

Before M. M. Kumar & T.P.S. Mann, J.

R.L. SANKHILA,—Appellant

versus

**THE HON'BLE HIGH COURT OF PUNJAB & HARYANA, AT
CHANDIGARH AND ANOTHER,—Respondents**

L.P.A. No. 239 of 2007

8th March, 2011

Constitution of India, 1950—Arts. 235—Haryana Civil Service (Punishment and Appeal) Rules, 1987—Rl. 4(a)—Punjab Civil Service Rules, Vol. 1, Part-1—Cl.(d) of Rl. 3.26—Challenge to order of Single Judge upholding order to compulsory retirement on recommendation of High Court as also dismissal of review application—Petitioner appointed to judicial service and promoted as Additional District and Sessions Judge—High Court placed him under suspension in exercise of disciplinary powers under Rule 4(a) and contemplated disciplinary action for imposition of major penalty—Inspecting Judge recording integrity as doubtful—Remarks indicated that repetition was stinking and members of the Bar and Judicial Officer were of view that appellant was corrupt—Appellant claimed that remarks regarding integrity made without departmental inquiry—Subjective and based on hearsay—Representation rejected—Petition filed for quashing suspension—Disposed of with a direction to pass speaking order—Suspension order revoked and reinstated—Appellant re-joined duties—Claimed reinstatement after a vacation led to a presumption as nothing adverse against him—Subsequently High Court recorded in his A.C.R. as integrity doubtful—Appellant claimed that report not recorded in normal Court and constituted colorable exercise of power to achieve a collateral purpose—Petition filed for quashing adverse remarks which was dismissed as withdrawn—Appellant compulsory retired from service in public interest—Single Bench dismissed petition with a detail order.

Held. That appellant has been retired in accordance with settled parameters and in the larger public interest. The High Court under

Article 235 is fully entitled to assess performance of judicial officers with a view to discipline the black sheep or weed out the dead wood. Constitutional power of the High Court cannot be circumscribed by any rule or order. One entry concerning doubtful integrity of the judicial officer would be adequate to form an opinion that he has lost his utility for the institution. Order of compulsory retirement cannot be recorded as punitive nor it is required to be a speaking order. Appeal dismissed.

(Para 15, 18, 20, 22)

J.K. Sibal, Sr. Advocate with Sapan Dhir, *Advocate for the appellant.*

Karminder Singh Walia, *Advocate for the respondent.*

M.M. KUMAR, J.

(1) The instant appeal filed by the appellant under Clause X of the Letters Patent is directed against the judgment dated 18th September, 2007, passed by the learned Single Judge upholding the order of his compulsory retirement dated 8th August, 2002, on the recommendation of respondent No. 1—High Court. The subject matter of challenge has also been the order dated 12th October, 2007 dismissing the review application filed by the appellant.

(2) Brief facts of the case are necessary to be noticed first so as to put the controversy in its proper perspective. The appellant was appointed to the Judicial Service on 11th May, 1981. He was promoted as Additional Senior Sub-Judge in December, 1989 and then as Chief Judicial Magistrate in June, 1993. Eventually, he was promoted as Additional District and Sessions Judge and joined as such on 2nd February, 1998, at Faridabad. He has claimed that till 6th September, 2000, no adverse entry was ever conveyed to him throughout his service career which remained without blemish. However, on 16th May, 2000, the High Court in exercise of disciplinary power under Rule 4-A of the Haryana Civil Service (Punishment and Appeal) Rules, 1987 (for brevity 'the 1987 Rules') read with Article 235 of the Constitution placed him under suspension (P-1), in contemplation of disciplinary action for imposition of major penalty. However, for the year

1999-2000, the remarks of the Inspecting Judge were communicated to him stating that his integrity was doubtful. The remarks also indicated that his reputation was stinking, and the members of the Bar and Judicial Officers were generally of the view that the appellant was corrupt. The appellant has claimed that adverse remarks regarding his integrity were made without holding any regular departmental enquiry. Those remarks were subjective in nature and founded on hearsay. In support of his claim, the appellant has placed reliance on a resolution dated 22nd May, 2000 passed by the District Bar Association, Faridabad, which discloses that during his tenure as Sub-Judge at Palwal and as Additional District and Sessions Judge at Faridabad, there was not a single instance of misuse of chair by him and the District Bar Association had sent an appeal to respondent No. 1—High Court to reinstate him in service pending departmental enquiry (P-2). The appellant has also placed reliance on press reports. The adverse remarks recorded by Hon'ble Inspecting Judge were communicated to the appellant on 2nd September, 2000 through the Registrar of the High Court (P-3). For expunging of the adverse remarks doubting his integrity, the appellant made a representation on 25th September, 2000 (P-5), which was rejected by Hon'ble Inspecting Judge (P-6). Even the second representation made on 4th December, 2000 (P-7) was again rejected by Hon'ble Inspecting Judge on 5th July, 2001 (P-8). On 14th May, 2001, the appellant represented to respondent No. 1—High Court for revocation of his suspension, which was followed by two reminders dated 3rd December, 2001 and 2nd April, 2002 (P-9) (Colly.). Eventually, the appellant filed CWP No. 7009 of 2002 with a prayer for quashing of his order of suspension. His writ petition was disposed of on 6th May, 2002 by a Division Bench of this Court and the respondents were directed to pass appropriate speaking order on the legal notice sent by the appellant (P-10). The order passed by the Division Bench on the aforesaid observation reads as under :

“learned counsel for the petitioner contends that the legal notice served by the petitioner dated 2nd April, 2002, copy whereof is annexed to the petition as Annexure P/6, has not been responded to by the respondents.

In the facts and circumstances of the case, we consider it appropriate to dispose of this petition with a direction to the respondents, to pass and appropriate speaking order on the afore-referred

legal notice within a period of four months from the date, a certified copy of this order is brought to their notice.

Writ petition stands disposed of accordingly.

(Sd. . .),

The 6th May, 2002.

SWATANTER KUMAR,

Judge.

(Sd. . . .),

MEHTAB S. GILL,

Judge."

(3) On 24th July, 2002, the suspension order passed against the appellant was revoked and he was reinstated in service (P-11). Accordingly, he submitted his joining report on 30th July, 2002 and also re-joined the duty as Additional District and Sessions Judge (P-12). The appellant claimed that reinstatement after revocation of his suspension, which lasted about 2 years led to a presumption and belief that there was nothing adverse against him which could justify disciplinary proceeding at the instance of respondent No. 1-High Court. However, on 3rd July, 2002, the District and Sessions Judge, Faridabad, intimated him that,—*vide* memo, dated 25th July, 2002, the High Court has recorded his ACR for the year 1999-2000, as integrity doubtful (P-13). The appellant has claimed that the report recorded in the year 2002, was not recorded in normal course at the end of the year 1999-2000 but after the close of the year 2001-2002. Therefore, it constituted a colourable exercise of power to achieve a collateral purpose.

(4) The appellant then filed CWP No. 12082 of 2002 with a prayer for quashing the adverse remarks recorded in his ACR for the period 1999-2000, but the same was dismissed as withdrawn with liberty to file a fresh writ petition on the same cause of action. The appellant has alleged that despite his reinstatement on 24th July, 2002 and assumption of charge on 30th July, 2002, he was not assigned any staff and work. He had addressed communication to the District and Sessions Judge, Faridabad, for the assignment of the work and staff (P-15). Eventually, he was compulsorily retired, *vide* order dated 8th August, 2002, communicated by respondent No. 2-State of Haryana (P-16). The order specifically mentions that the

appellant was being retired from service in public interest under Clause (d) of Rule 3.26 of the Punjab Civil Services Vol-I, Part-I, as applicable to State of Haryana. The appellant filed a representation against order dated 8th August, 2002, conveying adverse remarks doubting his integrity (P-17).

(5) The allegation of the appellant is that the adverse remarks were recorded on 25th July, 2002, a day after appellant was reinstated in service and proposal for retiring him was sent to the Government of Haryana on 29th July, 2002, much before communicating adverse remarks to him on 31st July, 2002. It is asserted that sequence of these events suggested that respondent No. 1—High Court had made up its mind to compulsorily retire the appellant and for that purpose the adverse remarks were recorded on 25th July, 2002. It is claimed that the whole service record of the appellant in respect of the previous years would not justify any such order of compulsory retirement.

(6) In the written statement filed by respondent No.—High Court, the board factual version disclosed by the appellant has been accepted but denying the allegations of exercise of colourable. It has been asserted that the adverse remarks recorded by Hon'ble Mr. Justice N. K. Sodhi on the work and conduct of the appellant in respect of the year 1999-2000 were not required to be based on any inquiry. In fact complaint dated 19th April, 2002, made by Jitinder Kumar @ Bablu against the appellant levelled allegations of accepting illegal gratification of Rs. 10 lacs. when the appellant was working as Civil Judge (Sr. Division), in the cases titled as "Raj Karan, versus Onkar Nath and "Radha Ram, versus Raj Karan Behal". The District and Sessions Judge (Vigilance), Haryana, conducted a preliminary enquiry into the complaint and the allegations were found to be *prima facie* correct. A copy of the report dated 1st May, 2000 (R-1) is on record. The report was then considered by the Hon'ble Judges in Full Court meeting held on 15th May, 2000, when it was decided that the appellant be suspended forthwith and he be charge-sheeted for inflicting major penalty. Accordingly, he was suspended,—*vide* order 16th May, 2000, and draft charge-sheet was prepared, which was duly vetted by the Committee of the three Hon'ble Judges and the same was placed before the Full Court for approval. The issue of approval of draft charge-sheet, which was proposed to be served on the appellant and the matter concerning his retention beyond 50 years of age were simultaneously considered in a Full Court meeting held on 26th July, 2002. The matter regarding approval of

draft charge-sheet was dropped in view of the fact that the decision was taken in the same meeting not to extend his period of service beyond the age of 50 years

(7) The representation made by the appellant on 23rd May, 2000 for reinstatement in service was rejected by the Full Court in its meeting held on 11th August, 2000. The subsequent representations were also considered in Full Court meeting held on 22nd July, 2002 and he was reinstated in service, *vide* order, dated 24th July, 2002. In reply to the allegations that 3 months' salary was not paid, the respondents have placed reliance on letter, dated 13th August, 2002, forwarding the acknowledgment in original by the District and Sessions Judge, Faridabad in token of having receipt the retirement order dated 8th August, 2002 and report dated 10th August 2002, relinquishing the charge. She also intimated that a sum of Rs. 60621 was drawn for payment of 3 months' pay and allowances in lieu of the period of notice on 12th August, 2002 (10th August, 2002 being holiday and 11th August, 2002 was Sunday). Mr. Dalbir Singh, Nazir, was deputed to handover the draft to the appellant who refused to accept the same, which was sent later on through registered post, *vide* office letter dated 12th August, 2002, and the same was received back with the report "since I am challenging the retirement order. Hence it is returned". Respondent No.2—State of Haryana has issued notification, dated 30th September, 2002, retiring the appellant from service w.c.f. 10th August, 2002 in terms of order dated 8th August, 2002. With regard to passing of speaking order in pursuance of the direction issued by a Division Bench of this Court on 6th May, 2002, the representation made by the appellant was considered in full Court meeting held on 22nd July, 2002 and consequently, he was reinstated in service.

(8) Having lost before the learned Single Judge, the appellant has challenged the adverse remarks doubting his integrity for the year 1999-2000 (P-3), orders rejection his representation (P-6 and P-8) and the adverse remarks communicated to him on 25th July, 2002 (P-13), and also order of his compulsory retirement passed against him on 8th August, 2002 (P-16). The learned Single Judge dismissed the petition by observing as under :

"It is settled law that in matters requiring subjective satisfaction, a court exercising jurisdiction under Article 226 of the Constitution of India cannot go in to sufficiency of material for arriving at

subjective satisfaction. The Court has only to be satisfied that there was material on record and the decision of the concerned authority is based on material on record. A subjective satisfaction can also be challenged on the ground of *mala fides* on the part of the concerned authority. Fortunately, in the present case, there is no allegation of *mala fides* against anyone nor any argument was raised suggesting *mala fides* on the part of any person or authority involved in the decision making process.”

(9) The learned Single Judge extracted five propositions of law as laid down by Hon’ble the Supreme Court rendered in the case of **Baikuntha Nath Das and another versus Chief District Medical Officer, Baripada and another**, (1) proceeded to obverse as under :

“The principles laid down by the Apex Court reproduced above have been generally followed by the Courts. Thus, so far as the impugned order dated 8th August, 2002 is concerned, it only says “Whereas on the recommendation of the Hon’ble Punjab and Haryana High Court, Chandigarh, it has been decided by the State Government to retire Shri Rattan Lal Sankhla, a member of the Haryana Superior Judicial Service from service in public interest” Such an order of compulsory retirement is not to be treated as punishment. It does not imply any stigma. The power to compulsorily retire an officer is meant for being used to improve efficiency in Government service. The officers who are not able to efficiently discharge their official duties and become a liability to public service on account of doubtful integrity, in efficiency or incompetence need not be continued in service. It has been often said that dead wood has to be chopped off....., to my mind, keeping in view the facts and circumstances of the case, a Judicial Officer can be pre-maturely retired even on the basis of a single adverse entry regarding integrity against him and a decision retiring the petitioner from service compulsorily has been taken in public interest. In the instant case, I find that the rules permit compulsory retirement of an officer and a decision regarding retiring the petitioner compulsorily from service has been taken in accordance with the rules.”

(10) Rejecting the contention that there was arbitrariness or *mala fide* in the decision to compulsorily retire the appellant from service, the learned Single Judge observed that the complaint filed against the appellant was rightly dropped and respondent No. 1—High Court rightly made recommendation to the State Government to compulsorily retire him. The view of the learned Single Judge is patent from the following observation, which reads as under:

“It is a *bona fide* exercise of powers under the rules. The decision is neither arbitrary nor *mala fide*. In fact, such decisions are necessary to improve efficiency in service. To my mind, recording of Annual Confidential Report is, in essence, subjective and administrative and the making of an adverse entry is not equivalent to imposition of penalty which would necessitate an enquiry and the giving of reasonable opportunity of being heard to the government servant concerned. It is further settled that recording of Annual Confidential Reports was a matter of subjective satisfaction of the officer concerned, the correctness thereof cannot be gone into by the court.”

(11) Learned Single Judge further opined against the retention of a corrupt officer and went on to observe as under :

“Since I am dealing with the case of a higher Judicial Officer, the nature of judicial services is such that continuance in service of an a doubtful integrity would mean condoning corruption. Moreover, no employer can be saddled with responsibility to retain an employee, who is proved to be corrupt or indulging in dishonest practices, especially in an Institution, which is considered a temple of justice where transparency and honesty of an officer is at stake and is adjudged at every step. Showing sympathy in a case like this possibly be construed as condoning corruption or even possibly be recorded as in directly encouraging dishonesty. That apart, it is impossible to prove by positive evidence the basis for doubting integrity of a judicial officer. Reliance is required to be placed on the opinion of the

person who had the opportunity to watch the performance of the officer and formation of the opinion with regard to overall reputation enjoyed by the petitioner concerned. Moreover, lower judiciary is the main hub of the judicial system and the weeding out of the dead wood from the judicial system in the administration of justice is a must, so that general public may not lose faith in the justice delivery system and in the instant case, it cannot be said that the order of compulsory retirement of the petitioner, in any way, erroneous or unjustified.

It is a painful decision, which is to be taken in order to maintain the dignity of the judicial system and for improving the efficiency in service.”

Rival contentions : Submissions of the appellant.

(12) Mr. J. K. Sibal, learned Senior Counsel has vehemently argued that recording of adverse remarks concerning doubtful integrity cannot constitute a basis for compulsory retirement of a Judicial Officer, especially when the appellant was placed under suspension and a departmental enquiry for imposition of major penalty under the 1987 Rules was pending. According to learned Senior Counsel, the whole process initiated by respondent No. 1-High Court lacks *bona fide* because it was aimed at defeating the direction issued by a Division Bench of this Court on 6th May, 2002, directing respondent No. 1-High Court to pass a speaking order on the legal notice sent by the appellant because the suspension order was quickly revoked on 24th July, 2002 and the appellant was reinstated in service. Consequently, the appellant joined his duty on 30th July, 2002. The District Judge, Faridabad, intimated him adverse ACR for the year 1999-2000, doubting his integrity. Therefore, the whole process is afflicted with irrelevant consideration and is vitiated. Learned counsel has also maintained that respondent No. 1-High Court cannot be permitted to circumvent the Rules of natural justice, inasmuch as the regular enquiry could not have been dropped when specific allegations have been levelled against the appellant. Learned Senior Counsel has maintained that dropping of regular enquiry *ex facie* shows that the case of establishment was very weak against the appellant therefore, it constitutes a colourable exercise of power to achieve a collateral purpose.

(13) In support of his submission, learned Senior Counsel has placed reliance on paras 15, 16, 20 and 32 of the judgement of Hon'ble the Supreme Court rendered in the cases of **Ram Ekbal Sharma versus State of Bihar and another (2)** and **Madan Mohan Choudhary versus State of Bihar and others (3)** and argued that Court is competent to lift the veil from the *ex facie* innocuous order and find out the real face of the order. Learned Senior counsel has maintained that single report of integrity doubtful cannot be considered as conclusive to hold the appellant guilty of any misconduct.

Submissions of respondent No. 1 :

(14) Mr. Karminder SinghWalia, learned counsel for the respondent No. 1-High Court has however, argued that well settled principles of law concerning compulsory retirement is that the deadwood, inefficient and corrupt officer has to be shown the door and it does not imply any stigma as suggested by the counsel for the appellant. According to learned counsel, order of compulsory retirement is passed in a larger public interest and the Court is not to sit over such decision as a Court of appeal. In support of his submission learned counsel has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the cases of **Shiv Dayal Gupta versus State of Rajasthan and another (4)** and **Pyare Mohan Lal versus State of Jharkhand and others (5)**.

(15) Having heard learned counsel for the parties and after perusing original record of the ACR produced before us, we are of the considered view that the appellant has been retired in accordance with the parameters settled for such and action and in larger public interest. It would first be appropriate to set out the precis of the ACRs showing work and conduct of the appellant from the year 1981-1982 to 1999-2000. The following table would give a bird's eye view and the same is as under :

*Precis of annual confidential remarks on the work and conduct of
Shri Rattan Lal Sankhla, former member of Haryana Superior
Judicial Service.

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- (2) (1990) 3 SCC 504
 - (3) (1999) 3 SCC 396
 - (4) (2005) 13 SCC 581
 - (5) (2010) 10 SCC 693

(Appointed as Sub Judge w.e.f. 11th May, 1981)

	Years	Remarks by the High Court
	1981-82	B(Average/Satisfactory)
	1982-83	B(Average/Satisfactory)
	1983-84	B(Average/Satisfactory)
	1984-85	B Plus (Good)
(Promoted as ADJ w.e.f. (2-2-1998)	1985-86	B Plus (Good)
	1986-87	B Plus (Good)
(The Officer was placed under suspension w.e.f. 16-5-2000).	1987-88	B Plus (Good)
	1988-89	B Plus (Good)
	1989-90	B Plus (Good)
(The officer was reinstated.— <i>vide</i> office order dated 24-7-2002)	1990-91	B Plus (Good)
	1991-92	B Plus (Good)
	1992-93	B Plus (Good)
	1993-94	B Plus (Good)
(The officer was retired prematurely.— <i>vide</i> orders dated 8-8-2002 by the Government of Haryana)	1994-95	B Plus (Good)
	1995-96	B Plus (Good)
	1996-97	B Plus (Good)
	1997-98	B Plus (Good)
	1998-99	B Plus (Good)
	1999-2000	C-Integrity doubtful

Inspection remarks for the year 2000-2001 and 2001-2002 were not recorded as the officer remained under suspension.”

(16) A perusal of the aforesaid table would show that for the first 3 years, the officer earned 'B (average/satisfactory)' reports and for the year 1999-2000, he has earned 'C-integrity doubtful'. The record further reveals that the appellant was placed under suspension w.e.f. 16th May, 2000 and was reinstated in service on 24th July, 2002 (P-11). It is trite to observe that judicial service is not an employment in the sense that an employee is to discharge duty from 9:00 a.m. to 5:00 p.m. The Judges have to discharge their sovereign function without fear or favour, affection or ill-will upholding the Constitution and the laws. In para 2 of the judgment of Hon'ble the supreme Court rendered in the case of **Nawal Singh versus State of U. P. and another (6)**, their Lordships of Hon'ble the Supreme Court has expressed similar sentiments, which extracted below :

"2. At the outset, it is to be reiterated that the judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further, the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility. If such evaluation is done by the Committee of the High Court Judged and is affirmed in the writ petition, except in very exceptional circumstances, this Court would not interfere with the same, particularly because order of compulsory retirement is based on the subjective satisfaction of the Authority." (emphasis added).

(17) Therefore, it is concluded that the judicial office demands much more than any other ordinary employment. In **Chandra Singh and others, versus State of Rajasthan and another (7)**, the similar views have been echoed, which are evident from reading of paras 47 and 48, which reads as under :

"47. In the instant case, we are dealing with the higher judicial officers. We have already noticed the observations made by the Committee of three Judges. The nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

(6) (2003) 8 SCC 117

(7) (2003) 6 SCC 545

48. In the instant case, the appellants, so retired, do not lose any part of their benefit that they have earned during their service and it involves no penal consequence and in our view the retirement is not considered *prima facie* and per se as punishment.” (emphasis added).

(18) In that case, a Committee of three Hon’ble Judges had taken the decision to recommend compulsory retirement of a Judicial Officer. The Committee had examined the service record, character roll, quality of the work, disposal, integrity, general reputation and potentiality and opined that the officers were not fit to be given the benefit of extension beyond the age of 58 years. Accordingly, it was held that under Article 235 of the Constitution, the High Court is fully entitled to assess the performance of any judicial officer at any time with a view to discipline the black sheep, or weed out the dead wood. This constitutional power of the High cannot be circumscribed by any rule or order, in order to record the aforesaid principles. Hon’ble the Supreme Court has placed reliance on three earlier judgments i.e. **State of Assam versus Ranga Mohd. (8)**, in **Samsher Singh, versus State of Punjab and another (9)** and **High Court of Judicature at Bombay, versus Shirishkumar Rangrao Patil and another (10)**.

(19) Hon’ble the Supreme Court again examined the case of compulsory retirement of a Judicial Officer in the case of **Shiv Dayal Gupta, versus State of Rajasthan (11)** and upheld the action concerning compulsory retirement despite the fact that his integrity was doubted in the year 1983 and in 1984 also when he was reported to be a corrupt officer. He was retired compulsorily in the year 2000 by taking into account his reports of integrity doubtful recorded long years back and Hon’ble the Supreme Court refused to interfere in the aforesaid order. While dealing with the order of compulsory retirement dated 9th November, 2000, their Lordships placed reliance on the observations made in the case **State of U.P., versus Vijay kumar Jain, (12)**. According to the view taken by Hon’ble the Supreme

(8) AIR 1967 SC 903 (FB)

(9) (1974) 2 SCC 831 (FB)

(10) (1997) 6 SCC 339

(11) (2005) 13 SCC 581

(12) (2002) 3 SCC 641

Court, the entire service record of an employee can be taken into account for the purposes of forming an opinion whether such an employee has become dead wood, inefficient and has outlived his utility and therefore, it is in the public interest to retire him from service. In para 16 of the judgement in Vijay Kumar Jain's case (*supra*), the following observations have been made :

"16. Withholding of integrity of government employee is a serious matter. In the present case, what we find is that the integrity of the respondent was withheld by an order dated 13th June, 1997 and the said entry in the character roll of the respondent was well within ten years of passing of the order of compulsory retirement. During pendency of the writ petition in the High Court, the U.P. Services Tribunal on a claim petition filed by the respondent, shifted the entry from 1997-98 to 1983-84. Shifting of the said entry to different period or entry going beyond ten years of passing of order of compulsory retirement does not mean that vigour and sting of the adverse entry is lost. Vigour or sting of an adverse entry is not wiped out, merely it is relatable to 11th or 12th year of passing of the order of compulsory retirement. The aforesaid adverse entry which could have been taken into account while considering the case of the respondent for his compulsory retirement from service, was duly considered by the State Government and said single adverse entry in itself was sufficient to compulsorily retire the respondent from service. We are, therefore, of the view that entire service record or confidential report with emphasis on the later entries in the character roll can be taken into account by the government while considering a case for compulsory retirement of a government servant."

(20) The aforesaid discussion would show that one entry concerning doubtful integrity of a judicial officer would be adequate to form an opinion that he has lost his utility for the institution and therefore, compulsory retirement of such a person has to be regarded as serving the larger public interest.

(21) The facts of the instant case now need to be examined in the backdrop of the aforesaid principles. The appellant had earned 3 average reports for the years 1981-82, 1982-83 and 1983-84. For the years 1999-2000, he had earned 'C-Integrity doubtful' entry. On the examination of whole record it could not be said that the order of compulsory retirement suffers from any legal infirmity. One entry concerning doubtful integrity is sufficient. The communication of adverse remarks is not mandatory before forming an opinion regarding compulsory retirement of an employee. The view of Hon'ble the Supreme Court is discernible from paras 28 and 29 of the judgment in **Pyare Mohan Lal's case (supra)**, which reads as under :

"29.The petitioner had made a bald assertion that the adverse entries have not yet been communicated to him. It has been repeatedly submitted by him that representations made by him against the said adverse entries had not been disposed of. Indisputably, uncommunicated adverse entries could be taken into account for the purpose of assessing an officer for compulsory retirement. The petitioner has not disclosed on what dates the representations against the adverse entries had been made. The petitioner had not challenged the said adverse entries, rather he considered it appropriate to challenge only the order of compulsory retirement which has been a consequential effect of such adverse entries. The law requires the authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judge of the High Court duly constituted by the Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or *mala fide*." (emphasis added)

(22) The arguments of Mr. Sibal, learned Senior counsel based on the judgment of Hon'ble the Supreme Court in **Ram Ekbal Sharma's case (supra)** has failed to impress us. Firstly, the aforesaid case did not relate to judicial service and, secondly, there is no bar to drop suspension along with the proposal for holding regular departmental enquiry for the purposes of inflicting major punishment and pass an order of compulsory retirement. Hon'ble the Supreme Court in the case of **Union of India and others versus Dulal Dutt (13)** has approved even such a course of action. In that case the review committee had submitted a report to the Government indicting the officer and yet the Government instead of proceeding with a departmental enquiry, passed an order of compulsory retirement. Placing reliance on the judgments of Hon'ble the Supreme Court in *Bainkuntha Nath Das's case (supra)* and other judgment it proceeded to observe that order of compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on relevant material and it has to be passed on the subjective satisfaction of the Government. The order of compulsory retirement cannot be regarded as punitive nor it is required to be a speaking order. The view of Hon'ble the Supreme Court was dicernible from para 18 of the judgment in *Baikuntha Nath Das's case (supra)*, which reads as under:

"18. Yet another contention which is relevant to the present case is this: the retirement of the appellant therein was ordered under Rule 235 of Mysore Civil Service Rules. The language of the said rule corresponded to F.R. 56(j) but it did not contain the word "absolute" as is found in F.R. 56(J). An argument was sought to be built up on the said difference in language but the same was rejected holding that even in the absence of the word "absolute", the position remains the same. We are referring to the said aspect inasmuch as the proviso two Rule 71 (a) of the Orissa Service Code, concerned in the appeals before us, also does not contain the word "absolute".

(23) No other issue has been raised.

(24) As a sequel to the above discussion, this appeal fails and the same is dismissed.

M. JAIN