HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP no. 1381/2015 Date of decision: 13.12.2016

Shamim Ahmad Laherwal. v. State of J&K & ors.

Coram:
Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Appearing counsel:

For Petitioner: Petitioner in person.

For Respondents: Mr. M. A. Beigh, AAG.

i) Whether approved for reporting in law journal: **YES/NO**
ii) Whether approved for reporting in press/media: YES/NO

In this writ petition, the subject matter of challenge is the Government order no.870-GAD of 2015 dated 30.06.2015 issued by the Commissioner / Secretary to the Government, General Administration Department, in exercise of the powers conferred by Article 226(2) of the Jammu and Kashmir Civil Services Regulations, 1956 giving notice to the petitioner, who, at the relevant time, was functioning as Director, General, Libraries and Research, J&K, that he, having already rendered 22 years of service, shall retire with effect from the forenoon of 01.07.2015.

2. The service data of the petitioner is this: He was appointed as Deputy Director, State Motor Garages, Kashmir, in October, 1991 and continued as such till he was promoted as Director, State Motor Garages by Government order no.-GAD of 1997 dated 09.10.1997. Inclusive of the said promotion and posting, the petitioner has held the following positions since 1997:

i) Director, State Motor Garages, J&K;
ii) Executive Director, J&K Rehabilitation Council;
iii) Managing Director,
J&K Women Development Corporation, J&K;

iv) Officer on Special Duty,
Civil Secretariat, Transport Department;

v) Director, Geology and Mining, J&K;

vi) Director General, State Motor Garages, J&K;

vii) Director General, Youth Services & Sports, J&K;

viii) Secretary, J&K State Sports Council;

ix) Director, Urban Local Bodies, Kashmir;

x) State Project Director, RMSA, J&K;

xi) State Project Director, J&K SSA (as additional charge); &

xii) Director General, Libraries and Research, J&K.

Naturally, the petitioner in the petition has counted his positives over the years. His case is that he all along his service performed his duties with utmost honesty, integrity and dedication which earned him the reputation of an officer of high merit which is evidenced by the fact that in his Annual Confidential Reports (APRs), written by varied officers under whom he had the occasion to work, he has all along been categorised as “outstanding” or “very good” and that, more importantly, he has never earned an adverse APR. Based upon his merit, integrity and such APRs, he rose through ranks, by having been granted promotions at different levels, somuch so at the time of issuance of the impugned order he was holding the post of Director General, Libraries and Research – a post equivalent in rank to that of a Commissioner/Secretary to Government – and was due for next higher promotion as Principal Secretary to Government.

3. It is further pleaded that there is no case of criminal nature involving allegations of corruption lodged or registered against him. It is also averred that the petitioner has regularly been submitting his annual property returns to the competent authority, reflecting the details of his immovable/moveable properties held or acquired by him or his family. It is stated that ostensibly the Government had decided

to place the cases of those Government servants before the High Level Committee for review who were involved in corruption and trap cases; or had been found in possession of properties beyond their known sources of income; or were found involved in other miscellaneous illegal activities. According to the petitioner, he did not fall in either of the aforesaid categories of officers/officials, therefore, there was no occasion to place his name before the said Committee for any purpose.

4. The petitioner has challenged the impugned order on the grounds that it has not been issued in public interest; that there was no material available with the respondents to arrive at the subjective satisfaction required under law; that the impugned order is bereft of supporting evidence or material; that the impugned order has been passed without application of mind; that the impugned order is irrational, unjust, unfair and, therefore, arbitrary, inasmuch as the respondents have not taken into consideration the entire service record of the petitioner; that the impugned order is infested with fatal error of legal malice inasmuch as the same has been passed without any lawful justification; that the impugned order is the outcome of a colourable exercise of power on the part of the respondents, inasmuch as under the garb thereof, the respondents have inflicted a major punishment of termination from service on the petitioner; etc.

5. Before adverting to the response of the respondents, one thing needs to be mentioned here that since a good number of officers/officials have been prematurely retired, this Court has had the occasion to deal with a few of the writ petitions filed by the affected persons and go through the replies of the respondents filed thereto. This Court noticed that the Government in the General Administration Department has prepared stereotype replies in these petitions, giving therein the same details in the factual matrix and preliminary

objections and hardly any attempt to contest the case on the merits of the issue specifically involved. Shearing such details, let the stand of the respondents as narrated in their reply be stated.

6. It is the case of the respondents that the Government in terms of order no.17-GAD(Vig.)2015 dated 20.05.2015, constituted a Committee to consider the cases of those of the officers/officials who had indulged in corruption, enjoyed bad reputation in public and had created impediments in delivery of services to the general public in a smooth and effective manner for premature retirement. The Committee considered the mandate of Article 226(2) of the Jammu and Kashmir Civil Service Regulations, 1956 (CSRs) and OM no.GAD(Vig.) 19-Adm/2010 dated 25.10.2010 which envisaged the screening of the record of the employees before making recommendation for premature retirement.

7. The records of the Government employees involved in corrupt practices; the trap cases – where the employees were found to have demanded and accepted bribe; the cases relating to disproportionate assets *vis-à-vis* the known sources of income; and the cases where FIRs were registered and investigation was either underway or had been completed were placed before the Committee. The Committee had extensive discussion in respect of each case, and finally on 26.06.2015, amongst others, considered the case of the petitioner.

8. It is stated that the Committee on consideration of the record observed that the petitioner did not enjoy good reputation in the public due to his consistent conduct over a period of time. The Committee also noticed that various complaints, which pertain to the release of payment to the supplier and making purchases at exorbitant rates by the petitioner, are under verification before the Vigilance Organization. Besides, the petitioner’s name also figured in the

preliminary enquiry no.PE-C-13/99 in terms whereof as per the report submitted by the Deputy Inspector General of Police, Vigilance Organization, J&K, Srinagar, the petitioner had made illegal appointments of 25 persons as Class IV employees during the year 1997-1998 in his capacity as Director, State Motor Garages, J&K, Srinagar. It is also stated that the Committee also took note of the complaints filed against the petitioner in his capacity as Director, Urban Local Bodies, Kashmir that he had indulged in corrupt practices and had been involved in several illegal acts during his service tenure, thereby substantiating the fact that he had outlived his utility to the public. According to the respondents, the Committee came to the conclusion that the petitioner was generally known to have bad reputation and, therefore, recommended his retirement under Article 226(2) of CSR. The recommendation so made was accepted by the competent authority and the impugned order was issued.

9. In the para-wise reply, it is averred that issuance of Government order no.1635-GASD of 1997 dated 10.09.1997 does not enhance the case of the petitioner in any manner as, while considering the case of an employee for compulsory retirement, his overall performance during his tenure of service is required to be considered. It is averred that petitioner has not served honestly but, as a matter of fact, has indulged in corruption and enjoyed a bad reputation in public. It is further averred that the APRs placed on record by the petitioner are not complete as per the mandate of Government order no.1311-GAD of 2001 dated 09.11.2001. It is stated that case FIR no.47/1998 was registered at Police Station VOK against the petitioner. However, in the same breath it is stated that subsequently the petitioner has been exonerated. According to the respondents, they have followed the mandate of Government order no.1311-GAD of 2001 dated

09.11.2001 and the guidelines framed in OM no.GAD(Vig.) 19-Adm/2010 dated 25.10.2010 and action has been taken against the petitioner in accordance with law and the guidelines framed. It is further stated that the grounds taken by the petitioner in para 6 of the writ petition are legally misconceived, untenable and without any merit.

10. It may be mentioned here that on 04.05.2016, adverting to the stand taken by the respondents, especially at page 4 of their reply to the effect that the Committee on consideration of the record observed that the petitioner did not enjoy good reputation etc., the Court required the respondents to file a fresh affidavit to make the position clear concerning the Annual Performance Reports of the petitioner *vis-a-vis* the stand taken by them with complete details and to produce the record of the recommendations which formed the foundation for premature retirement of the petitioner.

11. In response to the above order of the Court, the General Administration Department, through one of their Under Secretaries to the Government, named Ms. Sonam Chhosdon, filed an affidavit. In paragraph 3 thereof, it is stated that the details of the APRs placed on record by the petitioner are not complete in accordance with the mandate of Government order no.1311-GAD of 2001 dated 09.11.2001. The deficiencies pointed out in the APRs have been mentioned in tabulated form in the paragraph. The paragraph to that extent is extracted below:

S.no.	Year of reference	Whether initiated	Whether reviewed	Whether accepted	Grading	Remarks
1	1997-98	Yes	No	No	Very Good (Initiating Officer only)	Incomplete
2	1998-99	Yes	No	No	Outstanding (Initiating Officer only)	Incomplete
3	1999-2000	-	-	-	-	Not available
4	2000-01	Yes	No	No	Outstanding (Initiating Officer only)	Incomplete
5	2001-02	Yes	Yes	Yes	Outstanding	Complete
6	2002-03	Yes	certificate	Yes	Outstanding	Complete
7	2003-04	Yes	No	Yes	Very Good	Complete

8	2004-05	-	-	-	-	Not available
9	2005-06	Yes	No	Yes	Very Good	Complete
10	2006-07	-	-	-	-	Not available
11	2007-08	-	-	-	-	Not available
12	2008-09	-	-	-	-	Not available
13	2009-2010	Yes	No	No	Very Good (Initiating Officer only)	Incomplete
14	2010-11	-	-	-	-	Not available
15	2011-12	-	-	-	-	Not available
16	2012-13	-	-	-	-	Not available
17	1013-14	Yes	No	No	Outstanding (Initiating Officer only)	Incomplete
18	2014-15	-	-	-	-	Not available

In paragraph 4 of the affidavit, it is stated that the APRs for the years 1997-98, 1998-99, 2000-2001, 2009-10 and 2013-2014 placed on record by the petitioner are incomplete and as far the APRs for the years 1999-2000, 2004-05, 2006-07, 2007-08, 2008-09, 2010-11, 2011-12, 2012-13 and 2014-15 are concerned, the same, as verified from their records, are not available and have not been received in the General Administration Department.

12. Heard the petitioner in person and Mr. M A. Baigh, learned AAG, representing the respondents; perused the material placed on the record of the writ petition as well as the one produced on behalf of the respondents; and considered the matter.

13. The petitioner gave the details of his service tenure and the promotions he earned over the years on the basis of his merit and suitability ascertainable from the entries made in his APRs written over the years. He submitted that he was initially appointed as Foreman in State Motor Garages in the year 1981. Thereafter, by Government order no.179-TR of 1985 dated 02.09.1985, he was promoted as Works Manager. Seven years thereafter, on the basis of his merit and suitability, discernible from the entries made in his APRs for the years 1986 to 1990, he was promoted as Deputy Director, State Motor Garages, Srinagar, vide Government order no.67-TR of 1991 dated 28.11.1991. Six years thereafter, on the basis of his APRs for the

years 1992-1996, he was appointed as Director, State Motor Garages in terms of Government order no.1635-GAD of 1997 dated 09.10.1997. Nine years, thereafter, considering his performance and the record of service in the shape of APRs for the years 2001 to 2006, he was confirmed on the aforesaid post of Director, State Motor Garages. Subsequently, he was promoted as Director General, State Motor Garages, vide Government order no.1268-GAD of 2008 dated 25.09.2008 and while according consideration to the promotion of the petitioner to the aforesaid post, his APRs for the years 2003 to 2007 were taken into account. The petitioner submitted that if it were true that his APRs had been incomplete or were not available, his merit could not have been determined at the time of according consideration to him for promotion to the aforesaid posts in 1991, 1997, 2006 and 2008 and he would have been denied promotions on the said basis. The petitioner submitted that it is obvious that the Committee has not taken into account his entire record of service, especially the APRs which were very much available with the Government and had been considered for determining his merit, suitability and integrity at the time of his aforesaid promotions. The petitioner submitted that in view of the law settled by the Supreme Court and this Court, the impugned order is not sustainable. The petitioner cited and relied upon the following judgments of the Supreme Court and the Division Bench and Single Bench judgments of this Court:

Supreme Court judgments:

i) ***Baldev Raj Chadha v Union of India,*** 1980 Legal Eagle (SC) 347: 1980 (4) SCC 321;

ii) ***J. D. Srivastava v. State of Madhya Pradesh,*** 1984 Legal Eagle (SC) 22 : 1984 (2) SCC 8;

iii) ***State of Gujarat v. Suryakant Chunilal Shah,*** 1998 Legal Eagle (SC) 1114 : 1999 (1) SCC 529.

iv) ***Nand Kumar Verma v State of Jharkhand,*** Civil Appeal no.1458 of 2012 [SLP © no.5921 of 2007) decided on 01.02.2012; and

Judgments of High Court of J&K:

v) ***Parshotam Singh v. State of J&K***, 2010 Legal Eagle (J&K) 206 : 2010 (3) JKJ 797;

vi) ***State of J&K v. Janak Singh***, 2010 (4) JKJ 89 (HC) [DB judgment in LPA(SW no.43/2009)];

vii) ***Khurshid Anwar Shah v State of J&K,*** SWP no.322/2012 decided by this Court on 28.09.2015;

viii) ***Dr. Reyaz Ahmad Dar v State of J&K,*** SWP no.1383/2015, decided by a Coordinate Bench at Srinagar on 27.06.2016;

ix) ***Satish Chander Khajuria v State of J&K***, SWP no.2220/2015, decided by another Coordinate Bench of this Court at Jammu on 15.07.2016;

x) ***State of J&K v Satish Chander Khajuria,*** LPA(SW) no.122, decided by DB at Jammu on 07.10.2016;

14. Mr. M. A. Baigh, in his arguments, reiterated the pleadings narrated above and submitted that the entire available service record of the petitioner was considered by the Committee on the basis of which it came to the view as contained in the recommendations made by it. Mr. Baigh made specific reference to the averments made in the supplementary affidavit and submitted that all the APRs were not available and the ones which were available, were not complete. The learned AAG also produced a record file of the office of Secretary to Government, General Administration Department, bearing File no. GAD/Vig/12-Comp/2013 and captioned complaint against Shri Shamim Ahmad Laharwal, Director, Local Bodies, Kashmir. This record file is neither indexed nor page marked. Apart from two note sheets, it contains 35 leaves of correspondence etc, reference to which will be made later. Mr. Baigh cited the following decisions of the

Supreme Court and submitted that the decision of the Committee to prematurely retire the petitioner is in accord with the law laid down on the subject:

i)***Union of India v. M. E. Reddy***, (1980) 2 SCC 15;

ii) ***C. D. Ailawadi v. Union of India***, AIR 1990 SC 1004: (1990) 2 SCC 328;

iii) ***Baikuntha Nath Das v Chief Distt. Medical Officer***, (1992) 2 SCC 299;

iv) ***Posts and Telegraphs Board v. C. S. N. Murthy***, (1992) 2 SCC 317;

v) ***State of Gujarat v. Suryakant Chunilal Shah***, (1999) 1 SCC 529;

vi) ***Jugal Chandra Saikia v State of Assam***, (2003) 4 SCC 59;

vii) ***M. L. Binjolkar v State of M. P***., (2005) 6 SCC 224;

viii) ***Rajasthan State Road Transport Corp. v. Babu Lal Jangir***, AIR 2014 SC 142;

ix) ***Shakti Kumar Gupta v. State of J&K***, AIR 2016 SC 832;

x) ***Kapoor Chand v. State of J&K***, 2013(II) SLJ 516.

15. It may be observed here that as per their own showing, the Government, vide OM no.GAD(Vig.)19-Adm/2010 dated 25.10.2010, framed and formulated guidelines to be followed while making any recommendations for premature retirements. The said Office Memorandum has been issued under the signatures of Special Secretary to Government, General Administration Department, and endorsed to all Administrative Secretaries to Government. It reads as under:

"Government of Jammu and Kashmir,
General Administration Department.

Subject: Encouraging honest and weeding out of the corrupt, non-performing and inefficient officers/officials from Government service.

The undersigned is directed to invite attention of all Administrative Secretaries to Government order No.62-GAD(Vig) of 2010 dated 12.10.2010 under which a Committee has been constituted under the chairmanship of Chief Secretary to make necessary recommendations with a view to encouraging honest and to weed out the corrupt, non-performing and inefficient officers/officials. While making any recommendations for premature retirements, the entire service record of employees is required to be screened. These would include the following documents:-

(a) APR folder of the Government employee with particular reference to the entries in the APRs for the last five years;

(b) details about any promotions given in favour of the employee in the last three to five years;

(c) number and nature of complaints, if any, received by the parent Department/office of the employee or the State Vigilance Organization against the official;

(d) enquiries if any conducted by the State Vigilance Organization or by the Department concerned and the outcome thereof;

(e) cases if any registered / investigated by the State Vigilance Organization, nature of the allegation and the outcome of the investigation;

(f) adverse reports, if any, received by the CID about the reputation of the official and the gist of such reports supported by evidence;

(g) (missing)

(h) gist of irregularities committed by the employee, like in the matter of appointments, etc. supported by documents;

(i) brief mention about failure, if any, in achieving the targets set out for him by the Government / Department with supportive details; and

(j) warning and censures issued to the employee.

All Administrative Secretaries are requested to kindly forward to the GD, the names of officers/officials both who have outlived their utility in service by 15th

November, 2010 for consideration by the Committee, supported by such of the documents referred to above as are relevant in each case."

16. Perusal of the aforesaid guidelines reveals that resort to the exercise of power under Article 226(2) of the J&K CSRs can be had to weed out the corrupt, non-performing and inefficient Government officers/officials, and that in order to ascertain whether a Government officer or official is or is not corrupt, non-performing and inefficient, his entire service record is required to be screened. This is the mandate of the guidelines so framed and issued by the Government for compliance by the Administrative Secretaries. Obviously, the guidelines inherently bear the spirit of the law laid down by the Supreme Court, in that context, from time to time. The Committee constituted by the Government under the chairmanship of the Chief Secretary, which has dealt with the case of the petitioner, is not immune from such guidelines or their mandate.

17. The impugned order in the instant case is, admittedly, founded on the recommendations made by the Committee. The recommendations, comprising two leaves, have been placed at the end of the record file referred to hereinabove and produced for perusal of the Court, These recommendations read as under:

"Name of the Govt. Servant	:	Shamim Ahmad Laharwal
Present place of posting	:	Director General, Libraries & Research J&K
Date of Birth	:	09.05.1959
Date of Appointment	:	07.08.1981
No. of years in service	:	34

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

> Based on complaints against Mr. Shamim Ahmad Laherwal, verifications vide No.Veri-SLK-08/2013, Veri-SLK 13/2003 and Veri-SLK-44/2012, all clubbed together, are under probe in the Vigilance Organization, pertaining to release of payments to the suppliers and making purchases at exorbitant rates by the accused. Besides, the accused is also figuring in Preliminary Enquiries No.PE-C-13/99 and KG 158/98. The matter was referred by the investigating agency for a Regular Departmental Action against the accused. There are other complaints pending against the officer and he has defamed the Government in the eyes of the public.
>
> It was reported that the Annual Confidential Reports (ACRs) of the officer are incomplete.
>
> The Committee took note of the fact that the accused while holding a post at the top level, in an important department like Housing & Urban Development and State Motor Garages has indulged in corrupt practices and involved in several 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 duties, therefore, it is recommended that Mr. Shamim Ahmad Laherwal be retired from the Government Service in the public interest under Article 226(2) of J&K CSRs. It is further recommended that Mr. Shamim Ahmed Laherwal be given three months of pay and allowances in advance, as admissible, in lieu of the notice."
>
> ***(Underlining supplied)***

18. From the above, it is seen that the Committee has not been certain in its opinion inasmuch as the recommendations start with saying that "the employee does not enjoy a good reputation in the public" and, in the concluding para, it is said that "the officer is generally known to have bad reputation". Neither do the Conduct Rules governing the Government employees envisage that Government employees should enjoy good reputation in the public;

nor do the guidelines framed and promulgated by the Government in terms of OM no. GAD(Vig.)19-Adm/2010 dated 25.10.2010 provide that Government employees not enjoying good reputation in the public should be weeded out. In any case, not enjoying a good reputation does not connote enjoying a bad reputation and enjoying a bad reputation does not necessarily mean that a Government employee is corrupt.

19. Be that as it may, reading the recommendations of the Committee together with the reply filed by the respondents and keeping in view the submissions made at the Bar, the case of the respondents, in a nutshell, is that, while performing his duties, the petitioner had indulged in illegal and corrupt practices and that he did not enjoy a good reputation in the public. One thing is clear that this, therefore, is not a case where the petitioner has been adjudged as non-performing and/or inefficient officer and, therefore, could not, and, in fact, has not been termed a deadwood; he has been weeded out on formulation of the opinion that he is a corrupt employee.

20. There can be no dispute about the cardinal principal [as laid down by the Supreme Court in ***Baikuntha Nath Das v Chief Distt. Medical Officer*** (supra)] that formulation of such an opinion – that a Government Servant is corrupt and, therefore, his premature retirement from Government service is in public interest – by a competent authority is entirely dependent upon his subjective satisfaction. But a competent authority can be led to such a satisfaction only on consideration of the material on record and/or placed before him. It, therefore, presupposes existence of evidence and material germane to the issue, on the basis and consideration of which the competent authority is led to such a satisfaction. Of course, sometimes a Government servant may not generally enjoy a good reputation for

honesty and integrity, and it may indeed be difficult to show or prove by positive evidence that he is dishonest, but then his immediate controlling and supervising officer or those officers who have the opportunity to watch his performance from close quarters are always in a position to know the nature and character of his performance and reputation. They ought to record such observations and general remarks with specific details, if any, about the Government servant in his record of service to make the material gatherable therefrom, if and when required. That, of course, is the object and purpose of maintaining the service record of a Government servant, which necessarily mean the yearly assessments made on all the facets of the functioning of a Government servant, i.e., the APRs, especially those recorded by his immediate superior or the initiating officer who mostly has the control over the affairs of the reported officer and, therefore, has the first hand information about his conduct and performance as a public servant. The record of service would also include his service book containing the entries of the promotions earned by him; the record of the important positions assigned to, and held by, him; punishments, if any, awarded in any departmental enquiry; and more importantly, findings, if any, recorded on a proper enquiry, with which he has been legally associated, in any complaint received against him; convictions, if any, suffered in any complaint of corruption against the public servant, etc. In short, there has to be credible and germane material and evidence to support such a satisfaction; the satisfaction cannot be in abstract and in imagination. This is all the more necessary because while taking action against a Government servant under Article 226(2) of the J&K CSRs, the principles of natural justice are not attracted.

21. In the instant case, before stating what materials about the petitioner were placed before the Committee and considered by it, which led it to the subjective satisfaction about his reputation, it is reiterated that the Committee has prefaced its recommendations with its opinion that “through his consistent conduct over a period of time, the employee does not enjoy a good reputation in the public.” The words used by the Committee are ‘consistent conduct’. Obviously, the word conduct has reference to the attributes of a Government employee as enshrined in the Conduct Rules governing him, which require of him maintenance of absolute integrity, devotion to duty, and to do nothing which is unbecoming of a Government employee. The words so used by the Committee are suggestive of its members having been satisfied about existence of such material as, in their opinion, reflected that the petitioner throughout his service career, ‘consistently’, lacked in the aforesaid attributes, especially in relation to maintenance of integrity. That essentially connotes that there really was such material before the Committee which it took into consideration. This, however, is wholly belied not only by the records produced before the Court, but also by the fact that petitioner has earned as many as five promotions till the impugned order was passed, which clearly demonstrates that the petitioner’s conduct has consistently been commensurate with the mandate of the Rules governing the subject. It is not denied by the respondents that the petitioner has earned these promotions over the years after regular intervals. To reiterate, the petitioner was appointed as Foreman in 1981; he was promoted as Works Manager on 02.09.1985; as Deputy Director on 28.11.1991; as Director on 09.10.1997; confirmed as Director in 2006; and promoted as Director General on 25.09.2008. Naturally, the Government must have considered, and taken into account, his overall conduct and performance on the basis of his

service record and APRs at all these stages. It is not just one or two promotions – five promotions in 34 years. These facts by itself tantamount to certifying the petitioner's satisfactory conduct by the Government at regular intervals. When these facts are pitched against the satisfaction of the Committee, the satisfaction must be held to be assumed, not reasonable and real, and, therefore, unable to withstand such glaring facts.

22. The Committee in its recommendation, presumably to substantiate its opinion, makes reference to certain complaints received against the petitioner, styled as verifications bearing nos. Veri-SLK-08/2013, Veri-SLK 13/2013 and Veri-SLK-44/2012. It is specifically mentioned therein that these complaints/verifications have been clubbed together and are still under probe with the Vigilance Organization; meaning thereby that nothing was established against the petitioner as on the date of making of the recommendation by the Committee. This is one the crucial facets of the impugned action.

23. I am conscious that in these proceedings, the Court is not supposed to go to the sufficiency of the material, but it certainly falls within the scope of judicial review of the Court to see: firstly, if the material was such as could lead any reasonable person to the subjective satisfaction as had actually been formulated by the Committee; secondly, if formulation of such satisfaction has been the result of non-application of mind on the part of the competent authority?

24. The above complaints, as per the recommendation, alleged release of payments to the suppliers and making of purchases at exorbitant rates by the petitioner. Then there is an allegation that the petitioner's name also figured in the Preliminary Enquiries No.PE-C-

12/99 and KG158/98, and that the same were referred by the investigating agency for regular departmental action.

25. As mentioned earlier, the original record file, which presumably had been placed before the Committee, was produced by the learned AAG for perusal of the Court. It in all contains 37 leaves – 2 in its (a) part, i.e., the note sheets, and 35 in its (b) part, i.e., the correspondence. The (b) part, *inter alia*, contains the photocopy of a complaint dated 06.12.2012 made by the President, Urban Local Bodies Employees United Forum, which is affiliated to the Employees Joint Action Committee, to the Chief Minister with copies thereof endorsed to the Dy. Chief Minister of the State; the Chief Secretary of the State; the Commissioner/Secretary to Government, General Administration Department; and the Vigilance Commissioner, J&K, Kashmir, levelling certain general allegations against the petitioner who had been posted as Director, Local Bodies, some seven months prior to the said complaint. The Chief Minister's Secretariat in turn sent copies of the above complaint to the Secretary to Government, Housing and Urban Development Department and General Administration Department for examination and appropriate action. Another complaint of similar nature was addressed by the aforesaid Union Leader to the Secretary to Government, General Administration Department.

26. It is seen, rather, it is worthy of taking notice, that 28 of the 35 leaves of the (b) part of the aforesaid record file, apart from the above two complaints from one and the same union leader, comprise of the correspondence that has ensued and exchanged between General Administration Department, the Vigilance Organization, Housing and Urban Development Department and the Divisional Commissioner, Kashmir, requesting each other to take action in the matter or to

furnish action taken reports, but there is not a single paper worth the name on this record file to indicate that any action was actually taken and/or that anything adverse against the petitioner was found or unearthed. The only substantial part of this record, I may say, is that by communication dated 28.10.2014 the AIG, Vigilance, Srinagar, informed the Secretary to Government, General Administration Department, that the report into the matter was received from the Enquiry Officer, but some observations were raised by his office and that the final report in clarification to such observations was awaited.

27. Apart from the above, there are two other communications on this record file: one is dated 19.03.2001 written by Director Prosecution, Vigilance Organization, Jammu, to the Commissioner/Secretary to Government, General Administration Department, informing him that an information was received on 11.08.1998 (i.e., 18 years back from the date of the impugned order) that the petitioner in his capacity as SWTO (the abbreviation is not decipherable) had appointed about 40 persons as Drivers / Washer-men / Class IV employees after taking handsome amounts from the concerned candidates. In the same breath, in the very same communication, it is stated that on enquiry it was found that the suspect had appointed Shri Mohmad Muzaffar Baigh S/o; Mohmad Sultan R/o Srinagar; Navid Ahmad Lone R/O Srinagar; and Zahoor Ahmad Ahangar R/O Srinagar; against the posts of Drivers/Cleaners, besides one Zahoor Ahmad Ahangar under SRO 43. A request was made in the communication to initiate departmental action against the suspect and get the orders of appointment cancelled. However, subsequently, by communication dated 26.8.2003, the DIG, Vigilance Organization, J&K, Srinagar, wrote to the Commissioner/Secretary to Government, Transport Department, J&K, Srinagar, that during an

enquiry conducted into the allegations of illegal appointments made by the petitioner, it was revealed that he had made appointments of 25 persons as Class IV employees during the year 1997-98. This is the second of the two communications, referred to above, placed on the record file. As per the break up given therein, 06 appointments had been made under SRO 43; 02 appointments had been made on the direction of the Government; 11 appointments had been made under the orders of the Transport Minister; and 06 were attributed to the petitioner. Even so, in both the above communications it was recommended that appropriate action may be taken in the matter. There is nothing coming forth from the record as to what action was, thereafter, taken by the Government in the General Administration Department or the Transport Department.

28. As seen from the record, the complaints written by the union leader were forwarded for examining the same or for a probe into the allegations made therein. Obviously, the object of examining the complaints or conducting a probe into the allegations made therein was to ascertain the veracity of the contents of the complaints. The record file shows that no such examination or probe was held or conducted into these complaints; at least, nothing is there on the record to suggest so, muchless there being anything found adverse against the petitioner in relation thereto. If the veracity of the allegations contained therein was not yet even examined or probed into – the question of the same having been established on any such examination or probe being even far more remote – the complaints would not constitute any evidence or material, more so germane material, to even suspect the petitioner's honesty and integrity, the question of formulating an opinion or attaining a satisfaction that he had a bad reputation for honesty would not arise. It was all the more unreasonable on the part of the

Committee to opine that the petitioner, while performing his duties, had indulged in corrupt practices. Such an opinion could be founded or formulated only on the finding arrived at in any legally permissible proceedings involving the charges of corruption against the petitioner, not otherwise. It should be borne in mind that there is a distinction between saying that a person has a doubtful integrity and calling a person as corrupt. A person may be subjectively satisfied about the doubtful integrity of another and such satisfaction may be founded on merely on the complaint of a third person, but a person cannot be called as corrupt unless he has been so proven in appropriate judicial proceeding. Since it had not been proven in any legally permissible proceeding that the petitioner had indulged in corrupt practices while performing his duties, nor any such proceeding had been conducted, this establishes that the Committee had proceeded to record its satisfaction in the most mechanical manner and, therefore, renders it arbitrary.

29. The other point to be noted is that the aforesaid two complaints had been made by the President of the union, Urban Local Bodies Employees United Forum. It is astonishing that the Committee of so high Government officers with Chief Secretary at the top and the Principal Secretary to Government, Home Department; the Principal Secretary to the Chief Minister; the Secretary to Government, Department of Law, Justice and Parliamentary Affairs; and the Commissioner-cum-Secretary to Government, General Administration Department; as its members, has proceeded to give credence to the complaints of the President of a union, eyes shut, on their face value. It is all the more beyond one’s comprehension that the so high a Committee placed so great a reliance and lend so enormous a credence to the complaints of an office bearer of a union, on their face, as to

unceremoniously throw an officer of the rank of a Director General out of service. This Court, of course, does not mean to say that such complaints ought to have been discarded on their face as being worthless. What was required was that once these complaints had been sent to the Vigilance Organization for examination and probe and the Vigilance Organization had reported that the enquiry was almost complete, awaiting clarification in regard to certain observations raised by it, the respondents ought to have waited for such report. The failure on the part of the Committee to wait for such report and instead to haste through the decision making casts a serious doubt on the reasonableness of the process and its object, rendering it wholly arbitrary.

30. So far as the communication dated 19.03.2001 of the Director Prosecution, Vigilance Organization, Jammu, to the Commissioner / Secretary to Government, General Administration Department, on the allegations against the petitioner that he had made 40 appointments without recourse to the legally permissible procedure and had taken handsome amount from the concerned candidates, the report submitted, thereafter, by the DIG, Vigilance Organization, had established the complaint to be wrong, inasmuch as on enquiry it was found that in all 25 appointments had been made out of whom 06 had been made under SRO 43, 02 had been appointed on the directions of the Government and 11 on the directions of the Minister Incharge. Of course, 06 were attributed to the petitioner and in that connection the Vigilance Organization had requested for taking appropriate action. But no action was taken by the Government – not to speak of holding a regular enquiry against the petitioner to ascertain the truth and, if substantiated, to punish him commensurately, not even an explanation was sought from him. Further, the DIG Vigilance Organization in its

report did not make mention of any corruption having been resorted to by the petitioner. The inference legally available is that nothing in relation thereto was attributable to the petitioner or that the Government did not find anything wrong in the appointments or that no irregularities were found to have been committed by the petitioner as a result no action was taken by the Government. Therefore, these two communications also would not constitute such a material as would lead a reasonable person to the satisfaction that the petitioner enjoyed a bad reputation for honesty and integrity in public, or that he was corrupt.

31. In this connection, there is yet another very important aspect of the matter. In terms of clause (a) of OM no.GAD(Vig.)19-Adm/2010 dated 25.10.2010 quoted hereinabove, the Committee was obliged to take the entries made in the petitioners APRs into consideration and account with particular reference to the entries in the APRs for the last five years. This is not a hollow requirement or a condition without reason. As would be shown in the later part of this judgment, the procedure prescribed for writing these APRs is so elaborate and compact, that the entries in these APRs, if made in the manner as provided for, contain a regular record about the assessment of the honesty and integrity of each Gazetted Officer of the State on yearly basis. However, unfortunately, the recommendation of the Committee, as quoted above, records that “it was reported that the Annual Confidential Reports (ACRs) of the officer are incomplete”. This in itself is clear admission on the part of the Committee contained in the recommendation that the APRs of the petitioner were neither placed before it nor did it consider the same, or take the entries made therein into consideration, while formulating its opinion about the petitioner’s honesty and integrity and the consequent satisfaction whether the

petitioner's premature retirement was or was not in public interest. Once it is so admitted that the entries in the APRs of the petitioner were not taken into account, whatever be the reason for that, it leads to only one conclusion that the record of service of the petitioner was not taken into consideration. Thus the Committee has acted in the matter, not only against the mandate of the OM dated 25.10.2010, but also contrary to the law laid down by the Supreme Court in that regard from time to time. When such is the situation, the law laid down by the Supreme Court is replete, that the order of premature retirement would not sustain. Reference in this connection may be made to the judgment of the Supreme Court in ***S. Ramachandraraju v. State of Orissa*** AIR 1995 SC 111. Therein, the Supreme Court, relying on its earlier decisions in *Shyam Lal v. State of UP*, (1955) ISCR 26 : AIR 1954 SC 369; *Union of India v. J. N. Sinha*, (1971) 1SCR 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, laid down 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 deadwood 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 check 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 of 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 particularly 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 reaches 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 affected. 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 bona fide 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 exercise of its judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service."

In the instant case, the Committee having not considered the APRs of the petitioner, the whole exercise is rendered arbitrary.

32. Now, coming to the other aspects of the matter: in the affidavit filed by the General Administration Department in response to the Court's direction dated 04.05.2016 it is stated that certain APRs of the petitioner were incomplete and were not in consonance with the mandate of order no.1311-GAD of 2001 dated 09.11.2001; whereas some others were not received in the General Administration Department. Mr. Baigh, learned AAG, during the course of arguments, forcefully reiterated that these ACRs were not in consonance with the mandate of the aforesaid Government order,

inasmuch as most of them did not contain the views of the Accepting and the Reviewing Authorities. In essence, what was sought to be put forward was that since the APRs were either incomplete or were not at all available, the concerned authority was unable to place the same before the Committee and consequently, the Committee, was unable to take the APR entries into account and, therefore, no illegality should be read in such non-consideration arising out of the incurable inability in question. Well, the doctrine of *fait accompli* reasoning in such matters, if available as an option to the Government, could be used in favour of the petitioner, not against him, especially so when the fault for incomplete APRs or their not being available, as would be shown hereafter, did not lie with the petitioner. Furthermore, nothing prevented the Committee from considering and taking into account the entries in those of the APRs which are stated to have been incomplete.

33. I have already mentioned the legal and factual implication of non-placement of these ACRs before the Committee and the consequent non-consideration by it of the entries made therein. In order to find out whether any responsibility and/or liability of the APRs being incomplete or not available could be fastened on the petitioner and whether, by reason of such assumed fault on the part of the petitioner, the Committee or the Government would stand absolved of their obligation to consider the APRs, especially for the last 5 years, the relevant Government order, which, in fact, has been vehemently relied upon and cited by the respondents, both in their reply / affidavit as well as during arguments by the learned AAG, would need to be examined.

34. It is seen that by order no.1311-GAD of 2001 dated 09.11.2001, the Government in supersession of all previous orders and instructions on the subject, has ordered that the procedure for writing up, custody

and maintenance of Annual Confidential Reports of all the Gazetted Officer of the State shall be as per the Annexures appended thereto.

35. Annexure-I appended to the aforesaid Government order prescribes the instructions. It's item-I contains the instructions with regard to the maintenance and custody of the APRs. Clause (2) of item-I says that the APR shall be maintained by the Accepting Authority and where the Accepting Authority is the Minister, it shall be maintained by the concerned Administrative Department. Clause (3) of item-I says that the Secretaries to Government shall obtain the statements from the Heads of Department on the proforma (Annexure III) showing the names of officers in respect of whom the Reports have been initiated / reviewed / accepted, and that this should be monitored from time to time so as to ensure that the APRs in respect of all officers in a Department are written, reviewed and accepted.

36. If the above instructions, as stated by none other than the General Administration Department in its affidavit filed on 27.09.2016, and argued by Mr. Baigh during the course of argument, are mandatory in nature, then the obligation of the mandate of Clause (3) of item-I thereof, to ensure that the APRs in respect of all officers in a Department are written, reviewed and accepted, falls on the Secretaries to Government, and the responsibility of maintenance and custody thereof falls on the Administrative Departments. And if that be so, as it really is, the responsibility or the liability on account of either non-availability or the incompletion of these APRs can in no circumstances be shifted on to the petitioner. Consequently, the adverse fall out of such failure would not go to the petitioner's share.

37. Item-II of the Instructions deals with the form of APR and it states that the APRs shall be written in the form Annexure-IV annexed

to the instructions and the APRs of IAS Officers shall continue to be recorded in separate proforma prescribed by Government of India.

38. Then, proceeding ahead, item-III provides the procedure for writing up of the APRs. Its Clause (1) provides that the APR in respect of officers indicated in column 1 of the Annexure-II to the instructions, shall be written by the authority mentioned as "Initiating Officer" in column 2 who will submit it to the Accepting Authority defined in column 4 through the "Reviewing Authority" prescribed in 'column 3. Where the Reviewing / Accepting Authority is the Minister Incharge, the APRs are to be submitted to him through the concerned Minister of State / Deputy Minister. Then it is provided that every initiating officer shall ensure that a set containing two formats of APRs set out in Annexure-IV to the instructions is sent to the Officer to be reported upon by or before 31st of March every year for causing the officer (to be reported upon) to record his self assessment by or before 30th April on the APRs for the preceding financial year. However, in case the officer to be reported upon fails to record his self assessment within the reasonable time, the Initiating Officer shall initiate the APR after recording that the officer concerned failed to record his self assessment.

39. The Government instruction in Clause (1) of item-III thus unambiguously casts an obligation on the Initiating Officer to write the APRs. So, if any Initiating Officer fails to abide by the mandate of the Instructions, its fall out will not be attributable to the person to be reported upon. In fact, the Instructions provide the other way round. In this connection Clause (3) of item-IV under the caption ‘Periodicity and Frequency’ provides that an officer (Initiating / Reviewing) who fails to record the report on the officer within the prescribed time will himself come under adverse comment by the next superior at the time

of writing of his/her APR. It, therefore, becomes clear that no responsibility or liability on this count can be fastened on the officer to be reported upon and, consequently, no adverse inference on that count could be drawn against the petitioner.

40. Now, if all the APRs have not been written or that, though written, yet some of them are incomplete – incomplete in the sense that the Reviewing Authority and/or the Accepting Authority have not recorded their views – would these facts, either severally or jointly, lessen the rigor of the requirement to take the entries of the APRs into consideration or absolve the Committee and/or the Government of this mandatory obligation? Answer to these questions would obliviously be no. Whatever record in the shape of APRs would be available, the entries therein would need to be considered and taken into account because such entries would not automatically stand washed off or expunged. Furthermore, as would be seen in the following Instructions, it is the Initiating Officer who is fastened with the responsibility to record the remarks about the integrity of a reporting officer. So if an APR contains the remarks of only the Initiating Officer, it would hold good for all purposes and non-availability of the remarks of the Reviewing Authority or the Accepting Authority in that regard would be immaterial and inconsequential.

41. Item-V of the Instructions deals with the content of the APRs. I deem it apt to quote its various clauses hereunder:

> "**V. CONTENTS.**
>
> 1. Specific mention of incidents which have been subject of departmental proceedings and for which punishment has been awarded, should be made in the Performance Reports.

2. Whenever an officer attends any approved course of study or training, the fact of his having done so and results achieved, should be recorded in his report.

3. When the integrity of an officer is doubted the **Initiating Officer** should be in possession of definite material. The procedure for filling up the column relating to integrity of an officer should be as under:

(a) At the time of recording the APR instances, if any, which have created suspicion about integrity of a subordinate should be kept in view. If the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following sub-paragraphs.

(b) The column pertaining to integrity in the APR should be left blank and a separate secret note about the doubts and suspicions, regarding the officer's integrity should be recorded simultaneously and followed-up.

(c) A copy of the secret note should be sent together with the APR to the next superior Officer who should ensure that the follow up action is taken with due expedition.

(d) If, as a result of follow-up-action, an officer is exonerated, his integrity should be certified and an entry made in the APR. If suspicions regarding his integrity are confirmed, this fact should also be recorded and duly communicated to the officer concerned.

(e) There are occasions when an initiating Officer cannot in fairness to himself and to the officer reported upon either certify integrity or make an adverse entry, or even be in possession of any information which would enable him to make a secret report to the Head of the Department. Such instances can occur when an officer is serving in a remote station and the Initiating Officer has not had occasion to watch his work closely or when an officer has worked under the Initiating Officer only for a brief period or has been on long leave, etc. In all such cases, the initiating officer should make an entry in the integrity column to the effect that he has not watched the officer's work for sufficient

> time to be able to make any definite remarks or that he has heard nothing against the officer's integrity as the case may be. This should be a factual statement to which there can be no objection. But it is necessary that a superior officer should make every effort to form a definite judgement about the integrity of those working under him, as early as possible, so that he may be able to make a positive statement.
>
> (f) There may be cases in which after a secret note has been recorded expressing suspicion about an officer's integrity the inquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such a case the officer's conduct should be watched for a further period and, in the meantime he should, as far as practicable, be kept away from the positions in which there are opportunities for indulging in corrupt practices."
>
> ***(Emphasis added)***

42. The above procedure is so lucid, compact, fully descriptive and self explanatory that it hardly needs any analysis to spell out what it actually mandates. If one is in a position to literally visualise the essence of these instructions, then they figuratively blast into smithereens the stand taken by the respondents in their reply, in the affidavit filed on 27.09.2016 and during the course of arguments at the hearing of this case, together with the satisfaction the Committee is supposed to have attained, its consequent recommendations and finally, the impugned Government order based thereon. I do not think, in face of these instructions, anything more needs to be added, except to say that the satisfaction attained by the Committee, its recommendations and the impugned order, all are a product of gross non-application of mind on the part of the members of the Committee and, therefore, renders the whole exercise arbitrary.

43. In his rejoinder affidavit, the petitioner has stated that he has been a victim of arbitrary and colourable exercise of power and authority by the respondents. According to the petitioner, there are

corruption cases registered with the Vigilance Organization against a huge number of high ranking and other officers of the State and a few of them are facing trial before Courts of competent jurisdiction. Such officers have not been touched, and as against that, the petitioner, who is not involved in any such case, has been recommended to be prematurely retired. The petitioner has appended as annexure P10 with the rejoinder affidavit a list of the cases registered by J&K State Vigilance Organization with effect from 01.01.2011. The information gatherable therefrom shows that in Jammu Province in all 136 cases have been registered since 01.01.2011 as per the yearly break up of 28 cases in 2015, 35 in 2014, 17 in 2013, 28 cases each in the years 2012 and 2011. Similarly, in Kashmir Province in all 164 cases stand registered and the break up is 39 cases in 2015, 44 cases in 2014, 19 cases in 2013, 34 cases in 2012 and 28 cases in 2011. All these cases, barring a few, are still shown to be under investigation. There may be all the truth in the submissions made by the petitioner, but since he has not challenged the impugned order on the ground of *mala fide* on the part of the Committee or any of its members or any other authority having any say in the matter, this Court cannot proceed any further on this score in the matter.

44. The petitioner with his rejoinder affidavit has also appended certain information obtained under Right to Information Act. This information names five IAS and KAS officers against whom Vigilance Organization, Kashmir, had lodged an FIR but despite that they were promoted to higher posts. That may be truthful information, but the argument of the action being selective sought to be build thereon would not render any help to the petitioner, unless there is a specific allegation of the action being based on extraneous or *mala fide* considerations, supported by material particulars.

45. It may be reiterated here that the petitioner has been prematurely retired on the ground that he has been a corrupt officer or that he did not enjoy a good reputation which has been interchangeably also expressed by saying that the petitioner enjoyed a bad reputation. As seen hereinabove, this is merely an unfounded and unsupported allegation. It is also not the case of the respondents that the 'incomplete APRs of the petitioner' contain any adverse remark about his integrity. And if one goes by the remarks recorded against the integrity column in his available APRs for the years in the immediate past, the integrity of the petitioner is defined as under:

2013-2014	:	"Beyond doubt."
2009-2010	:	"No complaint ever came to my notice.."
2005-2006	:	"Very Good."
2003-2004	:	"Very Good."

This being the position of the available authentic record, not considered by the Committee, the subjective satisfaction or the opinion framed by it and the consequent action based thereon cannot withstand the scrutiny of law.

46. All what has been observed, mentioned and discussed hereinabove, leads to only one conclusion that on the basis of the material available on record no reasonable man can assume or attain the subjective satisfaction that the petitioner has been corrupt or that he did not enjoy a good reputation or that he enjoyed a bad reputation for honesty in public.

47. Now, coming to the judgments cited at the Bar, the learned State counsel has not been able to show one judgment where the Supreme Court or this Court has ever held that a Government servant can be dubbed as being corrupt merely on the basis of a complaint, especially

of a union leader, and thrown out of service, without holding any kind of probe or investigation into the allegations made in such complaint, or that if the APRs have not been recorded, or are recorded incomplete, the same need not be considered for assessing the integrity or honesty of the concerned Government servant, especially so when remarks about the integrity of the person have duly been recorded by the Initiating Officer in the relevant column of the APRs. Yet, let the judgments cited be examined.

48. In ***Union of India v. M. E. Reddy***, (1980) 2 SCC 15, the contention of the respondent before the Supreme Court was that his order of compulsory retirement was passed on non-existent material inasmuch as at no time were any adverse remarks recorded in his ACRs communicated to him. The Supreme Court dealt with the said contention of the respondent in the following words: (SCC p.24, para 17)

> "…This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the various rules on the subject it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who has had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys…. "

In the instant case, the issue of reliance on uncommunicated adverse remarks is not at all involved.

49. In ***C. D. Ailawadi v. Union of India***, AIR 1990 SC 1004: (1990) 2 SCC 328, the appellant before the Supreme Court challenged the

order of his compulsory retirement on the ground that the same was based on collateral grounds. The Supreme Court, after going through the character roll of the appellant, found that the entries in his character roll for last five years prior to the date of the order impugned therein justified the decision of compulsory retirement. The Supreme Court in para 8 of the judgment, in fact, observed as under:

> "8.…The service record of more than five years which we have perused shows that the higher officers under who the petitioner had worked were different and different sets of reviewing officers had also made the entries. Therefore, the reports must be taken to have reflected an appropriate and objective assessment of the performance of the petitioner."

Applying the same yard stick in the instant case, the remarks of different Initiating Officers recorded in the available APRs of the petitioner must be taken to be reflecting an appropriate and objective assessment of the integrity of the petitioner. Curiously, in the instant case, the learned AAG specifically relied upon para 8 of the judgment which, as seen above wholly goes against him.

50. In ***Baikuntha Nath Das v Chief Distt. Medical Officer***, (1992) 2 SCC 299, the main issue was as to whether the employer could act upon uncommunicated adverse remarks and whether observance of the principles of natural justice was necessary before taking a decision to compulsory retire a government servant. The court answered both the questions in the negative, holding that it was permissible for the Government to even look into and consider un-communicated adverse remarks. It was also held that since the premature retirement was not stigmatic in nature and such an action was based on subjective satisfaction of the Government, there was no room for importing the facet of natural justice in such a case (See *Rajasthan State Road Transport Corp. v. Babu Lal Jangir* para 15). Therein the Supreme

Court also set out the principles in relation to the exercise of power for premature or compulsory retirement of a Government employee. The judgment has no relevance to the facts of the present case.

51. In ***Posts and Telegraphs Board v. C. S. N. Murthy***, (1992) 2 SCC 317, the ACRs of the respondent before the Supreme Court for the latest two years under review were adverse. The Supreme Court held that though the earlier record of the respondent was good but if the record showed that the standard of work had declined and was not satisfactory, that certainly constituted material enabling the department to come to the conclusion under Fundamental Rule 56(j). Herein there is no such adverse remark recorded in the APR of the petitioner by any authority. In fact, the APRs have not at all been considered in the instant case. That fact by itself goes to the root of the impugned order.

52. In ***State of Gujarat v. Suryakant Chunilal Shah***, (1999) 1 SCC 529, the respondent before the Supreme Court was appointed as a Clerk in the office of Food Controller, Ahmadabad, and after about twenty-one years of service, he was promoted as an Assistant Food Controller (Class II) in the office of Food Controller, Ahmadabad. In 1983 certain complaints were received against him regarding permits for cement having been issued illegally by him and, therefore, he was placed under suspension and an enquiry by the State CID was ordered into the mater of issuance of bogus cement permits. On receipt of the CID enquiry report, which *prima facie* made out a case of issuing cement permits to bogus institutions which were not in existence in Ahmadabad, a first information report under various sections of IPC read with the provisions of Prevention of Corruption Act was filed against the respondent. Another FIR was lodged against him on the same day in respect of offences committed by him by fabricating the rubber stamp of the Government and fabricating bogus permits in

favour of equally bogus parties. By order dated 21.7.1988, passed under Rule 161 of the Bombay Civil Service Rules, 1959, the respondent was compulsorily retired from service in public interest. This order was challenged by him before the Gujarat High Court. Whereas the learned Single Judge dismissed the writ petition, the Division Bench on appeal allowed the appeal as well as the writ petition. Against the judgment passed by the Division Bench of the Gujarat High Court, the State of Gujarat went in appeal to the Supreme Court. The Review Committee in the case had doubted the integrity of the petitioner and it was opined that it was not advisable to continue the petitioner in service for a further period. The Supreme Court, while explaining as to what was 'public interest', in paragraph 11 of the judgment laid down as under:

> "11. What is 'public interest' was explained in the classic decision of this Court in *Union of India v. Col. J. N. Sinha* {(1970) 2 SCC 458}. It was pointed out that the object of premature retirement of a government servant was to weed out the inefficient, corrupt, dishonest employees from the government service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service, while the services of the dishonest or the corrupt or who are almost deadwood, are to be dispensed with…."

Further, relying on and discussing its earlier decisions in *H. C. Gargi v. State of Haryana*, (1986) 4 SCC 158; *Gian Singh Mann v. High Court of Punjab & Haryana*, (1980) 4 SCC 226; *Kailash Chandra Agarwal v State of MP*, (1987) 3 SC 513; *Union of India v. M. E. Reddy*, (1980) 2 SCC 15; *Baikuntha Nath Das v. Chief Distt. Medical Officer* (supra); *Posts & Telegraphs Board v. C. S. N. Murthy*, (1992) 2 SCC 317; *K. Kandaswamy v. Union of India*, (1995) 6 SCC 162, *S. R. Venkataraman v. Union of India*, (1979) 2 SCC 491; *Baldev Raj*

Chanda v. Union of India, (1980) 4 SCC 321, the Apex Court in paragraphs 27 and 28 laid down as under:

> "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 government servant or that he had lost his efficiency and had become a deadwood, he was compulsorily retired merely because of his involvement in two criminal cases 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 dependent upon the circumstances of each case and the nature of offence alleged committed by the employee.
>
> (*Underlining supplied*)
>
> 28. There being no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries, the integrity was not doubted at any time, the character roll entries subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) were not available, it could not come to the conclusion that the respondent was a man of doubtful integrity nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily from service. The order, in the circumstances of the case, was punitive having been passed for the collateral purpose of his immediate removal rather than in public interest. The Division Bench, in our opinion, was justified in setting aside the order passed by the Single Judge and directing reinstatement of the respondent."

It is thus obvious that this judgment by no standards of precedents helps the learned AAG.

53. In ***Jugal Chandra Saikia v State of Assam***, (2003) 4 SCC 59, the 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 formed the opinion objectively as to whether an 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 present case, the unfortunate aspect is that the Committee comprising of high and responsible officers, as discussed above, has not considered the entire service record of the petitioner, particularly his APRs. The case is, therefore, distinguishable on material facts.

54. In ***M. L. Binjolkar v State of M. P***., (2005) 6 SCC 224, the ratio laid down by the Supreme Court is that an employer can certainly pass an order of compulsory retirement when the employee is considered to be a dead wood and practically of no utility to the employer. Here, in the instant case, the petitioner is not prematurely retired on the ground of having turned into deadwood and, therefore, being of no utility; the ground taken here for prematurely retiring the petitioner is that he is corrupt, when the service records of the petitioner, especially his APRs, speak contrary to that. The judgment cited, therefore, renders no help to the learned AAG.

55. ***Rajasthan State Road Transport Corp. v. Babu Lal Jangir***, AIR 2014 SC 142: In that case the employee had been declared as deadwood on the basis of his service record which had nearly 19 cases of misconducts between the years 1978-1990. The Supreme Court in its judgment detailed out the particulars of the 19 misconducts and the result of the enquiries conducted therein, and came to the conclusion that the record projected a dismal picture. The Supreme Court noticed that apart from the years 1978-90, the service record after 1990 also

did not depict a rosy picture and that there was nothing to show that his performance had become better during the this period. While allowing the appeal filed by the employer, the Supreme Court in paragraph 28 of the judgment laid down as under:

> "28. It hardly needs to be emphasized that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non-application of mind, mala fide, perverse, or arbitrary or if there is non-compliance of statutory duty by the statutory authority. Power to retire compulsorily, the Government servant in terms of service rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest."

As seen above, the Supreme Court in the aforesaid judgment has laid down that power to retire compulsorily, a Government servant in terms of service rules is absolute, provided the authority concerned forms a *bona fide* opinion that compulsory retirement is in public interest. The test is that the opinion must have been formulated *bona fide,* that is, it must be founded on subjective satisfaction and such subjective satisfaction must based on the service record of the employee, supported by material and evidence; it should not be imaginative. Lot has been discussed hereinabove about the nature of the subjective satisfaction in the present case. This judgment, therefore, by no standards is applicable in the instant case.

56. ***Shakti Kumar Gupta v. State of J&K***, AIR 2016 SC 832. This judgment governs an entirely different service. The principles laid down therein emanating from the Rules governing the higher judicial service and attributes of a judicial officer cannot be made applicable herein. Even so, as recorded in the judgment, the Full Court had found

the petitioner therein to be incorrigible. That is not the case herein; there is no such finding recorded in the instant case.

57. ***Kapoor Chand v. State of J&K***, 2013(II) SLJ: This judgment only reiterates what the Supreme Court has held and laid down from time to time in the judgments already

58. As far the judgments cited by the petitioner, since I have come to and already recorded a definite finding I do not feel the necessity of referring to the judgments cited by the petitioner at the Bar.

59. In light of the above, this petition is allowed. The impugned Government order no.870-GAD of 2015 dated 30.06.2015, whereby the petitioner was given notice in exercise of the powers conferred by Article 226(2) of the Jammu and Kashmir Civil Service Regulations, that he, having already rendered 22 years of service, shall retire from service with effect from forenoon of 01.07.2015, allowing him three months of pay and allowances in lieu of such notice, is quashed. Consequently, the respondents are directed to reinstate and treat the petitioner in service, entitled to all the benefits, as if the impugned order had not at all been issued. To accelerate such process, the petitioner is directed to report for duty before Commissioner/Secretary to Government, General Administration Department, Jammu, within seven days from today, preferably, with a certified copy of this judgment.

60. No order as to costs.

61. The file produced by Mr. Baigh, learned AAG, for perusal of the Court as original case record is returned to him in the open Court.

(Ali Mohammad Magrey)
Judge

Srinagar,
13.12.2016
Syed Ayaz Hussain, Secretary