

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.1383/2015
CMP No.01/2015

Date of decision:27 -06-2016

Dr. Reyaz Ahmad Dar

Vs.

State & others

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the Petitioner(s): Mr. Altaf Haqani.

For the Respondent(s): Mr. N. H. Shah, AAG.

i)	Whether to be reported in Digest/Journal:	YES
ii)	Whether to be reported in Media/Press:	OPTIONAL

1. Vide Govt. order No.858-GAD of 2015 dated 30.06.2015, in exercise of power conferred by Article 226(2) of the Jammu and Kashmir Civil Services Regulations, petitioner has been retired from service w.e.f forenoon of 01.07.2015 at the age of 48 years. He has been allowed three months pay and allowances in lieu of three months notice. Aggrieved thereof, instant petition has been filed seeking Writ of Certiorari for quashing the said order with a further direction so as to command the respondents to reinstate the petitioner into service with all consequential service benefits.

2. The foundation for premature retirement of the petitioner, in the recommendations made by the Committee, constituted vide Govt. order No.17-GAD(Vig) 2015 dated 20.05.2015, is noticed as under:

- (1) *Through his consistent conduct over a period of time, the petitioner does not enjoy a good reputation in the public;*
- (2) *Petitioner claims to have done his Master Degree in Hospital Administration from Royal College of Physician and Surgeon, United States of America (USA), which, as per Medical Council of India clarification, is not a degree but Membership only;*
- (3) *Petitioner was shifted from Super Specialty Hospital, Jammu and suspended/attached with IGGDC, Jammu for his alleged involvement in some financial as well as administrative irregularities.*
- (4) *Petitioner is not having a valid Master Degree.*
- (5) *Has signed a MOU with Indian Railway Catering and Tourism Corporation (IRCTC) on behalf of Government Medical College, Jammu, without any administrative approval from the competent authority.*
- (6) *When MOU signed by the petitioner was compared with another MOU signed by PGI Chandigarh with IRCTC, irregularities were depicted which resulted in loss to the State exchequer.*
- (7) *Petitioner has procured 34 Kgs of Dog kill Powder without any supply order on exorbitant rates.*
- (8) *The Annual Confidential Reports (ACRs) of the petitioner were reported to be incomplete.*

It is also recorded in the recommendation that the Committee took note of the fact that the accused (petitioner) has indulged in corrupt practices and was involved in illegal acts during his service thereby substantiating the fact that he has outlived his utility to the public

It has also been mentioned by the Committee that since the officer is generally known to have bad reputation and has indulged in corrupt practices while

performing his legitimate duties. Finally, recommended the petitioner to be retired from Government service in the public interest under Article 226(2) of J&K CSRs with a further recommendation that the petitioner be given three months pay and allowances in advance as admissible in lieu of the notice.

3. In the writ petition as well as in the rejoinder, petitioner has projected that he has been victimized, none of the above grounds have any basis. All the grounds have been taken note of by the Committee in an arbitrary manner without ascertaining the actual position. Petitioner un-necessarily has been subjected to inconvenience and has been stigmatized.
4. In the reply filed by the respondents, the position as has been noticed by the Committee in its recommendations has been highlighted.
5. For appreciating the matter in its right perspective, it shall be advantageous to notice the background pursuant to which exercise has been undertaken for weeding out the dead wood, as detailed in the reply filed by respondents No.1, 2 and 4. It has been pleaded that the Government has to:
 - (a) Perform multitude of tasks in order to implement various welfare measures in public interest.
 - (b) The paramount task is that of providing clean and effective administration to the people of the State.

- (c) In order to make the administration effective, periodic review of all its officers is taken by the State Government to encourage honest and efficient Government servants
- (d) Simultaneously weed out inefficient and corrupt officers from the services in the public interest.
- (e) Various measures are taken to deal with unscrupulous, inefficient and corrupt officers to instill the faith of public in the administration while as various incentives and awards are given to honest and efficient officers.
- (f) Recourse is taken to the provisions of Article 226(2) and (3) of the J&K Civil Service Regulations, 1956, for removal of such Government servants from State services who have become deadwood on account of having indulged in corrupt practices.
- (g) It has become imperative to take action against such Government servants who indulge in corruption, suffer bad reputation in public and created impediments in delivery of services to the general public in a smooth and effective manner.
- (h) Compulsory retirement is based on sacrosanct object of weeding out the deadwood in order to maintain high standard of efficiency and initiative in the State services.

(i) Compulsory retirement as envisaged under Article 226(2) of the J&K Civil Service Regulations is designed to infuse the administration with initiative for better administration and for augmenting efficiency so as to meet the expanding horizons and cater to new challenges faced by the State to provide speedy, sensitivity, probity, non-irritative public relation and enthusiastic creativity, which can be achieved by eliminating the deadwood.

6. In the aforesaid background, vide Government Order No.17-GAD(Vig) 2015 dated 20.05.2015, sanction was accorded to the constitution of a committee to consider the cases of officers/officials for premature retirement.

7. The object is laudable. If positive steps are taken for betterment of the administration, for better services to the public and in the process any officer/official found to be a hurdle on the grounds of indolence, corruption, administrative disturbance etc. then for such a situation remedial provision i.e. Article 226(2) of the J&K CSR has to be resorted to. Resort to such a provision has not to be arbitrary, baseless or tainted with malice. A strong foundation has to be laid for taking action under the said Article.

8. Premature or compulsory retirement has its own impacts not only on the officer/official but on his family as a whole, therefore, all pros and cons are required to be taken care of and

in the process all the prescribed norms have to be meticulously followed. On complete evaluation of the material, if an officer/official is found not satisfying the norms, then it shall be in the larger interests of the public to show him the exit door. Once a person has opted to take poison, he has to face the consequences and the family has to bear it.

9. It will be advantageous to quote Govt. order No.17-GAD(Vig) 2015 dated 20.05.2015:

*Government of Jammu and Kashmir
General Administration Department
Civil Secretariat, Jammu/Srinagar*

Subject: Constitution of Committee to Consider cases of officers/officials for premature retirement in terms of Article 226(2) and 226(3) of J&K CSRs.

*Government Order No.17-GAD(Vig) 2015
Dated : 20-05-2015*

In supersession of all previous orders on the subject, sanction is accorded to the constitution of a committee, comprising the following to consider the cases of officers/officials for premature retirement, in terms of Article 226(2) and 226(3) of J&K Civil Services Regulations:

1. Chief Secretary	Chairman
2. Principal Secretary to the Chief Minister	Member
3. Principal Secretary to the Government Home Department	Member
4. Commissioner/Secretary to the Government General Administration Department	Member-Secretary
5. Secretary to the Government Department of Law, Justice & Parliamentary Affairs.	Member

The Chairman may also co-opt a Member for assisting the Committee in any particular meeting.

By order of the Government of Jammu & Kashmir.

*Sd/-
(Gazzanfar Hussain)
Commissioner/Secretary to Government*

10. The Committee so constituted while considering cases of number of officers/officials of various departments including that

of the petitioner, have adopted the baseline for examining the individual cases on the basis of position of their respective cases. Same is noticed in the recommendations of the Committee, which is quoted as under:

“The Committee, after threadbare discussions held in its series of meetings after going through the relevant service records, available Annual Performance Reports of the officers/officials, finally recommended following employees for retirement under Article 226(2)”.

11. On the basis of aforesaid norms and position of rules, case of the petitioner has been examined, the recommendation of the Committee vis-à-vis petitioner, for facility of reference is relevant to be quoted:

Cases under Article 226(2) of J&K CSR, 1956
Health & Medical Education Department.

The Committee constituted vide Government Order No.17-GAD of 2015 dated 20.5.2015, held its meeting on 21.05.2015, 11.06.2015 & 26.06.2015, under the Chairmanship of the Chief Secretary and considered following cases for retirement under Article 226(2) of the J&K CSRs.

The Secretary to the Government, Health & Medical Education Department participated in the meeting as co-opted member.

Name of Government Servant :Dr. Riyaz Ahmad Dar

*Present place of posting :Medical Officer,
Medical Supplies Corporation.*

Date of birth :17.02.1963

Date of appointment :26.03.2003

Number of years in service :12 (but has attained 48 years of age)

Through his consistent conduct over a period of time, the employee does not enjoy a good reputation in the public.

Dr. Riyaz Ahmad Dar claims to have done his Master Degree in Hospital Administration from Royal College of Physician and Surgeon, United States of America (USA), which, as per Medical Council of India clarification, is not a Degree but membership only. Dr. Riyaz was shifted from Super Specialty Hospital, Jammu and suspended /attached with IGGDC, Jammu for his alleged involvement in some financial as well as administrative irregularities. Dr. Riyaz is not having a valid Master Degree. Dr. Riyaz has signed a MOU with Indian Railway Catering and Tourism Corporation (IRCTC) on behalf of Government Medical College, Jammu, without any administrative approval from the competent authority. When MOU signed by Dr. Riyaz was compared with another MOU signed by PGI Chandigarh with IRCTC, irregularities were depicted which resulted in loss to the State exchequer. Besides, a verification was also initiated by the Vigilance Organization into the allegations that Dr. Riyaz has procured 34 kg Dog Kill Powder without any supply order on exorbitant rates. The matter stands referred to Health Department for Regular Departmental Action.

It was reported that the Annual Confidential Reports (ACRs) of the officer are incomplete.

The Committee took note of the fact that the accused has indulged in corrupt practices and involved in illegal acts during his service thereby substantiating the fact that he has outlived his utility to the public.

Since the officer is generally known to have bad reputation and indulged in corrupt practices while performing his legitimate duties, therefore, recommended the petitioner to be retired from Government service in the public interest under Article 226(2) of J&K CSRs with a further recommendation that the petitioner be given three months pay and

allowances in advance, as admissible, in lieu of the notice.

Sd/
(Mohd. Ashraf Mir)
Secretary, Law

Sd/
(M. K. Bhandari)
Secretary, H&ME

Sd/
(Gazzanfar Hussain)
Comm./Secretary, GAD

Sd/
(R. K. Goyal)
Principal Secretary, Home

Sd/
(B. B. Vyas)
Principal Secretary to HCM

Sd/
(Iqbal Khanday)
Chief Secretary

12. The recommendation vis-à-vis petitioner indicates the grounds as above which persuaded the Committee to recommend his premature retirement.

13. Before coming to the allegation of bias as against the respondent No.3, it would be relevant to ascertain as to whether the grounds based on which petitioner has been retired are supported by any material.

14. **Ground (1): Through his constant conduct over a period of time, the petitioner does not enjoy a good reputation in the public.**

There is nothing on record which would suggest that the petitioner did not enjoy good reputation. A general imputation without any base has the trappings of arbitrariness. It appears that the said ground has been linked with other grounds to be dealt with hereinafter. It is to be examined whether those grounds have any substance or not.

15. **Ground (2): Petitioner is claimed to have done his Masters degree in Hospital Administration from Royal**

College of Physicians and Surgeons, United States of America (USA), which as per Medical Council of India's clarification is not a degree but a Membership only:

The uncontrovertable position as highlighted by the petitioner in his rejoinder renders the said ground as baseless. In the rejoinder petitioner in categorical terms has stated that he was admitted as member of Royal College of Physicians and Surgeons at USA with rights and honours to use the designation "Member of the Faculty of Hospital Management and Public Health Medicine (MFHM&PHM)". The certificate was got verified by the then Hon'ble Minister for Medical Education and Youth Services and Sports from the said College vide mail dated 08.08.2012 read with response mail dated 10.08.2012 and was also verified by respondent No.3-Commissioner/ Secretary, Health & Medical Education Department vide his mail dated 22.11.2012 read with response mail of the same date.

16. It has been stated that the respondents have wrongly misinterpreted the said qualification and the certificate thereof, without appreciating that in Western World postgraduate degrees are referred as "Membership". Supporting this position, petitioner has placed on record photocopy of the certificate issued by the Royal College of Physicians and Surgeons at USA, wherein it has been certified that the petitioner has been admitted a Member of the Royal College of Physicians and Surgeons with

rights and honors to use the designation “Member of the Faculty of Hospital Management & Public Health Medicine”. The said certificate has been issued under No.SH0096PHM.

17. Copy of the original email message is placed on record. Its perusal reveals that Mr. R. S. Chib, then Minister for Medical Education, Technical Education, Youth Services & Sports, Government of Jammu & Kashmir, India, had sought verification and authentication of degree obtained by the petitioner. The response mail received from the said College is quoted hereunder:

“Hon’ble Minister:

We have received authorization to release the information that you requested from Dr. Riyaz Ahmad Dar.

Please be informed that on April 30, 2001, Dr. Riyaz Ahmad Dar successfully completed postgraduate studies in Hospital Management and Public Health Medicine from the Royal College of Physicians and Surgeons-USA. He was issued the certificate number SHOO96PHM after successfully completed series of examinations.

Our institution does not award ordinary membership certificate but purely academic studies and upon recommendation of the Directors and the Faculty

We appreciate your efforts to contact us to verify this matter. Verification is a valid approach to stop impostors from illegal use and abuse academic credential.”

18. Email message of respondent No.3 dated November 22, 2011 also reveal that he had sought verification from the said College by conveying that he is in receipt of certificate from Dr. Riyaz Ahmad Dar claiming to have acquired the postgraduate degree in Hospital Management and Public Health Medicine from the said College. Then they have been asked to inform whether certificate is genuine or not. In the response mail it has been mentioned that in addition to verification of Dr. Riyaz Ahmad Dar regarding completion of the postgraduate programme in Hospital Management and Public Health Medicine, please be informed that the Royal College is a postgraduate institution and upon receipt of the advanced degree, Dr. Riyaz Ahmad Dar and other holders of the Royal College certifications, are required to maintain their certifications by submitting prescribed continuing medical education credits every three years to assure current knowledge in the specialization.

19. In the aforesaid backdrop, there is no doubt about the certificate of the petitioner. That apart, whether petitioner has Masters degree or not in Hospital Administration, loses significance because petitioner claim that on the basis of said certificate he has neither been appointed nor has derived any benefit nor given any advantageous position nor he has utilized the said certificate. Therefore, how could such a position

constitute as one of the grounds for premature retirement. Said position projected by the petitioner has not been controverted by the respondents.

20. **Ground (3): Petitioner was shifted from Super Specialty Hospital, Jammu and suspended/attached with IGGDC, Jammu for his alleged involvement in some financial/administrative irregularities of having signed MOU with Indian Railway Catering and Tourism Corporation (IRCTC) on behalf of GMC, Jammu without any administrative approval from the competent authority and that on comparison thereof with MOU signed with PGI Chandigarh by IRCTC irregularities were depicted which resulted in loss to the State exchequer:**

Petitioner in the rejoinder has made the position clear by stating that he is not involved in financial or administrative irregularities. MOU was signed by him with IRCTC (Indian Railways) on the basis of decision taken in a meeting held on 16.11.2013 under the Chairmanship of Hon'ble Minister for Medical Education, Mr. Taj Mohi-ud-din at SS Hospital, Jammu, along with senior most officers of the Department including Principal, GMC, Jammu, HOD Nephrology, Administrator, Associated Hospital, Jammu, Personnel Officer, GMC, Jammu and others. In terms of the decision on agenda item-4 regarding allotment of Canteen services (one for doctors and one for attendants) in SS Hospital, Jammu, accepded the offer of IRCTC (Indian Railway), a Government of India Enterprise to provide better canteen services at the said Hospital. The petitioner was

Medical Superintendent, SS Hospital, Jammu, as such, was authorized to sign MOU on the analogy of PGI, Chandigarh, SGPC Lucknow and IIT, New Delhi. So he has not signed the MOU without approval from the competent authority.

21. The position, as stated in para 20 above, is supported by the copy of minutes of the meeting held under the Chairmanship of Hon'ble Minister, Medical Education, Youth Services & Sports on 16.11.2013 at Super Specialty Hospital, Jammu. Agenda item No.4, as considered in the said meeting is relevant to be quoted:

S. No.	Issue	Decision taken	Action to be taken
4.	Allotment of canteen services (one for doctors and one for attendants) in Super Specialty Hospital Jammu.	In order to provide better canteen services in Super Specialty Hospital, Jammu, Indian Railway Catering Division (A Govt. or India Enterprise) submitted vide No.2013ITCTC/CDG/NRC-SSHGMC was accepted. It was also decided that initially two canteens be allotted, one for doctors and one for the attendants.	Medical Superintendent SSH, Jammu will sign MOU with Railway authorities on the analogy of PGI Chandigarh, SGPC, Lucknow, I.I.T, New Delhi.

The ground that the petitioner had signed MOU without approval of the competent authority is negated by the aforesaid position.

22. Apart from aforesaid position, petitioner has further qualified in categorical terms that consequent to the orders of the Hon'ble Minister for Medical Education, he cancelled the said MOU and there was not even a single penny financial implication, therefore, the allegation of loss to the State

exchequer is totally imaginary. This position too has not been controverted by the respondents and, in effect, is supported by the wording as employed in the recommendation itself wherein it has been mentioned that the petitioner is allegedly involved in "**some financial as well as administrative irregularities**". The word "some" used means that the members of the Committee themselves were not sure about any financial loss or administrative irregularity nor any such material has been produced which would justify loss to the State exchequer or administrative irregularity, hence a baseless imputation.

23. **Ground (4): Petitioner has procured 34 kg Dog Kill Powder without any supply order on exorbitant rates:**

(a) While responding to the aforesaid imputation, in the rejoinder, it has been stated that the said allegation is not supported by any record. In fact, purchase and procurement officer, Srinagar Municipal Corporation had issued supply order bearing endorsement No.SMC/PPS/915-17 dated 02.12.2008 with M/S Indo German Alkaloids, Maha Kali Road, Andheri East, Mumbai, for supply of 34 Kgs. of strychnine Hydrochloride powder (dog kill poison) on rates verified by a team of officers constituted by the Joint Commissioner (Adm), SMC, Srinagar, vide endorsement No.SMC/PPO/819-32 dated 01.11.2008. For ascertaining rates, Srinagar

Municipal Corporation had constituted a team of three officers, namely, Health Officer, Veterinary Officer and Assistant Accounts Officers and on acceptance of the report, purchase order dated 02.12.2008 was issued by the Purchase and Procurement officer. The vigilance enquiry made into the said allegation against the Commissioner, Srinagar Municipal Corporation and other officers was finally concluded as not proved and closed by the Vigilance Commissioner way back in the year 2009. In acceptance of the vigilance conclusion, no departmental enquiry was ever initiated against the petitioner.

- (b) The aforesaid position has not been controverted. Had there been any illegal act of the petitioner in purchasing 34 Kgs. of dog kill poison, then Vigilance Organization would not have closed the case as not proved in the year 2009, from the year 2009 if there would have been any departmental enquiry, then some results would have been known. No record or any material has been produced for justifying the said allegation.
- (c) Non-involvement of the petitioner is further supported by the fact that the petitioner in case would have been involved, then he would not have been allowed to hold important and substantive posts thereafter like Medical Superintendent, Super Specialty Hospital, Jammu, Deputy

Medical Superintendent, Super Specialty Hospital, Jammu, and General Manager (Procurement), J&K Medical Supplies Corporation and would not have also been allowed regular benefits of pay and grade, annual increments and charge allowance.

- (d) It is rightly contended by learned counsel for the petitioner that the ground about purchase of 34 Kgs. of dog kill poison on exorbitant rates is not anywhere established, so could not form as a ground for premature retirement of the petitioner.
- (e) The position, as projected, is supported by Govt. order No.660-HME of 2012 dated 20.10.2012, where-under petitioner had been directed to look after duties of the Deputy Medical Superintendent, Super Specialty Hospital, Jammu. Then vide Govt. order No.332-HME of 2012 dated 22.05.2013, sanction had been accord to the grant of extension in favour of petitioner as I/C Deputy Medical Superintendent, Super Specialty Hospital, Jammu, till further orders or till the post is filled up through PSC/DPC, whichever is earlier. By the same order, it has been further provided that the petitioner shall also have the powers to discharge the work assigned to the post of Medical Superintendent, Super Specialty Hospital, Jammu, in order to ensure smooth functioning of the Hospital on day to day

basis. Then again, vide order No.05-HME of 2014 dated 02.01.2014, sanction has been accorded for grant of charge allowance in favour of the petitioner.

(f) All the aforesaid orders clearly indicate that there was nothing adverse against the petitioner. Had there been anything adverse, then said orders would not have been issued by the Government in favour of the petitioner.

24. In the year 2014, vide Govt. order No.21-HME of 2014 dated 08.01.2014, petitioner had been transferred and directed to report to the Principal, Indira Gandhi Govt. Dental College, Jammu. Said order was challenged by him by medium of SWP No.99/2014 wherein an interim stay was granted.

25. Again vide Govt. order No.53-HME of 2014 dated 24.01.2014, petitioner, on the ground of having signed MOU with IRCTC, had been suspended and a two member committee had been constituted for enquiry. The said order was challenged by the petitioner by medium of SWP No.154/2014. While considering the interim application, this Court in the order dated 28.01.2014 passed thereon, observed as under:

“.....This prima facie smack of mala fides in the bosom of someone who is against the petitioner and the petitioner is specific about it alleging mala fides against respondent No.2.....”

(Note: Respondent No.2 therein is respondent No.4 here in this petition)

Finally, said order of suspension was stayed.

26. It appears that the proactive approach of the petitioner in defending his rights and in discharge of his duties has given rise to malice against him. The allegation, which also form one of the grounds for his premature retirement, is that "his consistent conduct over a period of time does not enjoy good reputation in the public" falls flat in the background of afore-stated facts and circumstances, for want of material to support the same.

27. Now coming to the contention of the petitioner that the respondent No.4 was biased against him:

(a) Petitioner has claimed that while holding twin charge of Deputy Medical Superintendent and also Medical Superintendent, Super Specialty Hospital, Jammu, pursuant to the orders as referred to above, he was assigned the duties of Nodal Officer/General Manager, Kashmir division of J&K Medical Supplies Corporation under the orders of Hon'ble Minister for Health and Medical Education. Same was done in recognition of his honesty, merit, ability, suitability and reputation. Petitioner accomplished the said assignment within a period of two months leading to inauguration thereof by the Health Minister on 01.06.2015. It is also claimed that prior thereto, posting of two IAS officers in succession from 2013 as Managing Directors of the Corporation assisted by two

General Managers (KAS officers) for the purpose of establishment of the Corporation was without any success.

(b) Petitioner also accomplished the prestigious task of setting up of Super Specialty Hospital at Jammu within the targeted period of six months and its inauguration by then Hon'ble Union Health Minister. Assignment of multiple duties, accomplishment of the task of setting up Super Specialty Hospital and then its inauguration was not well taken by respondent No.4, who at that time was posted as Commissioner/ Secretary to Govt. Health and Medical Education Department, wherefrom ill will to harm the petitioner started. It is only in that backdrop, petitioner was transferred from the position of Deputy Medical Superintendent, Super Specialty Hospital, Jammu, and was directed to report to Principal, Indira Gandhi Government Dental College, Jammu.

28. Learned counsel for the petitioner highlighted that the aforesaid proactive approach of the petitioner by no stretch of imagination could be said to be against the public interest so as to persuade the authorities to say that in the public interest, petitioner is prematurely retired in terms of Article 226(2) of the J&K CSRs. No ground whatsoever was available to the respondent-authorities for ordering premature retirement of the petitioner.

29. Applying Article 226(2) of the J&K CSRs as well as the norms adopted by the Committee while considering the cases for premature retirement, case of the petitioner, for the stated reasons and facts, does not fall within the ambit so as to persuade the Committee to recommend his premature retirement.

30. Another strange situation is that the APRs of the petitioner were said to be incomplete. Why it has been so, why APRs were not written, what could be the reason for not recording APRs when as per norms requirement is to consider at least five years APRs, why instructions as form Annexure-I to Govt. order No.1311-GAD of 2001 dated 09.11.2011 have not been followed in maintaining APRs of the petitioner, are the questions which have remained to be answered. The whole service record of the petitioner was required to be looked into. In this connection, it will be quite relevant to notice as to what the petitioner has said which has not been controverted:

(i) The petitioner initially, after a full dress process of selection, was appointed in the Directorate of Health Services, Jammu, in the year 1990, served as Medical officer, Govt. Clinic, Jammu, w.e.f 24.01.1990 to 01.01.1992 followed by his posting as Medical Officer, ICDS, Banihal from 16.05.1992 till 05.05.1993.

(ii) In the year 1993, while receiving threatening to his own life and his family, particularly in the face of kidnapping of his minor daughter by some unknown gunmen, he had availed leave w.e.f. May, 1993. On such basis he had sought posting at Jammu so as to enable him to evade the consequences of threat but his request was not acceded to, therefore, for safety and for earning livelihood, he was constrained to take foreign assignment at Kingdom of Saudi Arabia along with his wife where he and his wife remained in employment at Armed Forces Hospitals and leading hospitals as Non-Resident India (NRI) for a period of ten years but has been insisting respondent-authorities to post him at Jammu which could not fructify. Finally, services of the petitioner and his wife were terminated but after considering their request in terms of Govt. order No.183-HME of 2000 dated 07.04.2000, he along with his wife were allowed re-join the department as fresh appointees as Assistant Surgeons and were posted at SDH, Gandoh Doda. In effect, was a fresh appointee in view of his fresh appointment w.e.f. the year 2003.

(iii) The position about threat perception, as projected by the petitioner, is certified by DIG, Security, J&K, Srinagar, vide his No.248/PA/DIG(S) dated 19.05.2003. The certificate so issued reads as under:

"TO WHOM IT MAY CONCERN:

It is certified that Doctor Riyaz Ahmad Dar during his posting in Banihal has invited wrath of militants because of his non co-operation with them and not sponsoring their cause. The doctor had to leave the place under severe threat to his life from the militant organizations of the district Doda. Now as per the available intelligence reports he is still facing threat from such militants and their groups active in the district Doda."

31. The Hon'ble Apex Court in the judgment rendered in the case of **S. Ramachandraru v. State of Orissa, 1994 Legal Eagle (SC) 757**, while relying on its earlier decisions in *Syam Lal v. State of UP, (1995) ISCR 26, AIR 1954 SC 369, Union of India v. J. N. Sinha, (1971) ISCR 791: AIR 1971 SC 40; B. R. Chadha v. Union of India, (1980) 4 SCC 321; and Baikuntha Nath Das v. Chief District Medical Officer, (1992) 2 SCC*, has held as under:

"9. It is thus settled law that though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a cheek and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and

reputation is such that his continuance in service would be a menace in public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the back drop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record more particular the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. When an officer reaching the age of compulsory retirement, as was pointed out by this Court, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly effected. Therefore before exercising the power, the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total evaluation of the entire record of service if the government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such bonafide exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by malafide or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service.”

(Emphasis supplied)

32. It shall be quite relevant to quote Para 27 of the judgment rendered by the Hon'ble Apex Court in *State of Gujarat and anr. v. Suryakant Chunilal Shah*, (1999) 1 SCC 529:

“27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a Govt. Servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of his involvement in two criminal case pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee.”

(Emphasis supplied)

33. An officer or an official when exhibits indolence, adopts corrupt practice much to the annoyance of general public and to the annoyance of smooth functioning, stringent action is imperative. The State Government has ample powers to deal with such persons with iron hand. Corruption, a dangerous evil,

breeds social disturbances, negates the concept of morality and impinges upon the smooth functioning to the utter sufferance of the public and bad consequences to the Government in executing laudable welfare measures. Inefficiency, indolence and corruption are totally unbearable. Corruption has assumed the character of a dangerous crocodile. Such a crocodile has to be poisoned i.e. to be legally thrown out.

34. Tough approach in dealing with the officers/officials who would become parasite has no substitute but in the name of corruption and indolence, an officer/official cannot be subjected to un-necessary hardships. For weeding out such elements, the norms and regulations have to be scrupulously followed. The action must not appear to be arbitrary and must not appear a targeted one. The measures taken or as may be taken, rules framed, regulations formulated and will to iron out hiccups for showing exit door to the officers/officials who are corrupt, indolent and inefficient is appreciable. An appreciable action can be more appreciable when such elements are shown exit only on the basis of material suggesting something attributable to such type of officer/official. Exercise in this regard should not be undertaken simply to give an impression that the inefficient and corrupt are shown exit. Such action must stand the test of judicial scrutiny otherwise it would amount to nothing but to supplant a

proverb "Much ado about nothing". Same is apt to be observed in the case in hand.

35. In the stated facts, circumstances and law coupled with the norms, a fair exercise has not been undertaken, that too by a high level constituted committee. Act of the Committee should not have been hasty as haste makes the waste. That I may say is quite apposite to be said vis-à-vis case of the petitioner. The grounds made base for premature retirement of the petitioner, as referred to above, are not supported by any material whereas the petitioner has in categorical terms made his position clear vis-à-vis all grounds which position has not been refuted nor any material to controver the same has been placed on record.

36. The power vested with the authorities has to be exercised judiciously with great caution. Same must not suffer from any arbitrariness. In the context of the present case, if the petitioner would have been a corrupt person, then at least some case would have been registered against him, some administrative action would have been taken against him coupled with the fact that he should not have been given important assignments. Therefore, no option but to concluded that the order of premature retirement bearing No.858-GAD of 2015 dated 30.06.2015 against the petitioner, by no stretch of imagination is sustainable.

37. Viewed thus, petition allowed. Impugned order bearing No. No.858-GAD of 2015 dated 30.06.2015 is quashed. Respondents are directed to take petitioner back into service and to grant him all consequential benefits.

38. Petition succeeds, shall stand disposed of as above along with connected CMP.

(Mohammad Yaqoob Mir)
Judge

Srinagar
27.06.2016
“Mohammad Altaf”