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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2303 of 2012

Order reserved on: 8-10-2021

Order delivered on: 1-11-2021

Amritlal, S/o Late Anand Ram, Aged about 47 years, R/o Phase: 1/18, Ashok Vihar Colony, Chantidih, Bilapsur (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Renewable Energy Development Agency (CREDA), Through the Chief Executive Officer, Core Office: State Electricity Regulatory Commission Building, Second Floor, Irrigation Colony, Shanti Nagar, Raipur (C.G.)
2. The Director, Chhattisgarh State Renewable Energy Development Agency (CREDA), State Electricity Regulatory Commission Building, Second Floor, Irrigation Colony, Shanti Nagar, Raipur (C.G.)
3. The Executive Engineer, Chhattisgarh State Renewable Energy Development Agency (CREDA), Oorja Park, Rajkishore Nagar, Bilaspur (C.G.)
4. The Assistant Engineer, CREDA District Office, Near Balmandir, Annapurna Vihar, B-Type Qtrs., CSEB Colony, Jailgaon Chowk, Darri, Korba (West), Distt. Korba (C.G.)

---- Respondents

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For Petitioner: Mr. N. Naha Roy, Advocate.
For Respondents: Mr. Satyendra Shrivas, Advocate on behalf of Mr. Devershi Thakur, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

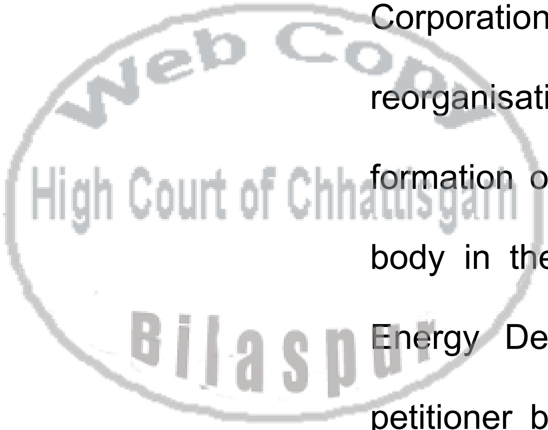
C.A.V. Order

1. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein has taken exception to the order dated 8-9-2011 (Annexure P-1), whereby the three months' notice for compulsory retirement dated 9-6-2011 (Annexure P-7) has been given effect to and by which the petitioner has been compulsorily

(prematurely) retired from service with effect from 8-9-2011 as per Rule 21.1 of the Chhattisgarh Rajya Akshay Oorja Vikas Abhikaran (CREDA) Ke Karmachariyon / Adhikariyon Ke Seva Bharti, Seva Sharte, Vargikaran Aur Appeal Niyam, 2004 (for short, 'the Rules of 2004'). The aforesaid order has been challenged as arbitrary, illegal and contrary to the well settled law in that behalf.

2. The aforesaid challenge has been made on the following factual backdrop: -

3. The petitioner was appointed as Mechanic on 21-3-1990 vide Annexure P-2 by the then Madhya Pradesh Energy Development Corporation Limited and he was posted at Bilaspur. Thereafter, on reorganisation of the erstwhile State of Madhya Pradesh and after formation of the State of Chhattisgarh with effect from 1-11-2000, a body in the name and style of the Chhattisgarh State Renewable Energy Development Agency (CREDA) was constituted and the petitioner became regular employee of the said Agency with effect from 25-5-2001. The petitioner was sent on deputation in the year 2005 for a period of two years to the Chhattisgarh Bio-fuels Development Corporation Limited from where he was repatriated in the respondent Agency in the year 2007 and since then he was posted at Jagdalpur, District Bastar and he was thereafter, transferred to the office of respondent No.4 with effect from 26-6-2008. It is the case of the petitioner herein that he was maintaining all along a clean service record and he was performing his duties with due sincerity and never caused any occasion of dissatisfaction of his higher authorities, and he was never ever asked to make any explanation in support of his any of the conduct, Although the petitioner was continuing his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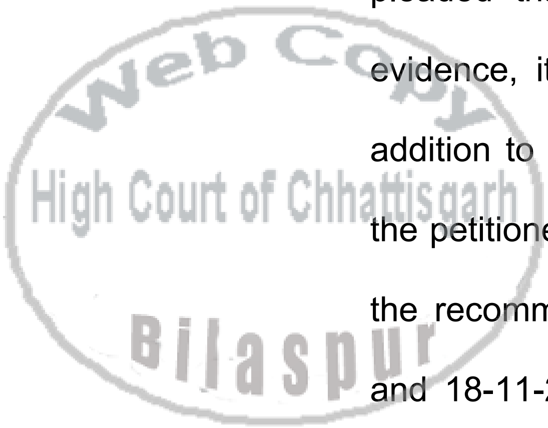
service with the respondents with due sincerity, he was put to utter surprise by issuance of a three months' notice for compulsorily retirement dated 9-6-2011 and firstly, he was compulsorily retired from service on 8-9-2011 by accepting the recommendations of the Screening Committee dated 18-5-2011 and 18-11-2010. It is the further case of the petitioner that Rule 21.1 of the Rules of 2004 gives unfettered and unbridled power to respondent No.1, as it nowhere speaks of compulsory retirement in public interest or in the interest of the institution and as such, the order of compulsory retirement is unsustainable and bad on that count itself. It has been further pleaded that the order of compulsory retirement is based on no evidence, it is perverse and it reflects non-application of mind. In addition to that, it has also been pleaded the competent authority of the petitioner did not apply its independent mind and passed order on the recommendations of the Screening Committee dated 18-5-2011 and 18-11-2010 and he has been compulsorily retired from service which is totally unjustified, arbitrary, illegal and liable to be set aside.



4. Return has been filed by the respondents that the petitioner has been afforded reasonable opportunity to improve his performance, but he did not improve his performance which is apparent from the documents annexed along with the return and since the petitioner's performance was not found up to the mark, therefore, his services have been dispensed with which is strictly in accordance with law in which no interference is warranted in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Short rejoinder has been filed controverting the averments made in the return stating inter alia that the petitioner has never been given

any opportunity to improve his performance and only he has been issued with advisory in shape of Annexure P-6.

6. Mr. N. Naha Roy, learned counsel appearing for the petitioner, would submit as under: -

    1. Rule 21.1 of the Rules of 2004 confers unbridled and unguided discretion or unfettered power to the appointing authority to retire an employee without assigning any reason on completing the qualifying service even without satisfying the requirement that compulsory retirement is in public interest or is in the interest of the institution which is decisive parameter in the matter of compulsory retirement applicable to the government servant as held by the judicial precedents and the Supreme Court has declared the statute permitting compulsory retirement which confers unbridled and unguided power as ultra vires. Mr. Roy, learned counsel, would rely upon the decision of the Supreme Court in the matter of **Senior Superintendent of Post Offices, Allahabad and others v. Izhar Hussain**[1] and **Union of India and others v. R.C. Mishra**[2] followed in the matter of **Uttar Pradesh Cooperative Sugar Factories Federation Limited v. P.P. Gautam and others**[3] to buttress his submission.

    2. Respondent No.1 / competent authority has simply relied upon the recommendations of the screening committee which are not binding on the competent authority and are merely persuasive, rather the competent authority has power and jurisdiction to accept the same or reject the same, however, in the instant

1 (1989) 4 SCC 318
2 (2003) 9 SCC 217
3 (2008) 17 SCC 365

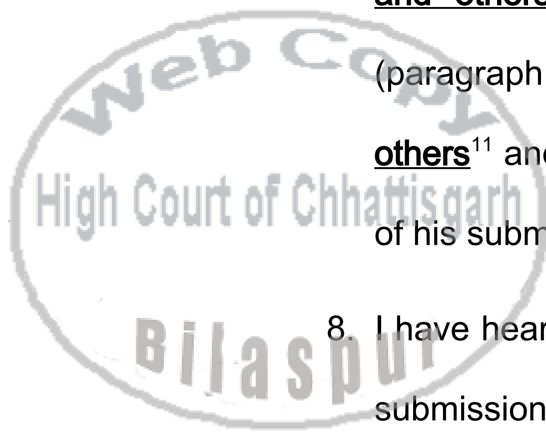
case, the competent authority simply relying upon the report / recommendations of the screening committee has taken a decision to compulsorily retire the petitioner without application of mind which runs contrary to the decisions of the Supreme Court rendered in this behalf.

3. The impugned order of compulsory retirement has been passed on the basis of absolutely arbitrary assessment of service record of the petitioner in complete ignorance of the principles of natural justice and the respondent Agency has not taken into consideration the fact that no explanation was ever sought from the petitioner and that no major or minor punishment has ever been inflicted upon the petitioner during his entire service period. Reliance has been placed upon the decisions of the Supreme Court in the matters of **Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another**[4], **Rajesh Gupta v. State of Jammu and Kashmir and others**[5], **Ram Murti Yadav v. State of Uttar Pradesh and another**[6], **R.C. Mishra's** case (supra) and **State of Gujarat and another v. Suryakant Chunilal Shah**[7].

7. Per contra, Mr. Satyendra Shrivas, learned counsel appearing for the respondents, while opposing the submissions of Mr. Roy, learned counsel for the petitioner, would submit that the petitioner has not questioned the constitutional validity of Rule 21.1 of the Rules of 2004 and in absence of challenge to the constitutional validity, it cannot be held that unbridled and unfettered power has been conferred to the

4 (1992) 2 SCC 299
5 (2013) 3 SCC 514
6 (2020) 1 SCC 801
7 (1999) 1 SCC 529

competent authority to retire a public servant by giving three months' notice without assigning any reason. He relied upon the decision of the Supreme Court in the matter of **National Aviation Company of India Limited v. S.M.K. Khan**[8] to buttress his submission. He would further submit that the screening committee after considering the entire service record of the petitioner and on finding that his retirement is necessary in the public interest, recommended for his compulsory retirement after giving three months' notice, which has been accepted by the competent authority. He would further rely upon the decisions of the Supreme Court in the matters of **I.K. Mishra v. Union of India and others**[9], **Baldev Raj Chadha v. Union of India and others**[10] (paragraph 9), **Tara Singh and others v. State of Rajasthan and others**[11] and **Union of India v. Col. J.N. Sinha and another**[12] in support of his submissions.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8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. After hearing learned counsel for the parties and on going through the record, the following questions would emerge for decision making: -

    1. Whether Rule 21.1 of the Rules of 2004 confers unbridled and unfettered power to the competent authority to compulsorily retire an employee making the order of compulsory retirement vulnerable?

    2. Whether the recommendation of the screening committee is

8 (2009) 5 SCC 732
9 (1997) 6 SCC 228
10 (1980) 4 SCC 321
11 (1975) 4 SCC 86
12 1970 (2) SCC 458

binding on the competent authority?

3. Whether the order of compulsory retirement retiring the petitioner from service is liable to be interefered with on the permissible ground for judicial review?

10. The petitioner is directed by the employer to retire before the stipulated date of retirement and he is said to be compulsorily retired or (to be terminologically more precise) he has suffered premature retirement. The term or phrase “compulsory retirement” in service law has been generally used in relation to cases where an employee has been directed that his services are no longer required before he reaches the normal age of retirement prescribed by the rules. In other words, in substance, there is a premature end of the relationship of master and servant before the servant reaches the prescribed age of retirement or superannuation. Premature retirement is, therefore, a more apt expression to convey the concept with which the petitioner has been subjected. The purpose and object of premature retirement of a Government employee is to weed out the inefficient, the corrupt, the dishonest or the dead-wood from Government service. In **Tara Singh** (supra), their Lordships of the Supreme Court summed up the concept of premature retirement in following words: -

> “26. The right to be in public employment is a right to hold it according to rules. The right to hold is defeasible according to rules. The rules speak of compulsory retirement. There is guidance in the rules as to when such compulsory retirement is made. When persons complete 25 years of service and the efficiency of such persons is impaired and yet it is desirable not to bring any charge of inefficiency or incompetency, the Government passes orders of such compulsory retirement. The government servant in such a case does not lose the benefits which a government servant has already earned. These orders of

compulsory retirement are made in public interest. This is the safety valve of making such orders so that no arbitrariness or bad faith creeps in."

11. In **S.M.K. Khan's** case (supra), their Lordships of the Supreme Court again explained the object of premature retirement and it has been held that the unsatisfactory service of the employee which may include any persistent misconduct or inefficiency furnishes the background for forming a view that the employee has become a dead wood and that he should be retired compulsorily. Such "compulsory retirement" is different and distinct from imposition of a punishment of compulsory retirement (or dismissal/removal) on a specific charge of misconduct, where the misconduct is the basis for the punishment.

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12. With this introductory note qua premature retirement, now, it would be appropriate to answer question No.1 which has arisen for consideration: -

Answer to question No.1: -

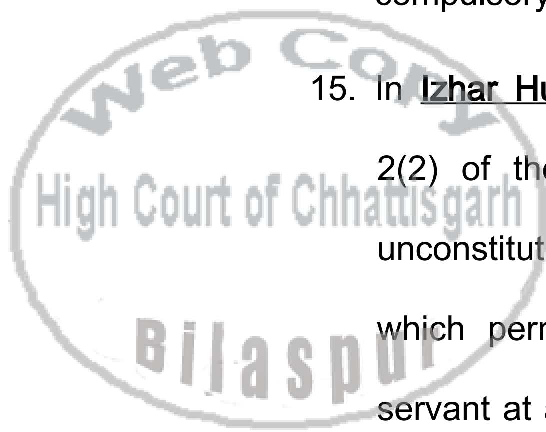
13. In order to answer this question, it would be appropriate to reproduce Rule 21.1 of the Rules of 2004 governing the concept of premature retirement in the respondent institution which is non-statutory in nature: -

अनिवार्य सेवा निवृत्तिः–

21.1 क्रेडा के अधीन 20 वर्ष की सेवा पूरी कर लेने अथवा 50 वर्ष की आयु पूरी कर लेने पर, जो भी पहले हो, नियुक्ति प्राधिकारी किसी कर्मचारी को बिना कारण बताए 3 माह का पूर्व नोटिस देकर सेवा–निवृत्त कर सकेगा ।

14. A careful perusal of the aforesaid rule would show that the services of the petitioner servant can be prematurely retired on completion of 20 years of service or on attaining the age of 50 years, whichever is earlier, by the competent authority without assigning any reason on

giving 3 months' notice. It is appropriate to mention that the rule does not speak of public interest and as such, in that view of the matter, it has been contended by learned counsel for the petitioner that the rule is absolutely arbitrary conferring an unguided discretion or unbridled power to the competent authority to compulsorily retire an employee without assigning any reason on completing the qualifying service. Such provision confers the competent authority with the absolute power to compulsorily retire any employee without even satisfying the requirement of continuation or discontinuation of the employee in public interest which confers unbridled power and the order of compulsory retirement is vulnerable.



15. In **Izhar Hussain's** case (supra), the Supreme Court declared Rule 2(2) of the Liberalised Pension Rules, 1950, as ultra vires and unconstitutional under Articles 14 and 16 of the Constitution of India, which permitted the Central Government to retire a Government servant at any time after completion of 30 years qualifying service by giving him three months' notice or pay in lieu of such notice. Comparing Rule 2(2) of the Liberalised Pension Rules, 1950 with Fundamental Rule 56(j), their Lordships opined that the power conferred under the later Rule could only be exercised in public interest and this public interest guideline was sufficient safeguard against the arbitrary exercise of powers by the Government, whereas Rule 2(2) of the Liberalised Pension Rules, 1950 provided no guideline and gave absolute discretion to the Government since there was no requirement under the rule to act in public interest. In paragraph 5 of the report, their Lordships pertinently observed as under: -

> "5. The object of Rule 2(2) of Pension Rules may also be to weed out those government servants who have outlived their utility but there is no guideline provided in the rule to this effect. The rule gives unguided discretion to the government to retire a government servant at any time after he has completed 30 years of qualifying service though he has a right to continue till the age of superannuation which is 58 years. Any government servant who has completed 30 years of qualifying service and has not attained the age of 55 years can be picked up for premature retirement under the rule. Since no safeguards are provided in the rule, the discretion is absolute and is capable of being used arbitrarily and with an uneven hand. We, therefore, agree with the Division Bench of the High Court and hold that Rule 2(2) of the Pension Rules is ultra vires Articles 14 and 16 of the Constitution of India."

16. Similarly, in the matter of **Union of India and others v. Shaik Ali**[13], the Supreme Court has declared paragraph 620(ii) of the railway Pension Manual which authorised the competent authority to retire a railway servant after he had completed 30 years of qualifying service by giving 3 months' notice or 3 months' pay and allowances in lieu of such notice to be ultra vires Article 14 of the Constitution of India for the same reason namely, not specifying the guideline of public interest.

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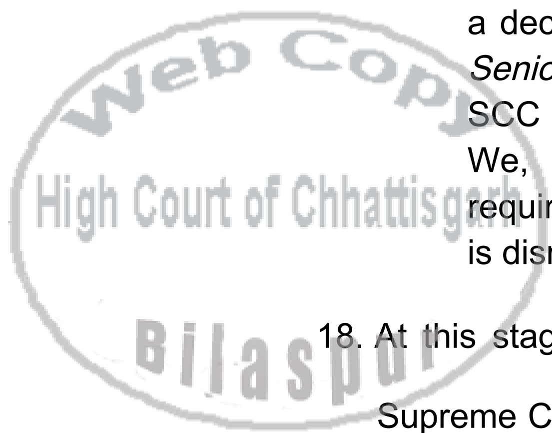
17. The judgments of the Supreme Court in **Izhar Hussain's** case (supra) and **Shaik Ali's** case (supra) were followed with approval by the Supreme Court in **P.P. Gautam's** case (supra) in which their Lordships of the Supreme Court have held that the conclusion of the High Court that it confers an unbridled power and is violative of Article 14 of the Constitution of India is unassailable. It has been observed in paragraph 2 of the report as under: -

> "2. The High Court has come to the conclusion that the aforesaid proviso confers an unbridled power on the

13 1989 Supp (2) SCC 717

employer to require an employee to retire on his attaining the age of 55 years and conferment of such unbridled power in violation of Article 14 of the Constitution. It is no doubt true that the order of compulsory retirement is not penal in nature, and every employer has a right to require the employee to compulsorily retire in accordance with the relevant service regulation, provided the non-continuance of service of the employee is held to be in public interest. The impugned regulation, however, does not indicate that the power under the second proviso could be exercised in public interest. To our query as to whether the employer has issued any guidelines for the exercise of power under the second proviso, and has indicated that such power could be exercised only in public interest, the answer was in the negative. In the absence of any such guidelines, and in the absence of such provision in the proviso itself, the conclusion of the High Court that it confers an unbridled power and is violative of Article 14 is unassailable. In fact, a decision of this Court on somewhat similar provisions in *Senior Supdt. of Post Offices* v. *Izhar Hussain*, (1989) 4 SCC 318, fully supports the conclusion of the High Court. We, therefore, do not find any merits in this appeal requiring our interference. The appeal accordingly fails and is dismissed."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18. At this stage, it would be appropriate to notice the judgment of the Supreme Court in **S.M.K. Khan's** case (supra) wherein their Lordships of the Supreme Court have held that it is not necessary to use the words "not in the interests of the institution" or "service not of utility to the employer" in the order of compulsory retirement as the Regulation in question provides that no reason need be assigned for compulsory retirement. It has further been held that the concept of public interest would get replaced by "institutional interest" or "utility to the employer" where the employer is a statutory authority or a government company and not the Government. It has been observed in paragraph 23 of the report as under: -

"23. The learned counsel for the respondent next submitted that recourse to "compulsory retirement" should be only in "public interest"; and that in this case, as neither

the Regulations nor the order of compulsory retirement referred to public interest, the compulsory retirement was vitiated. This contention has no merit. "Public interest" is used in the context of compulsory retirement of government servants while considering service under the State. The concept of public interest would get replaced by “institutional interest” or “utility to the employer” where the employer is a statutory authority or a government company and not the Government. When the performance of an employee is inefficient or his service is unsatisfactory, it is prejudicial or detrimental to the interest of the institution and is of no utility to the employer. Therefore compulsory retirement can be resorted to (on a review of the service on completion of specified years of service or reaching a specified age) in terms of the relevant rules or regulations, where retention is not in the interests of the institution or of utility to the employer. It is however not necessary to use the words “not in the interests of the institution” or “service not of utility to the employer” in the order of compulsory retirement as the Regulation provides that no reason need be assigned.”

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19. Thus, in view of the decision of the Supreme Court in **S.M.K. Khan’s** case (supra) it can safely be said that Rule 21.1 of the Rules of 2004 clearly provides that the petitioner servant can be compulsorily retired without assigning any reason, particularly when the respondents have relied upon the circular dated 12-1-2001 issued by the State Government which provides guidelines for retiring the petitioner servant based on the earlier circular dated 22-8-2000. As such, it cannot be held that Rule 21.1 of the Rules of 2004 confers unbridled and unguided power to the competent authority to retire a government servant. Therefore, the argument raised in this behalf by learned counsel for the petitioner is hereby repelled.

Answer to question No.2: -

20. The principles of forming a screening committee is to review the cases of the employees concerned for advising the Government as to

whether the retention of such employees in administration would be in public interest. The screening committee recommendations are to be considered by the competent authority, but the competent authority is free to accept or not to accept such recommendations. The order of compulsory retirement cannot be based on the sole basis of recommendations of the screening committee which has to be considered by the competent authority in accordance with law and merely because, the screening committee has made recommendation for retirement of the employee, the employee cannot be compulsorily retired unless the competent authority comes to a conclusion after forming a bona fide opinion of its own that the concerned employee can be subjected to compulsory retirement in the interest of the institution.

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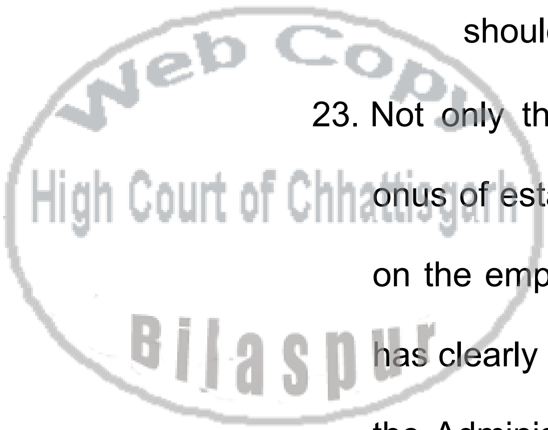
Answer to question No.3: -

21. The grounds for judicial review of an order of premature (compulsory) retirement are relatively limited. The concept of premature retirement is not a punishment or that it does not involve any civil consequences and the consequent non-applicability of the principles of natural justice has limited the scope and grounds of judicial review of an order of premature retirement, as it has been held that an order of premature retirement could be made on the basis of uncommunicated adverse entries in the confidential records of the employee and that it is not necessary to pass a speaking order. Although the scope of judicial review is limited, it has repeatedly been held that when an order of premature retirement is challenged, the authorities concerned must disclose the materials on the basis of which the order was made.

22. It is well settled that when an order is challenged as arbitrary or mala

fide in the petition under Article 226 of the Constitution of India, it is the governmental duty to provide documents for inspection of court. In the matter of **State of Uttar Pradesh v. Chandra Mohan Nigam and others**[14], the Supreme Court has ruled out in paragraph 36 as under: -

> "36. … when an order of compulsory retirement is challenged as arbitrary or mala fide by making clear and specific allegations, it will then be certainly necessary for the Government to produce all the necessary materials to rebut such pleas to satisfy the court by voluntarily producing such documents as will be a complete answer to the plea. It will be for the Government also to decide whether at that stage privilege should be claimed with regard to any particular document. Ordinarily, the service record of a Government servant in a proceeding of this nature cannot be said to be privileged document which should be shut out from inspection."



23. Not only the employer is obliged to produce the materials, but the onus of establishing that the order was made in public interest is also on the employer. In **Baldev Raj Chadha** (supra), the Supreme Court has clearly held that "it is a terminal step to justify which the onus is on the Administration, nor a matter where the victim must make out the contrary".

24. Likewise, in **S.M.K. Khan's** case (supra), the Supreme Court has held that when the order of premature retirement is violative of the rule, the proper approach of the court is to consider sustainability of the order vis-a-vis requirements of the relevant rule rather than examining whether the order is as a result of punishment for misconduct. It was further held that the order of compulsory retirement is not open to interference unless shown to be mala fide or arbitrary and not based on material relating to unsatisfactory service justifying such premature retirement.

14 AIR 1977 SC 2411

25. The Supreme Court in **Baikuntha Nath Das** (supra) surveyed / reviewed the entire precedents on the point and laid down the principles relating to compulsory retirement by observing as under: -

> "34. The following principles emerge from the above discussion:
>
> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
>
> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.
>
> (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
>
> (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

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Their Lordships clearly held that interference in the order of

compulsory retirement is permissible only on the grounds mentioned in (iii) above.

26. The decision of the Supreme Court in **Baikuntha Nath Das** (supra) has further been followed in the matters of **Posts and Telegraphs Board and others v. C.S.N. Murthy**[15], **Rajesh Gupta** (supra) and recently in **Ram Murti Yadav** (supra).

27. At this stage, it would be appropriate to notice the circular dated 12-1-2001 which has heavily been relied upon by the respondents and on that basis, the case of the petitioner has been assessed by the screening committee. It states as under: -

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विषयः– 50 वर्ष की आयु अथवा 20 वर्ष की सेवा पूर्ण करने पर शासकीय सेवकों के अभिलेखों की छानबीन कर समीक्षा ।

संदर्भः– इस विभाग का परिपत्र क्रमांक सी/3-24/2000/3/एक, दिनांक 22-8-2000.

उपर्युक्त विषयक इस विभाग के संदर्भित परिपत्र द्वारा 50 वर्ष की आयु अथवा 20 वर्ष की सेवा पूर्ण करने वाले शासकीय सेवकों के अभिलेखों की छानबीन करके उन्हें मूलभूत नियम एवं पेंशन नियम के अंतर्गत अनिवार्य सेवानिवृत्त करने के संबंध में विस्तृत निर्देश प्रसारित किये गये हैं ।

2. उल्लेखित परिपत्र दिनांक 22-8-2000 के पृष्ठ- 4 की कंडिका- 1 में निर्धारित मानदण्डों में मानदण्ड क्रमांक- 3 पर यह उल्लेखित है कि ख्याति एवं कार्यक्षमता का मूल्यांकन संबंधित शासकीय सेवक के सेवाकाल के संपूर्ण अभिलेखों के आधार पर किया जाये ।

3. उपर्युक्त संबंध में विचारोपरांत शासन ने एकरूपता की दृष्टि से यह निर्णय लिया है कि संबंधित सेवक के शासकीय सेवा में आने के दिनांक से छानबीन समिति की दिनांक तक की अवधि के उपलब्ध गोपनीय प्रतिवेदनों, विभागीय जांच एवं अन्य शास्तियों को ध्यान में रखकर समग्र मूल्यांकन किया जाये । इस उद्देश्य से शासकीय सेवक के गोपनीय प्रतिवेदनों के वर्गीकरण को अंकों में व्यक्त किया जाये और कुल सेवाकाल के इस प्रकार परिगणित किये गये अंकों के योग को उसकी सेवा अवधि से विभाजित कर औसत अंक निकाले जायें। इसके लिये उत्कृष्ट श्रेणी हेतु 4 अंक, बहुत अच्छा श्रेणी के लिय 3 अंक, अच्छा श्रेणी के लिए 2 अंक, साधारण श्रेणी के लिए 1 अंक तथा घटिया श्रेणी के लिए शून्य अंक निर्धारित किये जायें । इस प्रकार प्राप्त औसत अंकों के आधार पर शासकीय सेवक का मूल्यांकन निम्नानुसार किया जावे–

क्रमांक	प्राप्त औसत अंक	शासकीय सेवक के कार्य के

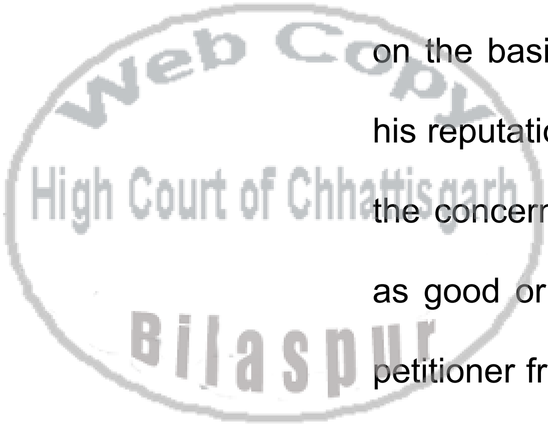
15 (1992) 2 SCC 317

		आधार पर मूल्यांकन की श्रेणी
1.	00	घटिया
2.	01	साधारण
3.	02	अच्छा
4.	03	बहुत अच्छा
5.	04	उत्कृष्ट

4. इस प्रकार परिगणित औसत अंक दो या दो से अधिक हैं, तो ही संबंधित शासकीय सेवक के समय कार्य का मूल्यांकन "अच्छा या उससे उच्च श्रेणी" का माना जावेगा ।

5. छानबीन समितियों की बैठकों के समय कृपया उपर्युक्त उल्लेखित निर्देशों का कड़ाई से परिपालन सुनिश्चित किया जाये ।

28. A careful perusal of the aforesaid circular would show that it is based on the earlier circular of the State Government dated 22-8-2000 and it has clearly been held in paragraph 2 that assessment has to be made on the basis of the entire service records of the petitioner to assess his reputation and efficiency. According to circular dated 12-1-2001, if the concerned employee gets 2 or more marks, he would be graded as good or of higher grade. Thus, the entire service records of the petitioner from the date of entering into service till the date of meeting of the screening committee, his ACRs, departmental enquiry and other penalties, if any, imposed upon him have been taken into account and that has been calculated into numbers. On that basis, it appears that the screening committee has screened the case of the petitioner and report of the screening committee has been filed as Annexure R-6 in which on the basis of circular dated 12-1-2001, the petitioner's entire service of 20 years has been taken into consideration in which the petitioner has secured 1.2 marks and he has been graded less than good. It has also been stated in paragraph 2 of the report that in last five years, the petitioner's grading of work is in descending order. On the basis of the said grade, in paragraphs 3 & 4, it has also been observed that the petitioner remained absent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without leave, he is not taking keen interest in work and despite notices, he has not improved. In the last paragraph, absence of the petitioner from duty has been noticed. The minutes of meeting of the screening committee convened on 18-5-2011 states as under: -

50 वर्ष की आयु अथवा 20 वर्ष की सेवा पूर्ण करने पर क्रेडा कर्मियों के अभिलेखों की छानबीनकर समीक्षा हेतु आयोजित बैठक दिनांक 18.05.2011

ऐसे शासकीय सेवक जिनकी 50 वर्ष की आयु अथवा 20 वर्ष की सेवा पूर्ण हो चुकी है, के अभिलेखों की नियमित समीक्षा मूलभूत नियम–56 एवं छत्तीसगढ़ सिविलन सेवा (पेंशन) नियम, 1976 के नियम 42 (बी) के प्रावधानों के प्रकाश में किये जाने हेतु क्रेडा में आदेश क्रमांक 8055, दिनांक 22.03.04 द्वारा गठित छानबीन समिति की बैठक आयोजित हुई, जिसमें छानबीन समिति के निम्नानुसार सदस्य उपस्थित थेः–

1- निदेशक, क्रेडा - अध्यक्ष
2– प्रभारी प्रशासन (लेखा अधिकारी) – सदस्य
3– अवसर सचिव, ऊर्जा विभाग – सदस्य

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छानबीन समिति द्वारा क्रेडा में तृतीय श्रेणी के मैकेनिक पद पर वर्तमान में कोरबा में पदस्थ कर्मचारी श्री अमृतलाल, जो अपने वर्तमान धारित पद पर 20 वर्ष की सेवा पूर्ण कर चुके हैं, के प्रकरण की समीक्षा की गई । श्री अमृतलाल के सम्पूर्ण सेवाकाल 20 वर्षो के गोपनीय प्रतिवेदनों का श्रेणीकरण निम्नानुसार हैः–

क्र.	वर्ष	मूल्यांकन का श्रेणीकरण	औसत अंक
1	1990-91	B	02
2	1991-92	C	01
3	1992-93	B	02
4	1993-94	C	01
5	1994-95	C	01
6	1995-96	B	02
7	1996-97	C	01
8	1997-98	B	02
9	1998-99	B	02
10	1999-2000	B	02
11	2000-2001	B	02
12	2001-2002	D	00
13	2002-2003	C	01
14	2003-2004	D	00
15	2004-2005	C	01
16	2005-2006	C	01
17	2006-2007	C	01

18	2007-2008	C	01
19	2008-2009	D	00
20	2009-2010	C	01
		कुल अंक-	**24**

सामान्य प्रशासन के ज्ञाप क्र.सी–3–24/2000/3/एक, दिनांक–12.01.2001 के माध्यम से जारी निर्देशों के अनुरूप की गई गणना के अनुसार सम्पूर्ण सेवाकाल 20 वर्ष में मात्र 24 अंक अर्जित किए गए हैं ।

क्र.	औसत अंक	मूल्यांकन श्रेणी	20 वर्षों में प्राप्त श्रेणी की कुल संख्या
1	00	घटिया (D)	3
2	01	साधारण (C)	10
3	02	अच्छा (B)	7
4	03	बहुत अच्छा (A)	0
5	04	उत्कृष्ट (AA)	0

इस प्रकार 24/20 = 1.2 अंक होते हैं, जो राज्य शासन के उक्त निर्देशों के तहत 'अच्छा' श्रेणी से कम है ।

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छानबीन समिति द्वारा समीक्षा में यह पाया गया किः–

1. श्री अमृतलाल, मैकेनिक का कार्य सम्पूर्ण सेवाकाल 20 वर्षो में कभी भी 'उत्कृष्ट' या 'बहुत अच्छा' श्रेणी का नही रहा । इन 20 वर्षो के दौरान उनका श्रेणीकरण 03 बार 'घटिया', 10 बार 'साधारण' तथा 7 बार 'अच्छा' श्रेणी का रहा । उन्हें विपरित टिप्पणियाँ संसूचित भी की गई, जिस पर उनके द्वारा कोई उत्तर नहीं दिया गया । समिति द्वारा श्री अमृतलाल के संपूर्ण सेवाकाल के अभिलेखों का परीक्षण किया गया । समग्र मूल्यांकन "अच्छा" श्रेणी से कम पाया गया ।

2. उक्त कर्मी के गोपनीय प्रतिवेदन में अंतिम 05 वर्षो का श्रेणीकरण निम्नानुसार हैः–

1	2005-2006	साधारण	C
2	2006-2007	साधारण	C
3	2007-2008	साधारण	C
4	2008-2009	घटिया	D
5	2009-2010	साधारण	C

उपरोक्त से भी स्पष्ट है कि श्री अमृतलाल के विगत अंतिम 05 वर्षो के कार्य का स्तर भी घटते क्रम में है ।

3. उपरोक्त कर्मचारी के विरूद्ध उनके नियंत्रणकर्ता अधिकारियों द्वारा कई बार यह सूचित किया गया है कि वे कार्यालयीन समय में कार्य से बिना अनुमति के अनुपस्थित हो जाते हैं, बिना आवेदन दिये लंबे अवकश पर चले जाते हैं

तथा इनके द्वारा कार्य में रूचि नहीं ली जाती है । इस तरह की शिकायतें उनके वरिष्ठों द्वारा कई बार की गई हैं । इनको कई बार अवसर दिये जाने के बावजूद इनके शैली में कोई सुधार परिलक्षित नहीं हुआ है ।

4. तत्कालीन नियंत्रक अधिकारी द्वारा श्री अमृतलाल के दिनांक 01.072009 से दिनांक 30.04.2010 तक कार्यालय में उपस्थित होने व जाने के समय की जानकारी प्रस्तुत की गई है, उससे स्पष्ट है कि वे इस अवधि में किसी भी दिन पूरे कार्यालयीन समय में कार्यालय में उपस्थित नहीं रहे अधिकांशतः वे कार्यालय में आधा या एक घण्टे ही उपस्थित रहे हैं।

अतः समिति द्वारा श्री अमृतलाल, मैकेनिक क्रेडा, जिला कार्यालय कोरबा के सम्पूर्ण सेवा अभिलेख, गोपनीय प्रतिवेदन में अंकित श्रेणीकरण के आधार पर उन्हें अनिवार्य सेवानिवृत्ति किये जाने की अनुशंसा की जाती है ।

सही/–	**सही/–**	**सही/–**
(एस.के. शुक्ला)	(एस.एल. आदिले)	(डी.डी. नाटेकर)
निदेशक, क्रेडा	अवर सचिव, ऊर्जा विभाग	लेखा एवं प्रशासकी अधिकारी
अध्यक्ष	**सदस्य**	**सदस्य**

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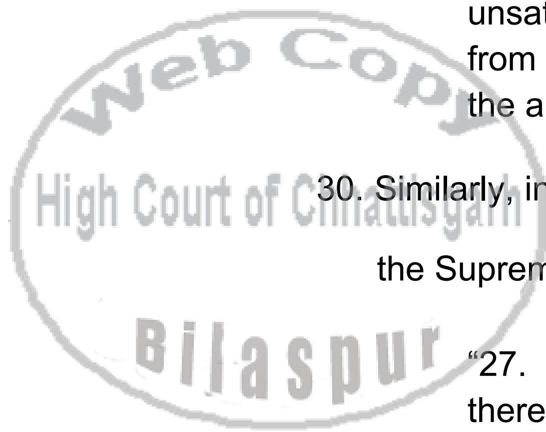
29. The Supreme Court in the matter of **Nand Kumar Verma v. State of Jharkhand and others**[16] has held that the formation of opinion for compulsory retirement is to be based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material and it is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. It has been observed by their Lordships of the Supreme Court in paragraphs 34 and 36 of the report as under: -

> "34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the

16 (2012) 3 SCC 580

service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service."



30. Similarly, in **Suryakant Chunilal Shah's** case (supra), their Lordships of the Supreme Court held 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 dead wood, 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 depend upon the circumstances of each case and the nature of offence allegedly committed by the employee."

31. Likewise, in the matter of **S. Ramachandra Raju v. State of Orissa**[17]

17 1994 Supp (3) SCC 424

the Supreme Court has clearly held that the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, but before exercising the power, the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. It has been observed in paragraph 9 of the report 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 needs to be removed to augment efficiency. Integrity in public service needs 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 or character rolls or confidential reports maintained would furnish the backdrop 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

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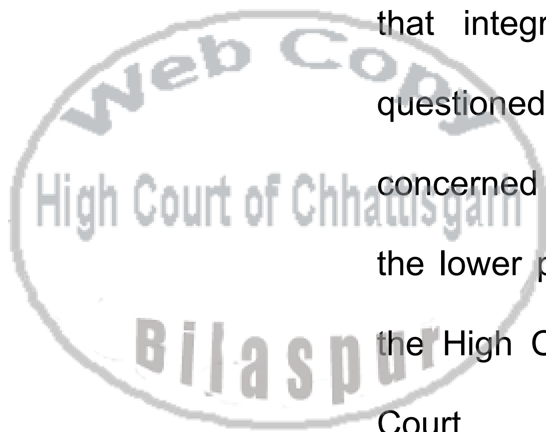
> evaluation of the entire record of service if the Government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such bona fide exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in its exercise of 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."

32. Reverting to the facts of the present case in the light of the aforesaid principles of law laid down by their Lordships qua the scope of judicial review in the order of compulsory retirement, it is quite vivid that the petitioner's case for premature retirement was taken for review by the screening committee in its last meeting dated 18-5-2011 and on the basis of the circular dated 12-1-2001, he was given total 24 marks for 20 years and it came to 1.2, and according to the screening committee, he secured grading "less than good" and his last five years grading was also held to be in descending order, but apart from that, in paragraphs 3 & 4 of the report of the screening committee, the petitioner's absence from duty was noticed and one or two advisories (notices) were also issued to him for improving his performance. However, it is appropriate to notice here that the petitioner was never subjected to any adverse remarks, if any, during his service tenure, particularly in last five years, though he has only been subjected to some advisories vide Annexures R-10, R-11 and P-7 to improve his performance. As such, his performance is found to be less than good or it can be, at the best, said to be unsatisfactory, but his integrity was never doubted by the respondents either in the screening committee report or by the competent authority in its report or in its order, as he was never subjected to departmental enquiry in his entire service

period of 20 years and he was never imposed with any minor or major penalty during his service tenure under the relevant conduct rules. Thus, on the basis of mere unsatisfactory performance, the petitioner has been subject to the order of compulsory retirement.

33. The Supreme Court in **Suryakant Chunilal Shah's** case (supra) has clearly held that if overall categorisation of employee is poor or if his character roll is studded with adverse entries and there is material also to cast doubts upon his integrity, such government servant cannot be said to be efficient.

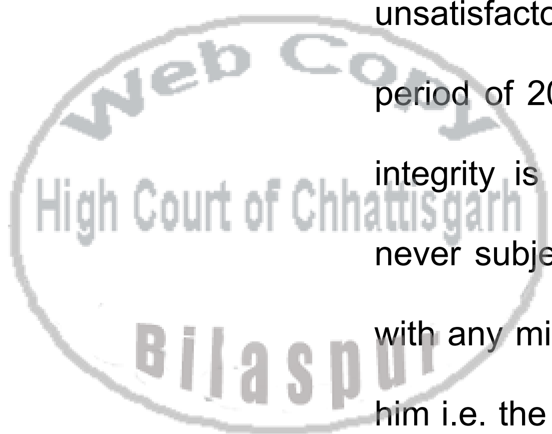
34. Similarly, in **R.C. Mishra's** case (supra), the Supreme Court has held that integrity of the respondent (therein) was not doubtful or questioned, merely on the basis of unsatisfactory performance, the concerned government servant could be retained in service at least in the lower post, and the order of compulsory retirement set aside by the High Court was maintained by their Lordships of the Supreme Court.



35. The screening committee submitted its report vide Annexure R-6 to the competent authority and the competent authority by its order Annexure P-1, blindly and mechanically accepted the recommendation of the screening committee without examining the matter further more as if it is binding on him and issued the order of premature retirement of the petitioner which is not correct procedure and thus, it cannot be said to be in accordance with law. Once the screening committee has submitted its report, the matter has to be considered by the competent authority in its proper perspective and the competent authority has to take a conscious decision as to whether there is material for exercising the power and jurisdiction to

retire an Agency servant compulsorily, as subjective satisfaction of the competent authority is *sine qua non* and subjective satisfaction must be based on valid material. The competent authority did not examine the material available on record to see as to whether the order of compulsory retirement is to be passed on the basis of material available and straightway issued the order of premature retirement of the petitioner without examining the material on record to find out whether case for compulsory retirement is made out or not.

36. In view of the aforesaid legal analysis, in the considered opinion of this Court, the order of compulsory retirement is only based on the alleged unsatisfactory performance of the petitioner for the qualifying service period of 20 years and it is not the case of the respondents that his integrity is doubtful or questionable. Moreover, the petitioner was never subjected to any departmental enquiry and was never inflicted with any minor or major penalty under the conduct rules applicable to him i.e. the Rules of 2004 and he was found to be "less than good" in the grading given by the screening committee. As such, merely on the basis of alleged unsatisfactory performance which was subject to improvement, the petitioner has been compulsorily retired and it is based upon the sole recommendation of the screening committee without examining the material on record, particularly when the petitioner's integrity was even not doubted and he was never subjected to any kind of major or minor punishment during his entire service career, the competent authority could not have passed the order of compulsory retirement without weighing pros and cons and balancing the public interest as against the individual interest. It is totally based on no evidence, arbitrary, mala fide and extraneous



consideration and is covered by the principle of law laid down by the Supreme Court in **Baikuntha Nath Das** (supra) {paragraph 34(iii)} and no reasonable person would form requisite opinion on the given material to retire an employee compulsorily, thus, it suffers from perversity. Accordingly, the order of compulsory retirement of the petitioner passed by respondent No.1 is hereby quashed. Respondent No.1 is directed to reinstate the petitioner with all consequential service benefits including back-wages forthwith.

37. The writ petition is allowed to the extent indicated herein-above. There shall be no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2303 of 2012

Amritlal

Versus

Chhattisgarh State Renewable Energy Development Agency (CREDA) and others

Head Note

Order of premature retirement can be passed on forming opinion that it is in the public interest to retire a government servant compulsorily and it has to be passed on the subjective satisfaction of the government.

समयपूर्व सेवानिवृत्ति का आदेश यह राय बनने पर पारित किया जा सकता है कि एक शासकीय सेवक की अनिवार्य सेवानिवृत्ति जनहित में आवश्यक है तथा ऐसा आदेश शासन के विषयपरक समाधान होने पर ही पारित किया जाना चाहिए।