Rajasthan State Road Tranp. Corp. & Ors vs Babu Lal Jangir on 16 September, 2013

Equivalent citations: AIR 2014 SUPREME COURT 142, 2013 AIR SCW 5404, 2013 LAB. I. C. 4215, (2014) 1 PAT LJR 394, 2014 (1) SERVLJ 64 SC, (2014) 1 SERVLJ 64, 2013 (4) KER LT 96 CN, (2013) 1 JCR 14 (SC), (2013) 4 KER LT 96, 2013 (3) CURLR 602, 2013 (11) SCALE 475, 2013 (10) SCC 551, 2013 (4) LAB LN 1, (2013) 11 SCALE 475, (2013) 2 WLC(SC)CVL 733, (2013) 139 FACLR 992, (2013) 4 SCT 438, (2014) 1 SERVLR 579, (2014) 1 JLJR 242, (2013) 6 ALL WC 6378

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Bench: A.K. Sikri, K.S. Radhakrishnan

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8245/2013
(Arising out of Special Leave Petition (Civil) No. 17760 OF 2013)

Rajasthan State Road Transport Corp. & Ors. ……Appellant(s)

Versus

Babu Lal Jangir
….....Respondent(s)

J U D G M E N T

A.K. SIKRI, J.

1. Leave granted.

2. Rajasthan State Road Transport Corporation is the appellant in the instant petition through of which it impugns the validity of the orders dated 16.1.2013 passed by Division Bench of the High Court of Judicature For Rajasthan, Bench at Jaipur. The Division Bench has dismissed the Writ Appeal of the appellant and confirmed the orders of the Additional Judge passed in the Writ Petition filed by the respondent herein, quashing the orders of compulsory retirement of the respondent with the direction that the respondent would be deemed to be in the service as if the order of compulsory

retirement had not been passed and as a consequence the respondent is held entitled to all consequential benefits.

3. The Respondent joined the services of the appellant on the post of Driver on 14.2.1977. He was placed on probation for a period of one year.

4. The appellant has framed Standing Orders for its employees known as the Rajasthan State Road Transport Workers and workshop Employees Standing Orders, 1965 (hereinafter to be referred as the 'Standing Orders'). These orders are duly certified by the Authority under the provisions of Industrial Employment (Standing Orders) Act, 1946. Subsequently, there was an amendment in these Standing Orders and certain new clauses under rule 18, were inserted introducing the provision of compulsory and voluntary retirement. The same are reproduced herein below:

"18-D(1) COMPULSORY RETIREMENT Notwithstanding anything contained in the regulations the Corporation may if is of the opinion that it is in the interest of the Corporation to do so, have the absolute right to retire any Corporation employee after, he has attained the age of 50 years or on the date he completes 25 years of service whichever is earlier, or on any date thereafter, by giving him 3 months notice in writing or three months pay and allowances in lieu thereof.

18-D (2) VOLUNTARY RETIREMENT Notwithstanding anything contained here in before Corporation employee may after giving three months previous notice in writing, retire from the service on the date on which he completes 20 years service on the date he attains the age of 45 years or on any other date thereafter."

5. It is clear from the above that the clauses pertaining to compulsory retirement gives the Petitioner-Corporation absolute right to retire any employee after he attains the age of 50 years or on completion of 25 years service whichever is earlier.

6. A Screening Committee was constituted by the Petitioner Corporation in 27.3.2002 to look into the conduct and continuance of four employees who had attained the age of 50 years or had completed 25 years of service. Among these four persons, name of the Respondent also appeared.

7. This committee, on perusal of the record of the respondent, recommended his compulsory retirement. The Review Committee held its meeting on 8.4.2002 to review the report of the Screening Committee and after perusal of the report of the Screening Committee, the Review Committee approved the proposal of the Screening Committee. Based on the recommendation of the Review Committee, the Competent Authority passed the orders dated 9.4.2002, compulsorily retiring the respondent from service. As three months previous notice is required under rule 18-D (1) of the Standing Orders, in lieu thereof the respondent was sent three months' salary cheque.

8. Challenging this action of the appellant, the respondent filed the Writ Petition in the High Court of Judicature for Rajasthan. The appellant herein (Respondent in the Writ Petition) appeared and decided a Writ Petition by filing counter affidavit. It was the highlight of the petitioner's defense that the service record of the respondent showed a dismal picture, in as much as between the year

1978-1990, nearly 19 cases of misconduct were foisted upon the respondent which resulted into some or the other kind of penalty like admonition or stoppage of pay or annual grade increment for a limited period. So much so, in the year 1992 a criminal case against the respondent was initiated under Section 279 read with Section 304 (a) of IPC and Section 18/118 of the Motor Vehicles Act. In that case he was given the benefit of doubt and released. However, a departmental inquiry was held in which penalty of imposition or stoppage of two years' increment was imposed upon him. A representation against this penalty was also dismissed. In the year 1999 another criminal case was instituted against the Respondent because of the accident of the bus of the petitioner which was driven by the Respondent as Driver. The victims had also filed their claim before the Motor Claim Tribunal (MACT) and the Appellant -Corporation had to suffer heavy loss by paying compensation in the said case. However, in criminal case, the Respondent was acquitted. The appellant also pointed out that the service record of the Respondent revealed that he was also involved in the another accident in the year 1999 in which he suffered serious burn injuries. Because of this, he had moved an application requesting the Petitioner-Corporation to give him light job. Accordingly, he was posted as staff car Driver at Head Office. This job was given to him virtually showing mercy, which did not entail regular hard work. It was thus, argued by the Appellant -Corporation that the aforesaid entire service record was gone into by the Screening Committee as well as the Review Committee on the basis of which the decision was taken to retire the Respondent prematurely.

9. The learned Single Judge of the High Court, however, did not eschew the aforesaid submission of the Appellant -Corporation giving the reason that the various acts of misconduct pointed out by the Petitioner-Corporation against the Respondent herein pertained to the period between 1978-90, whereas the order of compulsory retirement was passed 12 years thereafter i.e. on 9.4.2002. In the opinion of the learned Single Judge, thee minor misconducts of the period more than 12 years before the compulsory retirement were not sufficient to come to the conclusion that the compulsory retirement of the respondent was in public interest. The learned Single Judge also observed that record of immediate past period was not looked into at all and on the basis of current purpose it could not be said that respondent had become deadwood or had become inefficient who needed to be weeded out. It also It also remarked that the appellant corporation was not able to point out any deficiency in the work and conduct of the Respondent for over 10 years immediately preceding his compulsory retirement. It was thus, unjust, unreasonable and arbitrary to retire the respondent prematurely on the basis of old and stale material. For coming to this conclusion the learned Single Judge drew sustenance from the judgment of this Court in Brij Mohan Singh Chopra v. State of Punjab 1987 (2) SCC 188.

10. Not satisfied with the aforesaid outcome, the appellant preferred Writ Appeal before the Division Bench but without any success as the said Writ Appeal has been dismissed by the Division Bench, echoing the reasons given by the ld. Single Judge. While upholding the order of the learned Single Judge, the Division Bench also noted that the recorded date of birth, at the time of entry of the Respondent into service, was 7.7.1951. Since the normal age of superannuation is 60 years, the respondent would have continued in service till the year 2011. Since he was prematurely retired and that retirement has been set aside with the direction that he deems to be in service, the respondent would have to be treated in service till July, 2011. However, before the Division Bench, the respondent raised the dispute about his date of birth contending that his actual date of birth was

21.1.1957 which was even recorded in some of the official documents. He thus pleaded that he had right to continue in service even beyond July 2011 i.e. upto the end of January, 2017.

11. The High Court, however refrained from passing any order on this aspect and observed that it would be open to the respondent to submit a proper presentation before the concerned authority of the Appellant

-Corporation who will examine the records of his date of birth and take a decision thereon. It further directed:

> "In case his date of birth is ultimately determined to be 7/7/1951, all consequential benefits following the interference with the order of compulsory retirement would be released to him. In the eventuality of his date of birth being determined to be 21.9.1957, the Corporation would consider his reinstatement in service."

12. On the very first day i.e. on 23.8.13, when this petition came up for hearing, the respondent appeared person. He showed his willingness to argue the matter himself finally at the admission stage itself. As this course of action was agreeable to the Counsel for the petitioner as well, the parties were heard at length.

13. From the narration of facts stated above and specifically from the perusal of the judgment of the learned Single Judge which is upheld by the Division Bench on the same reasoning it is apparent clear that the main reason for setting aside the order of compulsory retirement is that adverse entries/ minor mis-conducts of the Respondent related to the period 1978-90 i.e 12 years prior to premature retirement were taken into consideration and there was no material whatsoever before this Review Committee in the recent past on the basis of which, the requisite opinion could be framed that the premature retirement of the respondent was in public interest. Again, as pointed above, for arriving at this conclusion, the High Court extensively relied upon judgment of this Court in Brij Mohan Singh Chopra (supra).

14. First and foremost argument of the learned Counsel for the appellant was that judgment of this Court in Brij Mohan Singh Chopra (supra) was overruled by three member Bench in Baikuntha Nath Das & Anr. v. Chief District Medical Officer, Baripara & Anr.;1992 (2) SCC 299, and it was specifically recorded so in subsequent judgment in the case of The State of Punjab v. Gurdas Singh; 1998 (4) SCC 92. This calls for examination of this argument in the first instance.

15. A reading of Baikuntha Nath judgment would reveal that the main issue in that case was as to whether the employer could act upon, un- communicated 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 facet of natural justice in such a case. In the process of discussion and giving reasons for the aforesaid

opinion, the Court took note of various judgments. Decision in the case of Brij Mohan Singh Chopra (supra) was also specifically dealt with. In this case there were no adverse entries in the confidential records of the appellant for a period of five years prior to the impugned order of premature retirement. Within five years there were two adverse entries. However, these adverse remarks were not communicated to the employee. The order based on un-communicated adverse entries was set aside on two grounds namely:

> i) It was not reasonable and just to consider adverse entries of remote past and to ignore good entries of recent past.

If the entries for the period of more than 10 years past are taken into account it would be act of digging out past to get some material to make an order against the employee.

ii) Since the adverse entries were not even communicated, it was unjust and unfair and contrary to principles of natural justice to retire prematurely a government employee on the basis of adverse entries which are either not communicated to him or if communicated, representations made against those entries are not considered and disposed of.

16. After taking note of the aforesaid grounds on which the order of compulsory retirement in Brij Mohan Singh Chopra (supra) was set aside, the Court in Baikuntha Nath Das (supra) dealt with the second ground alone namely whether principles of natural justice were required to be followed or it was permissible for the Government to take into consideration the adverse entries which were either not communicated to him or if communicated representations made against those entries were still pending. This second proposition of Brij Mohan Singh Chopra was held as not the correct proposition in law and principles of natural justice could not be brought in such a case. The Court had noted that this reasoning was in conflict with the earlier judgment in the case Union of India v. Col. J.N. Sinha & Anr. 1970 (II) LLJ 284 and agreed with the view taken in J.N. Sinha's Case.

17. It clearly follows from the above that in so far as first ground in Brij Mohan Singh Chopra namely consideration of adverse entries of remote past was inappropriate to compulsory retire an employee, was not touched or discussed. In fact, on the facts of the Baikunth Nath Dass, this proposition did not arise for consideration at all. No doubt, in Gurdas Singh's Case, it has been specifically remarked that the judgment in Brij Mohan Singh Chopra (supra) has been overruled in Baikuntha Nath (supra). It would be relevant to point out that even Gurdas Singh was a case relating to un-communicated adverse entries. Therefore, Brij Mohan Singh Chopra was overruled only on the second proposition.

18. The fact that the issue as to whether remote past of the employee can be taken into consideration or not was not dealt with in Baikuntha Nath Das or Gurdas Singh Case was specifically noticed by this Court in the case of Badrinath v. Government of Tamil Nadu and Ors. 2000(8) SCC 395; 2000(6) SCALE 618. That was a case where this question of taking into consideration the old records came up directly for discussion. The court discussed the judgment in Brij Mohan Singh Chopra and pointed out that three judge Bench in Baikuntha Nath Das overruled Brij Mohan Singh Chopra Case only on the second aspect, namely non-communication of the adverse reports. In so far

as first aspect, which pertained to considering adverse entries of old period, the Court also pointed out that in Para 32 of Baikuntha Nath Das Case, various legal principles/propositions were summed up and drew attention to principle No.(iv) in that para with which we are concerned. It reads as under:

> "So far as the appeals before us are concerned, the High Court has looked into the relevant record and confidential records has opined that the order of compulsory retirement was based not merely upon the said adverse remarks but other material as well. Secondly, it has also found that the material placed before them does not justify the conclusion that the said remarks were not recorded duly or properly. In the circumstances, it cannot be said that the said remarks were not recorded duly or properly. In the circumstances, it cannot be said that the order of compulsory retirement suffers from mala fides or that it is based on no evidence or that it is arbitrary."

19. On that basis following pertinent observations were made in Badrinath case:

> "54. We are however concerned with the first point stated in Brij Mohan Singh Chopra's case as explained and accepted in principle (iv) of para 34 of the three Judge Judgment in Baikunth Nath Das. We have already extracted this passage in principle (iv) of para 34. It reaffirms that old adverse remarks are not to be dug out and that adverse remarks made before an earlier selection for promotion are to be treated as having lost their 'sting'. This view of the three Judge Bench, in our view, has since been not departed from. We shall, therefore, refer to the two latter cases which have referred to this case in Baikunth Nath Das. The second of these two latter cases has also to be explained.
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> 55. In the first of these latter cases, namely, Union of India v. V.R. Seth MANU/SC/0286/1994 : (1994)IILLJ411SC the point related both to adverse remarks of a period before an earlier promotion but also to uncommunicated adverse remarks. It was held that the Tribunal was wrong in holding in favour of the officer on the ground that uncommunicated adverse remarks could not be relied upon for purposes of compulsory retirement. So far as the remarks prior to an earlier promotion this Court did not hold that they could be given as much weight as those in later years. The Court, in fact, relied upon Baikunth Nath Das case decided by three Judge Bench which had proposition (iv) in para 34 (at p. 315-316) had clearly accepted that adverse remarks prior to an earlier promotion lose their 'sting'.
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> 56. The second case is the one in State of Punjab v. Gurdas Singh MANU/SC/0256/1998 : AIR1998SC1661 . The facts there were that there were adverse remarks from 1978 prior to 1984 when the officer was promoted and there were also adverse remarks for the period 18.6.84 to 31.3.85. The compulsory retirement order was passed on 3.9.87. The said order was quashed by the Civil Court on the ground that his record prior to his promotion i.e. prior to 1984 could not have

> been considered and two adverse entries after 1984 were not communicated and could not be relied upon. The three Judge Bench, while clearly setting out proposition
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> (iv) in para 34 (at p. 315-316) of Baikunth Nath Das which said that adverse remarks prior to promotion lose their sting, held that they were following the said judgment and they allowed the appeal of the State. Following Baikunth Nath Das, the Bench felt that uncommunicated adverse remarks could be relied upon and in that case these entries related to the period after an earlier promotion. That ground alone was sufficient for the case. There is a further observation (at p. 99, para 11) that an adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during the whole tenure of service.
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> 57. The above sentence in Gurdas Singh needs to be explained in the context of the Bench accepting the three Judge Bench ruling in Baikunth Nath Das. Firstly, this last observation in Gurdas Singh's case does not go against the general principle laid down in Baikunth Nath Das to the effect that though adverse remarks prior to an earlier promotion can be taken into account, they would have lost their 'sting'.

Secondly, there is a special fact in Gurdas Singh's case, namely, that the adverse remarks prior to the earlier promotion related to his "dishonesty". In a case relating to compulsory retirement therefore, the sting in adverse remarks relating to dishonesty prior to an earlier promotion cannot be said to be absolutely wiped out. The fact also remains that in Gurdas Singh's case there were other adverse remarks also even after the earlier promotion, regarding dishonesty though they were not communicated. We do not think that Gurdas Singh is an authority to say that adverse remarks before a promotion however remote could be given full weight in all situations irrespective of whether they related to dishonesty or otherwise. As pointed in the three Judge Bench case in Baikunth Nath Das, which was followed in Gurdas Singh they can be kept in mind but not given the normal weight which could have otherwise been given to them but their strength is substantially weakened unless of course they related to dishonesty."

20. If one were to go by the dicta in Badrinath Case, obvious conclusion would be that even if there are adverse remarks in the service career of an employee they would lose there effect, when that employee is given promotion to the higher post and would not be taken into account when the case of that employee for compulsory retirement is taken up for consideration, except only those adverse entries in the confidential reports of that employee which touch upon his integrity. Thus, Badrinath case interprets principle (iv) in para 32 of Baikunth Dass to mean such adverse remarks for the period prior to promotion, unless they are related to dishonesty, would be substantially weekend after the promotion.

21. This interpretation given in Badrinath case, which was the judgment rendered by two member Bench, has not been accepted by three member bench of this Court, subsequently, in Pyare Mohan Lal v. State of Jharkhand and Ors. (2010) 10 SCC 693. After discussing various judgments, including the judgments referred to by us hitherto, the Court clarified and spelled out the circumstances in

which the earlier adverse entries/ record would be wiped of and the circumstances in which the said record, even of remote past would not lose its significance. It is lucidly conceptualized under the head "Washed Off Theory" as follows:

> "WASHED OFF THEORY "19. In State of Punjab v. Dewan Chuni Lal MANU/SC/0497/1970 :
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> AIR 1970 SC 2086, a two-Judge Bench of this Court held that adverse entries regarding the dishonesty and inefficiency of the government employee in his ACRs have to be ignored if, subsequent to recording of the same, he had been allowed to cross the efficiency bar, as it would mean that while permitting him to cross the efficiency bar such entries had been considered and were not found of serious nature for the purpose of crossing the efficiency bar.
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> 20. Similarly, a two-Judge Bench of this Court in Baidyanath Mahapatra v. State of Orissa and Anr. MANU/SC/0051/1989 :
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> AIR 1989 SC 2218, had taken a similar view on the issue observing that adverse entries awarded to the employee in the remote past lost significance in view of the fact that he had subsequently been promoted to the higher post, for the reason that while considering the case for promotion he had been found to possess eligibility and suitability and if such entry did not reflect deficiency in his work and conduct for the purpose of promotion, it would be difficult to comprehend how such an adverse entry could be pressed into service for retiring him compulsorily. When a government servant is promoted to higher post on the basis of merit and selection, adverse entries if any contained in his service record lose their significance and remain on record as part of past history.
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> This view has been adopted by this Court in Baikuntha Nath Das (supra).
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> 21. However, a three-Judge Bench of this Court in State of Orissa and Ors. v. Ram Chandra Das MANU/SC/0613/1996 : AIR 1996 SC 2436, had taken a different view as it had been held therein that such entries still remain part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest.

Therefore, such entries do not lose significance, even if the employee has subsequently been promoted. The Court held as under:

> Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that

> decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension.
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> (Emphasis added)

22. This judgment has been approved and followed by this Court in State of Gujarat v. Umedbhai M. Patel MANU/SC/0140/2001 : AIR 2001 SC 1109, emphasising that the "entire record" of the government servant is to be examined.

23. In Vijay Kumar Jain (supra), this Court held that the vigour or sting of an entry does not get wiped out, particularly, while considering the case of employee for giving him compulsory retirement, as it requires the examination of the entire service records, including character rolls and confidential reports. `Vigour or sting of an adverse entry is not wiped out' merely it relates to the remote past. There may be a single adverse entry of integrity which may be sufficient to compulsorily retire the government servant."

22. Stating that the judgment of larger Bench would be binding, the washed off theory is summed up by the Court in the following manner:

> "In view of the above, the law can be summarised to state that in case there is a conflict between two or more judgments of this Court, the judgment of the larger Bench is to be followed. More so, the washed off theory does not have universal application. It may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being assessed by the Reviewing Authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his "entire service record".

23. It clearly follows from the above that the clarification given by two Bench judgment in Badrinath is not correct and the observations of this Court in Gurdas Singh to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

24. The principle of law which is clarified and stands crystallized after the judgment in Pyare Mohan Lal v. State of Jharkhand and Ors.; 2010 (10) SCC 693 is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this 'washed off theory' will have no application when case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no

question of not taking into consideration an earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.

25. Having taken note of the correct principles which need to be applied, we can safely conclude that the order of the High Court based solely on the judgment in the case of Brij Mohan Singh Chopra was not correct. The High Court could not have set aside the order merely on the ground that service record pertaining to the period 1978-90 being old and stale could not be taken into consideration at all. As per the law laid down in the aforesaid judgments, it is clear that entire service record is relevant for deciding as to whether the government servant needs to be eased out prematurely. Of course, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively. What is to be examined is the "overall performance" on the basis of "entire service record" to come to the conclusion as to whether the concerned employee has become a deadwood and it is public interest to retire him compulsorily. The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the Authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the Court to interfere in the exercise of its limited power of judicial review."

26. With this we revert to the facts of the present case:

> In so far as period of 1978-1990 is concerned, the respondent was charge sheeted in 19 cases. In few cases he was exonerated and in some other cases he was given minor penalty like admonition, stoppage of pay, annual grade increment for a limited period. The gist of these cases is as follows:
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> |S.N|Charge|Date |Details of |Date of |Details of |Remarks | |o. | | |Charges |Order |decision | | | |Sheet | | | | | | |1. |1648 |11.8.1978|Negligent |417/7-2-79 |Exonerated | | | | | |Driving | | | | |2. |798 |25.10.79 |Recovered fare|2783/ |Yearly | | | | | |from 15 |27.8.84 |increment | | | | |passengers | |stopped and | | | | | |without ticket| |forfeiture of | | | | | | |salary for | | | | | | |suspension | | | | | | |period | | |3. |2314 |20.11.80 |Corruption |3454/ |Stoppage of | | | | | |22.10.84. |yearly | | | | | | |increment for | | | | | | | |one year | | |4. |1235 |27.4.83 |Absent from |1708/ |Absolved from | | | | | |duty |7.4.86 |charges | | | | | | |without | | | | | | |intimation | | |5. |1035 |31.3.83 |Excess |1709/ |Stoppage of | | | | |consumption |3.4.86 |one/ two | | | | | | |increments | | |6. |1754 |13.6.84 |Misbehavior |3453/

|Absolved from | | | | | |with conductor|22.10.84. |charge | | |7. |162 |8.1.85 |Absent from |5123/ |Stoppage of | | | | | |duty without |4.12.85 |yearly | | | | | |intimation | |increment for | | | | | | | |one year | | | | | | | |without | | | | | | | |commutative | | | | | | | |effect and | | | | | | | |forfeiture of | | | | | | | |salar for | | | | | | | |suspension | | | | | | | |period appeal | | | | | | | |No. 3588/ | | | | | | | |29.8.88 | | | | | | | |pending | | |8. |1798 |4.4.85 |Damage to tyre| | | | |9. |2298 |29.4.85 |Absent from |5123/4.12.1|Stoppage of | | | | | |duty without |985 |one increment | | | | | |intimation | |& forfeiture | | | | | | | |of salary for | | | | | | | |suspension | | | | | | | |period | | |10.|3928 |26.2.85 |Vehicle |830/ |Stoppage of | | | | | |accident |5.12.85 |two increments| | | | | | | |without | | | | | | | |commutative | | | | | | | |effect | | |11.|3763 |1.8.90 |Excess |68/ 14.2.94|Order for | | | | | |consumption of| |recovery and | | | | | |Diesel | |or warning for| | | | | | | |future | | | | | | | |recovered Rs. | | | | | | | |132.60. | | |12.|3090 |30.10.82 |Different | | | | | | | |types of | | | | | | | |complaints | | | | |13.|4669 |30.10.85 |Damage to tyre|11830/ |Stoppage of | | | | | |5.12.88 |two increments| | | | | | | |without | | | | | | | |commutative | | | | | | | |effect and | | | | | | | |forfeiture of | | | | | | | |salary for the| | | | | | | |suspension | | | | | | | |period. | | |14.|316 |23.1.86 |Bad behavior |4953/ |1. Stoppage of| | | | | |12.10.87 |one increment.| | | | | | | |Forfeiture of | | | | | | | |salary for the| | | | | | | |suspension | | | | | | | |period. | | | | | | | |2. Less Diesel| | | | | | | |average | | |15.|134 |12.1.87 |Demanding |11830/ |Stoppage of | | | | | |money from |5.12.88 |two increments| | | | | |driver | |without | | | | | | | |commulative | | | | | | | |effect under | | | | | | | |consideration | | |16.|4745 |1.11.85 | | | | |17.|3361 |13.7.97 |Refusal to |706/ |Absolved, | | | | | |take vehicle |10.2.88 |released the | | | | | | | |salary for the| | | | | | | |suspension | | | | | | | |period | | |18.|2041 |21.4.87 |Negligent |2815/ |Absolved | | | | | |driving of |9.6.93 |released the | | | | | |vehicle | |salary for | | | | | | | |suspension | | | | | | | |period. | | | | | | | | | | |19.|3792/ |27.7.87 |Less average |2686/5.5.89|Recovered Rs. | | | | | |of Diesel | |72/- | |

27. The aforesaid record projects the dismal picture. The High Court has observed that the respondents have not been able to show anything adverse in the career of the respondent after 1990 i.e. in last 12 years preceding the order of retirement. These observations are not correct in as much as:

a) There was an inquiry against the respondent for which he was imposed the penalty of stoppage of increment for two years.

He had made a representation against this penalty on 5.11.1998 which was dismissed on 25.5.1998.

b) Further another criminal case was also instituted against him in the year 1999. Though outcome of this criminal case is not mentioned, fact remains that the accident was caused by the Respondent while driving the bus of the appellant Corporation, and the appellant corporation had to pay heavy compensation to the victims as a result of orders passed by MACT.

Thus even the service record after 1990 does not depict a rosy picture. In any case, there is nothing to show his performance became better during this period.

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, malafide, 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 rule is absolute, provided the authority concerned forms a bonafide opinion that compulsory retirement is in public interest.(See: AIR 1992 SC 1368)

29. Accordingly, we have no option but to set aside the impugned order of the High Court thereby upholding order of the compulsory retirement. The appeal is allowed with no order as to costs.

.....J. [K.S. RADHAKRISHNAN] .....J. [A.K. SIKRI] NEW DELHI SEPTEMBER 16, 2013