

L.MOHAPATRA, J & B.K.PATEL, J.

W.P.(C) NO. 14213 OF 2004 (With Batch) (Dt.29.02.2012)

GAGAN BIHARI MAHALA & ORS.

..... Petitioners.

. Vrs.

**CHAIRMAN-CUM-MANAGING
DIRECTOR,ORISSA FOREST
DEVELOPMENT CORPN. LTD.
& ORS.**

.....Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART.311.

For Petitioners - M/s. M.K.Mishra, P.K.Das & D.Mishra.
M/s. A.K.Biswal, N.Barik, M.K.Mohanty, K.P.Mishra.
For Opp.Parties -M/s. S.K.Pattnaik, N.Satpathy, U.C.Mohanty,
P.K.Pattnaik.
For Petitioner - M/s. A.K.Biswal, N.Barik, M.K.Mohanty,
K.P.Mishra.
For Opp.Parties -M/s. S.K.Pattnaik, N.Satpathy, U.C.Mohanty,
D.Pattnaik & P.K.Pattnaik.

L.MOHAPATRA, J. The petitioners in the above 10 writ petitions were employees of the Orissa Forest Development Corporation Limited. They have filed the writ petitions challenging the order passed by the competent authority compulsorily retiring them from service.

Gagan Bihari Mahala, petitioner in W.P.(C) No.14213 of 2004; Bibhuti Bhusan Patra, petitioner in W.P.(C) No.14214 of 2004; Dillip Kumar Kar, petitioner in W.P.(C) No.14215 of 2004; Gangadhar Mahakud, petitioner in W.P.(C) No.14216 of 2004; Santosh Kumar Gochhayat, petitioner in W.P.(C) No.14217 of 2004; and Manoj Kumar Mohanty, petitioner in W.P.(C) No.14218 of 2004 were compulsorily retired from service on the basis of the minutes of the proceedings of the Review Committee meeting in Baripada (R & B) Division under Bhubaneswar (C) Zone held on 27th and 28th June, 2003.

Bijay Kumar Mohanty, petitioner in W.P.(C) No.4524 of 2005; Madhusudan Swain, petitioner in W.P.(C) No.4525 of 2005 and Debaraj Biswal, petitioner in W.P.(C) No.4706 of 2005 were compulsorily retired from service on the basis of the minutes of the proceedings of the Committee held on 10th June, 2003 in the office of the General Manager, O.F.D.C. Limited, Berhampur (Com.) Zone and M. Manibabu Dora, petitioner in W.P.(C) No.4526 of 2005 was compulsorily retired from service on the basis of the minutes of the proceeding of Committee meeting held on 10th June, 2003 in the office of the General Manager, O.F.D.C. Limited, Berhampur (C) Zone.

2. Shri Manoj Kumar Mishra and Shri R.K. Rath, the learned Senior Counsel for the petitioners challenged the order of compulsory retirement of all the petitioners on the following grounds:

- (1) The order of compulsory retirement is tainted with mala fides;
- (2) The petitioners made complaint against certain officers and two of those officers were members of the Review Committee and therefore, constitution of such a Review Committee was not permissible and such members have influenced the other members of the Committee in recommending compulsory retirement of the petitioners.
- (3) An order of compulsory retirement cannot be passed in lieu of a punishment in a Departmental Proceeding.

3. Jurisdiction of the Court in the matter of judicial review of an order of compulsory retirement has been settled by the Hon'ble Supreme Court in several decisions. Some of the decisions are required to be taken note of with reference to the grounds of challenge.

4. In the case of ***Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada***, reported in ***AIR 1992 SC 1020***, the Hon'ble Supreme Court has laid down certain criteria for the Courts, on which it can interfere and the criteria includes mala fide, an order based on no evidence and an arbitrary order in the sense that no reasonable person would form the requisite opinion on the given material, i.e., if the order is found to be a perverse order. The Hon'ble Supreme Court further observed that an order of compulsory retirement is not a punishment, it implies no stigma nor any suggestion of misbehaviour and the order should be passed in public interest on subjective satisfaction of the Authority and while reviewing the service record, the entire service record is to be considered. The criteria laid down by the Hon'ble Supreme Court in the said decision are as follows:

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

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

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

This view expressed by the Hon'ble Supreme Court has been reiterated in subsequent decisions such as in the case of ***Posts and Telegraphs Board & others Vs. C.S.N. Murthy***, reported in ***(1992) 2 SCC 317***; ***Sukhdeo Vs. Commissioner Amravati Division, Amravati & another***, reported in ***(1996) 5 SCC 103***; ***State of***

Orissa & others Vs. Ram Chandra Das, reported in (1996) 5 SCC 331; and **M.S. Bindra Vs. Union of India & others**, reported in (1998) 7 SCC 310. A similar view has also been expressed by the Hon'ble Supreme Court in the case of **State of U.P. Vs. Vijay Kumar Jain**, reported in AIR 2002 SC 1345. In the case of **Jugal Chandra Saikia Vs. State of Assam & another**, reported in AIR 2003 SC 1362, the Hon'ble Supreme Court held that where the screening committee is consisting of responsible officers of the State and they have examined/assessed the entire service record and form the opinion objectively as to whether any employee is fit to be retained in service or not, in absence of any allegation of mala fide, there is no scope of a judicial review against such an order. In the said decision, the Hon'ble Supreme Court relied on previous decisions of the said Court in the case of **S. Ramachandra Raju Vs. State of Orissa**, reported in AIR 1995 SC 111 and **M.S. Bindra Vs. Union of India & others**, reported in (1998) 7 SCC 310. In the light of the above decisions, the case of each of the petitioner is required to be examined and the decisions cited by the learned counsel for the petitioners as well as by the learned counsel appearing for the Corporation will be taken note of while dealing with each individual case.

5. Before we deal with the case of each of the petitioners, the first ground taken by the learned counsel appearing for the petitioners being common in all the cases, the same is required to be addressed first.

It is the case of the petitioners that they are the office bearers of the "Karmachari Sangha" and allegations had been made by the Sangha against one Shri T.K. Mohanty to the effect that he was involved in corrupt activities such as mixing of stone cheeps with Sal seeds at Udala Godown and on the basis of the complaint made by the office bearers of the Sangha, the then Divisional Manager had warned Shri T.K. Mohanty not to get indulged in such corrupt activities. It is also alleged that one Shri Vinod Kumar, who was working as General Manager, Baripada Zone was involved in misappropriation of Corporation fund by submitting false and excess T.A. Bills and the Karmachari Sangha had raised objection to such activities of Shri Vinod Kumar and audit was conducted and it was found that Shri Vinod Kumar had taken an excess amount of Rs.4,471/- and the said amount was also recovered from him. It is further alleged that at the instance of Shri Vinod Kumar, Shri T.K. Mohanty, the then Divisional Manager of Baripada R & B Division was inducted as a member of the Review Committee and Shri Mohanty influenced the other members to recommend for compulsory retirement of the petitioners. Similar allegations are also made so far as induction of Shri G.P. Mohanty, Divisional Manager, Berhampur (C-PL) Division in the Review Committee, who recommended for compulsory retirement of three of the petitioners in its minutes of the meeting is concerned. Shri S.K. Patnaik, the learned counsel appearing for the Corporation submitted that the Review Committee was headed by one I.F.S. Officer, one Orissa Finance Service Officer, one Forest service Officer and the Personnel Officer of the Corporate Office and therefore, it is difficult to accept the contention of the petitioners that the said outsiders could be influenced by Shri T.K. Mohanty, who had to be taken as a member of the Review Committee because of his posting at the place as Divisional Manager. Similar is the situation so far as Shri G.P. Mohanty is also concerned.

6. Undisputedly in the Review Committee headed by the General Manager, Bhubaneswar (C) Zone for Baripada office there were four more members and Shri T.K. Mohanty was one of them. Shri T.K. Mohanty at the relevant time was working as Divisional Manager of the Corporation and was posted at Baripada. Because of such

posting, he had to be included in the Review Committee. Though it is alleged in the writ petition that the office bearers of the Karmachari Sangha had lodged complaint against Shri T.K. Mohanty on the basis of which he had been warned by the then Divisional Manager, there is absolutely nothing on record to show that Shri T.K. Mohanty had been warned as alleged on the basis of a complaint made by the office bearers of the Karmachari Sangha. Similarly no document has also been produced before us to show that any action had been taken against Shri G.P. Mohanty of Berhampur Division on the basis of any allegation made by the office bearers of the Karmachari Sangha. Whatever action was taken against these two Officers as reflected from the record was on the basis of their own conduct and therefore, any action taken by the Corporation in respect of the above two Officers at any point of time cannot be said to be on the basis of any complaint made by the office bearers of the Karmachari Sangha. Both the Officers were inducted as member of the Review Committee because of the official position held by them at the relevant time. The Review Committee constituted for Baripada consisted of five members. The four other members were Shri B.L.K. Reddy, General Manager, Bhubaneswar (C) Zone; Shri C. Murmu, Chief Audit Officer from Orissa Finance Service; Shri K.C. Sahoo, Divisional Manager, Keonjhar (C) Division from Orissa Forest Service and Shri P.K. Swain, Personnel Officer of Corporate Office. It is difficult to accept the contention of the learned counsel for the petitioners that Shri T.K. Mohanty could influence all the above four senior Officers to make a recommendation for compulsory retirement of the petitioners. So far as Berhampur Division is concerned, apart from Shri G.P. Mohanty, there were six more Officers, who were members of the Review Committee. Those six members were Shri K.R. Singh, General Manager, Berhampur Commercial Zone; Shri S.B. Sasmal, Divisional Manager, Boudh; Shri S.K. Mohapatra, Divisional Manager, Muniguda; Shri M.R. Kar, Divisional Manager, Bhanjanagar; Shri C. Murmu, Chief Audit Officer and Shri P.K. Swain, Personnel Officer, Corporate Office, Bhubaneswar. For the reasons stated above, we are unable to accept the contention of the learned counsel appearing for the petitioners that either induction of Shri T.K. Mohanty or Shri G.P. Mohanty in the two Review Committees was intentional or that these two Officers had influenced the other members of the Committee in recommending compulsory retirement of the petitioners. There was no mala fide. Law is well settled that when mala fide is alleged, the same has to be specifically pleaded and proved. Though mala fide has been pleaded in all the writ petitions, the same is not supported by any documentary evidence. We, therefore, find no substance in the first ground taken by the learned counsel appearing for the petitioners.

7. The second ground taken by the learned counsel for the petitioners is that the order of compulsory retirement in respect of all the petitioners is arbitrary and based on no material. In order to deal with such contention, it is required to examine the findings of the Review Committee in respect of each of the petitioner.

Gagan Bihari Mahala – W.P.(C) No.14213 of 2004

The Review Committee made the following observation in its recommendation:-

“His date of birth is 4.3.60 and the joining date in Corporation service on daily wages is 5.11.80 and in regular service is 1.1.82. One Departmental Proceedings has been drawn against him with the following charges and the same is yet to be finalized. Departmental Proceedings drawn vide O.O. No.9 dt.21.1.99.

CHARGES:

- i) Gross misconduct and negligence in duty.
- ii) Unlawful trespass with ulterior motive and threatening the staff and taking snaps.
- iii) Assistance in tampering of official records.

One Criminal case is filed against Sri Mahala based on the F.I.R. bearing No.55 dt.6.8.98 filed by the Dy. D.M. (Sri M.R. Patra) in Udala Police Station for the criminal activities. The case is under trial in the court of S.D.J.M., Udala. In addition to this the Divisional Manager produced the copies of the following letters where the then General Managers have submitted reports to the Head Office against the misconduct of Sri Mahala.

- i) Letter No.2705 dtd.1.8.84 of Sri D.K. Das, Ex. General Manager.
- ii) Letter No.Res/12 dt.4.3.96 of Sri Vinod Kumar, I.F.S., Ex. General Manager.
- iii) Letter No.Res/56 dt.20.3.96 of Sri Vinod Kumar, I.F.S., Ex. General Manager.
- iv) Letter No.Res/103 dt.26.3.96 of Sri Vinod Kumar, I.F.S., Ex. General Manager.
- v) Letter No.Res/113 dt.26.3.96 of Sri Vinod Kumar, I.F.S., Ex. General Manager.

The reports are found to be very serious in nature and clearly indicate official misconduct and behavioural attitude of Sri Mahala. The copies of the letters are enclosed. The letters also indicate how Sri Mahala was responsible for not allowing the General Manager to discharge his normal duties in the Zonal Office. Therefore in view of all these evidences the Committee recommends this case for Compulsory Retirement.”

From the above observation, it appears that Shri Mahala was facing one Departmental proceeding on charges of gross misconduct and negligence in duty, unlawful trespass with ulterior motive and threatening the staff and taking snaps apart from assisting in tampering of official records. One criminal case was also filed against him at the instance of the Deputy Divisional Manager in Udala Police Station for his criminal activities. The then General Manager had also written four letters in the month of March, 1996 indicating the activities of Shri Mahala. The Committee considered the said letters, the charges in the Departmental proceeding as well as pendency of a criminal case and came to a conclusion that the allegations are very serious in nature and clearly indicate official misconduct and behavioural attitude of Shri Mahala. Accordingly the Committee recommended for his compulsory retirement. Shri Manoj Kumar Mishra, the learned Senior Counsel appearing for this petitioner submitted that the Departmental proceeding was pending and the criminal case was also pending by the time the Review Committee met. Shri Mahala was also given no opportunity to meet the allegations made by the then General Manager in his letters written in the month of March, 1996. It was also contended that in the Departmental proceeding, Shri Mahala could be punished and in lieu of such punishment, avoiding the Departmental proceeding, Shri Mahala should not have been placed on compulsory retirement. In the case of ***Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada***

(supra), the Hon'ble Supreme Court held that principles of natural justice has no place in the context of an order of compulsory retirement. While the High Court or the Court would not examine the matter as an Appellate Court, they may interfere if they are satisfied that the order is passed without any evidence. The case of Shri Mahala is not a case of that nature. The Review Committee considered the serious allegations made by the then General Manager against Shri Mahala apart from the allegations made against him in the Departmental proceeding. On consideration of such serious allegations, the Committee decided to recommend for compulsory retirement. It is, therefore, difficult to accept the contention of the learned Senior Counsel Shri Mishra that the recommendation of the Review Committee is based on no material. Sufficiency of material is not a matter to be looked into while exercising the jurisdiction of judicial review. The High Court does not sit in appeal against the recommendation of the Review Committee. If on certain allegations the Committee is satisfied that it is a fit case for recommending compulsory retirement, the Court has hardly any jurisdiction to interfere with the same on the ground of insufficiency of material. We, therefore, do not find any infirmity in the recommendation made by the Review Committee for compulsory retirement of Shri Mahala.

Bibhuti Bhusan Patra – W.P.(C) No.14214 of 2004

The Review Committee made the following observation in its recommendation:-

“The date of birth is 15.4.52 and the date of entry into service is 1.4.72. One Departmental Proceedings is drawn vide O.O.No.72 dt.4.5.2000 by the General Manager, Baripada (C) S.D. Zone with the following **charges**:

1. Suppression of facts.
2. Negligence in duty.
3. Misleading to higher authorities.

Besides the above the Committee perused the reports submitted by the Ex. General Manager Sri Vinod Kumar, I.F.S., to Head Office vide letters given below:

1. Letter No.Res/12 dt.4.3.96
2. Letter No.Res/56 dt.20.3.96
3. D.O. Letter No.Res/103 dt.26.3.96
4. Letter No.Res/113 dt.26.3.96

The reports are found to be very serious in nature and clearly indicate official misconduct and behavioural attitude of Sri Patra. The copies of the letters are enclosed. The letters also indicate how Sri Patra was responsible for not allowing the General Manager to discharge his normal duties in the Zonal Office.

The Committee also perused the C.C.Rs.

Basing on the correspondences made by the Ex. General Manager as mentioned above, it is evident that the delinquent is a liability to the Corporation and the Committee, therefore felt that this is a fit case for Compulsory Retirement and recommends for the same. ”

The case of this petitioner is more or less same as that of Shri Mahala. In this case Shri Patra was facing one Departmental proceeding on charges of suppression of facts, negligence in duty and misleading the higher authorities. Apart from the above, the then General Manager Shri Vinod Kumar had written four letters in March, 1996 with regard to conduct of Shri Patra. The Review Committee found the allegations to be very serious in nature and also observed that Shri Patra was a liability to the Corporation and accordingly recommended for compulsory retirement.

Though it was contended by the learned Senior Counsel Shri Mishra for the petitioner that the recommendation is based on no material, the recommendation itself shows that the allegations made by the then General Manager were of serious in nature and considering the conduct of the petitioner as alleged in those letters, the Committee took a decision to recommend for compulsory retirement. Therefore, it cannot be also said in the case of Shri Patra the recommendation made by the Committee was based on no material.

Dillip Kumar Kar – W.P.(C) No.14215 of 2004

The Review Committee made the following observation in its recommendation:-

“The date of birth is 7.8.1949 and the date of entry into service is 3.7.74. He completed 50 years of age and 20 years of service. In total 3 (Three) Nos. of Departmental Proceedings have drawn against Sri Kar during his incumbency in different places. Out of this 2 (Two) Nos. of proceedings have been finalized and 1 No. of proceedings is under enquiry. The details of the proceedings drawn and final orders issued are given below:

1. Departmental Proceedings drawn vide Memo No.936 Dt.18.4.1979 of the D.M., Baripada Division.

CHARGES:

- A. Mala fide intention to pilferage timber from forest to his personal benefit.
- B. Felling of un-marked trees.
- C. Put the Corporation into troubles and spoiling its image.
- D. Misappropriation of Corporation money.
- E. Negligence in duty.

FINAL ORDERS PASSED VIDE O.O. NO.16 DT.5.3.81:

- i) The period of suspension is treated as such.
- ii) He is censured.
- iii) He will remain liable to pay the compensation as may be assessed by the Forest Department for felling of trees not due for felling in Kuliana 6/3.
- iv) The cost of 12 (Twelve) stack garinda firewood and 210 pcs. of Dhaw Axles amounting to Rs.1,037.93 is to be recovered from his pay.
- v) His pay has been reduced to the minimum pay scale with immediate effect.

2. Departmental Proceedings drawn vide O.O. No.294 dt.8.11.91 of G.M., Sambalpur Zone with the following:

CHARGES:

- i) Gross misconduct.
- ii) Unauthorised absent from duty.
- iii) Disobedience of orders.

FINAL ORDER PASSED VIDE O.O. NO.18 Dt.1.2.93 OF THE D.M., ROURKELA:

- a) The unauthorized absence from duty for the period from 1.10.84 to 9.9.91 shall not be counted in service.

3. Departmental Proceedings drawn vide O.O.No.18 dt.22.1.96 of G.M., Baripada with the following:

CHARGES:

- i) Disobedience of orders.
- ii) Misappropriation of Corp. Money.
- iii) Negligence in duty.
- iv) Misconduct.

The Proceedings is yet to be finalized.

The proceedings involve large amount of financial implications and also unauthorized period of absence for more than 6 years. In addition to this orders have been passed in the disallowed vouchers for recovery of more than Rs.65,000/. In spite of these departmental actions there has been no improvement in his performance and is not found to be satisfactory. In view of this the Committee felt that it is a fit case for Compulsory Retirement.”

From the above recommendation, it appears that Shri Kar faced a Departmental proceeding in 1979 and was punished. He faced another Departmental proceeding in the year 1991 on the charges of gross misconduct, unauthorized absence from duty and disobedience of orders. In the said case also he was punished. He faced the third Departmental proceeding in the year 1996 on allegations of disobedience of orders, misappropriation of Corporation money, negligence in duty and misconduct. The said Departmental proceeding was pending when the Review Committee met. From the observations made by the Review Committee, it appears that the third Departmental proceeding involved large amount of financial implications and unauthorized absence was for a period of more than six years. In spite of three Departmental proceedings, the conduct of Shri Kar did not improve and accordingly the Committee recommended for compulsory retirement. This is also not a case where the Committee recommended for compulsory retirement in absence of any material. The observations made by the Committee as quoted above clearly justify the recommendation for compulsory retirement.

The Review Committee made the following observation in its recommendation:-

"The date of birth is 23.5.54 and the date of entry into service is 17.4.80. He completed 20 years of service. 3 Nos. of Departmental Proceedings were drawn against Sri Mahakud during his tenure. All these three proceedings have been finalized. The details are as follows:-

1. Departmental Proceedings drawn vide O.O No.2870 dt.18.9.84.

CHARGES:

- i) Willful absence from duty.
- ii) Pilferage of Corporation property
- iii) Mishandling of Corporation records
- iv) Negligence in duty

FINAL ORDER PASSED VIDE O.O. NO.183 DT.19.12.85.

- i) He is severely warned for future.
 - ii) The period of suspension is treated as such which will count towards his increment.
2. Departmental Proceedings drawn vide O.O. No.30 dt.24.3.01.

CHARGES:

- i) Negligence in duty.
- ii) Suppression of facts.
- iii) Gross misconduct.

FINAL ORDERS PASSED VIDE O.O NO.20 DT.8.2.2003

- i) Sri Mahakud, Watcher is cautioned for future.

3. Departmental Proceedings Drawn vide O.O.No.891 dt.5.6.98.

CHARGES:

- i) Gross misconduct and indiscipline.
- ii) Abusing & scandling Forest Department officials & Staff for no reason related to the matter.
- iii) Provocating other Watchers and Peons of Division Office for non-cooperation in discharging their duties.
- iv) Gross insubordination.

FINAL ORDERS PASSED WITH THE FOLLOWING PUNISHMENTS:

- i) On consideration of the statement of Sri Mahakud, Watcher the charges made in the D.P is dropped.
- ii) The period of suspension is treated as duty.
- iii) He is warned not to repeat in future.
- iv) He is allowed to draw his salary for the period from 21.5.98 to 1.6.98.

The Committee carefully analyzed the series of proceedings drawn against Sri Mahakud and came to the conclusion that his conduct has not improved in spite of the warnings given to him in the final orders. Further the Divisional Manager in his report, submitted based on the records of the P.C. File, states that Sri Mahakud is an unwilling and irresponsible worker. He is also in the habit of frequently availing leave. His performance is also found to be not at all satisfactory. Keeping all these analysis in view the committee felt that it is a fit case for Compulsory Retirement.”

From the above observation made by the Committee, it is clear that Shri Mahakud faced series of proceedings but his conduct did not improve. The Divisional Manager also reiterated that Shri Mahakud is an unwilling and irresponsible worker. For the reasons stated above, the Committee felt that Shri Mahakud has become a liability on the Corporation and accordingly recommended for compulsory retirement. Though it was contended by Shri Mishra, the learned Senior Counsel appearing for this petitioner that he could be punished in the Departmental proceeding and there was no justification for recommending compulsory retirement, we find that the conduct of the petitioner as revealed from the observation made by the Committee is such that any reasonable person would come to a conclusion that in absence of any improvement in the conduct of Shri Mahakud in spite of several Departmental proceedings justifies an order of compulsory retirement. We, therefore, do not find any infirmity in the recommendation of the Review Committee so far as this petitioner is concerned.

Santosh Kumar Gochhayat – W.P.(C) No.14217 of 2004

The Review Committee made the following observation in its recommendation:-

“His date of birth is 11.2.56 and the date of joining in service on daily wages is 21.3.83 and on regular basis from 19.10.89. One Departmental Proceeding has been drawn against him vide O.O. No.10 dt.21.1.99 on the following **charges**:

- i) Gross misconduct.
- ii) Act of offence by instigating a local man for assaulting the Divisional Manager in the office chamber.

The above proceeding has been finalized vide O.O. No.2 dt.2.1.01 of General Manager, Baripada and the following punishment has been awarded.

Charge No.1 is established and the delinquent is warned for future. In addition to this a criminal case is pending in the Court of S.D.J.M., Baripada. The case has been filed vide F.I.R. No.192 dt.2.9.98. The F.I.R. has been filed by the Divisional Manager, Baripada in connection with the assault on him in the office chamber. The police have investigated the case and submitted the report to the court of S.D.J.M., and the case is under trial. The case has been booked under Section 448/323 etc. of I.P.C. In addition to this the then General Manager vide their letter No.2705 dated 1.8.94, Res/12 dt.4.3.96, D.O No.103 dt.26.3.96 have also submitted detailed reports to the Head Office about the irregularities committed by him, misconduct and obstructing the General Manager from discharging his official duties. On review of the records the Committee felt that the performance of Sri Gochhayat has been far from satisfactory and his

continuance in the Corporation is not at all desirable. **Therefore the Committee recommends his case for Compulsory Retirement.**”

It is evident from the above observation of the Committee that Shri Gochhayat was punished in the Departmental proceeding and in addition to the same, a criminal case was pending against him in the Court of the learned S.D.J.M., Baripada for commission of offence under Sections 448/323 of the I.P.C. The General Manager had also written two letters indicating the irregularities committed by Shri Gochhayat. On examination of those letters, the Committee found that the performance of Shri Gochhayat has been far from satisfactory and his continuance in the Corporation is not at all desirable. The recommendation of the Committee is based on the above facts. Since this Court does not sit in the appeal over the recommendation made by the Review Committee and examine sufficiency of materials, we find no infirmity in the recommendation of the Committee which is based on the materials indicated in the recommendation itself.

Manoj Kumar Mohanty – W.P.(C) No.14218 of 2004

The Review Committee made the following observation in its recommendation:-

“The date of birth is 20.1.57 and the date of joining in service on daily wages is 15.3.80 and on regular service from 15.3.82. On perusal of the Service Book and other relevant records submitted by the Divisional Manager the Committee observed that 7 (Seven) Departmental Proceedings have been drawn with serious charges. The details of Departmental Proceedings drawn and the charges framed are as under:

1. Departmental Proceedings drawn vide O.O No.14 dt.19.5.86.

CHARGES: Not entered in the Service Book.

FINAL ORDERS PASSED VIDE O.O. NO.40 DT.21.7.86.

Three increments i.e. falling due on 15.3.87 & 15.3.88 withheld.

2. Departmental Proceedings drawn vide O.O. No.74 Dt.1.9.87.

CHARGES:

- i) Severely misconduct himself.
- ii) Created indiscipline in the Corporation.

3. Departmental Proceedings drawn vide O.O. No.71 dt.27.8.87.

CHARGES:

- i) Gross negligence in duty.
- ii) Temporary misappropriation of Rs.576.75 of the Corp.
- iii) Manipulation of accounts with intension of wrongful gain amounting to misconduct.
- iv) Misappropriation of Corp. money for wrongful pecuniary gain to himself to the tune of Rs.5,757.50.

FINAL ORDERS PASSED VIDE O.O NO.99 DT.30.8.90:

- i) Period of suspension is treated as such.
- ii) A sum of Rs.5,757.50 being the misappropriated amount be recovered from the entitlements of Sri Mohanty, if any.
- iii) He is dismissed with immediate effect.

FINAL ORDERS PASSED VIDE O.O. NO.45 DT. 9.5.94 OF M.D. BBSR ON THE APPEAL PETITION DT.21.2.94 & 3.3.94 OF SRI MOHANTY AGAINST THE FINAL ORDERS PASSED VIDE O.O. NO.99 DT.30.8.90 OF PROJECT MANAGER, KEONJHAR IN THE DEPARTMENTAL PROCEEDINGS DRAWN VIDE O.O.NO.71 DT.27.8.87 & O.O.NO.74 DT.1.9.87.

AWARD:

- i) He is reinstated to service as Junior Clerk with effect from the date of joining as such.
 - ii) The period of suspension is treated as such.
 - iii) A sum of Rs.5,757.50 is to be recovered from the salary in suitable monthly instalments.
 - iv) The period from the date of dismissal till the date of his joining in the post, he shall not be paid any kind of financial benefits as he has not worked during the said period.
4. Departmental proceedings drawn vide O.O. No. 153 dt. 18.11.98.

CHARGES:

- i) Gross misconduct.
 - ii) Creating disturbance to run the office smoothly polluting the working atmosphere.
 - iii) Tampering of official records.
 - iv) Unlawful and illegal and illegal trespass in a gang with criminal motive into office premises, central godown and Sub-Division office at Udala without authority.
 - v) Violation of the official rules & conduct rules.
 - vi) Illegal stoppage of OFDC work & abused the staff at work.
 - vii) Unlawful work by obtaining the signature of staff & labourers in blank papers with mala fide intention.
 - viii) Leaving the office and the headquarters without prior permission from the competent authority.
 - ix) Loss to OFDC by illegal stoppage of ongoing works.
5. Departmental Proceedings drawn vide Memo No.1394 dt.15.9.99.

CHARGES:

- i) Willful and unauthorized absence from duty.
 - ii) Negligence in due discharging of official duty.
 - iii) Disobedience of order.
6. Departmental Proceedings drawn vide O.O. No.55 dt.24.5.02.

CHARGES:

- i) Unauthorised & willful absent from official duty without Application.
- ii) Disobedience of orders.
- iii) Negligence in duty.
- iv) Gross misconduct.
- v) Loss to the Corporation.

7. Departmental Proceedings drawn vide O.O.No.100 Dt.30.7.02.

CHARGES:

- i) Disobedience of order.
- ii) Negligence in duty.
- iii) Violation of conduct rules.

Out of the above 7 (Seven) No. of Departmental Proceedings 3 (Three) Nos. of Departmental Proceedings have been finalized. In the proceedings drawn vide O.O.No.71 dt.27.8.87 Sri Mohanty has been dismissed from service. On appeal to the Managing Director the orders have been modified vide O.O.No.45 dt.9.5.95. The rest of the 4 (Four) Departmental Proceedings have not yet been finalised. In addition to these Departmental Proceedings F.I.R. No.55 dt.6.8.88 has been filed against him in Udala P.S. by the S.D.M. (Sri M.R. Patra) of Podadia Sub-Division and he has been charged under Section 448/506/323/294/384/34 of I.P.C. and the case is under trial in the court of S.D.J.M., Udala. It is also reported by the D.M. that Sri Mohanty is absent since 17.2.03. The C.C.Rs. were also perused by the Committee. It is observed that in most of the years his performance is recorded to be very unsatisfactory and he was also found to be not fit for promotion. In some cases the adverse remarks were also given by the General Managers. His criminal activities and also the police case instituted against him vide F.I.R. No.55 dt.6.8.98 at the Udala P.S. are also reflected in the C.C.Rs. The recording authority confirmed him to be a permanent liability to the Corporation. In view of the above findings the Committee recommends his case for Compulsory Retirement."

As is evident from the recommendation made, Shri Mohanty faced several Departmental proceedings out of which in three Departmental proceedings, he had been punished. In one proceeding, he was dismissed from service but in appeal, the appellate authority modified the punishment. There is also a criminal case against Shri Mohanty for commission of offence under Sections 448/506/323/294/ 384/34 of the I.P.C. The Committee on perusal of the C.C.Rs., the allegations made in seven Departmental Proceedings, the punishment imposed in some of the proceedings and the allegations made in the criminal case, recommended for compulsory retirement. On perusal of the reasons assigned by the Committee, we find no infirmity in the same.

Bijay Kumar Mohanty – W.P.(C) No.4524 of 2005

The Review Committee met on 10.6.2003 in the Office of the General Manager, O.F.D.C. Limited, Berhampur (Commercial) Zone and made the following recommendation:-

“On perusal of records submitted by the Divisional Manager it is found that Sri Bijay Ku. Mohanty, F.A. has been proceeded eight times for serious irregularities like tampering of records, causing financial loss, serious dereliction in duty and he has also been punished three times but in spite of this he continued to commit the irregularities as indicated above. Perused and found not satisfactory in view of past records. The committee observes that the continuation of such person shall be detrimental to the Corporation and recommended for compulsory retirement.”

It is evident from the recommendation made by the Review Committee that Shri Mohanty had been proceeded eight times on allegations of serious irregularities like tampering of records, causing financial loss and serious dereliction in duty and he had also been punished three times. The Committee perused the records of all the proceedings and did not find the work of Shri Mohanty satisfactory and observed that continuance of Shri Mohanty shall be detrimental to the interest of the Corporation and accordingly recommended for compulsory retirement. Shri R.K. Rath, the learned Senior Counsel relied on a decision of the Hon'ble Supreme Court in the case of **State of Gujarat v. Umedbhai M. Patel**, reported in **2001 STPL (LE) 29384 SC**. In the said reported case there was no adverse entries in the confidential record. The employee had successfully crossed the efficiency bar at the age of 50 as well as 55. He was placed under suspension on 22.5.1986 pending disciplinary proceedings. The Review Committee did not recommend for compulsory retirement. The State Government had also sufficient time to complete the enquiry as the employee had two years service left to retire. The authorities did not wait for conclusion of the enquiry and decided to dispense with the services of the employee merely on the basis of allegations which had not been proved and in absence of any adverse entries in his service record to support the order of compulsory retirement. Under these circumstances the Hon'ble Supreme Court confirmed the order of the High Court setting aside the order of the compulsory retirement. The Hon'ble Supreme Court in the said reported judgment referring to some earlier cases decided by the same Court observed that the settled legal position is that the Government is empowered and would be entitled to compulsorily retire a Government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. In the present case, undisputedly Shri Mohanty had been proceeded with departmentally eight times on allegations of tampering of records, causing financial loss and serious dereliction in duty. In three of the Departmental proceedings, he had been punished. Therefore, the case of Shri Mohanty is distinguishable of facts. In the case of **State of Gujarat v. Umedbhai M. Patel** even the Review Committee had not recommended for compulsory retirement but because of pendency of a disciplinary proceeding, the order of compulsory retirement had been passed. There was no adverse entry in his C.C.R. also. Under those circumstances, the Hon'ble Supreme Court held the compulsory retirement to be bad. The case of Shri Mohanty is distinguishable on facts and therefore, has no application to the case of Shri Mohanty. We, therefore, do not find any infirmity in the recommendation of the Review Committee in this case.

Madhusudan Swain – W.P.(C) No.4525 of 2005

The Review Committee made the following observation in its recommendation:-

“Shri Swain has been proceeded for 4 (four) times for serious irregularities like negligence in duty, causing heavy loss to Corporation to the tune of Rs.2.7 lakhs, embezzlement of firewood stock etc. In spite of punishment in these cases, Sri Swain has not improved his performances. After perusal of the C.C.Rs. and past records, his case recommended for compulsory retirement and such persons should not continue in the organization. Accordingly the committee records for compulsory retirement.”

From the recommendation made by the Review Committee, it appears that Shri Swain had been proceeded against departmentally four times on allegations of negligence in duty, causing financial loss to the Corporation to the tune of Rs.2.7 lakhs, embezzlement of firewood stock etc. and he had been punished in all the four departmental proceedings. On consideration of the same and the C.C.R. of Shri Swain, the Committee recommended for his compulsory retirement. As stated earlier, this Court does not sit in appeal over the recommendation made by the Committee and cannot decide the sufficiency of materials for the purpose of recommendation. There being no dispute that Shri Swain had been proceeded four times departmentally on serious allegations and had also been punished and the fact that the Committee had also seen the C.C.Rs. of Shri Swain in order to come to the said conclusion, there is hardly any scope for this Court to interfere with such recommendation.

Debaraj Biswal – W.P.(C) No.4706 of 2005

The Review Committee made the following observation in its recommendation:-

“Shri Biswal has been proceeded for serious irregularities for eight times such as absconding from duty, illegal disposal of F.W., connivance with smugglers and embezzlement of firewood stock, careless handling of office records and vouchers etc. Out of 8 (eight) proceedings 6 (six) has been finalized but he has not corrected himself and committed irregularities. The C.C.Rs. were verified along with the service records and found not satisfactory. In view of the past service records, the committee observes that such persons should not be continued in Corporation service and recommended that he should be given Compulsory Retirement.”

The case of Shri Biswal is more or less same as the case of Shri Bijay Kumar Mohanty. Shri Biswal had also been proceeded departmentally eight times on allegations of absconding from duty, illegal disposal of firewood, connivance with smugglers and embezzlement of firewood stock etc. Out of eight departmental proceedings, six had been concluded. The Committee not only looked into the allegations proved against Shri Biswal in six of the proceedings but also considered the C.C.Rs. and recommended for compulsory retirement. The submission of the learned counsel for this petitioner that if the petitioner was found guilty of the charges in the departmental proceeding, his services could be dispensed with by way of an order of dismissal or removal does not hold good considering the fact that even if an employee is let off with minor punishment in several departmental proceedings, his performance has to be adjudged by the Committee along with the entries in the C.C.Rs. in order to come to a conclusion as to whether the employee should be compulsorily retired in public interest or not. The Committee after considering the allegations made against Shri Swain and the C.C.Rs. was satisfied that compulsory retirement of Shri Swain was

required in public interest and accordingly recommended for compulsory retirement. We find no infirmity in such recommendation.

M. Manibabu Dora – W.P.(C) No.4526 of 2005

In this case the Committee meeting was held on 10.6.2003 in the Office of the General Manager, O.F.D.C. Ltd., Berhampur (C) Zone and the following recommendation was made:-

“On verification of the service records, it is found that Sri Manibabu Dora, S/S. has been punished twice for the departmental proceedings initiated against him. It is reported by the D.M. that he has been recently suspended for obstruction of corporation work. Prior to this, he was also suspended twice. As reported by D.M. that he is unwilling worker and his performance is not satisfactory and he is an inefficient worker. The Committee observes that such inefficient workers should not be allowed to continue in the service and it is recommended that he should be compulsory retired from Corporation service.”

The Committee observed in its recommendation that Shri Dora had been punished twice in the departmental proceedings initiated against him and had also been suspended thrice. He was an unwilling worker and his performance was not satisfactory. In this connection, reference may be made to a decision of the Hon'ble Supreme Court in the case of ***M.P. State Cooperative Dairy Federation Ltd. & another v. Rajnesh Kumar Jamindar & others***, reported in ***2009 STPL (LE) 41854 SC***. In paragraphs-32 to 38 of the judgment, the Hon'ble Supreme Court held that law relating to compulsory retirement in public interest is no longer res integra. The provisions had been made principally for weeding out dead wood. Considering the performance of Shri Dora, the Committee considered for compulsory retirement. We, therefore, do not find any infirmity in such recommendation.

8. The learned Senior Counsel Shri R.K. Rath and Shri Manoj Kumar Mishra challenged the recommendation of the Review Committees and the order of compulsory retirement on three grounds. The first ground was mala fide and the second and third ground relate to insufficiency of materials based on the fact that the petitioners had been proceeded departmentally during their tenure under the Corporation and they could be punished in those departmental proceedings. In lieu of such punishment, an order of compulsory retirement could not have been passed. We have already held that the allegation of mala fide has not been proved by any one of the petitioner. Though allegations were made in the writ petitions that on the basis of complaint lodged by the members of the Karmachari Sangha, two of the Committee members had been proceeded with departmentally, no document has been placed before the Court to show that either of the two Officers had been proceeded with departmentally on the basis of the allegations made by any of the members of the Karmachari Sangha. Therefore, the case of the petitioners on this ground fails. So far as the second and third grounds are concerned, we have perused the recommendation made by the Committee in case of each of the petitioners and found that materials were available before the Committee to make such recommendation. Since this Court does not sit in appeal over the recommendation made by the Committee and also cannot examine sufficiency of materials for arriving at a conclusion as to whether the recommendation is justified or not, it is not open for the Court in exercise of judicial review to interfere with either the recommendation made by the Committee or with the order of compulsory retirement. If

the Court is satisfied that the Committee was subjectively satisfied while recommending for compulsory retirement, it has no jurisdiction to interfere.

9. We, therefore, do not find any merit in any of the writ petitions and accordingly dismiss all the ten writ petitions

Writ petition dismissed.