report.

- 9) A statement of adequacy or otherwise of the disposal of the concerned judicial officer, viz. the petitioner during the last 10 years submitted as Annexure 'D' in the consolidated statement before the Committee reads as under:-

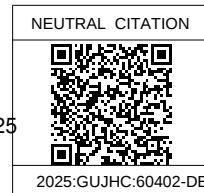
Mr. M.S. Shaikh	1998	ADEQUATE	VERY GOOD	ADEQUATE	VERY GOOD
	1998	VERY GOOD	VERY GOOD	GOOD	VERY GOOD
	2000	VERY GOOD	VERY GOOD	GOOD	GOOD
	2001	POOR	INADEQUATE	POOR	ADEQUATE
	2002	GOOD	POOR	VERY GOOD	GOOD
	2003	VERY GOOD	VERY GOOD	GOOD	VERY GOOD
	2004	GOOD	GOOD	VERY GOOD	VERY GOOD
	2005	VERY GOOD	VERY GOOD	GOOD	VERY GOOD
	2006	NOT ASSESSED	VERY GOOD	JUST ADEQUATE	GOOD
	2007	VERY GOOD	GOOD	GOOD	VERY GOOD

- 10) From the record, it was placed before us by the learned Senior counsel for the High Court that the Registry prepared a consolidated statement showing the details as noted hereinbefore for the last 10 years in respect of the officers working in the cadre of District Judge, who had completed 50-54 years of age on 11.02.2009, for the meeting of the Review Committee scheduled on 13.02.2009 wherein the details with regard to 14



officers completing 54 years of age were submitted, which included the service record of the petitioner. The statement regarding the petitioner contained 9 vigilance complaints, 1 departmental inquiry, 2 judicial observations of the High Court, as noted hereinbefore, and 6 administrative complaints, apart from Grading and adverse remarks of the confidential reports between 2000-2007 and Assessment of disposals from 1998-2008.

- 11) It is demonstrated before us that for the year 2006 and 2007, the grading in the Confidential Report was "average" though the said adverse remarks were not communicated to the officer. The remark about integrity of the officer for the year 2006 and 2007 was "doubtful" and the report says "reputation was not upto the mark".
- 12) In the meeting held on 11.05.2009, the three member Review Committee had considered the confidential reports, assessment of disposals, vigilance complaints, departmental inquiries, administrative complaints and judicial observations, of the last 10 years and upon scrutiny of each individual case, has separately recorded their opinion. On an overall assessment of their performance and evaluating their potential for useful service in future, the Committee resolved to retire two judicial officers including the petitioner herein from service under Rule 21 of the Rules' 2005, in the said meeting.
- 13) With regard to the case of the petitioner, it was placed



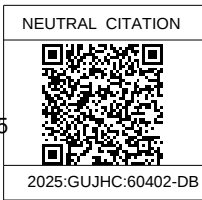
before us that the Committee noted :-

"The officer had earned overall good grading in his Confidential Reports for the year 2000-2005 and had shown good/very good disposals in most of the quarters in those years. However, in his Confidential Reports for the years 2006 and 2007, the officer was marked as "average" and his integrity was reported to be "doubtful".

The Committee also noted the departmental inquiry and the charge-sheet dated 19.12.2008 issued to him for various charges such as making excessive awards in MACT cases, disbursing large amounts of compensation to the widows and minors and using intemperate language in the judgments. The Committee has considered the service record of the officer including vigilance complaints and on overall assessment of the performance of the officer and on evaluation of his potential for his useful service in future, the Committee recommended to retire the petitioner from service in the public interest in exercise of Rule 21 of the Rules' 2005.

14) Various reports of the Committee dated 7th February, 7th March, 6th May, 7th May and 11th May 2009 for effective implementation of the provisions of Rule 21 of the Rules' 2005 were placed before the Standing Committee in its meeting held on 12.05.2009, and the Standing Committee resolved to accept the recommendations and place the same before the Full Court for consideration and approval.

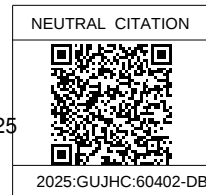
15) In the Chamber meeting (Full Court) held on 14.05.2009,



the recommendations of the Standing Committee in its meeting held on 12.05.2009 in connection with the reports dated 7th February, 7th March, 6th May, 7th May and 11th May 2009 submitted by the Review Committee, had been approved and the Registry was directed to take action accordingly.

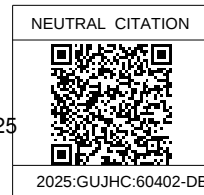
- 16) By communication dated 15.05.2009, the Registrar General of the High Court sent a list of eight (8) judicial officers to the Secretary, Legal Department, Government of Gujarat who were found by the Full Court of the High Court unfit for being continued in service and, therefore, to retire them from service in the public interest, for passing necessary orders retiring them compulsorily under Rule 21(1) and (2) of the Rules 2005 read with Rule 10(4)(a)(i) and (ii) of the Gujarat Civil Service (Pension) Rules 2002.
- 17) In light of the same, a notification dated 19.05.2009 was issued by the State Government accepting recommendation of the High Court to pass the order to retire eight (8) judicial officers from the judicial service in public interest with immediate effect, which included the name of the petitioner herein. The copy of the Government Order dated 19.05.2009 was communicated to the petitioner by the Registrar General vide communication dated 20.05.2009 through the Principal District Judge, Sabarkantha at Himmatnagar.

15. Placing the above noted material before us from the



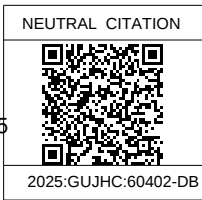
original record of the proceedings undertaken by the High Court and the averments in the counter affidavit filed on behalf of the High Court, it was argued by Mr. Shalin Mehta, learned Senior counsel for the respondent High Court that :-

- (1) The compulsory retirement order was passed on an overall assessment of the performance, on evaluation of the entire service record by the Review Committee constituted by the Full Court.
- (2) The material evaluated by the Committee included 9 vigilance complaints received against the petitioner during the period from 1998-2008; the record of the departmental inquiry; observations in the judicial order of this Court and 6 administrative complaints received against the petitioner during his entire period of service.
- (3) In addition to the said material, the Grading, adverse remarks and assessment of disposals were also evaluated by the Committee and after taking into consideration all the materials that were placed before it, the Committee recommended to retire the petitioner from service in the public interest, on an overall assessment of the performance of the officer and evaluation of his potential for useful service in future, in accordance with the provisions of Rule 21 of the Rules' 2005.
- (4) The report of the Committee dated 11.05.2009 was placed before the Standing Committee in its meeting

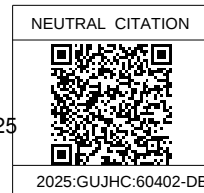


held on 12.05.2009, which has resolved to accept the recommendation of the Committee. In the Full Court meeting held on 14.05.2009, the recommendation of Standing Committee in connection with the reports of the Review committee had been approved.

- (5) The contention is that none of the material placed before the Committee or considered by it can be said to be extraneous. Rather, all attending circumstances including the Annual Confidential Reports, which were germane to the decision, were taken into consideration.
- (6) The Annual Confidential Reports of two continuous years reported the "integrity of the officer being doubtful" and the "reputation not being up to the mark". The ACRs were written by the Administrative judge and in view of the said entry in the column of integrity in the ACRs of two continuous years, there is a presumption of allegation of corruption against the petitioner.
- (7) The view taken by the High Court to retire the petitioner in the public interest cannot be said to be not a *bona fide* decision taken in the public interest.
- (8) The view taken by the three Committees of the High Court in three layers cannot be said to be an unplausible view. In the exercise of power of judicial review by this Court, the reliability, sufficiency or adequacy of the material evaluated by the Review Committee/Standing Committee and the Full Court cannot be examined by this Court.



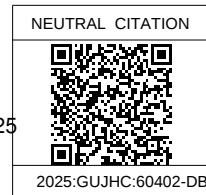
- (9) The judicial observation in the orders of the High Court of passing excessive awards repeatedly by the petitioner, cannot be said to be extraneous material. Testing the entire material evaluated by the High Court on the Wednesbury principle, it cannot be termed to be a bad decision in the eyes of a reasonable man of ordinary prudence.
- (10) The power to compulsorily retire under the Rules is absolute, provided the authorities form a *bonafide* opinion in the public interest and the standard of test within the scope of judicial review by the Court is confined to the decision making process. No infirmity in the decision making process could be pointed out.
- (11) There are no allegations of *mala fide* or procedural impropriety. It is not a case of absolutely no material or extraneous considerations influencing the decision itself. The entire material evaluated by the High Court is to be looked into and the bar of scrutiny is very high. Only if the decision to retire the petitioner prematurely shocks the conscience of the Court, it can be a case of interference.
- (12) It is contended that though it is permissible for the Court to ascertain whether a valid material exists, but in absence of any allegations of *mala fide* or the case being non-application of mind on the part of the competent authority, subjective satisfaction based on the material placed before the High Court cannot be interfered with in the limited scope of judicial review in the matter of



compulsory retirement.

(13) As regards the contention of the petitioner that the fact of one Hon'ble Judge being part of the three member Review Committee would vitiate the decision and the whole decision making process would be tainted, the contention is that it cannot be said to be a case of personal bias. The Review Committee was consisted of three senior Judges of the High Court and it is not possible to comprehend that the one Hon'ble Judge who may have formed adverse opinion on the judicial side could influence not only the decision of the three Member Committee, but also the Standing Committee and the Full Court of the High Court so as to take unanimous decision to compulsorily retire the petitioner.

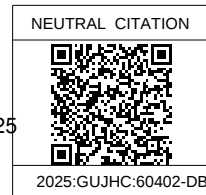
(14) It cannot be perceived without any material on record merely by the presence of one Hon'ble member in the Committee, being member of the Standing Committee and the Full Court, that he had influenced the decision taken at three levels. The decision making process cannot be said to be vitiated on the premise of bias or the decision cannot be held as *malafide* merely by the presence of one Hon'ble Judge in the three member Review Committee, who had passed an order on the judicial side, which had also led to the initiation of the departmental inquiry. The submission is that so long as the decision is taken by the competent authority on evaluation of the entire service record, it cannot be said



to be not a *bona fide* decision taken in the public interest so as to interfere.

(15) Lastly, it was contended that it was not a case of evaluation of the performance of one officer. Rather, the three member Committee was constituted by the Full Bench in its meeting held on 17.10.2008 for effective implementation of the provisions of Rule 21 of the Rules' 2005 in light of the letter dated 14.10.2008 of Hon'ble the then Chief Justice of India addressed to the then Chief Justice of the High Court.

(16) The Review Committee had taken into consideration the entire service record of the judicial officers falling within the age group of 50-54 years and the list placed before it comprised of 125 officers working in the Court establishments of the State of Gujarat. After evaluation of the performance of these officers in various meetings of the Review Committee, the reports of the Review Committee dated 7th February, 7th March, 6th May, 7th May and 11th May 2009, for effective implementation of the provisions of Rule 21 of the Rules' 2005 were placed before the Standing Committee, which had resolved to accept the said recommendations and placed the same before the Full Court for consideration and approval. The decision to retire 11 judicial officers from service in the public interest including the petitioner, had been taken after the decision of the Full Court of the High Court, they being unfit to continue in service in accordance with the provisions of Rule 21 of the Rules'

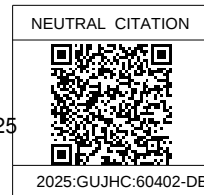


2005 read with the relevant Rules of the Gujarat Civil Services (Pension) Rules, 2002.

16. In light of the above facts, it was argued by the learned Senior counsel for the High Court that, by no stretch of imagination, it can be said that the three member Review Committee was constituted with a pre-conceived idea to retire the petitioner at the instance of one senior Judge of the High Court who had made certain adverse observations about the working of the petitioner on the judicial side. The observations made in the judicial orders of the High Court placed before the Review Committee were incidental material wherein different Benches of the High Court had observed that the petitioner was passing excessive awards on the basis of incorrect proposition of law while working as the Motor Accident Claims Tribunal. None of the observations placed before the Review Committee along with other material can be said to be extraneous material.

17. Above all, the adverse entries with regard to integrity cannot be ignored. The Senior Judges of the High Court who were members of the Review Committee and Standing Committee had taken a well-considered decision and unless there are allegations of *mala fides* or the facts are so glaring that the decision of compulsory retirement is unsupportable, this Court may not exercise its power of judicial review.

18. It was vehemently argued that the judicial service is not an ordinary Government service and judges cannot be treated as ordinary employees of a public office. A judge must be a person of impeccable integrity and unimpeachable



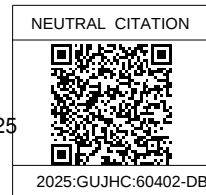
independence, a man honest to the core with high moral values. The credibility of the judicial system is dependent upon the judges who man it and integrity, impartiality and intellectual honesty are the hallmark of a judge discharging his judicial function, much like Caesar's wife. Testing from this standard set in place with the various decisions of the Apex Court, the order of compulsory retirement cannot be said to be so arbitrary or irrational that justifies interference in the power of judicial review.

19. To support these submissions, the learned Senior counsel for the High Court has referred to and relied on the decisions of the Apex Court in :-

- (a) Shiv Dayal Gupta v. State of Rajasthan²¹
- (b) Rajasthan SRTC v. Babu Lal Jangir²²
- (c) Arun Kumar Gupta v. State of Jharkhand²³

20. On the question of perceived bias or apprehension of likelihood of bias, the learned Senior counsel for the High Court has relied upon the decisions of the Apex Court to submit that the issue of bias has to be seen from the angle of a reasonable, objective and informed person and the petitioner's apprehension of likelihood of bias playing role in the decision making process has to be reasonable and not fanciful. The decisions relied by the learned Senior counsel for the High Court to support the same are :-

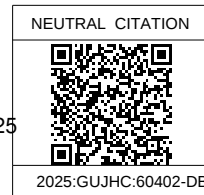
- (a) P.D. Dinakaran vs. Judges Inquiry Committee & Ors.²⁴



(b) G.N. Vinayak vs. Goa University & Ors.²⁵

(c) Kihoto Hollohan v. Zachillhu²⁶

21. Further, placing the decision of the Apex Court in **Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)**²⁷, it was argued by the learned Senior counsel for the High Court that the order of compulsory retirement cannot be considered to be a punishment or penalty, one in the case of dismissal or removal. In the exercise of judicial review, only this much is open for the Court to ascertain as to whether the order of compulsory retirement is one of punishment, i.e. whether in the order of compulsory retirement there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned. It is to be examined by the Court whether the order of compulsory retirement will be indicative of punishment or penalty or if the order will involve loss of benefits already earned. The order of compulsory retirement cannot be held to be in the nature of punishment or penalty on the ground that there is possibility of loss of future prospects, viz. the officer will not get his pay till he attains the age of superannuation or he will not get any enhanced pension for not being allowed to remain a few years in service and being compulsorily retired. The inquiry made by the Court is to the examination of the order of compulsory retirement alone. The fact that considerations of misconduct or misbehaviour weighed with the High Court in coming to its conclusion to retire them compulsorily does not amount to any imputation or charge against such officer.



22. It was submitted that it cannot be established, in the instant case, from the order of compulsory retirement itself that the charge or imputation against the petitioner was made a condition for exercise of the power. The argument made by the learned counsel for the petitioner that the order of retirement is to be considered as one of dismissal or removal in the nature of penalty or punishment for the same having been passed during the pendency of the departmental inquiry, is to be rejected as misconceived.

23. It was argued that the High Court has taken into consideration the overall record including the adverse entries pertaining to integrity and in absence of any *mala fide* or arbitrary exercise of power having been established, a possible different conclusion would not be a ground for interference by this Court in exercise of its power of judicial review. What is needed to be looked into is whether a *bona fide* decision is taken in the public interest. It is further contended that the Apex Court has taken into consideration the settled law stated in various decisions of the Apex Court that even uncommunicated adverse remarks can be taken into consideration while deciding the question as to whether the officer should be made to retire compulsorily or not.

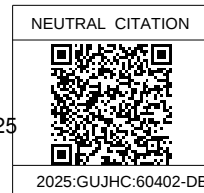
24. It was argued that the assessment, evaluation and formulation of opinions by the Review Committee/Standing Committee/Full Court being guided by vast range of multiple factors which play a vital and important role, cannot be said to be arbitrary or capricious nor can be said to be so irrational so as to shock the conscience of this Court to warrant or



justify any interference. No one factor can be allowed to be blown out of proportion, either to decry or deify an issue to be resolved or claim sought to be considered or asserted. It is almost impossible for the Court to subject the decision of the Full Court by undertaking such an exercise in the power of judicial review except in an extraordinary case when the Court is convinced that some real injustice has really happened and not merely because there could be another possible view.

25. It is settled that this Court may not be able to conduct such an exercise as undertaken by the Review Committee/Standing Committee/Full Court because of the grievances raised by the petitioner that some of the material assessed or evaluated by such bodies ought not have been taken into consideration. The contention is that considering the backgrounds of the factual details and the material on record, there is absolutely no need or justification to interfere in the decision of the High Court.

26. Reliance is further placed on the decision of the Apex Court in **R.C. Chandel v. High Court of M.P.**²⁸ to submit that the views of the Review Committee was not final and it was recommendatory in nature. It is the Full Court of the High Court which has unanimously resolved to accept the resolution of the Standing Committee which, in turn, accepted the report of the Review Committee. The unanimous opinion of the Full Court being based on the entire service record of the petitioner, the order of compulsorily retiring the petitioner based on the recommendation of the High Court, cannot be



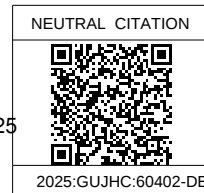
said to be arbitrary or based on material not germane for such recommendation. None of the material considered by the Full Court of the High Court can be said to be extraneous in nature or not being germane to such recommendation. Much emphasis has been laid to the entries in the ACR about the "integrity of the petitioner being doubtful" and the "reputation not being up to the mark" to submit that the standard of scrutiny in the case of an officer of judicial service is much higher than the inquiry to be made in the case of a Government official.

27. Having considered the submissions made by the learned counsels for the parties, we may proceed to analyse the material on record by applying the settled law pertaining to the scope of judicial review in the matter of compulsory retirement. We would first like to deliberate, in brief, on the settled legal principles before proceeding to deal with the arguments of the learned counsel for the petitioner to assail the order of compulsory retirement.

28. **(I) Analysis on the principles of law :-**

(i) The law on compulsory retirement :-

Instead of diving deep into the ocean of judicial pronouncements on the scope of power of judicial review, ranging from the year 1970 to date, we find it fit to refer to only one recent decision of the Apex Court reported in **Arun Kumar Gupta**²³, to cull out the legal position, as under :-

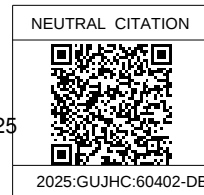


(i) The compulsory retirement does not involve civil consequences as it is not intended for taking any penal action against the officer/Government servant (**Ref :- Union of India v. Col. J.N. Sinha²⁹**)

(ii) The appropriate authority has 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 *bonafide* forms the opinion to retire in the public interest, the correctness of that opinion cannot be challenged before courts. It is, however, 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. [**Ref :- Para '9' of J.N. Sinha²⁹**]

(iii) The concept of public interest has been explained in detail by the Apex Court in **State of Gujarat v. Suryakant Chunilal Shah³⁰** [**Ref : Para '6' of Arun Kumar Gupta²³**].

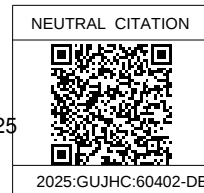
(iv) A three Judge Bench in **Baikuntha Nath Das v. District Medical Officer³¹**, has culled out the principles while dealing with the concept of compulsory retirement that the order is passed on the subjective satisfaction of the Government and it neither implies any stigma nor the principles of natural justice have any place in the context of an order of compulsory retirement. The Court would not examine the matter as an appellate court. They may interfere if they are satisfied that the



order is (a) mala fide or (b) based on no evidence or (c) arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material. The scrutiny to the assertions of perversity in the order is confined to the inquiry into the above noted three aspects. **[Ref : Para '7' of Arun Kumar Gupta²³]**

(v) In **Chandra Singh v. State of Rajasthan³²**, the Apex Court has held that the constitutional power of the High Court under Article 235 of the Constitution of India to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the deadwood cannot be circumscribed by any rule or order. The nature of judicial service is such that it cannot afford to suffer continuance in service of a person of doubtful integrity or who have lost their utility. **[Ref : Para '8' of Arun Kumar Gupta²³]**

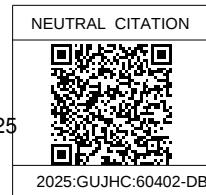
(vi) In **Syed T.A. Naqshbandi v. State of J&K³³**, it was held by the Apex Court that the Courts while exercising powers of judicial review should not substitute themselves for the Committee/Full Court of the High Court to make an independent reassessment of the material, as if sitting on an appeal. It was held that in cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. **[Ref : Para '9' of Arun Kumar Gupta²³]**



(vii) The order of compulsory retirement is not a punishment and it does not imply a stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the statutory rules. **[Ref : Pyare Mohan Lal v. State of Jharkhand³⁴]**

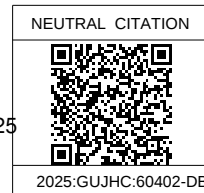
(viii) The authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as in some cases inspite of satisfactory performance, the authority may still desire to compulsorily retire an employee in public interest as in the opinion of the said authority, the post has to be manned by more efficient and dynamic person. If there is sufficient material on record to show that the employee “rendered himself a liability to the institution”, there is no occasion for the Court to interfere in the exercise of its limited power of judicial review **[Ref : Pyare Mohan Lal³⁴ - Para '10' of Arun Kumar Gupta²³]**

(ix) If the authority *bona fide* forms an opinion that the integrity of an officer is doubtful and it is in public interest to compulsorily retire such judicial officer, judicial review of such order should be made with great care and circumspection. The whole service record of the officer concerned which has been taken into consideration, could include non-communicated adverse remark also. **[Rajendra Singh Verma²⁷ - Para '11' of Arun Kumar Gupta²³]**



(x) Overall profile of a judicial officer is a guiding factor. Those in judicial service, if of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age. **[R.C. Chandel²⁸ - Para '12' of Arun Kumar Gupta²³]**

(xi) Referring to **Pyare Mohan Lal³⁴**, it was observed by the Apex Court in **Rajasthan SRTC²²** that the principle that after 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 servant is to be considered for future promotion, will have no application in case of compulsory retirement where assessment is based on the "entire service record". There is no question of not taking into consideration the earlier old adverse entries or record of the old period. Though while taking into consideration such a record, at the same time, the service record of the immediate past period would have to be given due credence and weightage. 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. The only caveat put in **Pyare**



Mohan Lal³⁴ was that the entire record should be taken into consideration and the record even after promotions cannot be ignored. [**Ref :- Para '13' of Arun Kumar Gupta²³**]

(xii) Noticing the decision of the Apex Court in **High Court of Judicature of Patna v. Shyam Deo Singh³⁵**, it was recorded in paragraph "14" in **Arun Kumar Gupta²³** that the very process by which the decision is eventually arrived at, in our view, should permit a limited judicial review and it is only in a rare case where the decision taken is unsupported by any material or the same reflects a conclusion which, on the face of it, cannot be sustained that judicial review would be permissible.

(xiii) The opinion drawn in paragraphs '24' and '25' in **Arun Kumar Gupta²³** are also relevant to be extracted hereinunder :-

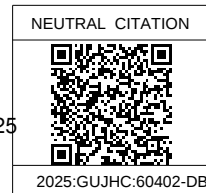
"24. As is obvious from the law quoted above, adverse entries with regard to integrity do not lose their sting at any stage. A judicial officer's integrity must be of a higher order and even a single aberration is not permitted. As far as the present cases are concerned, the matter has been considered by the Screening Committee on two occasions and the recommendations of the Screening Committee have been accepted by the Standing Committee on both occasions. The action taken is not by one officer or Judge, it is a collective decision, first by the Screening Committee and then approved by the Standing Committee.

25. Senior Judges of the High Court who were the members of the Screening Committee and Standing Committee have taken a considered and well-reasoned decision. Unless there are allegations of mala fides or the facts are so glaring that the decision of compulsory retirement is unsupportable this Court would not exercise its power of judicial review. In such matters the court on the judicial side must exercise restraint before setting aside the decision of such collective bodies comprising of senior High Court Judges. In our opinion these are not fit cases to interfere with the said decisions."

(ii) The Principle of lifting of Veil :-

29. The principle of lifting of veil in the matter where compulsory retirement order is passed in an innocuous language has been evolved in the case of **Baldev Raj Chadha**¹ where Justice Krishna Iyer speaking for the Bench has observed that 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. It was observed that to constitutionalise the rule, the Court must so read it as to free it from the potential for the mischiefs which was projected. The exercise of power must be *bona fide* and promote public interest. It was stated that compulsory retirement is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is a terminal step to justify of which the onus is on the administration, not a matter where the victim must make out the contrary.

30. It was further observed that when an order is challenged

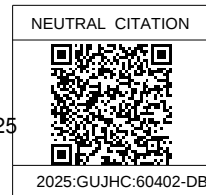


and its validity depends on it being supported by public interest, the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever which to a reasonable man reasonably instructed in law is sufficient to sustain the grounds of public interest justifying forced retirement of public servant. The limitations on judicial review in this area are well known and the examination of the material must be confined merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

31. In **Anoop Jaiswal v. Govt. of India**³⁶, the principle of lifting of veil was elaborated in a matter of discharge from service by an innocuous order. Paras '12' and '13' stating the said principle are relevant to be extracted hereinunder :-

12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

13.Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that

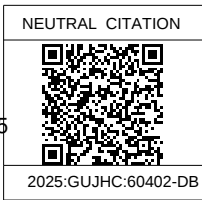


the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.

32. The Apex Court in **Ram Ekbal Sharma**², in a matter of compulsory retirement of a Government servant under the Bihar Service Code, has proceeded to consider the concept of lifting of veil evolved in **Samsher Singh v. State of Punjab**³⁷, for discharge of a probationer and also the law laid down in **Anoop Jaiswal**³⁶, to state in paragraphs '32' as under:-

"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 who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the 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 cases 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*....."

33. Considering the above noted decisions, it can be culled out that though the scope of judicial review in the matter of compulsory retirement is limited and the Courts cannot substitute the decision of the administrator, but they are not absolved from minimal review well settled in administrative law and founded on constitutional obligations. The limitations



are confined to the examination of the material merely to test the decision with the standards of a rational mind of a reasonable person well sounded in the law.

34. In making such inquiry within its limited scope of judicial review, in appropriate case, the Court can lift the 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 without any oblique or extraneous purposes. Mere form of the order, i.e. the order of compulsory retirement being couched in innocuous language without making any imputations against the Government servant cannot deter the Court from delving into the basis of the order, if the challenge is raised. The respondent State cannot defend the order of compulsory retirement on the mere plea that it has been made in accordance with the provisions of service rules, which *prima facie* does not make any imputation or does not cast any stigma on the service career of the Government servant.

35. When an order of compulsory retirement is challenged with an emphatic statement that it was passed under the guise of "public interest", its validity would depend upon it being supported by the material, which must be disclosed by the State to satisfy the Court that the order is not bad for want of any material, sufficient to sustain the grounds of "public interest" justifying the premature retirement, with the standard of scrutiny by the reasonable man of ordinary prudence well-versed in law. During the course of such scrutiny, where the Court finds from the material on record

that the form of order is merely a camouflage, though in reality it is a cloak for an order of dismissal for misconduct or punishment, the Court would not deter, merely because of the form of the order and on ascertaining the true character of the order, if the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and but for a particular incident it would not have been passed, then it is inevitable that the order of discharge should fall to the ground, as the Government servant has not been afforded a reasonable opportunity to defend himself as provided under Article 311(2) of the Constitution of India.

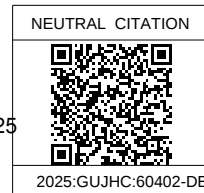
36. Keeping in mind the above principles of the scope of judicial review vis-a-vis lifting of veil, in order to ascertain the true character of the order of compulsory retirement, in the instant case, we may proceed to have a look to the original record presented before us by the High Court.

(II) Analysis on the facts of the Case :-

(a) Findings from the original record :-

37. The original record placed by the Registrar General of the High Court in sealed envelopes contains the following :-

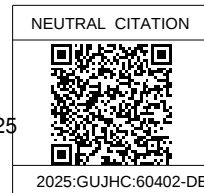
- (i) A file containing details of the vigilance complaints;
- (ii) A file containing relevant papers regarding review process conducted under Rule 21 of the Rules' 2005 (proceedings of compulsory retirement);



The details in the said file show that :-

- (a) Six officers between the age group of 50-51 years;
 - (b) Ten officers around the age of 52 years;
 - (c) Nine officers of about 53 years of age; and
 - (d) Fourteen officers in the age group of 54 years, were considered and their entire service record was evaluated by the Review Committee under the provisions of Rule 21 of Rules' 2005.
- (iii) File No.3 contains the Annual Confidential Reports of the petitioner which show that his grading was 'good' most of the time during service. The confidential remarks communicated to the petitioner in the year 1998 for the period from 12.05.1997 to 31.12.1997 are as "initiative lacking" and "whether he takes matters as fixed on Board (not strictly)", but they were termed as advisory to show improvements in the said respect in future. There is another communication about the Annual Confidential Report of the year 2001 where entry in the remarks column of "Administrative Capacity:- (2) Knowledge of administrative rules" was "Average", however, it says that the remark be not treated as adverse, but as advisory to show better results in future.

For the period from 01.01.2002 to 14.05.2002, the remarks communicated to the petitioner "Personal Characteristics :- (7) Diligence and Industry :- Average", to be treated as advisory, not adverse but to enable the

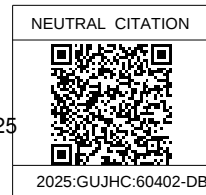


officer to show better results in future.

In the Annual Confidential Report for the period from 08.05.2006 to 31.12.2006, the remarks of the Administrative judge dated 30.01.2008 are about "doubtful integrity" and "reputation not up to the mark", which were approved by the reviewing authority namely the Chief Justice of the High Court. For the period from 01.01.2007 to 31.12.2007 also, the remarks are about "doubtful integrity" and "reputation not up to the mark" reported by the Administrative judge dated 24.02.2008 as the Reporting officer, reviewed by the Chief Justice. The record shows that the ACR for the period from 01.01.2008 to 31.12.2008 though entered by the Administrative judge, but had not been reviewed by the Chief Justice.

The original record, thus, indicates that the Review Committee had taken into consideration the Annual Confidential Reports of the petitioner for the entire period of his service upto the year 2007 entered by the Administrative Judge and reviewed by the Chief Justice;

- (iv) File No. 4 contains the assessment of disposal, the description of which can be found in the summary prepared by the registry placed before the Review Committee;
- (v) File No.5 pertains to administrative complaints against the officer;

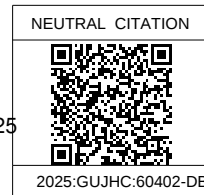


- (vi) File No. 6 contains the papers, viz. the judicial order dated 10.07.2007 passed in First Appeal by the learned Single Judge of this Court wherein certain observations were made about the discretion exercised by the petitioner in permitting disbursement of the deposited claim amount, to the claimants;
- (viii) Four envelopes containing papers of Vigilance Complaint No. 366/2006 and Departmental Inquiry No. 1/2008 initiated against the petitioner pursuant to the Standing Committee decision dated 12.12.2007, have been placed in the record.

38. At the outset, we may record that none of the material placed before us in the original record by the Registrar General of the High Court can be said to be extraneous in nature or such which is not germane to the material relevant under Rule 21 of the Rules' 2005, in the process of forming opinion for compulsory retirement of an incumbent in service.

(b) The Remarks about the Integrity in the ACR :-

39. It is also pertinent to record, at this juncture, that the remarks about the integrity of the petitioner forming part of the Confidential Reports for the period from 08.05.2006 to 31.12.2006 and 01.01.2007 to 31.12.2007 made on 30.01.2008 and 24.02.2008; respectively, had not been communicated to the petitioner, inasmuch as, the summary prepared by the Registrar for placing it before the Review Committee reveals the said fact.

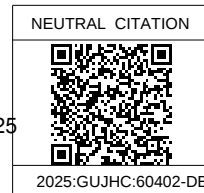


40. Upon inquiry about the procedure of filling up the column relating to integrity, we have come across a decision of the Full Court of the Gujarat High Court in its meeting held on 20.07.2002 on Subject No.3, to consider the report of the Sub-committee of five Judges constituted by the Full Court, to look into the matter of implementation of the recommendation of the 1st National Judicial Pay Commission constituted pursuant to the directions given by the Apex Court in **All India Judges Association case**. The report submitted by the five judges Sub-committee was accepted subject to certain modifications, in the resolution of the Full Court dated 20.07.2002. Part IV of the report contains the form of Confidential Reports (ACRs) for judicial officers. In the instructions, as to the manner in which the confidential report in the prescribed format would be filled in by the reporting officer and the reviewing authority, the following procedure was approved to be followed in filling up the column relating to the integrity :-

"(i) If the Officer's integrity is beyond doubt, it may be so stated

(ii) If there is any doubt or suspicion, the column should be left blank and action taken as under:

(a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior Officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he had not watched the officer's work for sufficient time to form a definite judgement or



that he has heard nothing against the officer, as the case may be.

(b) If, as a result of the follow up action, the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.

(c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.

(d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) above."

41. A perusal thereof indicates that the procedure set out to fill-up the column relating to integrity required the reporting officer to leave the column blank initially and take action, viz. recording a secret separate note and send a copy of the note together with the confidential report to the next superior officer, who will ensure that the follow-up action is taken expeditiously. As a result of follow-up action taken by the next superior officer, i.e. the reviewing officer, if doubts or suspicions are cleared, the officer's integrity can be certified, but if the doubts or suspicions are confirmed, the said fact should also be recorded and communication be made duly to the officer concerned.

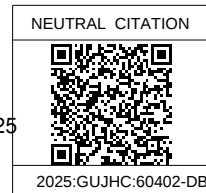
42. There may be a third situation where as a result of follow-up action, the doubts or suspicion are neither cleared or confirmed then the officer's conduct should be watched for a further period and, thereafter, action to certify the integrity



or record the doubt shall be taken.

43. From the above noted procedure set out by the Full Court in its Resolution dated 20.07.2002, it was incumbent upon the reporting officer to record a secret note and send it to the superior officer. The follow-up action was to be taken on receipt of the secret note by the next superior officer, to confirm the doubts or suspicion before recording the entry in the column relating to the integrity. Even while recording doubtful integrity, the factum of follow-up action was required to be recorded and due communication was to be made to the officer concerned.

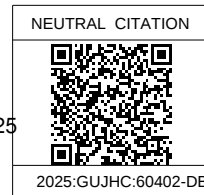
44. When we look to the original record of the ACR of the petitioner for the period in question, i.e. when the remarks of the Administrative Judge about "doubtful integrity" and "reputation not up to the mark" were approved by the Chief Justice of the High Court being the reviewing authority, we do not find any secret note of the Administrative Judge. There is nothing on record which would indicate that any follow-up action was taken in conformity with the procedure prescribed for filling up the column relating to integrity, as per the resolution of the Full Court. The remark about the "doubtful integrity" were recorded in the ACRs of the petitioner, for the period mentioned hereinbefore, in the years 2006 and 2007 by making entries in the column straightaway of "doubtful integrity" by the Administrative Judge and the same was approved by the Chief Justice of the High Court as the Reviewing authority simply by putting his signatures without any remark of his own as the reviewing authority.



45. There is also nothing on record which would indicate that the reports of "doubtful integrity" recorded in the ACR by the reporting officer, approved by the reviewing authority, were placed before the Standing Committee, which is the ultimate authority in the Rules of Business, to take a decision as to whether the follow-up action taken has confirmed the doubts or suspicion about the integrity of the officer concerned and further that the remarks are to be communicated to the officer concerned or not. The adverse remarks about integrity are bereft of any material which would indicate as to what had transpired with the reporting officer to record his doubts or have suspicion about the integrity of the petitioner.

46. We, thus, find that the entries in the columns relating to the integrity and reputation of the officer concerned, marked by the Administrative Judge as the reporting authority and the affirmation of the same by the reviewing authority for the periods mentioned hereinbefore, were not made duly by following the procedure set in place by the High Court in line with the decision of the Apex Court in **All India Judges Association case**. There has been no communication of the said entries to the petitioner, as admitted to the High Court.

47. We are alive of the situation as noted by the Apex Court in the case of **Nawal Singh v. State of U.P.**³⁸ that at times it may be almost impossible to prove by positive evidence the basis for doubtful integrity of a judicial officer and that while evaluating the material, the authority should not altogether ignore the reputation which the officer holds till recently.

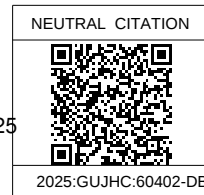


Formation of opinion by the higher officer who had the opportunity to watch the performance of the concerned officer from close quarters and while forming his opinion, due regard may be given to the overall reputation enjoyed by the concerned officer. However, to dunk an officer into the puddle of doubtful integrity, it is not enough that the doubt fringes on a mere hunch. **(Ref :-Nawal Singh³⁸ and Desh Bhushan Jain¹⁸)**

48. Mere possibility or rumour mongering would hardly be sufficient to assume the doubtful conduct or reputation of the judicial officer. Any error of law in rendering a decision on the judicial side, however gross it may be, should not be attributed to improper motives so as to make a remark about the doubtful integrity or improper functioning of the judicial officer.

49. We are also alive of the fact that there may not be any concrete or material evidence to make it part of the record, but there has to be some semblance of reality or certainty in what has been recorded by the reporting officer when forming his opinion about the doubtful integrity and reputation of the officer not being up to the mark. The reviewing authority could not have simply put its signature without initiating any follow-up action to ensure that the doubts have some basis to record the same in the ACR.

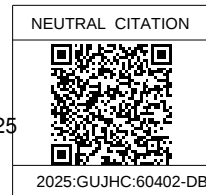
50. We are of the considered opinion that the reporting of any adverse remark should be based on some tangible material and not on mere surmises. We are alive of the fact



that as a court, we cannot sit in appeal and do not have any expertise to correct the administrative decision. The scope of judicial review cannot exceed an inquiry in the decision making process, which is confined to the inquiry on the questions :-

- i) whether the decision making authority exceeded its power;
- ii) committed an error of law;
- iii) committed the breach of the rules of Natural justice;
- iv) reached a decision which no reasonable man would have reached;
- v) abused its powers;
- vi) the decision making authority is influenced by considerations which ought not influence it or fails to take into account the matters which it ought to take into account.

51. We may also take note of the decision of the High Court of Allahabad in **Desh Bhushan Jain¹⁸** and **Sunil Kumar Singh Iii vs. State of U.P.³⁹** that the adverse remarks about integrity or otherwise of a judicial officer should be supported by some material on record. Every error made by a judicial officer in passing a judicial order, however gross it may be, should not be attributed to improper motive. The remark about integrity being doubtful, cannot be based on hearsay and rumours, as it would impinge upon the independent



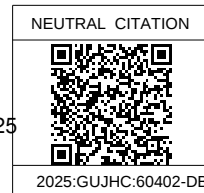
functioning of the judicial officer.

52. We are of the view that the adverse remark entered by the reporting officer regarding the petitioner having doubtful integrity should have been based on some tangible material in the form of a secret note, which would have conveyed his mind in forming his initial opinion with regard to the integrity and overall reputation enjoyed by the petitioner.

53. Once the Full Court of the High Court had resolved in the year 2002 to set out the procedure as to how a remark of doubt or suspicion about the integrity of the judicial officer should be recorded in line with the decision of the Apex Court in **All India Judges Association**, deviation from the said procedure was not permissible. As the procedure set out by the High Court itself, has not been followed by the reporting officer, namely the Administrative Judge, at the outset, we find that the entries in the column relating to integrity in the ACRs of the petitioner, which have been pressed into service very heavily by the learned Senior counsel for the High Court, could not have been formed basis for taking the decision to compulsorily retire the petitioner.

54. The said entries having not been entered as per the procedure set out by the Full Court of the High Court, are required to be ignored by us as the relevant material for assessment by the Review Committee for forming opinion on overall consideration of the entire service record.

55. For the above, the submissions made by the learned Senior advocate for the High Court that the remarks of

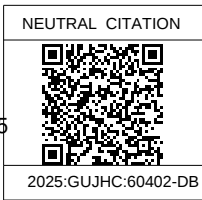


'doubtful integrity' and 'questionable reputation' in the ACR of the petitioner would disentitle him to continue after the requisite length of service or age, inasmuch as, the comment on the integrity of the judicial officer cannot be ignored in view of the legal position enunciated in a range of decisions of the Apex Court cited by him, are liable to be turned down.

(c) Plea of Bias :-

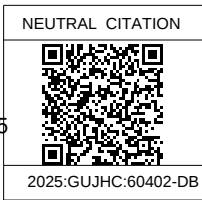
56. Coming on the plea of bias on the part of one of the members of the Review Committee, we may note that it was vehemently argued by the learned counsel for the petitioner that one of the Hon'ble Judges who was forming part of the Review Committee, had made adverse observations in his judicial order dated 17.07.2006, which had led to the initiation of the Departmental Inquiry No. 1/2008 against the petitioner with the issuance of the charge-sheet dated 19.12.2008. This fact, in itself, is sufficient to hold that personal bias of a Senior Judge of the High Court, who was not happy with the award dated 13.06.2005 passed by the petitioner, had influenced the decision of the Review Committee, and has virtually led to the decisions taken by the Standing Committee and the Full Court wherein the said learned Judge was also a member and was part of the deliberations.

57. Placing the judgment and order dated 17.07.2006 from the record, it was argued that castigating remarks were made by the Presiding Judge of the Division bench in the said order passed on an interim application being Civil Application No. 7745 of 2006 in First Appeal No. 3401 of 2005, wherein the



only prayer made by the original claimant was for disbursement of the amount pursuant to the order of the First Appellate Court admitting the appeal challenging the award dated 13.06.2005 passed by the petitioner in Motor Accident Claims Petition No. 823 of 1998.

58. While considering the prayer for disbursement of the amount deposited under the order passed by this Court in the First Appeal, the Presiding Judge had made certain remarks, which as per the contention of the learned counsel for the petitioner, were wholly uncalled for. It is contended that general remarks were passed by the Presiding Judge in the order dated 17.07.2006 about various judicial decisions of the petitioner in making awards as a Motor Accident Claims Tribunal to the effect that the petitioner was making awards in large number of cases ignoring the legal principles laid down by the Apex Court and the High Court and was awarding large sums on the basis of incorrect legal proposition and was permitting withdrawal of excessive amounts deposited for the widows and the children of the deceased. This observation has further led to initiation of the departmental inquiry against the petitioner. The contention is that all the observations made in the order passed by the Presiding Judge about the excessive awards, disbursement of large amount in cases of widows and minors, use of intemperate and disrespectful language, were one-sided and without any material on the record of the First Appeal or the Civil Application wherein prayer was for seeking disbursement of the amount deposited under the order of the

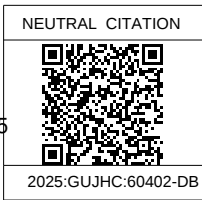


first Appellate court.

59. The submission is that all the observations made in the order dated 17.07.2006 casting aspersion upon the integrity and propriety of the awards passed by the petitioner in various Motor Accident Claim cases were extraneous to the case and, more so, were made without giving any opportunity to the petitioner to furnish his explanation.

60. We may take note of the decision in **K.P. Tiwari**¹⁰ relied by the learned counsel for the petitioner. The Apex Court has made a discordant note of caution for the High Court therein in criticising the officers of the District judiciary intemperately and castigating publicly while saying that no greater damage be done to the administration of justice and to the confidence of the people in the judiciary when the judges of the High Court publicly express lack of faith in the District Judges for one or the other reasons. It was observed that the officer against whom such strictures are publicly passed stands condemned forever in the eyes of his subordinates and of the members of the public. No better device can be found to destroy the judiciary from within.

61. The Apex Court has advised the High Court Judges to exercise self-restraint. It was observed that there are many other ways of expressing disapproval of the orders of the District judiciary, but attributing motives to them is certainly not one of them. It was observed that the higher courts may come across orders of the District Court, which are not justified either in law or in fact and modify them or set aside,



but the learned Judge of the High Court should not have allowed himself the latitude of ignoring judicial precaution and propriety even momentarily. Even the Judges who try to discharge their duties to the best of their capacity are likely to err. It is well said that a judge who has not committed an error is yet to be born and that applies to judges at all levels from the lowest to the highest. It was stated that every error, however, gross it may look, should not be attributed to improper motive. The proper course for the higher court is to make note of the conduct of the judicial officer in the confidential record of his work and to use it on proper occasions. The judges in the higher courts also have a duty to ensure judicial discipline and earn respect for the judiciary from all concerned.

62. With the aid of these aforesaid observations in **K.P. Tiwari**¹⁰, it was vehemently argued by the learned counsel for the petitioner that once it has come to the knowledge of the Review Committee that one Senior member of the Review Committee was the Presiding Judge of the Bench, who passed castigating remarks on the judicial awards passed by the petitioner, in his order dated 17.07.2006, the said learned Judge was required to recuse himself from the Review Committee meeting held on 11.05.2009 to consider the service record of the petitioner to form an opinion, to compulsorily retire him from service.

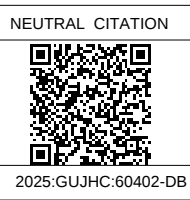
63. Placing the decision of the Apex Court in **A.U. Kureshi**¹⁷, arising out of the order passed by the High Court of Gujarat dated 25.07.2006, it was argued that the Apex

Court has deprecated that one of the judges who was the member of the disciplinary committee had dealt with the case of the delinquent as one of the judges of the Bench on the judicial side. Taking note of the principles of the latin maxim '*nemo debet esse judex in propria causa sua*' (No one should be a judge in his own cause), it was held therein that a reasonable connotation of this principle is that no Judge should adjudicate a dispute which he or she has dealt with in any capacity, other than a purely judicial one. The failure to adhere to this principle creates an apprehension of bias on the part of the said judge.

64. The principle of reasonable likelihood of bias as enunciated by the Apex Court in **Ashok Kumar Yadav v. State of Haryana**⁴⁰ were noted therein, which reads as under:-

“One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the Judge is actually biased or [has] in fact [decided] partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias it is ‘in accordance with natural justice and common sense that the [Judge] likely to be so biased should be incapacitated from sitting’. The basic principle underlying this rule is that justice must not only be done but must also appear to be done.”

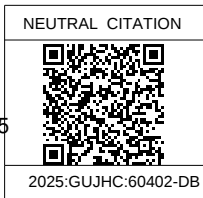
65. Reference has also been made to the decision of this Court in **S.J. Pathak**⁴, wherein it was observed in para '29', as under :-



"29. We are of the considered view that entrusting the enquiry to the same Committee would give rise to a real apprehension in the mind of the delinquent that he would not get justice because the Committee would be more inclined to uphold their view that the delinquent was guilty and to be dismissed from service. Bias in this case cannot be said to be unreal, it is real and substantial. It is trite law that a person who tries a cause should be able to deal with the matter before him objectively, fairly and impartially. No one can act in a decision making process if his previous conduct gives ground for believing that he cannot act with open mind. The cumulative effect of all the circumstances of this case is sufficient to create in the mind of a reasonable man an impression that there was likelihood of bias in the Disciplinary Committee headed by Justice B.J. Shethna, since the Committee had earlier expressed their views."

66. The contention is that the Presiding Senior Judge of the Division bench who had pre-judged the working of the petitioner as the Presiding officer of the Motor Accident Claims Tribunal, in his judicial order dated 17.07.2006, by not only making castigating remarks but also directing the Registrar General to bring the said order to the notice of the then Chief Justice on the administrative side, could not have constituted the Review Committee or participated in the meetings of the Standing Committee and the Full Court, which had taken decision to compulsorily retire the petitioner.

67. The submission is that the manner in which the present matter has proceeded, it is evident that the entire decision making process is vitiated by the likelihood of real apprehension of bias in the mind of the learned Judge forming part of the decision making authority. The cumulative effect

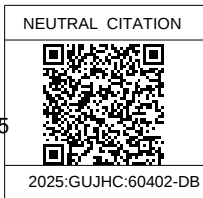


of all the circumstances of the present case, the way the disciplinary proceeding was initiated against the petitioner based on the observations and directions contained in the order dated 17.07.2006 of the Division Bench, the expression of opinion about the judicial working of the petitioner as Motor Accident Claims Tribunal, is sufficient to give rise to a real apprehension in the mind of the petitioner that bias had played a crucial role in the decision of the Review Committee headed by the learned Judge who had passed the order dated 17.07.2006.

68. The apprehension of the petitioner that the learned Judge could not have acted with open mind once he had already pre-judged the issue, is the impression of a reasonable man that there was a likelihood of bias in the decision of the Committee headed by the learned Judge, who made recommendations to retire the petitioner compulsorily.

69. The contention is that it is not only a case of personal bias, but also a case where the decision making process suffers from "malice in law". The order of compulsory retirement suffers from *mala fide* exercise of power by the High Court for the purposes foreign to those for which it is in law intended.

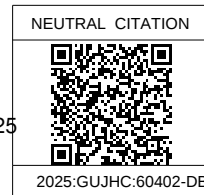
70. Heavy reliance is placed on the decision of the Apex Court in **High Court of Punjab & Haryana vs. Ishwarchand Jani**⁵ by the learned counsel for the petitioner to submit that though a great circumspection is to be exercised by the High Court in setting aside the order of the



Full Court of the High Court on the administrative side, but that by itself is not sufficient to discard the facts and circumstances of the present case, which demonstrate reasonable likelihood of bias on the part of one of the Judges forming part of the Review Committee while recommending for compulsory retirement of the petitioner.

71. Mr. Shalin N. Mehta, learned Senior advocate, in rebuttal, would rely upon the decision of the Apex Court in **G.N. Vinayak**²⁵ to submit that it is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason and actuated by self-interest, whether pecuniary or personal. The principle that "No man should be a judge in his own cause" can be applied in case where there is an element of personal interest, where the bias is also seen as an extension of the principles of Natural justice.

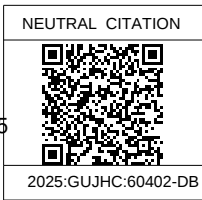
72. It was submitted that in the instant case, no personal bias of the learned Judge who was a member of the Review Committee and also passed the order dated 17.07.2006 on the judicial side, can even be pleaded much less proved. The castigating remarks in the judicial order dated 17.07.2006 cannot be made basis by the petitioner to contend that the said learned Judge had influenced all, not only the recommendation of the Review Committee, but also the decision of the Standing Committee, which comprised of Senior Judges of the High Court and the Full Court comprised of all the High Court judges. There is no allegation of bias against any of the other members of the three



Committees/bodies. It was a mammoth exercise conducted by the High Court to implement the provisions of Rule 21 of the Rules' 2005 where apart from the petitioner, the service record of other officers within the zone of consideration were also considered.

73. It can neither be accepted nor can be assumed that the one member of the two Committees and the Full Court would have influenced the decision of all. The Review Committee was not a one man committee which had made initial recommendations. Extreme step of setting aside the decision of the Full Court because of the presence of one Hon'ble member throughout, cannot be based on any sound principles of law. The infirmity in the decision making process even if exist, the standards of testing the decision of the Full Court and the bar of scrutiny is very high, so much so that when the entire material is looked into, ultimately the decision shocks the conscience of the Court. Any irregularity, even if, in the decision making process because of the presence of one Senior Judge of the High Court in the Review Committee stood validated by the decision of the Full Court. At the same time, it must be kept in kind that the role of the Review Committee was recommendatory in nature and it is the Full Court, which had taken the decision to retire the petitioner compulsorily along with other officers of the District Judiciary, on the recommendation of the Standing Committee after perusal of the entire material including the service record of each of the officer concerned.

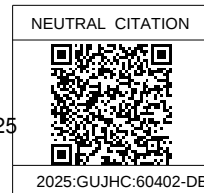
74. Testing these submissions, we find it proper to



deliberate, in brief, on the principles of bias. As observed by the Apex Court in **G.N. Vinayak**²⁵, the bias may be generally defined as partiality or preference. The bias or partiality which in law is taken to vitiate an act, must be seen as a prejudice, which is not founded on reason and actuated by self-interest. However, being a state of mind, a bias is sometimes impossible to determine. The Courts, therefore, have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case, can be inferred.

75. As observed by the Apex Court in **Ashok Kumar Yadav**⁴⁰, the inquiry is to be made in dealing with the plea of bias as to whether the circumstances are such so as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The cumulative effect of all the circumstances of the case, if sufficient to create in the mind of a reasonable man an impression that there was likelihood of bias, the prejudice caused by the decision can be inferred to vitiate an act.

76. In the instant case, the learned Judge who was also the Hon'ble Senior member of the Review Committee made certain castigating remarks on the judicial working of the petitioner and the judicial order passed by him on the interim application in the pending First Appeal against the award passed by the petitioner as a Motor Accident Claims Tribunal, was very much part of the record placed before the Review



Committee. The affidavit-in-reply of the High Court dated 06.05.2010 filed by the Deputy Registrar, High Court, makes a specific reference to the material evaluated by the Review Committee of three Judges of the High Court for the purpose of overall assessment of the performance of the petitioner while taking decision to recommend him for compulsory retirement. The statement in this regard in paragraph '4' of the said affidavit are pertinent to be extracted hereinunder :-

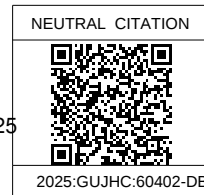
"4. I state and submit that the High Court constituted a Committee of three Hon'ble Judges for the purpose of overall assessment of the performance of Judicial Officers to ascertain potential for useful service in future. Case of the petitioner was also taken-up for consideration by the Hon'ble Members of the Committee. When the Committee considered the case of the petitioner, petitioner had completed 55 years of age. I submit that the Committee took into consideration the following aspects:-

(a) Confidential Reports of the petitioner.

(b) Record relating to Departmental Inquiry initiated against the petitioner as per the charge-sheet dated 19/12/2008 for various charges such as making excessive awards in MACT Cases, disbursing large amount of compensation to the widows and minors and using intemperate language in the judgments.

(c) Service record of the petitioner including vigilance complaints.

(d) Judicial observations while hearing Civil Application No.2648 of 2007 in First Appeal No.934 of 2007 dated 10/7/2007 and while deciding Civil Application No.7745 of 2006 in First Appeal No.3401/2005 dated 17/7/2006. In both the cases the Hon'ble Division Bench directed to the Registrar General to communicate the observations to the petitioner as Presiding Officer of the Tribunal with

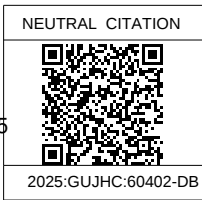


instructions that the same shall be kept in mind by the petitioner at the time when such discretion is to be exercised in future. In the same manner in the order dated 17/7/2006 the Bench was constrained to observe that the petitioner who has rendered number of other cases, has not only been purporting to propound legal propositions which are against the settled legal principles enunciated in catena of decisions of the Hon'ble Supreme Court and of this Hon'ble High Court, but after making awards for large sums on the basis of enacted proposition, has also been permitting the claimants, including widows and minor children, to withdraw large sums of money to the extent of 35 to 40% or even 50% of the amounts payable to the claimants. The Division Bench directed the Registrar General to bring the order to the notice of the Hon'ble the Chief Justice on the administrative side."

77. The result is that one out of the various material evaluated by the Review Committee was the judicial decision of one of the learned members of the Review Committee, where the learned Single Judge not only made strong adverse remarks about various decisions/awards rendered by the petitioner on the judicial side but also directed the Registrar General to place his order along with other orders in other matters arising out of the Motor Accident Compensation awards passed by the petitioner, to the notice of the Chief Justice on the administrative side.

78. The Departmental Inquiry No. 1/2008 was initiated on the basis of the said order, after issuing a show-cause notice to the petitioner, wherein charge-sheet had been issued before the matter was placed before the Review Committee.

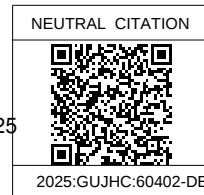
79. In light of these facts, when the cumulative effect of the



facts and circumstance of the present case are seen and evaluated, it is difficult for us to ignore that one learned Judge having expressed his mind in his judicial order dated 17.07.2006 about the judicial working of the petitioner, could have been part of the Review Committee. Once this was so, it is difficult for us to say that the learned Member of the Committee who had pre-judged the working of the petitioner without even calling the explanation of the petitioner, was in a position to take an independent evaluation ignoring the preconceptions in his mind.

80. The fact that there was a judicial observation in the order passed by the learned member of the Committee who formed part of not only the Standing Committee but also the Full Court, is sufficient for the petitioner to establish the case of a reasonable possibility of bias. No one can enter into the state of mind of a person or a body of persons, who form part of the decision making process. However, the propriety demands that the fairness and impartiality must reflect from the record to the extent that the fair assessment of the merits of the case can be inferred, bereft of any operation of influence. The circumstances of the present case show that the judicial decision of the learned Member of the Review Committee dated 17.07.2006 had resulted in a tale of woe for the judicial officer (petitioner) which had not only led to the initiation of the departmental inquiry but also resulted in his compulsory retirement from service.

81. The castigating remarks against the judicial working of the petitioner in the order dated 17.07.2006, it seems, acted

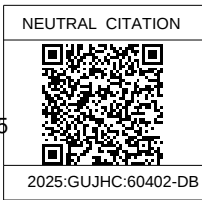


as a catalyst in taking decisions at three levels by three Committees/bodies of the High Court.

82. In our considered opinion, the judicial order dated 17.07.2006 may not fall within the category of an extraneous material, but it had an effect to influence the minds of the Hon'ble Judges forming part of the Full Court.

83. The present case though does not present a scenario of personal bias of the Senior member of the three Committees of the High Court but the circumstances clearly reflect that there was reasonable likelihood of bias sufficient to create in the mind of a reasonable man an impression that the decision of the Full Court was influenced by two factors, viz. the entry about the doubtful integrity and reputation in the ACRs of certain period in the year 2006 and 2007 and the castigating remarks and observations about the judicial working of the petitioner in the order dated 17.07.2006, passed by the Division Bench comprising one of the members of the Review Committee.

84. At the cost of repetition, once we find that the secret notes about the integrity in the ACR are missing in the original records and the only entries made in the column of integrity could not have been formed the basis to record the integrity of the officer being doubtful and further the record was lacking for an endorsement of the Standing Committee or the Full Court, the entries in the ACR of the year 2006 and 2007 would become extraneous material placed before the Full Court for taking decision in the matter of compulsory

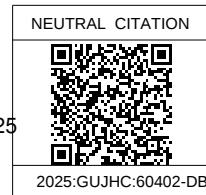


retirement. In all possibility, these entries must have had an influence in the minds of the judges of the High Court reading the material placed before them for deliberations in the Full Court meeting.

85. The conclusion is obvious that the action of the High Court in compulsorily retiring the petitioner was based on the allegations of misconduct, which was subject matter of the departmental inquiry, which, in turn, was based on the observations made in the judicial order of one of the members of the Review committee. The impugned order of compulsory retirement though innocuously worded, but is in fact an order of removal of the petitioner from service.

86. It may be a different situation where the service record of the petitioner itself speaks of his judicial functioning or on overall consideration of the service record, the assessment of overall performance of the petitioner would have been the reason to retire him compulsorily. But on lifting of the veil, once we find that two factors may have influenced the decision of the three Committees, viz. the remarks about doubtful integrity and reputation and the observations of the High Court in the judicial order dated 17.07.2006, it is not necessary for us to consider that there were other factors, if assessed generally, ignoring the above two factors, which could have been the reason to compulsorily retire the petitioner from the judicial service.

87. In totality of the facts and circumstances of the present case, in view of the above discussion, we reach at an

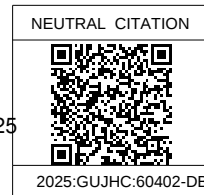


irresistible conclusion that the whole exercise of evaluation of the material, viz. service record of the petitioner by the Review Committee had not resulted into a *bona fide* decision taken in the public interest. The attending circumstances, some of which become extraneous for the reasoning given hereinabove, will make the decision vulnerable in the eyes of a reasonable man of ordinary prudence. The decision making process is tainted on the premise of reasonable likelihood of bias and results into the decision being held as *mala fide*, not taken in the public interest.

88. With the above, the order of compulsory retirement cannot but be said to be an order of punishment, which though innocuously worded but implies a stigma and suggestions of misconduct. Such an order would amount to removal of the petitioner from service without adhering to the provisions of Article 311 of the Constitution of India.

89. This order cannot be protected by taking aid of Article 235 of the Constitution of India which confers power on the High Court to exercise complete control over the District Courts as also the Rule 21 of the Gujarat State Judicial Service Rules, 2005, which confers absolute power upon the High Court in its supervisory administrative jurisdiction to retire a judicial officer compulsorily.

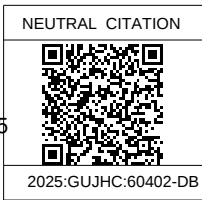
90. With the above, we set aside the decision of the Full Court taken in its meeting held on 14.05.2009 and the consequential order dated 19.05.2009 of compulsory retirement of the petitioner issued by the State Government.

**Reliefs:-**

91. It is placed before us by the learned counsel for the petitioner that the petitioner has attained the age of superannuation on 01.03.2014, during the pendency of the present proceeding. The Departmental Inquiry No. 1/2008 has been withdrawn vide decision taken on 17.07.2009 in view of the order of compulsory retirement. The connected Writ petition is for the relief of promotion and the prayer is to open the sealed cover and grant promotion to the petitioner as per the result dated 18.07.2008 of the promotion exercise conducted for the post of the District Judge, as has been granted to other officers participated in the said exercise. The question, therefore, is as to what relief is to be granted to the petitioner as a result of setting aside of the compulsory retirement order dated 19.05.2009.

92. Once the compulsory retirement order goes, the petitioner shall be treated to be in service continuously with effect from the date of the said order, i.e. 19.05.2009, which stands obliterated with this decision. The continuity of service, therefore, is to be granted to the petitioner till the date on which he has attained the age of superannuation, i.e. 01.03.2014.

93. As the petitioner has been deprived from continuing in service after 19.05.2009, as a result of the illegal exercise of power by the High Court, he is held entitled to all consequential benefits including arrears of salaries, allowances, etc. upto the date of superannuation, i.e.

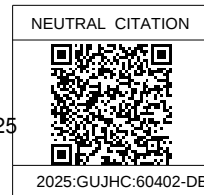


01.03.2014, as if he was in continuous service, without any break.

94. The petitioner is also held entitled to all retiral benefits of service. The pension of the petitioner is to be re-fixed by revision of the last drawn salary by granting the above directed benefits to him being a member of continuous service upto the date of superannuation, i.e. 01.03.2014. The arrears of salary and allowances, etc. including the difference in the pension and other retiral benefits shall have to be computed and paid to the petitioner, as early as possible.

95. The Departmental Inquiry No. 1/2008, which has been dropped/withdrawn on 17.07.2009 on account of the decision to compulsorily retire the petitioner may be revived by the High Court. The decision, in this regard, is left open to be taken by the High Court on the administrative side. In case, the High Court decides to revive the Departmental Inquiry No. 1/2008, withdrawn on 17.07.2009, the consequential benefits of continuity of service accorded to the petitioner shall be subject to the result of the departmental inquiry.

96. However, in case the High Court decides not to proceed with the Departmental Inquiry No. 1/2008 and leave the same as having been withdrawn on 17.07.2009 on account of retirement of the petitioner from service having attained the age of superannuation, the sealed cover of the result of promotion declared on 18.07.2008 qua the petitioner is to be opened and resultant effect is to be given as per the recommendation of the Committee. The petitioner if found



entitled to promotion to the post of the District Judge, the effect of promotion shall be given from the date on which the other incumbents participated in the promotion exercise had been promoted, with all consequential benefits including the revision of salary and allowances, etc.

97. It is clarified that the aforesaid benefits shall also be available to the petitioner, in case, the High Court decides to continue with the Departmental Inquiry No. 1/2008 and the petitioner stands exonerated in the same.

98. With the above, the Special Civil Application No. 3875 of 2010 stands allowed. The Special Civil Application No. 14654 of 2008 stands disposed of in light of the above observations and directions. No order as to costs.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BIJOY B. PILLAI

¹ (1980) 4 SCC 321 : AIR 1987 SC 70
² (1990) 3 SCC 504
³ (2007) 4 SCC 247
⁴ 2010 (1) GLR 153
⁵ (1999) 4 SCC 579
⁶ (1979) 2 SC 368
⁷ (1984) 1 SC 694
⁸ (1991) 3 SCC 38
⁹ AIR 1993 SC 1197
¹⁰ 1994 Supp (1) SCC 540



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- 11 (1997) 7 SC 409
12 AIR 2000 SC 2150
13 (2001) 1 SCC 596
14 (2005) 6 SCC 767
15 (2007) 4 SCC 566
16 (2008) 8 SCC 725
17 (2009) 11 SCC 84
18 2007 (7) ADJ 605 : 2007 SCC OnLine All 1568
19 (1998) 7 SCC 310
20 (2012) 3 SCC 580
21 (2005) 13 SCC 581
22 (2013) 10 SCC 551
23 (2020) 13 SCC 355
24 (2011) 8 SCC 380
25 (2002) 2 SCC 712
26 1992 Supp (2) SCC 651
27 (2011) 10 SCC 1
28 (2012) 8 SCC 58
29 (1970) 2 SCC 458
30 (1999) 1 SCC 529
31 (1992) 2 SCC 299
32 (2003) 6 SCC 545
33 (2003) 9 SCC 592
34 (2010) 10 SCC 693
35 (2014) 4 SCC 773
36 (1984) 2 SCC 369
37 (1974) 2 SCC 831
38 (2003) 8 SCC 117
39 2023 9 ADJ 586
40 (1985) 4 SCC 417