Rajendra Singh Verma (D) Thr.Lrs vs Lt.Governor Of Nct Of Delhi & Anr on 12 September, 2011

Equivalent citations: 2012 AIR SCW 3996, 2011 (10) SCC 1, 2012 LAB. I. C. 3217, AIR 2012 SC (SUPP) 515, (2011) 8 SERVLR 452, (2011) 2 CLR 798 (SC), (2011) 10 SCALE 315, (2011) 4 KER LT 29, (2012) 1 SCT 483, 2012 (1) SCC (CRI) 129, AIR 2012 SC (CIVIL) 2290

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Bench: H.L. Gokhale, J.M. Panchal

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7781 OF 2011

(Arising out of SLP (C) No. 27028/2008)

RAJENDRA SINGH VERMA (Dead)

Through LRs ... Petitioner(s)

Versus

LT. GOVERNOR OF

NCT OF DELHI & ANR. ..... Respondent(s)

WITH

CIVIL APPEAL NO. 7782 OF 2011

(Arising out of SLP (C) No. 27200/2008)

WITH

CIVIL APPEAL NO. 7783 OF 2011

(Arising out of SLP (C) No. 314/2009)

J U D G M E N T

J.M. Panchal, J.

Leave granted in each of the special leave petition.

2. These appeals, by the grant of special leave, are directed against common judgment dated May 2, 2008 rendered by the Division Bench of the High Court of Delhi in C.W.P. No. 2157 of 2002, C.W.P. No.1965 of 2002 and C.W.P. No.2362 of 2002.

The appellants were the Members of Delhi Higher Judicial Service (`D.H.J.S.', for short). Mr. M.S.Rohilla and Mr. P.D.Gupta were compulsorily retired from service under Rule 56 (j) of the Fundamental Rules, read with Rule 33 of the Delhi Judicial Service Rules 1970, whereas deceased Mr. R.S.Verma was compulsorily retired from service under Rule 16(3) of All India Service (Death-cum-Retirement Benefit) Rules 1958 read with Rule 27 of the Delhi Higher Judicial Service Rules 1970, on different dates. They had challenged orders of their compulsory retirement from service by filing Writ Petitions under Article 226. Though the result of each appeal would depend on its own facts, having regard to the commonality of submissions on legal aspects, this Court had tagged these cases together and heard them one after the other. This Court proposes to dispose of the three appeals, by this common Judgment for the sake of avoiding repetitiveness of legal principles. However, the Court proposes to consider each case on its own merits.

With these observations, the Court proposes to deal with appeal arising out of Special Leave to Appeal (Civil) No.27028 of 2008, filed by Mr. Rajendra Singh Verma against decision in C.W.P. No.2157 of 2002. Mr. Verma was born on April 13, 1950. After enrolling himself as an advocate, he had started legal practice in the year 1980. In the year 1994 applications were invited from practicing advocates for direct recruitment to the D.H.J.S. Mr. Verma had also applied pursuant to the said advertisement and after interview he was selected and was offered appointment to D.H.J.S. He joined the service on 9.3.1995 and was aged about 45 years on the date of joining service. He worked as Additional District Judge at Karkardooma Courts, Shahdara, Delhi. For the year 1995-1996 he was given a `B' remark in the A.C.R., which means his performance was average. From

April 1, 1999 to December 7, 2000, he functioned as Sessions Judge, Tis Hazari, Delhi.

3. By the year 2000 he had rendered service of five years.

It may be mentioned that a Screening Committee consisting of two Hon'ble Judges of Delhi High Court was constituted for screening the cases of those officers of the D.H.J.S. and Delhi Judicial Service, who had either completed thirty years of service or had attained the age of 50/55 years and for considering the question whether those Judicial Officers should be continued in service or should be prematurely retired in public interest. The Screening Committee considered the cases of several officers including that of Mr. Verma under Rule 56 (j) of the Fundamental Rules. The learned members of Screening Committee perused service record including the ACR dossiers of the Judicial Officers but did not find, for the time being, any Officer who could be retired prematurely in public interest as on July 17, 2000. A copy of the abstracts from the Minutes of the Meeting of the Full Court of Delhi High Court held on July 22, 2000 indicates that the Full Court had accepted the report of the Screening Committee.

However, by an order dated December 7, 2000 which was served upon Mr. Verma on December 8, 2000, judicial work entrusted to him was withdrawn with immediate effect. He was made in-charge of all the record rooms in Tis Hazari Courts, Delhi. ACRs of four years i.e. from the year 1997 to the year 2000 were not communicated to him on due dates.

From the record it is evident that ACRs of Mr. Verma for the years 1997, 1998 and 1999 were written in one go and he was awarded `C` remark, which means below average. The ACRs for above mentioned three years were communicated to him on January 8, 2001 whereupon he had made representation against the same on February 16, 2001.

4. In the A.C.R. for the year 2000, he was given `C-' remark, which means his integrity was doubtful. While communicating the ACR for the year 2000, he was given a time of six weeks to make representation against the same.

Such communication was received by him on September 25, 2001. On September 21, 2001 the Screening Committee of the High Court decided to retire Mr. Verma compulsorily from service. The Full Court of the Delhi High Court accepted the recommendation made by the Screening Committee in its meeting held on September 22, 2001. After acceptance of recommendation of the Screening Committee by the Full Court, entire work entrusted to him was withdrawn by a letter dated September 24, 2001. He made representation dated September 25, 2001 against the proposed order retiring him compulsorily from service. He was thereafter served with order dated September 27, 2001 retiring him compulsorily from service with effect from September 28, 2001. The record shows that the representation dated 16.2.2001 made by Mr. Verma against ACRs for the years 1997, 1998 and 1999 was rejected on October 5, 2001. Against the A.C.R. for the year 2000, Mr. Verma had made a representation dated October 13, 2001, which was received by the High Court on September 25, 2001. This was rejected by the High Court vide order dated November 25, 2001.

5. Thereupon Mr. Verma had filed C.W.P. No. 2157 of 2002 before the Delhi High Court challenging the order of compulsory retirement dated September 27, 2001. The reliefs claimed in the petition filed by him are enumerated in detail in paragraph 7 of the impugned judgment and, therefore, it is not necessary to reproduce the same in this judgment. The prayers made by Mr. Verma in his Writ Petition were essentially based on the following grounds, namely, (1) ACRs for the years 1997, 1998 and 1999 were not recorded as and when they fell due and, therefore, he had reason to believe that nothing adverse was found against his judicial work and/or conduct whereas recording of ACRs for the three years at the same time on January 3, 2001, was illegal. (2) There was no inspection by the Hon'ble Inspecting Judge for the years 1997, 1998, 1999 and 2000 as a result of which the decision to retire him prematurely from service on the basis that his performance was below average and his integrity was doubtful, was bad in law. (3) In July, 2000 when the Screening Committee had reviewed the cases of various Officers of D.H.J.S. for premature retirement in public interest, no recommendation was made to retire anyone including him, compulsorily from service and thus review of his case on September 21, 2001 by the Screening Committee, on the same material, was impermissible. (4) Adverse entry for the year 2000 was served upon him on September 25, 2001 vide a letter dated September 21, 2001 from the Registrar (Vigilance), High Court whereas the recommendation made by the Screening Committee on September 21, 2001 to retire him compulsorily from service was accepted by the Full Court in its meeting held on September 22, 2001, on the basis of which the Lt. Governor of Delhi passed the order of compulsory retirement on September 27, 2001 which was communicated to him on September 28, 2001 and as he was deprived of right to make meaningful representation against ACR of the year 2000, the order retiring him compulsorily from service was liable to be set aside. (5) His representation against the entries for the years 1997, 1998 and 1999 was rejected vide letter dated October 5, 2001, which was received by him on October 8, 2001 whereas his representation dated October 13, 2001 against the entry for the year 2000 was dismissed by order dated April 5, 2002, before which order of compulsory retirement from service was passed against him on September 28, 2001 and thus non-consideration of representation before passing order of compulsory retirement had vitiated order of his compulsory retirement. (6) Before taking decision to retire him prematurely from service opportunity of being heard was not given to him. (7) The circumstances of the case indicated that the Order of compulsorily retirement passed against him was punitive, arbitrary, mala fide and in violation of the principles of natural justice.

6. In support of these submissions, Mr. Verma had relied upon decisions in (a) Baikunth Nath Das Vs. Chief District Medical Officer, Baripada (1992) 2 SCC 299; (b) Madan Mohan Choudhary Vs. State of Bihar (1999) 3 SCC 396; (c) High Court of Punjab & Haryana Vs. I.C. Jain (1999) 4 SCC 579; (d) High Court of Judicature at Allahabad Vs. Sarnam Singh & Another (2000) 2 SCC 339; (e) Bishwanath Prasad Singh Vs. State of Bihar (2001) 2 SCC 305; (f) State of U.P. Vs Yamuna Shanker Mishra (1997) 4 SCC 7; (g) Registrar, High Court of Madras Vs. R. Rajiah (1988) 3 SCC 211; (h) M.S. Bindra Vs. Union of India & Others (1998) 7 SCC 310;

(i) Ram Ekbal Sharma Vs. State of Bihar & Another (1990) 3 SCC 504; (j) Anoop Jaiswal Vs. Govt. of India (1984) 2 SCC 369; and (k) Padam Singh Vs. Union of India & Others, 2000 (III) AD (Delhi) 430 (D.B.).

7. On Service of notice, the respondent No.1, namely, the Lt.

Governor, Administrator (Government of N.C.T. of Delhi) and the respondent No.2, i.e., the High Court of Delhi had filed their separate counter affidavits opposing the Writ Petition.

The High Court, in its reply, amongst other things had explained that the date of birth of Mr. Verma was April 13, 1950 and, therefore, review of his case on September 21, 2001 when he had completed fifty one years of age was perfectly legal. According to the High Court, his case was reviewed by the Screening Committee on September 21, 2001 and the Committee had recommended that he should be compulsorily retired from service keeping in view his overall service record, ACRs and performance. The High Court mentioned in its reply that the recommendation made by the Screening Committee was accepted by the Full Court on September 22, 2001. What was asserted by the High Court was that the decision of the Full Court was just and reasonable having regard to the ACRs of Mr. Verma.

8. The Division Bench hearing the petition filed by Mr. Verma had summoned the entire service record relating to his case. After hearing the learned counsel for the parties and considering the materials on the record, the High Court observed that a mere glance at the ACRs of Mr. Verma and other records was enough to conclude that the decision to retire him compulsorily from service was well founded. The High Court discussed principles laid down by this Court in the case of Baikunth Nath Das (supra) with regard to compulsory retirement under Rule 56(j) of the Fundamental Rules, and also took into consideration the principles of law as to when interference by a writ Court with the decision of compulsory retirement would be justified. Having noticed the law, the High Court held that principles of natural justice were not attracted in case of compulsory retirement. The High Court observed that in this case the ACRs for three years were recorded at the same time which according to High Court was not proper, but held that there is no absolute proposition of law that recording of ACRs at once would be perse illegal.

The High Court expressed the view that if good reasons were noted for which the ACRs could not be recorded by stipulated dates and the matter of recording of ACRs had to be deferred, the recording of ACRs of few years at one point of time would not render the same illegal. The High Court noticed the reasons as to why ACRs for the years 1997, 1998 and 1999 were recorded in one go, and thereafter held that there was sufficient explanation for recording the ACRs of three years at one time. The argument that there was no material justifying recording such ACRs was considered to be misconceived in view of settled legal position.

According to the High Court the entire service record of Mr. Verma from 1995 to 2000 revealed that even for one year he had not earned "Above Average" remark and his performance and conduct as a judicial officer in fact had kept on deteriorating and shown a downward trend. After taking into consideration the law on the point, the High Court concluded that action under Fundamental Rule 56(j) need not await the disposal of the representation made against the ACRs and, therefore, the order of compulsory retirement passed against him after taking into consideration the ACR for the year 2000 was not bad in law.

9. In view of the above conclusions the High Court dismissed the petition which has given rise to the above numbered appeal.

10. It may be mentioned that during the pendency of the SLP the original petitioner that is Mr. Rajendra Singh Verma expired in October, 2009. Therefore, the appeal is being prosecuted by his legal representatives.

11. The facts giving rise to the appeal arising out of SLP (C) No. 314 of 2009, are as under:

> The appellant Mr. Purshottam Das Gupta was born on 24.12.1949. He joined Delhi Judicial Service on 28.01.1978.

He was granted selection grade on 03.06.1993 retrospectively with effect from 31.05.1991. He joined as Additional Senior Civil Judge Delhi on 06.01.1996. According to him his work and conduct from 1978 to 1992 was graded as "B", which means his performance was average. In the year 1995 the Inspecting Judge reported that "I have not inspected his Court, but I have heard complaints about integrity", and left column nos. 6 and 7 to be filled up by Full Court. On 18.05.1996 the Full Court recorded ACR for the years 1994-95 as "C-Integrity Doubtful" and on the basis of the same denied promotion to him to Delhi Higher Judicial Service. Mr. Gupta filed a representation against adverse ACR for the year 1994- 95 on 10.07.1996. The High Court rejected the same by an order dated 05.09.1997. On 26.09.1997 the Full Court recorded his ACR for the year 1996 as "B". He filed W.P.(C) No. 4334 of 1997 against his non-promotion to Delhi Higher Judicial Services and also prayed to expunge adverse remark for the year 1994-95. Pending the said petition, the Full Court on 22.05.1998 recorded his ACR for the year 1997 as "B".

W.P.(C) No. 4334 of 1997 filed by Mr. Gupta was allowed by a Single Judge of the High Court vide Judgment dated 28.05.1999 and the adverse remark for the year 1994-95 was quashed. Thereupon, he was granted deemed promotion with seniority. The High Court on its administrative side filed LPA No. 329 of 1999 against Judgment dated 28.05.1999. On 24.12.1999 he attained the age of 50 years. In July 2000 the Screening Committee had reviewed the cases of various officers of DHJS including that of Mr. Gupta for premature retirement in public interest. The Screening Committee gave report dated July 17, 2000. In the report it was mentioned that the Members of the Screening Committee had gone through the service record including the ACR dossiers of the officers of Delhi Higher Judicial Service and Delhi Judicial Service who were within the zone of consideration for being considered for premature retirement in public interest at the age of 50/55 years, but they did not find, for the time being, any Officer who could be retired prematurely in public interest. The Full Court considered the report of Screening Committee in its meeting held on 22.07.2000 and accepted the report. However, on 29.07.2000 the Full Court recorded ACR of the appellant for the year 1999 as "C". On ACR being communicated, to him, he filed representation dated 08.09.2000.

12. The LPA No. 329 of 1997 filed by the High Court against Judgment dated 28.05.1999 rendered by a Single Judge in W.P.(C) No. 4334 of 1997 which was filed by the appellant, was accepted by the Division Bench vide Judgment dated 09.02.2001. The record does not indicate that the Judgment rendered by the Division Bench in LPA No. 329 of 1997 was subjected to challenge by Mr. Gupta

before higher forum. It may be mentioned that Mr. Justice M.S.A. Siddiqui was nominated as Inspecting Judge of the court of Mr. Gupta for the year 2000. The case of Mr. Gupta is that he had sent one copy each of his five Judgments delivered by him during the year 2001, on 18.05.2001 as was requisitioned by the learned Inspecting Judge. The learned Inspecting Judge retired on 29.05.2001 without giving his report in respect of Mr. Gupta for the year 2000. The representation made against adverse ACR for the year 1999 was rejected by the High Court vide order dated 01.06.2001. The record does not show that the said decision was challenged by Mr. Gupta before higher authority or in court of law. Thus the ACR for the year 1999 had attained finality. According to Mr. Gupta, Mr. Justice K.S.Gupta who was not his inspecting Judge for any year visited his Court on 07.09.2001 and directed him to send copies of three Judgments delivered by him during 2000, which requisition was complied with by him. The record would indicate that Mr. Justice K.S.Gupta submitted his inspection report for the year 2000 on 11.09.2001 for consideration of the Full Court. On 21.09.2001, the Full Court recorded ACR of Mr. Gupta for the year 2000 as "C (Integrity Doubtful)". On 21.09.2001 the Screening Committee of the High Court submitted its report recommending his premature retirement from service. The Full Court in its Meeting dated 22.09.2001 recommended premature retirement of Mr. Gupta to the Lt.

Governor of Delhi (The Administrator). On 21.09.2001 he was communicated ACR for the year 2000 and he was granted six weeks time to file representation against the same. Meanwhile the Administrator (Lt. Governor of Delhi) passed an order dated 27.09.2001, prematurely retiring him from service, under Fundamental Rule 56 (j) of the Fundamental Rules read with Rule 33 of Delhi Judicial Service Rules, 1970. The appellant made a representation against adverse entry in the ACR for the year 2000, on 29.10.2001 i.e. after the appellant was retired compulsorily from service. The appellant also addressed a representation dated 16.11.2001 to the Administrator against the order retiring him compulsorily from the service. It was forwarded by the Administrator, to the High Court for necessary action. The High Court by order dated 12.02.2002 rejected the representation made by the appellant on 16.11.2001 which was addressed to Lt.

Governor. The representation of the appellant against adverse ACR for the year 2000 was also rejected by the High Court vide order dated 16.03.2010. Feeling aggrieved by the order retiring him compulsorily from service the appellant filed W.P.(C) No. 2362 of 2002 in the High Court and also prayed to expunge adverse remarks in his ACR for the years 1999 and 2000.

13. On service of notice the High Court filed reply affidavit controverting the averments made in the petition. It was explained in the reply that the Screening Committee of the two learned Judges had considered the overall service record of the appellant and found that his performance and conduct were recorded as average for the years 1979-80, 1980-81, 1999, 1997 and 1998. The High Court mentioned in the reply that in the report for the year 1995, the Inspecting Judge had recorded that he had heard complaints about the integrity of the appellant. According to the High Court, again in the inspection report for the year 1999-2000 the Inspecting Judge, in respect of judicial reputation of the appellant and in respect of his impartiality and integrity, had recorded that the appellant did not enjoy good reputation. As per the reply, the case of the appellant was considered for promotion on18.05.1996 but he was not found fit at that time and even in the subsequent selections as a result of which he was not promoted. What was highlighted in the reply was that for the year 1994-95 the

appellant was granted "C-Integrity Doubtful"

whereas for the year 1999 he was granted "C (Below Average)" and for the year 2000 he was granted "C- Integrity Doubtful", and keeping in view the over all assessment of service record, the Screening Committee had recommended that the appellant be prematurely retired from service in public interest forthwith. It was explained in the reply that the report of the Screening Committee with respect to number of Judicial Officers was placed before the Full Court of the High Court and the Full Court after considering the report of the Screening Committee and the work and conduct as reflected in service record and general reputation of the appellant as well as of other officers, had resolved that it be recommended to the Administrator, Government of NCT of Delhi to retire the appellant and others forthwith in public interest. The High Court mentioned in the reply that the Lt. Governor had accepted the recommendations of the High Court and vide order dated 27.09.2001, the appellant was compulsorily retired in public interest. It was further stated in the reply that the appellant had preferred a representation before the Lt. Governor who after going through his service record including assessments made by the Inspecting Judge along with the recommendations of the Screening Committee and the resolution of the Full Court of the High Court had concluded that the appellant was not fit to be continued in service and his representation was rejected by order dated 13.09.2001 which was communicated to him vide order dated 27.09.2002.

14. The High Court after hearing the learned Counsel for the parties concluded that so far as ACR for the year 1999-2000 was concerned, there was hardly any reason to interfere with the same. The High Court noted that the ACR for the year 1994-95 recording "C-Integrity Doubtful" was upheld by the High Court, on judicial side, on the ground that there was sufficient material to record the said ACR. According to the High Court the Judgment of the Division Bench of the Delhi High Court in L.P.A. was upheld by the Supreme Court which operated as res-judicata so far as the appellant was concerned. The High Court, on the basis of said fact, came to the conclusion that the action of the High Court on its administrative side, to compulsorily retire the appellant from service would be sustainable as easing out a person with integrity doubtful. The High Court noticed that so far as the ACR for the year 1999 was concerned the appellant was given "C" grading i.e. below average and representation made by him was rejected by the Full Court in its Meeting held on 19.05.2001. High Court after looking into the over all career profile of the appellant held that it was totally untenable to allege that there was any bias or mala fide against him.

15. In view of the above mentioned conclusions the High Court rejected the petition.

16. Thereupon, the petitioner filed Review Petition before the High Court. However, the same was withdrawn with a view to filing SLP against Judgment delivered by High Court in W.P.(C) No. 2362 of 2002. After withdrawing the review application, the appellant filed Special Leave Petition no. 314 of 2009 which on leave being

granted is treated as an appeal.

17. The facts of the appeal arising out of Special Leave to Appeal No.27200 of 2008 are as under :-

The appellant, i.e., Mr. M.S. Rohilla was appointed as Civil/Sub. Judge, in the Subordinate Judicial Services under the Government of Delhi on May 05, 1972. On June 17, 1975 he was confirmed as an officer in the Delhi Judicial Services. He was granted benefit of Selection Grade on June 3, 1980 and was promoted to the Higher Judicial Services as Additional District & Sessions Judge on November 1, 1989. One anonymous complaint was received against him and, after looking into the same, he was reverted to Subordinate Judicial Services, as Civil/Sub. Judge by order dated February 15, 1995. Feeling aggrieved, he had preferred W.P. No. 4589 of 1995, challenging his reversion. Meanwhile, he was served with a communication from the High Court of Delhi dated October 23, 1997 wherein his A.C.R. for the year 1996 was graded as `C'. Thereupon he made a representation dated December 3, 1997 against the said grading. The representation made by him was rejected on December 2, 1998. The record does not show that any steps were taken by him to challenge order dated December 2, 1998 by which his representation against ACR for the year 1996 was rejected.

18. Thereafter he received a communication from the High Court in the year 1999 whereby he was informed that in his A.C.R. for the year 1997, he was awarded `B' remark. Again by a communication dated February 9, 2000 forwarded by the High Court he was informed that in his ACR for the year 1998 he was graded `B'. He made a representation against his ACR for the year 1998 in the year 2000. In July, 2000 the Screening Committee consisting of Hon'ble Judges of the High Court of Delhi reviewed the case of the appellant with that of several other judicial officers. As observed earlier, the deliberations made by the Screening Committee indicate that it did not find, for the time being, any officer who could be retired prematurely in public interest as on July 17, 2000.

A copy of the abstracts from the Minutes of the meeting of the Full Court of High Court of Delhi held on July 22, 2000 produced on the record of the case, indicates that Full Court had accepted the report of the Screening Committee. In July, 2000 he received a communication from the High Court mentioning that his ACR for the year 1999 was graded as `B'. On 21.9.2001 he received a communication from the High Court with reference to the ACR for the year 2000 whereby he was informed that he was given Grade `C'. It was further mentioned therein that his integrity was found doubtful. By the said communication, he was given six weeks time to make a representation against the said grading. According to Mr. Rohilla, when he was awaiting the response to his previous representations made with reference to the ACRs for the years 1998 and 1999 and when he was yet to respond to the ACR for the year 2000, he received communication dated September 27, 2001 from the High Court prematurely retiring him from service under rule 56(j) of the fundamental Rules read with Rule 33 of the Delhi Subordinate Judicial Services.

According to him he made a representation requesting the respondents to supply the material upon which decision was taken to prematurely retire him from service. As he was called upon to make a representation against the ACR for the year 2000 within six weeks from the date of communication dated 21.9.2001, he filed representation dated November 3, 2001 against the same but of no avail. Ultimately, in the month of March 2002 he filed W.P. No. 1965 of 2002 challenging order of his compulsory retirement from service. Pending the said Writ Petition, the Full Bench of the High Court hearing W.P. No. 4589 of 1995 which was directed against the order of his reversion dated February 15, 1995, allowed the same by judgment dated May 29, 2006. The result was that he stood reinstated to his post of Additional District Judge under Higher Judicial Services.

19. As is evident from the memorandum of the writ petition, the order retiring him compulsorily from service was challenged on several grounds. On notice being served the respondents namely the Lieutenant Governor as well Delhi High Court had filed their separate counter affidavits controverting the claims advanced by Mr. Rohilla in his writ petition. It was emphasized in the counter affidavit filed on behalf of the High Court that the petition filed by Mr. Rohilla proceeded on a mistaken assumption and incorrect presumption that he was retired compulsorily from service only upon consideration of adverse remark `C-' recorded indicating that his integrity was doubtful for the year 2000. It was mentioned in the reply that the Full Court as also the Screening Committee consisting of the two learned Judges of the Delhi High Court, had considered his entire service record which revealed that his performance as a judicial officer was either average or below average and his integrity was found doubtful and despite the passage of time, nothing was done by him to improve his performance/image. The reply affidavit proceeded to mention that in so far as the case of Mr. Rohilla was concerned, in its report dated September 21, 2001 the Screening Committee had inter alia recorded as under :

> "The officer has earned throughout his career `B' (Average) or C (Below Average) or `C' (Below Average-Integrity doubtful) reports except for three years i.e. 1979-80, 1981-82 and 1988 when he could earn only B+ (Good) and for the years 1997, 1998 and 1999 when he could earn `B' reports. In the inspection note dated 29th March 1973, the concerned Hon'ble Inspecting Judge observed that he needed to be watched so far as his efficiency as a Judicial Officer was concerned. The District & Sessions Judge, Delhi, in his report dated 31.5.1973 for the year 1972-73, mentioned that "a complaint was pending against him in the High Court about the return of ornaments in a theft case to a party which was not entitled". Further, as directed by a Single Bench of this Court by its order dated 24.7.1973 passed in Criminal Revision No. 428/72 in re: Ramavtar Vs. State, the findings of the District & Sessions Judge, Delhi, regarding the conduct of Mr. M.S. Rohilla, then working as Judicial Magistrate, First Class, were placed on his personal file. It had been noted in the aforesaid findings of the District & Sessions Judge, that Mr. M.S. Rohilla should not have shown so much indecent haste in passing the order for handing over the ornaments to Jawahar Lal Gupta. Though, the District & Sessions Judge, Delhi, did not find any malafide on the part of Mr. M.S. Rohilla, still according to him, he acted in a most injudicious manner due to his inexperience and suppression of the material facts by the S.H.O. while sending the report in the above noted case. The Full Court recorded `C' (Below

Average) remarks for the year 1972-73).

In the Inspection Report dated 29.4.1978 for the year 1977-78, the District & Sessions Judge, Delhi, observed regarding the reputation for honesty and impartiality of the officer that there were complaints of which the High Court was seized then. In the Inspection Report dated 7.12.1985, for the year 1983-84, his efficiency as Judicial Officer was termed as a mediocre. As regards his reputation for honesty and impartiality, the District & Sessions Judge observed that he must improve his reputation which suffered a set back when he was Additional Rent Controller. In Inspection Report for the same year, the District & Sessions Judge, Delhi, reported that he did not enjoy good reputation for honesty among lawyers and general public and that he was in the habit of drinking and gambling almost daily. In the Inspection Report dated 7.12.1985 for the year 1984-85, the concerned Hon'ble Inspecting Judge had observed that his reputation was under cloud although no specific instance of corruption had come to his notice, but watch was called for.

Following adverse remarks were recorded on the work and conduct of Sh. M.S. Rohilla for the years mentioned against each :-

Years	Adverse Remarks
1972-73	`C' (Below Average)
1993	`C' (Below Average) (Integrity doubtful)
1994	`C' (Below Average) (Integrity doubtful)
1994	`C' (Below Average) (Integrity doubtful)
1995	`C' (Below Average)
1996	`C' (Below Average)
2000	(Integrity doubtful)

Keeping in view the over all record of the

officer, we recommend that Mr. M.S. Rohilla be prematurely retired in public interest forthwith."

20. According to the High Court it was on this basis that the case of Mr. Rohilla was recommended for premature retirement in public interest which recommendation was accepted by the Full Court.

21. It may be stated that the entire service record of Mr. Rohilla was called for by the Division Bench. After taking holistic view of the matter and the facts projected in the counter affidavit of the High Court, the Division Bench of the High Court expressed irresistible opinion that Mr. Rohilla was rightly retired compulsorily from service under FR 56 (j) of Fundamental Rules. According to the High Court, it was totally misconceived and untenable on the part of Mr. Rohilla to argue that the so-called material relied upon was only one sided view or it was not known what was the material placed before the High Court before decision to retire him compulsorily from service was taken. The High Court found that there was no force in the contention that his case could have been considered for the purpose of compulsory retirement only in the year 2001 when he was about to attain the age of 55 years in the year 2002. The High Court further concluded that it was also a wrong premise adopted by Mr. Rohilla that the High Court had based its decision solely on the basis of his ACR for the year 2000 wherein it was recorded that his integrity was doubtful. What was concluded by the High Court was that the exercise undertaken clearly revealed that his entire service record was taken into consideration. In view of the above-mentioned conclusions as well as other findings, the High Court has rejected the writ petition filed by Mr. Rohilla giving rise to the appeal by him.

22. It is relevant to notice that though each appeal will have to be decided on its own facts, certain common points were raised in three appeals by the learned counsel for the appellants for consideration of this Court. Therefore this Court proposes to deal with those common points raised by the learned counsel for the appellants for consideration.

23. Normally, an aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds, namely, (a) that the requisite opinion has not been formed, or (b) that the decision is based on collateral grounds, or (c) that it is an arbitrary decision. If the civil servant is able to establish that the order of compulsory retirement suffers from any of the above infirmities, the court has jurisdiction to quash the same. In the light of the above stated position of law, the present appeals will have to be considered.

24. The first point which was argued was that once a review was conducted by the Screening Committee of the High Court on 17.7.2000 on the appellants' reaching the age of 50 years, which was accepted by the Full Court, no second review on the same material was permissible and the service record of the appellants for compulsory retirement, could have been reviewed only upon their reaching the age of 55 years and not before reaching the said age.

What was maintained was that the Screening Committee as well as the Full Court had considered the entire service record of the appellants and found that there was no material to recommend compulsory retirement of any of them as a result of which the previous record of each appellant before July, 2000 could not have been again considered for compulsory retirement. According to the

learned counsel for the appellants, the effect of decision of the Full Court of the High Court dated July, 22, 2000 reflected in its resolution, passed on the recommendation of the report of the Screening Committee dated July 17, 2000, which was submitted after considering the entire service records and ACR Dossiers of each of the appellant, not to retire any of them prematurely, was that there was a bar to consider again the case of the appellants for premature retirement and, therefore, the order of compulsory retirement was liable to be set aside. In support of this plea, reliance was placed on the decision of this Court in State of U.P. Vs. Chandra Mohan Nigam & Others (1977) 4 SCC 345.

25. In reply to the above mentioned argument, it was pointed out by the learned Counsel for the High Court that the decision of the Committee dated July 17, 2000 was purely tentative in nature and was not a final decision. According to the learned counsel for the High Court, the use of the expression "for the time being" in the Minutes of the Committee would show that it was not a final decision meaning thereby the matters were to be considered in detail on a later date and final decision was to be taken later on. What was maintained was that the decision of the Committee dated July 17, 2000 was not a decision dealing each officer separately but general in nature and, therefore the phrase "for the time being" should be construed to mean that it was not a final decision and the cases of the appellants were deferred for being considered in future.

Elaborating this contention, it was submitted that the Division Bench of the High Court has considered the question as to whether it was consideration on merits or a case of deferment and rightly held that the exercise done in July 2000 was not final and the cases of the appellants were deferred. According to the learned counsel, the High Court, in the impugned judgment, was perfectly justified in holding that there was no consideration on merits of the cases of the appellants before 21.9.2001, and, therefore, the orders passed in cases of the appellants retiring them compulsorily from service were not bad in law.

Without prejudice to above mentioned contention, it was argued that even if it was assumed for the sake of argument that there was consideration of the cases of the appellants in July, 2000, even then there was no legal bar in again considering their cases in next year particularly when it had come to the notice of the High Court that their integrity was doubtful. The learned counsel for the High Court emphasized that in State of U.P. Vs. Chandra Mohan Nigam and others (Supra) there was consideration of cases of the respondents therein for compulsory retirement at the age of 50 years and next consideration could have been only at the age of 55 years but in the said case an exception to this rule is carved out, namely, if material in regard to doubtful integrity of the officer comes to light, the authority need not wait till the officer attains the age of 55 years and action can be taken immediately. Placing reliance on the decision of this Court in Government of T.N. Vs. P.A. Manickam (1996) 8 SCC 519, it was argued that the consideration of an employee for compulsory retirement at the age of 50 years is only the starting point and not the end point, and, therefore, after 50 years at any time case of an officer can be considered for compulsory retirement. The learned counsel brought to the notice of this Court, the observations made in Nawal Singh Vs. State of U.P. and another (2003) 8 SCC 117 to the effect that "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" and argued that it was always open to the High Court to consider the case of the appellants at

any point of time though earlier a decision was taken not to retire any of the appellants compulsorily from service in the public interest.

According to the learned counsel for the High Court the consideration of the cases of the appellants in September, 2001 was in fact not a review of the earlier decision taken by the Screening Committee in July 2000 but it was a fresh consideration and on review of record of service of the appellants the High Court was justified in retiring the appellants compulsorily from service. Placing reliance on the decision in Haryana State Electricity Board Vs. K.C. Gambhir (1997) 7 SCC 85, it was pointed out that therein the case of the officer was considered at the age of 50 years and he was permitted to continue in service and again his case was considered at the age of 55 years and he was permitted to continue in service but he was compulsorily retired at the age of 57 years and such a decision was upheld by this Court by rejecting the plea that his case could have been considered only again at the age of 60 years.

26. This Court has considered the rival contentions raised by the learned counsel for the parties on the question whether the cases of the appellants for compulsory retirement, could have been considered again before they had reached the age of 55 years, when the Screening Committee had already considered their cases for compulsory retirement on their attaining the age of 50 years on July 17, 2000, and had not recommended their compulsory retirement which recommendation was accepted by the Full Court of the High Court.

27. In this connection it is relevant to notice certain facts emerging from the record of the case. Rule 27 of the Delhi Higher Judicial Service Rules, 1970 provides that in respect of matters regarding the conditions of service for which no provision or insufficient provision has been made in those rules, the rules, directions or orders for the time being in force, and applicable to the officers of comparable status in the Indian Administrative Service and serving in connection with the affairs of the Union of India, shall regulate the conditions of such service.

Thus Rule 16(3) of the All India Services (Death-

cum-Retirement Benefits) Rules, 1958 (`the Rules of 1958' for short) would be applicable to the officers of the Delhi Higher Judicial Service. Clause (3) of Rule 16 of the Rules of 1958 was substituted in 1972 specifying the age of premature retirement to be 50.

Rule 16(3), after its substitution, reads as under: -

> "16 (3) The Central Government may, in consultation with the State Government concerned and after giving a member of the Service at least three months, previous notice in writing, or three months pay and allowance in lieu of such notice, require that member to retire in public interest from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice."

Therefore, the matter regarding pre-mature retirement of officers of the Delhi Higher Judicial Service who have completed 30 years of qualifying service or attained 50 years of age, has to be reviewed in the light of Rule 16(3) of the Rules of 1958 quoted above.

28. Similarly, in case of officer of Delhi Judicial Service, Rule 33 of Delhi Judicial Service Rules, 1970 provides that in respect of all such matters regarding the conditions of service for which no provision or insufficient provision has been made in the Rules, the Rules or orders for the time being in force, and applicable to Government servants holding corresponding posts in connection with the affairs of the Union of India, shall regulate the conditions of such service.

29. In Delhi Judicial Service Rules, 1970, no provision for compulsory retirement has been made.

Therefore, Fundamental Rule 56(j), which is, for the time being in force and applicable to Government servants holding corresponding posts envisaged under the Delhi Judicial Service Rules, 1970, shall regulate the matter of compulsory retirement of officers of Delhi Judicial Service. Fundamental Rule 56(j), which is applicable to officers of Delhi Judicial Service, reads as under:-

> "(j) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice:
>
> (i) if he is in Group `A' or Group `B' service or post in a substantive, quasi permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
>
> (ii) in any other case after he has attained the age of fifty-five years.

Provided that nothing in this clause shall apply to a Government servant referred to in clause (e), who entered Government service on or before the 23rd July, 1966."

It would be seen that FR 56(j) gives absolute rights to the appropriate authority to retire any government servant who entered the service before attaining the age of 35 years, after he has attained the age of 50 years.

30. The cases of the officers of Delhi Higher Judicial Service and Delhi Judicial Service were laid before the Screening Committee constituted by the Administrative Committee vide its resolution dated December 15, 1992 and also for laying down the guidelines before reviewing the cases of direct recruits. The Screening Committee decided as under :-

> "Government Rules be applied."

31. It may be stated that after reviewing the cases of the officers of Delhi Higher Judicial Service and Delhi Judicial Service upto 31.12.1994, the Full Court in its meeting held on February 7, 1996 had

taken the following decision :-

> "It was decided that for screening of the cases of the officers of the Delhi Higher Judicial Service and Delhi Judicial Services, now falling within the zone of consideration for retirement in public interest, a Screening Committee consisting of Hon'ble Mr. Justice Jaspal Singh and Hon'ble Mr. Justice J.K. Mehra be constituted and the report of the Committee be laid before the Full Court for consideration."

Consequent upon the retirement of Hon'ble Mr. Justice J.K. Mehra, it was decided to reconstitute the composition of the Screening Committee by Full Court in its meeting held on January 17, 1998. The aforesaid reconstituted Screening Committee reviewed the cases of several judicial officers in its meeting held on July 17, 2000 and gave its report which reads as under: -

> "We have gone through the service record including the ACR dossiers of the officers of Delhi Higher Judicial Service and Delhi Judicial Service who are within the zone of consideration for being considered for premature retirement in public interest at the age of 50/55 years.
>
> We do not find, for the time being, any officer who can be retired prematurely in public interest."

32. As ordered by the then Hon'ble the Chief Justice of the Delhi High Court, the report of the Screening Committee was to be laid before the Full Court for consideration and orders.

33. In the meeting of the Full Court held on July 22, 2000 the report of the Screening Committee was considered. The true copy of extracts from the Minutes of the Meeting of the Full Court held on Saturday, the July 22, 2000 at 11.00 A.M. in the Judge Court reads as under :-

> "Agenda : 6. To review the case of the officers of DHJS and DJS who are within the zone of consideration for being considered for premature retirement in public interest - Report dated 17.7.2000 of the Screening Committee consisting of Hon'ble Mr. Justice Arun Kumar and Hon'ble Mr. Justice S.K. Mahajan constituted pursuant to Full Court decision dated 17.01.1998.
>
> Minutes : "The report of the Committee was accepted."

34. On a fair reading of the report of the Screening Committee quoted above read with the resolution adopted by the Full Court in its meeting dated July 22, 2000, it becomes evident that the cases of the appellants alone for premature retirement were not considered but cases of all the officers of Delhi Higher Judicial Service as well as that of officers belonging to Delhi Judicial Service who were within the zone of consideration for being considered for premature retirement in public interest at the age of 50/55 years were also considered. The record of the case would indicate that cases of number of officers belonging to Delhi Higher Judicial Service and Delhi Judicial Service were considered on one day, and that too, in the Meeting of the Screening Committee held on July

17, 2000. The record indicates that case of each officer was not considered individually. No reasons could be recorded by the Screening Committee as to how earlier entries adversely reflecting on the integrity of the appellants, were dealt with or viewed. Under the circumstances, the observation that "We do not find, for the time being, any officer who can be retired prematurely in public interest" will have to be regarded as tentative and not final in nature.

When the Screening Committee stated that it did not find for the time being any officer who could be retired prematurely in public interest, it meant that the cases of all the officers were deferred to be considered in near future. It would be seen that FR 56(j) gives absolute right to the appropriate authority to retire any Government servant who has entered the service before attaining the age of 35 years, after he has attained the age of 50 years and in other cases after he has attained the age of 55 years. There is no rule prohibiting consideration of case of an officer for compulsory retirement before he attains the age of 55 years, even if his case is earlier considered at the age of 50 years. There is nothing in the Delhi Judicial Service Rules or Delhi Higher Judicial Service Rules or the Indian Administrative Service Rules laying down a prohibition that if the case of an officer for compulsory retirement is considered at the age of 50 years, his case cannot be reconsidered till he attains the age of 55 years. As held by this Court in Government of T.N. (Supra), 50 years is only the starting point and not the end point which means that after 50 years at any time case of an officer can be considered for compulsory retirement.

35. In State of U.P. Vs. Chandra Mohan Nigam and Others (1977) 4 SCC 345, the facts were that the respondent, i.e., Mr. Chandra Mohan Nigam was recruited in the Indian Administrative Service in Uttar Pradesh Cadre. He joined service on March 23, 1947. He was appointed as Judicial Member of the Board of Revenue in 1969 and had attained the age of 50 years on December 29, 1967. By an order dated August 22, 1970 the President of India, in consultation with the Government of Uttar Pradesh, in pursuance of the power conferred by sub-rule (3) of Rule 16 of the All India Services (Death-cum-

Retirement Benefits) Rules 1958 had passed the order of compulsory retirement of the respondent in the public interest on the expiry of three months from the date of service of the order. That was challenged by Mr. Chandra Mohan Nigam by a writ petition before the Allahabad High Court. The learned Single Judge had allowed the same on the grounds of contravention of the justiciable and binding rules and because the order was based on consideration of irrelevant matters and was also vitiated by bias.

Feeling aggrieved both the Union of India and the State of U.P. had appealed to the Division Bench of the High Court.

The Division Bench of the High Court by an order dated April 13, 1973, dismissed both the appeals by a common judgment.

The Division Bench had not agreed with all the reasons given by the learned Single Judge and had quashed the order of compulsory retirement holding that the decision of the Central Government to retire Mr. Nigam was passed on collateral facts and was, therefore, invalid.

36. In appeals by certificates, this Court had noticed the service career of the respondent. It was noticed that the respondent during his service career, had the following adverse entries in his character role -

(1) A warning was administered to him on December 6, 1953, for taking undue interest in the ejectment of tenants from a house owned by him at Lucknow, (2) another warning was issued to him on August 31, 1962, for having acquired a car from Varanasi Corporation while working as the Administrator of the said Corporation, (3) he was once warned for not observing proper rules and procedure for utilizing the fund earmarked for lower-income group housing scheme towards the construction of a market (1956- 1957) and (4) he was placed under suspension in 1964 in connection with some strictures passed on him by the Election Tribunal in a case relating to the Gorakhpur Parliamentary Constituency elections.

37. With regard to the last entry, he had filed appeal before High Court and the strictures were expunged upon which the order of suspension was set aside and he was reinstated in service. However, the aforesaid entry continued to be part of his character roll at least till December 20, 1969. In pursuance of sub-Rule (3) of Rule 16 and in consonance with the certain instructions, the State Government of U.P. in October 1969 had constituted a Review Committee to review the records of the members of the Service who were to attain or had attained the age of 50 years. The list of officers considered by this Committee had included the respondent Mr. Nigam. The Committee had not recommended any of the Officers including Mr. Nigam for premature retirement and, on the other hand, had recommended that they should be continued in service. The State Government had accepted the report of the Review Committee and communicated its decision to the Central Government. On December 20, 1969, the Secretary, Ministry of Home affairs of the Central Government had addressed a letter wherein a reference was made to the adverse remarks in the character roll of Mr. Nigam including suspension of Mr. Nigam which was set aside on strictures being expunged by the High Court, and a view was expressed that his was a fit case in which proposal for his premature retirement under Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 should have been considered. After noticing the fact that the State Government had not recommended the compulsory retirement the letter proceeded to mention that the Central Government was not knowing if there were any particular reasons for taking a different view or whether it was a case of over-sight. By the said letter the Central Government had expressed opinion to have the considered views of the State Government before any decision was taken by the Central Government.

On January 29, 1970, the Chief Secretary to the State Government had replied that the Review Committee had considered the character roll and the merits of the case of Mr. Nigam and found that he was suitable for continuing in service, and that the decision of the Committee was accepted by the State Government. In the reply, it was mentioned that the State Government's decision in the matter was taken after thorough consideration and that the State Government did not consider it necessary to go into this question again. No adverse decision contrary to the recommendation of the State Government was taken and communicated by the Central Government to the State Government in pursuance of the recommendation of the first Review Committee in October, 1969. However, the State Government, on its own motion, constituted a second Review Committee in May 1970. Again

before this Committee also the case of all the officers who had attained the age of 50 years including those whose cases had been reviewed earlier in October 1969 was also placed for consideration. Thus Mr. Nigam's case was considered again by the Second Review Committee.

This time the Committee recommended that the two officers one of whom was Mr. Nigam should be prematurely retired. The State Government having accepted this recommendation forwarded the same to the Central Government. The Central Government asked the State Government to send the proceeding of the Review Committee and on receipt of the proceedings, the Central Government agreed with the views of the State Government and passed the order of compulsory retirement of Mr. Nigam.

38. It is in the light of these facts that this Court made following observations in paragraph 29 of the reported decision which read as under :

> "29. The correct position that emerges from Rule 16(3) read with the procedural instructions is that the Central Government, after consultation with the State Government, may prematurely retire a civil servant with three months' previous notice prior to his attaining 50 years or 55 years, as the case may be. The only exception is of those cases which had to be examined for the first time after amendment of the rule substituting 50 years for 55 years where even officers, who had crossed the age of 50 years, even before reaching 55, could be for the first time reviewed. Once a review has taken place and no decision to retire on that review has been ordered by the Central Government, the officer gets a lease in the case of 50 years upto the next barrier at 55 and, if he is again cleared at that point, he is free and untrammelled upto 58 which is his usual span of the service career. This is the normal rule subject always to exceptional circumstances such as disclosure of fresh objectionable grounds with regard to integrity or some other reasonably weighty reason."

39. So far as present case is concerned, no final decision was taken by the Screening Committee in case of any officer of Delhi Higher Judicial Service and Delhi Judicial Service, but a tentative decision was taken that at that stage no officer was found fit who could have been retired compulsorily from service. This is not a case wherein a review had taken place and a positive final decision to continue the appellants in service, was taken by the Screening Committee. In the case of Chandra Mohan Nigam (Supra), the case of Mr. Nigam was considered positively for retirement but a specific recommendation was made to continue him in service, by the Review Committee which was accepted by the State Government and except expressing an opinion that having regard to certain adverse remarks in his character roll, this was a fit case in which proposal for his premature retirement should have been considered, the Central Government, after receipt of reply from the State Government, had not taken any adverse decision contrary to the recommendation of the State Government, which was in turn based on the recommendation of the First Review Committee.

Further, in Chandra Mohan Nigam's case itself this Court has in para 27 of the reported decision hastened to add that when integrity of an officer is in question, that will be an exceptional

circumstance for which order may be passed in respect of such an officer under Rule 16(3), at any time, if other conditions of that rule are fulfilled apart from the choice of disciplinary action which will also be open to the Government. Thus an exception to the rule, that if there is consideration at the age of 50, next consideration can be only at the age of 55 is made in Chandra Mohan Nigam's case itself by holding that if material in regard to doubtful integrity of the officer comes to light, the authority need not wait till the officer attains the age of 55 years and action can be taken immediately. The integrity of all the three Judicial Officers was found to be doubtful and, therefore, their compulsory retirement from service cannot be held to be illegal.

40. At this stage, a reference may be made to the decision of this Court in Haryana State Electricity Board vs. K.C. Gambhir (1997) 7 SCC 85. Though the decision may not be strictly applicable to the facts of the present cases, but certain observations made therein are relevant to understand the issue posed for consideration of this Court in the present appeals.

The respondent therein was an employee of Haryana State Electricity Board. He was promoted as Executive Engineer on February 19, 1977. When he attained the age of 50 years, his case for compulsory retirement was reviewed on November 30, 1986. His integrity was reported doubtful in the year 1985-86, yet it was decided not to retire him compulsorily because his representation against adverse remarks was pending. On attaining 55 years of age, his case for compulsory retirement was again reviewed on November 30, 1991. AT that time also, departmental proceedings were pending against him for a serious act of misconduct and, therefore, it was decided not to retire him. The enquiry was over on August 4, 1993 and thereafter, he was compulsorily retired on February 3, 1994 by giving him three months' notice. The retirement came nine months before his date of superannuation. Thus, on two earlier occasions, it was decided not to retire him compulsorily, but on third occasion, order of compulsory retirement was passed. The order of compulsory retirement was set aside by the High Court of Punjab and Haryana in the writ petition filed by the respondent. This Court, while allowing the appeal filed by the Haryana State Electricity Board, observed that though the appellant could have taken the action of compulsorily retiring the respondent from service earlier, it acted very fairly and allowed him to remain in service till his representation against the adverse remarks was considered on the first occasion and subsequently, till the departmental enquiry was completed.

The clear meaning of the above-mentioned observation is that even during the pendency of his representation against adverse remarks and during the pendency of departmental enquiry, Haryana State Electricity Board could have taken action of compulsorily retiring the respondent from service earlier. Thus on the basis of service record, the three Judicial Officers could have been retired compulsorily from service but a tentative decision was taken not to retire them from service at that point of time. But this tentative decision would not preclude the authority concerned from passing orders of compulsory retirement later on.

41. In Government of T.N. vs. P.A. Manickam AIR 1996 SC 2250, what is ruled by this Court is that the rule permits the appropriate authority to retire any Government servant after he has attained the age of 50 years or after he has completed 25 years of qualifying service and the rule prescribes a starting point, which is the attaining of the age of 50 years or the completion of 25 years of service,

but it does not prescribe a terminus ad quam and it is, therefore, open to the appropriate authority under the rule to consider the case of a Government servant for premature retirement at any time after the aforementioned starting points. Thus, after the so-called review of the cases of the two appellants and the deceased officer in July, 2000, their cases were rightly reviewed again and orders retiring them compulsorily from service were rightly passed against them.

42. In Union of India Vs. M.E. Reddy (1980) 2 SCC 15, the respondent Mr. Reddy started his career in the Police Service as Deputy Superintendent of Police in the year 1948. In the year 1958 he was appointed to the Indian Police Service. On July 31, 1958, he was promoted as Superintendent of Police in State of Andhra Pradesh and held charge of a number of Districts from time to time. He was awarded the President Police Medal on August 14, 1967 but the award of the said medal was withheld as he was placed under suspension by the Government on August 11, 1967 pending departmental enquiry into a number of allegations made against him.

In 1969, he filed a writ petition in the Andhra Pradesh High Court praying that the order of suspension passed against him be quashed as it was passed on false allegations and at the instance of Mr. K. Brahmanand Reddy who was then Chief Minister of the State. The writ petition was admitted by the High Court and an interim order staying all further proceedings in departmental enquiry was passed.

When the writ came up for hearing, the State Government represented to the High Court that, it had decided to withdraw order of suspension and reinstate Mr. Reddy. The State Government withdrew the order of suspension and directed that the period of suspension be treated as on duty.

Thereafter, on application being filed by Mr. Reddy, the writ petition was dismissed as withdrawn. Because of these developments the departmental proceedings against him were dropped and he was given Selection Grade, which was withheld because of the suspension order. By an order dated April 28, 1971, he was promoted to the rank of Deputy Inspector General of Police. During the course of the departmental enquiry an entry to the effect that "he had concocted a case of attempt to rape against one Mr. Venugopal Reddy to please the then Inspector General of Police Mr. Nambiar and there was a strong suspicion about his integrity"

> was made in his A.C.R. He made a representation to expunge the entry. The Government decided that as statements were factual, it would be sufficient if entry was made to the effect that the suspension was subsequently lifted and the period was treated as on duty and that further action was not necessary as there were no good grounds to hold him guity of any of the charges leveled against him.
>
> However, on August 7, 1975, a Review Committee consisting of the Chief Secretary, Home Secretary and Inspector General of Police considered various cases of police officers including that of Mr. Reddy and made recommendations. On September 11, 1975, the Government of India, after considering report of the Review Committee, ordered compulsory retirement of Mr. Reddy in public interest.

Thereupon Mr. Reddy filed writ petition in the Andhra Pradesh High Court. The Single Judge allowed the petition and quashed order of compulsory retirement. That decision was upheld by the Division Bench of the High Court, in appeal filed by State of Andhra Pradesh and Union of India. Therefore, the two appeals by certificate were filed before this Court.

It was argued before this Court on behalf of Mr. Reddy that the order impugned was passed on materials which were not existent inasmuch as there were no adverse remarks against Mr. Reddy who had a spotless career throughout and if such remarks had been made in his confidential reports, they would have been communicated to him under the rules. This contention was negatived in following terms: -

"Here we might mention that the appellants were fair and candid enough to place the entire confidential personal file of Reddy before us starting from the date he joined the Police Service and after perusing the same we are unable to agree with Mr. Krishnamurty Iyer that the officer had a spotless career. The assessment made by his superior officers from the very beginning of his service until the impugned order was passed show that at the best Reddy was merely an average officer and that the reports show that he was found to be sometimes tactless, impolite, impersonated, suffered from other infirmities, though not all of them were of a very serious nature so as to amount to an adverse entry which may be communicated to him. We might also mention that before passing an order under Rule 16(3) it is not an entry here or an entry there which has to be taken into consideration by the Government but the overall picture of the officer during the long years of his service that he puts in has to be considered from the point of view of achieving higher standard of efficiency and dedication so as to be retained even after the officer has put in the requisite number of years of service. Even in the last entry which was sought to be expunged through a representation made by Reddy and other entries made before that it appears that the integrity of Reddy was not above board."

While allowing the appeals of the Union of India and State of Andhra Pradesh, this Court has emphasized the importance of adverse entry. After referring to observations made by this Court in para 27 of the decision in the case of Sate of U.P. vs. Chandra Mohan Nigam (1977) 4 SCC 345, wherein the Court had hastened to add that when integrity of an officer is in question that will be an exceptional circumstance for which order may be passed in respect of such a person under Rule 16(3) at any time, if other conditions of the rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government, this Court M.E. Reddy's case, has held as under: -

"Thus, even according to the decision rendered by this Court in the aforesaid case the fact that an officer is of doubtful integrity stands on a separate footing and if he is compulsorily retired that neither involves any stigma nor any error in the order."

Further, in the process of interpreting the decision in Chandra Mohan Nigam's case, this Court in para 25 of the reported decision inter-alia observed that "we have already indicated above that this

Court made it absolutely clear that when a person was retired under Rule 16(3) on the ground that his integrity was in question, the observations made by this Court would have no application."

43. Apart from the poor judicial performance, the appellants were also retired compulsorily from service, on the ground that their integrity was doubtful.

44. The mandate of Article 235 of the Constitution is that the High Court has to maintain constant vigil on its subordinate judiciary as laid down by this Court in High Court of Judicature at Bombay through its Registrars Vs. Shirishkumar Rangrao Patil and Another (1997) 6 SCC 339. In the said case, this Court has explained that the lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and need to stem it out by judicial surgery lies on the judiciary itself by its self- imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution, and therefore, it would be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self introspection.

45. Judicial service is not a service in the sense of an employment as is commonly understood. 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.

There is no manner of doubt that 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. As explained by this Court in Chandra Singh and others Vs. State of Rajasthan & another (2003) 6 SCC 545, the power of compulsory retirement can be exercised at any time and that the power under Article 235 in this regard is not in any manner circumscribed by any rule or order. What is explained in the said decision by this Court is that Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the deadwood, and this constitutional power of the High Court cannot be circumscribed by any rule or order. Moreover while upholding the orders of compulsory retirement of judicial officers who were working in the State of U.P., following weighty observations have been made by this Court in para 13 of decision in case of Nawal Singh vs. State of U.P. and another (2003) 8 SCC 117: -

> "13. It is to be reiterated that for keeping the stream of justice unpolluted, repeated scrutiny of service records of judicial officers after a specified age/completion of specified years of service provided under the Rules is a must by each and every High Court as the lower judiciary is the foundation of the judicial system. We hope that the High Courts would take appropriate steps regularly for weeding out the dead wood or the persons polluting the justice delivery system."

46. Under the circumstances this Court is of the firm opinion that the principle laid down in Chandra Mohan Nigam's case will not be applicable to the facts of the appellants who were Members of the Delhi Higher Judicial Service.

47. Even if it is assumed for the sake of argument that the principle laid down in Chandra Mohan Nigam's case would apply with all the vigour to the facts of the appellants also, this Court finds that in respect of all the three officers, after the previous consideration in July, 2000, new material in the form of ACR for the year 2000 "`C' integrity doubtful" had come into existence and had become a part of their respective service records when the Full Court in its meeting held on 13.9.2001 recorded their ACRs for the year 2000. Thus the consideration by the Committee constituted for the purpose of evaluating the cases of the officers to ascertain whether they should be compulsorily retired, was subsequent in point of time, namely, on 21.09.2001 and as such it will be fully covered by the exception spelt out in Chandra Mohan Nigam's Case itself in regard to consideration of cases again before the age of 55 years. The consideration of the cases of the three judicial officers on the basis of ACRs dated September 13, 2001 recorded by the Full Court of the Delhi High Court is not a review of the earlier decision of July, 2000. It is a fresh consideration. It is review of the record of service of the officers and not review of the earlier decision and such review is not only permissible but is perfectly legal and valid.

48. The net result of the above discussion is that this Court does not find any substance in the first contention raised on behalf of the appellants and the same is hereby rejected.

49. The next contention which was raised by the learned counsel for the appellants was that the order passed by the Lt. Governor compulsorily retiring the appellants from service, without seeking aid and advice of his Council of Ministers, as required by Article 239(AA)(4) of the Constitution is ultra vires as well as illegal and therefore, the same should not be sustained. Elaborating the said point, it was argued that the order retiring the appellants compulsorily from service was passed by the Lt. Governor on receiving the recommendation of the High Court of Delhi, pursuant to the resolution of the Full Court passed on September 22, 2001 acting under and in exercise of control over subordinate judiciary under Article 235 of the Constitution, but the powers of the Lt. Governor of N.C.T. of Delhi under Article 239(AA)(4) which are analogous to powers of a Governor under Article 163(1) of the Constitution can be exercised only on aid and advice of his Council of Ministers, and therefore, the order passed by the Lt. Governor retiring the appellants compulsorily from service are bad in law. In support of these submissions the learned counsel for the appellants placed reliance on: (a) Samsher Singh Vs. State of Punjab and Another, (1974) 2 SCC 831 = AIR 1974 SC 2192 and (b) M.M.Gupta and Others Vs. State of Jammu & Kashmir and Others, (1982) 3 SCC

412.

50. The learned counsel for the respondent High Court pleaded that the contention that Lt. Governor while passing the Order of compulsory retirement ought to have been advised by his Council of Ministers was not advanced before the High Court and therefore was not considered by the High Court and this plea should not be permitted to be raised for the first time in the appeals arising by grant of special leave.

It was pointed out that in the appeal arising out of SLP No. 314 of 2009 in the list of dates filed by Mr. P.D. Gupta it was pleaded that this plea was urged before the High Court but the same was not considered before the High Court and if that be so the remedy of the appellant is to go back to the

High Court and file the review petition. What was emphasized was that Mr. Gupta had in fact filed a review petition but later on withdrawn the same without seeking any liberty to agitate this point in the Special Leave Petition or in any other proceedings and therefore, he is not entitled to urge this plea. It was emphatically pointed out by the learned counsel for the High Court that in other appeals, it is not stated by the appellants that such a plea was urged before the High Court and they having not urged such a plea in the memorandum of Special Leave Petitions, the plea raised at the delayed and belated stage should not be considered by this Court. In support of this argument, the learned counsel for the respondent relied upon decisions in (a) Daman Singh and Others Vs. State of Punjab and Others, (1985) 2 SCC 670, (b) State of Punjab and Another Vs. H.B. Malhotra, (2006) 11 SCC 169, (c) Mohd. Akram Ansari Vs. Chief Election Officer and Others, (2008) 2 SCC 95 and (d) Ex-Constable Ramvir Singh Vs. Union of India and Others, (2009) 3 SCC 97.

51. Without prejudice to the above stated contention, it was argued by the learned counsel for the respondent that under Article 235, it is High Court which has to exercise supervision and control over the subordinate judiciary and not the State Government and therefore, recommendations of the High Court in regard to compulsory retirement were/are binding on the State Government/the Governor. The learned counsel pleaded that the Lt. Governor has to act on the recommendation of the High Court and there is no illegality, if the Governor on the recommendations of the High Court had passed order retiring the appellants compulsorily from service.

To buttress this submission, the learned counsel for the respondent placed reliance on (a) Samsher Singh Vs. State of Punjab and Another, (1974) 2 SCC 831 = AIR 1974 SC 2192, (b) State of Haryana Vs. Inder Prakash Anand H.C.S. & Others, (1976) 2 SCC 977, (c) Baldev Raj Guliani Vs. The Punjab and Haryana High Court & Others, (1976) 4 SCC 201, (d) Registrar, High Court of Madras Vs. R. Rajaiah, (1988) 3 SCC 211, (e) Registrar (Admn.), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by LRs. & Another, (1999) 7 SCC 725, (f) Tej Pal Singh Vs. State of U.P. & Another, (1986) 3 SCC 604 and (g) T. Lakshmi Narasimha Chari Vs. High Court of A.P. and Another, (1996) 5 SCC 90.

This Court has heard the learned counsel for the parties at great length on the question whether the order passed by the Lt. Governor compulsorily retiring the appellants from service without seeking aid and advice of his Council of Ministers as required under Article 239 (AA)(4) of the Constitution is ultravires and illegal.

52.It is true that the appellant Mr. Gupta has stated in the Memorandum of Special Leave Petition that the point that Lt. Governor could not have passed order retiring him compulsorily from service on the recommendation of the High Court and without seeking aid and advice of his Council of Ministers, was urged before the High Court, but the said point was not considered by the High Court. It is rightly argued by the learned counsel for the respondent that even in such an eventuality, the only course/remedy available to the said appellant was to approach the High Court seeking review of the Judgment. The record shows that the appellant Mr. Gupta had filed review application before the High Court, but the same was unconditionally withdrawn. At the time of withdrawal of review application, the appellant had not sought any liberty to agitate this point in Special Leave Petition before this Court. So far as two other appellants are concerned they have not stated that

such a point was argued on their behalf before the High Court and was not dealt with by the High Court.

Under the circumstances a question arises whether the learned counsel for the appellants should be permitted to raise such a plea before this Court at the stage of final disposal of the matters.

53.Ordinarily the Supreme Court would not entertain a new prayer at the hearing of the appeal under Article 136 when it is not raised in the High Court or in the petition seeking leave to appeal. Point not raised before the High Court but taken in Special Leave Petition will not ordinarily be allowed to be agitated before this Court. The consistent practice of this Court is that the Court does not permit a party to raise a new point which has not been argued before the High Court. However, there are exceptional cases in which this Court may permit a party to raise a new plea before this Court for the first time, for example, where the plea raised does not require investigation of new facts or where the question raised is a pure question of law or where the point is likely to be raised in future affecting such cases or where the respondent has dealt with the point raised for the first time, in the reply filed before this Court and the learned counsel for the parties are heard at length and in great detail. This Court having gone through the decisions relied upon by the learned counsel for the respondent, finds that no absolute proposition of law is laid down in any of the decisions that in no circumstances a new plea can ever be permitted to be raised before this Court if the same was not raised before the High Court.

The question sought to be raised is a pure question of law for which factual foundation is already laid. The learned counsel for the parties have been heard at great length on the new point sought to be raised first time before this Court. The authorities cited at the Bar have been read and re-read to emphasize respective view points. Therefore, having regard to the facts of the case, this Court has permitted the learned counsel for the appellants to raise the point and heard the learned counsel for the parties in detail.

54.In order to answer the question posed for the consideration of the Court, it will be useful to notice the contents of Articles 163(1) and 239(AA) (4) of the Constitution.

55.Article 163 makes provision that Council of Ministers has to aid and advice Governor. It inter alia provides that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. The said Article further provides that if any question arises whether any matter is or is not a matter in respect of which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. Sub Article (3) of Article 163 stipulates that the question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court.

56.Article 239AA inserted by the Constitution (Sixty-ninth Amendment) Act, 1991 enacts special provisions with respect to Delhi. Clause (1) of said Article states that as from the date of

commencement of the Constitution (Sixty-

ninth Amendment) Act, 1991 which is February 1, 1992 the Union Territory of Delhi shall be called the National Capital Territory of the Delhi and the administrator thereof appointed under Article 239 shall be designated as the Lieutenant Governor. Sub-clause (2) deals with the constitution of Legislative Assembly for the National Capital Territory and total number of seats of the assembly etc. Sub-clause (3) of the Article confers power on the Legislative Assembly to make laws for the whole or any part of the National Capital Territory. Sub-clause (4) with which the court is concerned, inter alia provides that there shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion.

57. A meaningful and conjoint reading of Article 163 of the Constitution makes it clear that the Governor has to act on aid and advice of the Council of Ministers with the Chief Ministers as the head except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. In view of the provisions of sub Article (4) of Article 239AA of the Constitution, the Lt.

Governor has to take aid and advice of the Council of Ministers in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws. Article 235 provides that the control over the subordinate courts is vested in High Court of a State. The expression "control" has been elucidated in several reported decisions of this Court, the leading case being Shamsher vs. State of Punjab (1974) 2 SCC 831.

The "control" vested in the High Court is a mechanism to ensure independence of the subordinate judiciary. Under Article 235 of the Constitution, the control over the subordinate judiciary, vested in the High Court, is exclusive in nature, comprehensive in extent and effective in operation and it is to subserve a basic feature of the Constitution, i.e., independence of judiciary. Among others things, it includes - (a) (i) disciplinary jurisdiction and a complete control subject only to the power of Governor in the matter of appointment, dismissal, removal and reduction in rank of District Judges and initial posting and promotion to the cadre of District Judges, (ii) in Article 235 the word `Control' is accompanied by the word `vest' which shows that the High Court alone is made the sole custodian of the control over the judiciary, and (iii) Suspension from service of a member of judiciary with a view to hold disciplinary enquiry; (b) transfers, promotion and confirmation of such promotions, of persons holding posts in judicial service, inferior to that of District Judge; (c) transfer of District Judges; (d) recall of District Judges posted on ex-cadre posts or on deputation on administrative posts; (e) award of selection grade to the members of the judicial service, including District Judges and grant of further promotion after their initial appointment to the cadre; (f) confirmation of the District Judges who have been on probation or are officiating after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233; and (g) premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts.

58.The scheme envisaged by the Constitution does not permit the State to encroach upon the area reserved by Articles 233, 234 and first part of Article 235 either by legislation or rules or executive instructions.

59.Article 235 has no concern with the conferring of jurisdiction and powers on the Court but it only relates to administrative and disciplinary jurisdiction over the subordinate Courts. Therefore, the conferment of power of the prescribed authority by the State Legislature on the Judicial Officers cannot be construed to mean that the power of the High Court under Article 235 is inoperative or inchoate as High Court alone is the sole authority competent to initiate disciplinary proceedings against Subordinate Judicial Officers or to impose various punishments including passing of order of compulsory retirement on verification of the service record. The State is least competent to aid and advise Governor on such subjects. While the High Court retains the power of disciplinary control over the subordinate judiciary including power to initiate disciplinary proceedings, suspend them during enquiries and impose punishment on them, but when it comes to the question of dismissal, removal or reduction in rank or termination of services of judicial officers on any count whatsoever, the High Court becomes the recommending authority and cannot itself pass the orders. The formal order to give effect to such a decision has to be passed by the State Governor on the recommendations of the High Court. In disciplinary proceedings if an action is taken by the High Court against the judicial officer the recommendations made by the High Court bind the Governor and he is left with no discretion except to act according to the recommendations. The Governor, under the scheme of Articles 233, 234 and 235 of the Constitution cannot refuse to act in terms of the recommendations made by the High Court on the ground that he is not aided and advised by the Council of Ministers and this is the true import of total control of the High Court over the Subordinate Judiciary.

60.In the light of the above mentioned principles the decisions sited at the bar will have to be considered.

61. In Shamsher Singh (Supra), there were two appellants, namely, Shamsher Singh and Ishwar Chand Agarwal. The two appellants were members of the Punjab Civil Services (Judicial Branch) and were appointed on probation. The services of appellant Shamsher Singh were terminated by an order dated April 27, 1967, by the Governor of Punjab under Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, with immediate effect. By an order dated December 15, 1969, the services of the appellant Ishwar Chand Agarwal were terminated under Rule 7(3) in Part `D' of the Punjab Civil Services (Judicial Branch) Rules, 1951, by the Governor of Punjab, on the recommendation of the High Court of Punjab and Haryana.

Both of them had filed writ petitions in the Punjab and Haryana High Court against the termination of their services. The writ petitions were dismissed and, thereafter, they had filed appeals to the Supreme Court.

62.The first contention raised by appellant Ishwar Chand Agarwal that he completed his initial period of probation of two years on November 11, 1968 and by reason of the fact that he continued in service after the maximum period of probation, he became confirmed by necessary implication, was

negatived by this Court on the ground that notice dated October 4, 1968 was given at the end of the probation and the period of probation got extended till the inquiry proceedings commenced by the notice under Rule 9 came to an end.

63.The second contention on behalf of Ishwar Chand Agarwal that termination of his service was by way of punishment on the basis of charges of gross misconduct by ex-parte enquiry conducted by the Vigilance Department found favour with this Court.

64.This Court accepted the plea that the termination of his services was based on the findings of misconduct contained in about eight complaints, which were never communicated to him and High Court had abdicated the control vested in it under Article 235 by not having an enquiry through judicial officers subordinate to the control of the High Court, but asking the Government to enquire through the Vigilance Department.

65.The abdication of the control over the subordinate judiciary by the High Court under Article 235 in favour of the Government and the stand of the State that the High Court wanted the Government to be satisfied about the suitability of Mr. Agarwal was found to be something obnoxious and had annoyed and shocked this Court. Therefore, this Court, without mincing the words, authoritatively, clearly and for future guidance of one and all, expressed itself in the following strong words in para 78 of the reported decision.

> "78. The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange that the High Court which had control over the subordinate judiciary asked the Government to hold an enquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court. That is the broad basis of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to enquire through the Director of Vigilance."

Having laid down, abovementioned proposition of law, this Court deprecated the abdication of control by the High Court by observing that the High Court denied itself the dignified control over the Subordinate Judiciary and after holding that the order of termination of the services of Ishwar Chand Agarwal was clearly by way of punishment, set aside the same.

66. In view of what is categorically, clearly and authoritatively held in paragraph 78 of the reported decision there is no manner of doubt that it is ruled by Seven Judge Bench of this Court in case of Shamsher Singh (supra), that the Governor has to act on the recommendation of the High Court and

that is the broad basis of Article 235.

The appellant Shamsher Singh was appointed on May 1, 1964 as Subordinate Judge. He was on probation. On March 22, 1967, the Chief Secretary issued a notice to him substantially repeating the same charges which had been communicated to him by the Registrar on December 15, 1966, and asked the appellant to show cause as to why his services should not be terminated as he was found unsuitable for the job. The appellant gave an answer. On April 29, 1967, the services of the appellant were terminated.

Shamsher Singh, in the context of the Rules of Business, contended that the removal of a Subordinate Judge from service was a personal power of the Governor and was incapable of being delegated or dealt with under the Rules of Business.

This Court held that the Governor can allocate the business of the Government to the Ministers and such allocation is no delegation and it is an exercise of executive power by the Governor through the Council or officers under the Rules of Business. Therefore, the contention of the appellant that the order was passed by the Chief Minister without the formal approval of the Governor was found to be untenable and it was held that the order was of the Governor.

Thereafter, this Court noted the contents of the show-

cause notice, reply given to the said notice by the appellant, protection granted by Rule 9, etc. and held that it was clear that the order of termination of services of Shamsher Singh was one of punishment and set it aside.

In the light of the contention raised on behalf of Shamsher Singh in the context of the Rules of Business, this Court, in para 88 of the said decision, held that the President and the Governor act on the aid and advice of Council of Ministers in executive action and the appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution.

67. Thus what is observed by the Supreme Court, in para 88 of the reported decision, will have to be read in the light of the submission made on behalf of the appellant Shamsher Singh and subject to clear, unambiguous and manifest proposition of law laid down in para 78 of the reported decision. Therefore, it is wrong to contend that in Shamsher Singh's case (supra), it is ruled by this Court that the Governor is bound to act as per the aid and advice tendered by the Council of Ministers and not on the recommendations of the High Court in the matter of termination of services of the judicial officers on any count whatsoever.

68. In another decision relied upon by the learned counsel for the appellants, i.e., in M.M. Gupta and Others (Supra), this Court held that in the appointment of Judicial Officers or removal of Judicial Officer by the Government, there has to be effective consultation between the Government and the High Court. This decision basically interprets Section 109 of the Constitution of Jammu and

Kashmir. In the State of Jammu and Kashmir certain vacancies for the post of District and Sessions Judge occurred for being filled up out of the eligible Judicial Officers. The High Court at a meeting of all the Judges considered the merits and suitability of all the eligible candidates and by a resolution recommended to the Government the name of some officers in supersession of others. The Government then called for a copy of the High Court's resolution and Annual Confidential Reports of the candidates. In response, the high Court sent its detailed comments justifying its recommendation as also reasons for the supersession of seniors along with the resolution and confidential reports as desired by the Government. Thereafter, a Cabinet sub-

committee considered the matter. But the government neither communicated the recommendation of the Committee to the High Court, nor sought the High Court's views thereon and thereafter without any further intimation or discussions made the appointments in accordance with seniority. Those officers whose names were recommended by the High Court filed a writ petition under Article 226 challenging validity of the appointments. The Court granted a stay of operation of the appointment order pending disposal of the matter regarding admissibility of the petition. But ultimately in view of the agreement between the parties, the High Court declined to hear the petition on the ground of judicial propriety and vacated the order of stay and granted a certificate of fitness to the petitioners to file an appeal in the Supreme Court, holding that the point involved in the writ petition relating to the interpretation of Section 109 of the Constitution of Jammu and Kashmir, raised a substantial question of law of general public importance and the case was a fit one in which a certificate of fitness should be granted. Against this order the State filed a special leave to appeal in this Court. The petitioners also filed a writ petition under Article 32 substantially for the same reliefs claimed in their earlier writ petition under Article 226. Allowing the aggrieved officers appeal with costs against the State Government, this Court held that the power to make appointment of District Judges vested in the Governor is conditioned by the mandatory duty on the part of the Governor to consult the High Court, and the High Court has to decide whether a person is fit for promotion and make recommendations accordingly. This Court further held that the consultation has to be made with the High Court alone and not with any other authority, because the High Court by virtue of its control over the officers must be considered to be the best judge of the ability and suitability of any officer as it has in its possession all the relevant materials regarding the performance of the officers.

Therefore, this Court in the said case ruled that it should generally be left to the High Court to decide as to which of the officers will best serve the requirements in furtherance of the cause of justice. In this decision in no uncertain terms this Court after considering previous judgments on the point held that the High Court should judge the suitability for promotion in a detached manner taking into consideration all material facts and relevant factors and normally, as a matter of rule, the recommendations made by the High Court should be accepted by the State Government and the Governor should act on the same. If the decision is construed in a pragmatic manner there is no manner of doubt that this decision also takes a view that Governor has to act on the recommendations made by the High Court. Ultimately, this Court found that the appointments of respondent Nos. 3, 4, 5, 6 therein made by the State Government were in violation of the Constitutional provisions and were therefore, set aside.

69. In State of Haryana Vs. Inder Prakash Anand H.C.S. and Others (Supra), the respondent joined the Punjab Civil Service, (Executive Branch) in November, 1954. He was selected for the Judicial Branch of the Punjab Civil Service on May 1, 1965. On November 15, 1968 he was promoted as officiating Additional District and Sessions Judge. He was due to attain the age of 55 years on February 24, 1971. The State referred his case to the High Court for its recommendation whether he should be retired at the age of 55 years or he should be retained in service till the age of 58 years, i.e., the age of superannuation. The High Court recommended that the respondent should be reverted to his substantive post of Senior Subordinate Judge/Chief Judicial Magistrate and that he might be allowed to continue in service till the age of 58 years. The State again sought recommendation about his retirement. The High Court recommended against compulsory retirement. The State Government did not agree and retired the respondent compulsorily. The High Court in a Writ Petition filed by the respondent quashed the order. In appeal this Court examined the scope of Article 235 of the Constitution and held that control which is vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment including dismissal, removal, reduction in rank and the initial posting and of the initial promotion to District Judges. According to this Court when a case is not of removal or dismissal or reduction in rank, any order in respect of exercise of control over the judicial officers is by the High Court and cannot be by any other authority. What is explained by this Court is that there cannot be dual control and if the State Government is to have the power of deciding whether a judicial officer should be retained in service after attaining the age of 55 years up to the age of 58 years, that will seriously affect the independence of the Judiciary and take away the control vested in the High Court. What is ruled by this Court in the said decision is that it is unsound to contend that the Governor and not the High Court has the power to retire a judicial officer compulsorily under Section 14 of the Punjab General Clauses Act.

70.In paragraph 18 of the reported judgment this Court has held that the control vested in the high Court is that if the High Court is of the opinion that a particular judicial officer is not fit to be retained in service, the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment, but in such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendation of the High Court. According to this Court, if the recommendation of the High Court is not held to be binding on the State, the consequences will be unfortunate. What is highlighted by this Court in the said decision is that it is in public interest that the State will accept the recommendation of the High Court. As a principle, it is stated in the said decision that the vesting of complete control over the subordinate Judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State.

71. In Baldev Raj Guliani (1976) 4 SCC 201, this Court had occasion to consider and interpret the provisions of Articles 235, 311 and 234 read with Article 309 of the Constitution.

In the said case adverse reports having been received against the appellant while he was acting as Subordinate Judge, disciplinary proceedings were initiated against him by the High Court. After preliminary enquiry, he was suspended and on the findings of the departmental enquiry and on consideration of his explanation in reply to show-

cause notice under Article 311(2), the High Court recommended to the Government that the officer should be removed from service. The State Government although on its own showing was inclined to agree with the views of the High Court and with the recommendations made by it, however referred the case to the Haryana Public Service Commission for advice purporting to act under Article 320(3) of the Constitution. The Commission advised that no case had been made out against the appellant and that he should be exonerated. The Governor accepted the advice of the Commission and passed the order for reinstatement. The High Court, however, did not issue any posting order as it regarded the order of reinstatement by the Governor illegal. It even requested the Government to review its order.

72.Thereupon the appellant filed a writ petition praying for a writ of mandamus directing the high Court to issue an appropriate order of posting and also for a mandamus directing the Government to disburse full salary to him and other consequential reliefs. While the writ petition was pending the Governor compulsorily retired him.

Subsequently a Full Bench of the High Court delivered its judgment holding the order of reinstatement violative of Article 235, for the Governor was bound to accept the recommendation of the High Court as regards the subordinate judiciary. Therefore, the appellant preferred an appeal before this Court. Three questions were considered by this Court in the said case - (1) whether the Government is bound under the Constitution to accept the recommendation of the High Court and to pass an order of removal of the judicial officer, (2) whether consultation with the Public Service Commission in the matter of a disciplinary proceeding relating to the judicial officer under the control of the High Court is unconstitutional. Was the order of reinstatement passed by the Government constitutionally valid, and (3) if not what will be position of the officer on the date of the officer's compulsory retirement? Was an order of removal possible after that date?

73.After considering the scheme envisaged by different provisions of the Constitution this Court held that the appointing authority of a Subordinate Judge under Article 235 as well as under the Appointment Rules, is the Governor because under Article 235 itself the Subordinate Judge will be governed by the Appointment Rules made under Article 234 read with Article 309. This Court then considered the submission of the appellant that the Governor being the appointing authority, both under Article 235 and the Appointment Rules read with the Punishment Rules, is the final authority to pass the order of removal of the officer and is not under any constitutional obligation to be bound by the recommendation of the High Court and also the assertion made on behalf of the High Court that Article 235 leaves no option to the Governor to refuse to accept its recommendation in a disciplinary matter in respect of a judicial officer. This Court found that the High Court in making its recommendation to the Governor for passing the order of removal, had rightly conceded the authority of the Governor to pass the same. Thereafter the Court considered the question : Is the recommendation of the High Court binding on the Governor, and answered that since the Governor is the ultimate authority to pass the order for removal it will not be correct always to insist that he has no authority even under certain extraordinary circumstances to decline to accept, forthwith, the particular recommendation, but ordinarily and as a matter of graceful routine, recommendations of the High Court are and should be always accepted by the Governor, because that is ordinarily so and should be in practice the rule as a matter of healthy convention.

74.In paragraph 28, of the reported decision this Court has held that the quality of exclusive control of the High Court does not appear to be whittled down by the constitutional device of all orders issued in the name of the Governor as the head of the State administration and, therefore, when the High Court exercising disciplinary control over the subordinate judiciary finds, after a proper enquiry, that a certain officer is guilty of gross misconduct and is unworthy to be retained in judicial service and, therefore, recommends to the Governor his removal or dismissal, it is difficult to conceive how and under what circumstances such a recommendation should be rejected by the Governor acting with the aid and advice of the Council of Ministers or, as is usually the case, of one of the ministers. It is explained by this Court in the said decision that in this context more than once the Supreme Court has observed that the recommendation of the High Court in respect of judicial officers should always be accepted by the Governor, and this is the inner significance of the constitutional provisions relating to the subordinate judiciary. This Court further noted that whenever in an extraordinary case, rare in itself, the Governor feels, for certain reasons that he is unable to accept the High Court's recommendations, these reasons will be communicated to the High Court to enable it to reconsider the matter, but it is, however, inconceivable that without reference to the High Court, the Governor would pass an order which had not been earlier recommended by the High Court. This Court further explained that such a course will be contrary to the contemplation in the Constitution and should not take place. In para 36 of the reported decision , this Court has explained the power and/or role of Governor in such matters and laid down the law authoritatively as under : -

> "36. The Governor could not have passed any order on the advice of the Public Service Commission in this case. The advice should be of no other authority than the High Court in the matter of judicial officers. This is the plain implication of Article 235. Article 320(3)(c) is clearly out of place so far as the High Court is concerned dealing with judicial officers. To give any other interpretation to article 320(3)(c) will be to defeat the supreme object underlying Article 235 of the Constitution specially intended for the protection of the judicial officers and necessarily the independence of the subordinate judiciary. It is absolutely clear that the Governor cannot consult the Public Service Commission in the case of judicial officers and accept its advice and act according to it. There is no room for any outside body between the Governor and the High Court."

It may be noted that in the case of Baldev Raj Guliani (supra), this Court had considered the case of Shamsher Singh and thereafter has laid down above mentioned proposition of law.

In the decision delivered in case of Baldev Raj Guliani, this Court has not ruled that the Governor has to act in aid and on advice of the Council of Ministers. What is ruled is that the recommendation made by the High Court is binding on the Governor.

75. Again in the case of Regist rar, High Court of Madras Vs. R. Rajaiah, (1988) 3 SCC 211, the High Court had decided to compulsorily retire the respondents but had not communicated the recommendations to the Governor for passing formal orders of compulsory retirement. Instead the High Court had passed the orders of compulsory retirement under FR 56 (d). As there was no formal

order by the Government under FR 56 (d), this Court held that the impugned orders of the High Court were ineffective.

Ultimately, this Court did not interfere with the view expressed by the Division Bench of the High Court on merits of the matter and held that the High Court was perfectly justified in quashing orders of compulsory retirement. However, this Court considered the scope of Article 235 of the Constitution and held that the test of control is not the passing of an order against a member of the subordinate judicial service, but the power to take such decision and action. The Court explained that so far as the members of the subordinate judicial service are concerned, it is the Governor, who being the appointing authority, has to pass an order of compulsory retirement or any order of punishment against such a member, but passing or signing of such orders by the Governor will not necessarily take away the control of the High Court vested in it under Article 235 of the Constitution. This Court further explained that an action against any Government servant consists of two parts. Under the first part, a decision will have to be made whether an action will be taken against the Government servant and in the second part, the decision would be carried out by a formal order. Having explained this, this Court proceeded to hold that the power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the High Court against a member of the subordinate judicial service and such a decision is arrived at by holding an enquiry by the High Court against the member concerned, and after the High Court comes to the conclusion that some action either in the nature of compulsory retirement or by the imposition of a punishment, as the case may be, has to be taken against the member concerned, the High Court will make a recommendation in that regard to the Governor and the Governor will act in accordance with such recommendation of the High Court by passing an order in accordance with the decision of the High Court. What is ruled by this Court is that the Governor cannot take any action against any member of a subordinate judicial service without and contrary to the recommendation of the High Court. After review of the law on the subject matter till then, this Court has made following pertinent observations, in para 18 of the reported decision: -

> "18. The control of the High Court, as understood, will also be applicable in the case of compulsory retirement in that the High Court will, upon an enquiry, come to a conclusion whether a member of a subordinate judicial service should be retired prematurely or not. If the High Court comes to the conclusion that such a member should be prematurely retired, it will make a recommendation in that regard to the Governor inasmuch as the Governor is the appointing authority. The Governor will make formal order of compulsory retirement in accordance with the recommendation of the High Court."

Again, in para 20 of the reported decision, this Court, while holding that so long as there is no formal order by the Governor, the compulsory retirement, as directed by the High Court would not take place, has, inter-alia observed that "It may be that the power of the Governor under Rule 56(d) of the Fundamental Rules is very formal in nature, for the Governor merely acts on the recommendation of the High Court by signing an order in that regard". The proposition of law laid down in this case also supports the contention of the respondents that in the matter of disciplinary action against a member of the Subordinate Judicial Service, the Governor has no option, but to

pass final order on the basis of the recommendation of the High Court.

76. It may be mentioned that in this case, i.e., Registrar, High Court of Madras (supra), this Court has referred to the decision of Shamsher Singh (supra), and has thereafter ruled that Governor has to act in accordance with the recommendation of the High Court by passing an order in accordance with the decision of the High Court and the Governor cannot take any action against any member of the judicial service without and contrary to the recommendation of the High Court.

77. This Court further finds that in Registrar (Admn.) High Court of Orissa, Cuttack (Supra), decision of Orissa High Court on administrative side was required to be forwarded to the Governor for passing an order of the compulsory retirement but this was not done, and an order of compulsory retirement was passed by the High Court itself.

This decision was challenged before the high Court on judicial side. The writ petition was decided in favour of judicial officers holding that the order dated February 5, 1987 compulsorily retiring them was bad in law. In appeal, this Court considered the scope of Articles 233 to 235 of the Constitution as well as Articles 55 and 368 in the light of basic feature of the Constitution namely independence of the judiciary. After noticing several previous decisions on the point, this Court considered the powers of the High Court and held that the Governor is bound by the recommendation of the High Court but the constitutional propriety requires that the recommendation would be sent by the High Court to the Governor and formal order would be passed by the Governor. Explaining the scope of Articles 234, 235 and 311 of the Constitution, a five-Judge Constitution Bench of this Court has held that while the High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiries and impose punishment on them but when it comes to the question of dismissal, removal, reduction in rank or termination of the services of the judicial officer, on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order. What is ruled by the Constitution Bench is that the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court.

78.In the said case, this Court found that by not making an order of compulsory retirement on the recommendation of the High Court, a peculiar situation was created in the sense that the judicial officers were neither in service nor were they technically out of service nor had they performed any work and, therefore, in order to balance the equities between the parties and in order to give litigation a quietous, this Court had requested the Governor of the State to pass a formal order of compulsory retirement of judicial officers.

79.On review of law, what is ruled by the Constitution Bench of this Court is that undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court, and it is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor.

80. In Tej Pal Singh Vs. State of U.P. and Another, (1986) 3 SCC 604, the State Government moved the High Court in the year 1967 with proposal of premature retirement of the appellant, an Additional District and Sessions Judge. On July 8, 1968 the Administrative Judge agreed with the proposal of premature retirement after giving three months' notice. The Governor passed the order of retirement on August 24, 1968. Three days thereafter, on August 27, 1968 the Administrative Committee of the High Court gave its approval to the recommendation of the Administrative Judge earlier communicated to the State Government.

Thereafter on August 30, 1968 the Additional Registrar transmitted the order of retirement to the appellant. It was actually served on the appellant on September 3, 1968.

The question for consideration in this case before this Court was whether the order of compulsory retirement passed against the appellant satisfied the requirements of the Constitution. While allowing the appeal, this Court held that the impugned order of premature retirement passed by the Governor without having before him the recommendation of the Administrative Committee or of the Full Court was void and ineffective. What is ruled is that it is for the High Court, on the basis of assessment of performance and all other aspects germane to the matter to come to the conclusion whether any particular judicial officer under its control is to be prematurely retired and once the High Court comes to the conclusion that there should be such retirement, the Court recommends to the Governor to do so, and the conclusion is to be of the High Court since the control vests therein. After noticing the Rules obtaining in the Allahabad High Court, this Court held that the Administrative Committee could act for and on behalf of the Court but the Administrative Judge could not have done so and therefore his agreeing with the Government proposal was of no consequence and did not amount to the satisfaction of the requirement of Article

235. After noting that it was only after the Governor passed the order on the basis of such recommendation, that the matter was placed before the Administrative Committee before the order of retirement was actually served on the appellant, this Court held that the deviation was not a mere irregularity which could be cured under Rule 21 of the Rules of Court, 1952 by the ex post facto approval given by the Administrative Committee to the action of the Governor after the order of premature retirement had been passed and the error committed was an incurable defect amounting to an illegality. This Court took notice of the decision of the Court in State of U.P. Vs. Batuk Deo Pati Tripathi, (1978) 2 SCC 102, and ruled therein that the Governor can pass an order of compulsory retirement only on the recommendation made by the High Court or the Administrative Committee. Further, in paragraph 18 of the reported decision, this Court observed that in view of the control over the members of lower judiciary vested in the High Court by virtue of Article 235 of the Constitution, the Governor is bound, in each case, to act in accordance with the recommendation of the High Court. This decision also takes the firm view that the recommendation made by the High Court is binding on the Governor.

81.Thus, it is fairly well settled by catena of decisions of this Court that in the matter of compulsory retirement of a Judicial Officer the Governor cannot act on the aid and the advice of Council of Ministers but has to act only on the recommendation of the High Court. Though the Lt.

Governor is a party to these appeals, he has not raised any plea that the recommendation made by the Delhi High Court was not binding on him and he could have acted in the matter only on the aid and advice of his Council of Ministers. Thus the order of the Lt. Governor compulsorily retiring the appellants without seeking aid and advice of his Council of Ministers is neither ultra vires nor illegal and is rightly sustained by the High Court. The Governor could not have passed any order on the aid and advice of Council of Ministers in this case. The advice should be of no other authority except that of the High Court in the matter of judicial officers. This is the plain implication of Article 235.

Reliance on Article 239AA(4) is entirely out of place so far as the High Court is concerned, dealing with the judicial officers. To give any other interpretation to Article 239AA(4) will be to defeat the supreme object underlying Article 235 of the Constitution, specially intended for protection of the judicial officers and necessarily independence of the subordinate judiciary. It is absolutely clear that the Governor cannot take the aid and advice of his Council of Ministers in the case of judicial officers and accept its advice and act according to it. There is no room for any outside body between the Governor and the High Court. Therefore, this Court does not find any substance in this contention also and the same is rejected.

82.The next point which was argued on behalf of the appellants was that the appellants were made to retire compulsorily from service without affording them an opportunity to make representation against the ACR of the year 2000 wherein they were graded as "`C' doubtful integrity", which was the basis for their compulsorily retirement, and, therefore, the orders retiring them compulsorily from service are liable to the set aside. It was vehemently contended that in such circumstances when ACR of 2000 wherein the appellants were graded as "`C' doubtful integrity" which was the sole basis of passing the order of compulsory retirement, the respondents were under legal obligation to look into the representation of the appellants against those adverse remarks but before the appellants could made the representation against the said ACR, orders retiring them compulsorily from service were passed, and, therefore, the orders impugned should be regarded as arbitrary, unfair and unreasonable.

83.In the appeal arising from SLP No. 27028 of 2008 deceased Mr. R.S. Verma had stated that adverse remark for the year 2000 was communicated to him vide letter dated September 21, 2001 by the Registrar, Vigilance, Delhi High Court which was received by him on September 25, 2001, whereas on the same date i.e. on September 21, 2001 the Screening Committee had taken decision to retire him prematurely from service which was accepted by the Full Court in its meeting held on September 22, 2001 and though in the letter communicating ACR it was mentioned that he was entitled to made representation within six weeks, the order of compulsory retirement against him was passed on September 27, 2001 which was communicated to him on September 28, 2001 and as he was deprived of making any representation against the ACR for the year 2000, the order retiring him from service compulsorily was bad in law.

84.In the Appeal arising from Special Leave Petition No.27200 of 2008 it was contended by M.S. Rohilla that in the ACR for the year 2000, recorded by the Full Court on May 24, 2001, he was graded `C-Integrity doubtful' and he was communicated the said ACR and was asked to submit his representation within six weeks, but within three days thereafter i.e. on September 27, 2001

decision was taken to retire him compulsorily from service and, therefore, the order retiring him compulsorily from service was illegal.

85.In Appeal arising out of Special Leave Petition No. 314 of 2009 it was contended on behalf of P.D. Gupta that the Full Court had recorded remarks `C-Integrity Doubtful' for the year 2000, in his case, which was communicated to him vide letter dated September 22, 2001 and he was asked to file his representation against the remarks within six weeks, but without waiting for the representation to be filed by him, the High court upon the adverse remarks of 2000 had recommended his premature retirement to the Lt.

Governor under F.R. 56(j) read with Rule 33 of the DJS Rules, and therefore the order retiring him from service should have been set aside by the High Court.

86.As against this it was emphasized on behalf of the respondents that this Court not only has taken the view that a single adverse entry reflecting on the integrity of the officer is sufficient because there has to be constant vigil by the High Court over subordinate judiciary but this Court has further taken the view that it is not necessary that such an entry should have been communicated or that the officer concerned should have an opportunity to represent against the said adverse entry or that before it could be taken into consideration and acted upon, the representation should have been considered or rejected.

87.The High Court in the impugned judgment, while considering this plea raised on behalf of the appellants, has inter alia held that action under FR 56(j) need not await the final disposal of such representation. It may be mentioned that in support of their respective contentions, the learned counsel have cited several decisions for the guidance of the Court but this Court proposes to refer to only those judgments which are relevant for deciding the issue.

88.Compulsory retirement from service is not considered to be a punishment. Under the relevant rules, an order of dismissal is a punishment laid on a Government servant when it is found that he has been guilty of misconduct or the like. It is penal in character because it involves loss of pension which under the Rules have accrued in respect of the service already put in. An order of removal also stands on the same footing as an order of dismissal and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment, one who is removed is. A compulsory retirement is neither dismissal nor removal and differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences, in as much as the person retired is entitled to pension and other retiral benefits, proportionate to the period of service standing to his credit.

89. As explained by a Bench of three Hon'ble Judges of this Court in State of U.P. vs. Shyam Lal Sharma AIR 1971 SC 2151, in ascertaining, whether the order of compulsory retirement is one of punishment, it has to be ascertained, whether in the order of compulsory retirement there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned. Secondly, the order of compulsory retirement will be indicative of punishment or penalty if the order will involve loss of benefits already earned. Thirdly, as order of compulsory

retirement on the completion of 25 years of service or an order of compulsory retirement made in the public interest to dispense with further service will not amount to an order for dismissal or removal as there is no element of punishment. Fourthly, an order of compulsory retirement will not be held to be an order in the nature of punishment or penalty on the ground that there is possibility of loss of future prospects, namely, that the officer will not get his pay till he attains the age of superannuation, or will not get an enhanced pension for not being allowed to remain a few years in service and being compulsorily retired. So far as the present cases are concerned, this Court finds that there are no words in the orders of compulsory retirement, which throw any stigma against the two appellants and the deceased officer.

Therefore, it is not necessary for this Court to make inquiry into the Government files to discover whether any remark amounting to stigma could be found in the files. The reason is that it is the order of compulsory retirement, which alone is for examination. If the order itself does not contain any imputation or charge against the two appellants and the deceased officer, the fact that considerations of misconduct or misbehaviour weighed with the High Court in coming to its conclusion to retire them compulsorily does not amount to any imputation or charge against them. It is not established from the order of compulsory retirement itself that the charge or imputation against the appellants was made a condition for exercise of the power. Therefore, the orders of retirement cannot be considered to be one for dismissal or removal in the nature of penalty or punishment.

90.Now, the policy underlying Article 311(2) of the Constitution is that when it is proposed to take action against the servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. The confidential reports provide the basic and vital inputs for assessing the performance of an officer and his advancement in his career as also to serve the data for judging his comparative merits when the questions arise for his confirmation, promotion, grant of selection grade, crossing E.B., retention in service beyond the age of 50 years etc. Maintenance of such records is ordinarily regulated by administrative rules or instructions.

Writing the confidential report is primarily and essentially an administrative function. Normally tribunals/Courts are loath to interfere in cases of complaints against adverse remarks and to substitute their own judgment for that of the reporting or reviewing officers. It is because these officers alone are best suited to judge the qualities of officials working under them and about their competence in the performance of official duties entrusted to them.

Despite fear of abuse of power by prejudiced superior officers in certain cases, the service record contained in the confidential reports, by and large, reflects the real personality of the officer. The object of writing confidential reports and making entries therein is to give an opportunity to the public servant to improve excellence. Article 51 A(j) of the Constitution enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group.

Therefore, the officer entrusted with the duty to write C.R. has a public responsibility and trust to write the C.R. objectively, fairly and dispassionately while giving, as accurately as possible the statement of facts on an overall assessment of performance of the subordinate officer.

Opportunity of hearing is not necessary before adverse remarks because adverse remarks by themselves do not constitute a penalty. However, when the order of compulsory retirement is passed, the authority concerned has to take into consideration the whole service record of the officer concerned which would include non-

communicated adverse remarks also. Thus it is settled by several reported decisions of this Court that un- communicated adverse remarks can be taken into consideration while deciding the question whether an official should be made to retire compulsorily or not.

91. In State of U.P. and Another Vs. Bihari Lal (1994) Supp (3) SCC 593, this Court has taken the view that even an adverse entry which has been set aside in appeal on technical grounds could also be taken into consideration.

The plea that since the last entry, i.e., `C-Integrity Doubtful' for the year 2000 was communicated almost around the same time when the order of compulsory retirement was communicated and as the appellants had no opportunity to represent against the same, it ought not to have been taken into consideration and that the consideration of the said last adverse entry vitiates the order of compulsory retirement has no merits. This Court has consistently taken the view that an order of compulsory retirement is not a punishment and does not have adverse consequence and, therefore, the principles of natural justice are not attracted. What is relevant to notice is that this Court has held that an un-communicated adverse A.C.R. on record can be taken into consideration and an order of compulsory retirement cannot be set aside only for the reason that such un-communicated adverse entry was taken into consideration. If that be so, the fact that the adverse A.C.R. was communicated but none of the appellants had an opportunity to represent against the same, before the same was taken into consideration for passing order of compulsory retirement, cannot at all vitiate the order of compulsory retirement.

92. In State of U.P. and another vs. Biharilal (supra), this Court has ruled that before exercise of the power to retire an employee compulsorily from service, the authority has to take into consideration the overall record, even including some of the adverse remarks, though for technical reasons, might have been expunged on appeal or revision. What is emphasised in the said decision is that in the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the Court/Tribunal in exercise of its power of judicial review. According to this Court, what is needed to be looked into is whether a bona fide decision is taken in the public interest to augment efficiency in the public service. Again, a three Judge Bench of this Court in Union of India vs. V.P. Seth and another 1994 SCC (L&S) 1052, has held that uncommunicated adverse remarks can be taken into consideration while passing the order of compulsory retirement. The bench in the said case made reference to Baikuntha Nath Das vs. Chief District Medical Officer, Baripada (1992) 2 SCC 299, as well as Posts and Telegraphs Board vs. C.S.N. Murthy (1992) 2 SCC 317, and after reiterating, with approval, the principles stated therein,

has laid down firm proposition of law that 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. Applying the ratio laid down in the above-mentioned two cases to the facts of the present cases, this Court finds that the authorities concerned were justified in relying upon the adverse entry made against the two appellants and the deceased officer in the year 2000 indicating that their integrity was doubtful alongwith other materials. Here in these cases, the ACRs for the year 2000 were communicated to the three officers but before they could exercise the option given to them to make representation against the same, the orders of compulsory retirement were passed. When an uncommunicated adverse entry can be taken into consideration, while passing order of compulsory retirement, there is no reason to hold that adverse entry communicated, against which opportunity of making representation is denied, cannot be taken into consideration at the time of passing order of compulsory retirement. Merely because the two appellants and the deceased officer had no opportunity to make representation against the said entry or that the representation made against the same was pending, would not render consideration of the said entry illegal, in any manner, whatsoever.

93. In Baidyanath Mahapatra Vs. State of Orissa and Another (1989) 4 SCC 664, the Review Committee constituted by the Government of Orissa in October 1983 to determine the appellant's suitability for retention in service after his completing the age of 50 years, recommended the appellant to be compulsorily retired under Rule 71(1)(a) of the Orissa Service Code. The Committee took into account for formulating its opinion, the entries awarded to him for the years 1981-82 and 1982-83 which had been communicated to the appellant on July 5, 1983 and August 9, 1983 respectively. The appellant made representations against entries on November 1, 1983 but without disposing them of, the Government made an order on November 10, 1983 compulsorily retiring the appellant from service, which was upheld by the State Administrative Tribunal. Allowing the appeal this Court held that the appellant had right to make representation against the adverse entries within six months, and, therefore, the adverse entries awarded to him in the years 1981-82 and 1982-83 could not have been taken into account either by the Review Committee or by the State Government in forming the requisite opinion as contemplated by Rule 71(1)(a) of the Orissa Service Code, before the expiry of the period of six months. According to the Court, the proper course for the Review Committee should have been not to consider those entries or in the alternative, the Review Committee should have waited for the decision of the Government on the appellant's representation. This Court in the said decision emphasized the purpose of communicating adverse entries and held that delay in communication of adverse entries should be avoided. This Court finds that the said case did not deal with entry which had adverse reflection on the integrity of the official concerned.

94. In S. Maheswar Rao Vs. State of Orissa and Another 1989 Supp (2) SCC 248 the appellant was a Superintending Engineer. His case was considered under the first proviso to Rule 71(a) of the Orissa Service Code and on the basis of adverse remarks awarded to him for the last three years, i.e., for the years 1980-81, 1981-82 and 1982-83, the Review Committee had made recommendation for his premature retirement. At that time his representation against the adverse remarks relating to the first year was pending. Against the remarks for the other years, he made representations subsequently and the State Government had without disposing of these representations compulsorily retired him. The Bhubaneswar Administrative Tribunal disapproved the taking into

consideration of the remarks for the first year but sustained the impugned order of compulsory retirement on the basis of remarks for the subsequent years. While allowing the appeal this Court observed that adverse entries for the years 1981-82 and 1982-83 could not have been taken into consideration for the premature retirement of the appellant, and the Review Committee should have deferred the consideration of his case till his representation against the aforesaid adverse entries was disposed of or in the alternative the State Government itself should have considered and disposed of the representation before issuing the order for premature retirement. However, in this case also, this Court finds that this was not a case of consideration of adverse entry relating to the integrity of the officer concerned.

95. Though the learned counsel for the appellants have relied upon decision in V.K. Jain Vs. High Court of Delhi through Registrar General and Others, (2008) 17 SCC 538, this Court finds that basically the said decision deals with expunction of adverse remarks made by the High Court against a judicial officer while setting aside his judicial order granting bail to an accused. It emphasizes, the judicial restraints to be exercised by the High Courts in judicial functions. It does not deal with compulsory retirement of a judicial officer or how to write his ACR.

Therefore, detailed reference to the same is avoided.

96. However, this Court finds that in Union of India Vs. Col.

J.N. Sinha and Another, 1970 (2) SCC 458, the respondent was compulsorily retired by the Government of India under Fundamental Rule 56(j). The said order was challenged by the respondent amongst other things on the ground that the lack of opportunity to show cause amounted to denial of natural justice. The said plea was accepted by the High Court and High Court had issued a writ of certiorari quashing the said order. In appeal this Court held that a Government Servant serving under the Union of India holds his office at the pleasure of the President, but this `pleasure' doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. This Court firmly held that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights, and the Court cannot ignore the mandate of the Legislature or a statutory authority. After holding that the compulsory retirement involves no civil consequences and that a Government servant does not lose any of the rights acquired by him before retirement, it was held that Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. According to this Court, while a minimum service is guaranteed to the Government servant, the government is given power to energize its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

Thus the plea of breach of principles of natural justice was not accepted by this Court in the said case.

97. In Baikuntha Nath Das and Another Vs. Chief District Medical Officer, Baripada and Another, (1992) 2 SCC 299, the three Judge Bench of this Court had occasion to consider the question of effect of uncommunicated adverse remarks taken into consideration while passing order of

compulsory retirement against the appellants of that case and scope of judicial review of the order retiring an employee compulsorily from service. The appellants in the appeals were compulsorily retired by the Government of Orissa in exercise of the power conferred upon it by the first Proviso to sub-rule (a) of Rule 71 of the Orissa Service Code. The appellant Mr. Baikuntha Nath Das was appointed as a Pharmacist by the Civil Surgeon, Mayurbhanj on March 15, 1951. By an order dated February 13 1976 the Government of Orissa had retired him compulsorily. The said Order was challenged by him in the High Court of Orissa by way of a Writ Petition. His case was that the order was based on no material and that it was the result of ill-will and malice, the Chief District Medical Officer bore towards him. According to him he was transferred by the said officer from place to place and was also placed under suspension at one stage, but his entire service had been spotless and that at no time were any adverse entries in his confidential character rolls communicated to him. In the counter affidavit filed on behalf of the Government it was submitted that the decision to retire him compulsorily was taken by the Review Committee and not by the Chief Medical Officer and it was stated that besides the remarks made in the confidential character rolls, other material was also taken into consideration by the Review Committee and that it had arrived at its decision bona fide and in public interest which decision was accepted and approved by the Government. In the Counter the allegation of mala fide was denied. The High Court had looked into the proceedings of the Review Committee and the confidential character rolls of the appellant and dismissed the writ petition holding that an order of compulsory retirement after putting in the prescribed qualifying period of service does not amount to punishment. The High Court had observed that the order in question was passed by the State Government and not by the Chief Medical Officer and did not suffer from vice of malice. It was further held by the High Court that it was true that the confidential character roll of the appellant contained several remarks adverse to him which were, no doubt, not communicated to him. On behalf of the appellants who were compulsorily retired reliance was placed upon the decisions of this Court in Brij Mohan Singh Chopra Vs. State of Punjab, (1987) 2 SCC 188 and Baidyanath Mahapatra (Supra) in support of the contention that it was not permissible to the respondent Government to order compulsory retirement on the basis of material which included uncommunicated adverse remarks, whereas on behalf of the respondent Government reliance was placed upon the decision in Union of India Vs. M.E. Reddy, (1980) 2 SCC 15, to contend that it was permissible to the Government to take into consideration uncommunicated adverse remarks also while taking a decision to retire a Government servant compulsorily. A study of the decision rendered by the three Judge Bench of this Court makes it evident that not less than twenty reported decisions of this Court were taken into consideration and thereafter the Court has overruled the decision in Baidyanath Mahapatra Vs. State of Orissa (1989) 4 SCC 664, which took the view that uncommunicated adverse remarks cannot be taken into consideration while passing an order of compulsory retirement against a Government servant.

98. In Baikuntha Nath Das case, after referring to decision of this Court in Brij Mohan Singh Chopra Vs. State of Punjab (1987) 2 SCC 188, where a three Judge Bench of this Court has specifically affirmed the decision rendered in Union of India Vs. M.E. Reddy (1980) 2 SCC 15, this Court has laid down following firm proposition of law stated in paragraph 34 of the reported decision:

> "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 a 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.

Interference is permissible only on the grounds mentioned in (iii) above.."

99.In view of the two three Judge Bench decisions of this Court mentioned above the contention that adverse remarks relating to integrity regarding which no opportunity of making representation was provided or pending representation was not considered and, therefore, orders of compulsory retirement were bad in law cannot be accepted. Therefore, the said contention is hereby rejected.

100.Another point which was canvassed for consideration of the Court was that Rule 31A of DJS Rules incorporated since 1.1.1996 covers entire field of age of retirement and premature retirement of Delhi Judicial Officers and, therefore, premature retirement of the appellants could not have been

made before their attaining the age of 58 years.

According to the learned counsel for the appellants Rule 31A was added by notification dated 1.1.1996 issued by Lt.

Governor on the recommendation of the Delhi High Court under Article 309 of the Constitution to DJS Rules on the subject of retirement, providing the normal age of retirement as 60 years with proviso of compulsory retirement at the age of 58 years and for voluntary retirement at the age of 58 years and after addition of this Rule, Rule 33 of DJS Rules could not have been invoked for application of Fundamental Rules, on the subject of normal age of retirement, age of premature retirement and assessment of performance as well as age of voluntary retirement. What was emphasized was that after introduction of Rule 31A in DJS Rules the subject of premature retirement cannot be considered to be a residuary matter for which no Rule exists in DJS rules and, therefore, premature retirement of the appellants could not have been ordered before they attained the age of 58 years.

101.The learned counsel for the High Court argued that this point was given up before the High Court and, therefore, the Court should not permit the appellants to agitate the same in appeals arising from grant of special leave. In support of this submission reliance was placed by the learned counsel for the High Court on: (1) State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr., (1982) 2 SCC 463, (2) Shankar K. Mandal & Ors. Vs. State of Bihar & Ors., (2003) 9 SCC 519, (3) Mount Carmel School Society Vs. DDA, (2008) 2SCC 141, and (4) Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors., (2003) 2SCC 111.

102.Without prejudice to the above contention, it was argued by the learned counsel for the High Court that in All India Judge's Association Vs. Union of India & Ors., (1992) 1 SCC 119, this Court directed that the age of retirement of the judicial officers be increased to 60, and when a review was filed, this Court in All India Judges' Association and others vs. Union of India and others (1993) 4 SCC 288, while maintaining that the judicial officers be permitted to serve up to the age of 60 years, imposed a condition that all judicial officers would not be entitled to the said benefit automatically, but only those who were found fit after the evaluation of their fitness would be permitted to go up to 60 years and this Court expressed the view that the standard of evaluation could be the same as for compulsory retirement. The learned counsel emphasized that while giving the said direction, this Court expressly and specifically provided that the ordinary provisions relating to compulsory retirement at earlier stages were not dispensed with and they will continue to operate, and, therefore, incorporation of Rule 31A in the Delhi Judicial Service was made but it is wrong to contend that Rule 31A overrides the other provisions of the Rules and in particular, Rule 33 read with Fundamental Rules which provide for compulsory retirement after a judicial officer attains the age of 50 years. According to the learned counsel for the respondent, Rule 31A has no bearing and impact in deciding whether the order of compulsory retirement against the appellant in terms of Rule 33 read with F.R. 56(j) is valid or not.

103.Though High Court in paragraph 45 of the impugned judgment has observed that the plea taken in the writ petition filed by Mr. Gupta that FR 56(j) read with Rule 33 of the DJS Rules is not

applicable after the introduction of Rule 31 of the DJS rules, was dropped at the time of argument by the learned counsel for the appellant conceding that the order could have been passed under the aforesaid provision, this Court finds that this was a concession on point of law which would not bind the appellants. Further in the interest of justice it is necessary to settle the controversy once for all and, therefore, though in view of decisions cited by the learned counsel for the High Court, it is accepted as correct by this Court that the point sought to be argued was dropped before the High Court, it would not be in the interest of justice to preclude the learned counsel for the appellants from agitating this point before this Court. Under the circumstances, the Court proposes to examine the said contention on merits.

104.It is well known fact that in All India Judge's Association (Supra), this Hon'ble Court in paragraph 63(iii) directed that :

> "Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992."

105.In Second All India Judge's Association & Others Vs. Union of India & Others, (1993) 4 SCC 288, this Court clarified in paragraph 30 of the said judgment as under :

> "The benefit of the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past records of service and evidence of their continued utility to the judicial system.....The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justice of the High Courts and the evaluation shall be made on the basis of the judicial officer's past record of service, character rolls, quality of judgments and other relevant matters."

106.In paragraph 31 of the reported decision this Court has inter alia observed that the standard of evaluation shall be as applicable to compulsory retirement. However what is relevant to notice is paragraph 52 wherein this Court observed and directed as under:-

> "The assessment directed here is for evaluating the eligibility to continue in service beyond 58 years of age and is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken under the relevant Service Rules, at the earlier stage/s."

107.In Nawal Singh Vs. State of U.P. & Another, (2003) 8 SCC 117, this Court had again occasion to consider the observations made in All India Judge's Association case (second) and after making reference to the said decision this Court observed as under :-

> ".....there is no embargo on the competent authority to exercise its power of compulsory retirement under Rule 56 of the Fundamental Rules. As stated above, we have arrived at the conclusion that because of the increase in retirement age, rest of

the Rules providing for compulsory retirement would not be nugatory and are not repealed."

108.Again in Ramesh Chandra Acharya Vs. Registrary, High Court of Orissa and Another, (2000) 6 SCC 332, this Court observed in paragraph 8 of the reported decision that "the Court thereafter clarified that the assessment at the age of 58 years is for the purpose of finding out suitability of the officers concerned for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years; it is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective service rules."

109.In view of the direction contained in All India Judge's Association case Rule 31 was inserted in DJS Rules with effect from 1.1.1996 providing that the normal age of retirement of the Delhi Judicial Officers governed by D.J.S. Rules would be 60 years. The potential for continued utility was to be assessed and evaluated at the age of 58 years because the benefit of the increase of the retirement age to 60 years was not available automatically to all judicial officers irrespective of their past records of service.

Though this Court observed that the standard of evaluation for determining the potential for continued utility should be the same as for compulsory retirement but it was specifically made clear that the assessment directed was for evaluating the eligibility to continue in service beyond 58 years of age and was in addition to and independent of the assessment for compulsory retirement that might have to be undertaken under the relevant Service Rules at the earlier stage/s. The clarification made by this Court in All India Judge's Association case No. 2 leaves the matter in no doubt that the independent assessment for compulsory retirement to be undertaken under the relevant Service Rules is not affected at all in any manner whatsoever. It is true that the performance of a judicial officer is to be evaluated for determining his utility to continue in service upto the age of 60 years but it is wrong to contend that Rule 31 overrides Rule 33, which deals with residuary matters which includes compulsory retirement of a judicial officer after he attains the age of 50 years. It is rightly contended by the learned counsel for the High Court that Rule 31A has bearing and impact in deciding the question whether the order of compulsory retirement against the appellant in terms of Rule 33 read with F.R. 56(j) is valid or not. The newly added rule does not deal with the aspect of compulsory retirement at all. In terms of Rule 33 the subject of compulsory retirement did remain residuary even after the introduction of Rule 31A in DJS Rules and, therefore, the question of premature retirement will have to be considered only under FR 56(j) and not under the newly added Rule 31A. Thus consideration of the case of the appellant for premature retirement before he attained the age of 58 years cannot be regarded as illegal in any manner at all. This Court does not find any substance in this contention raised on behalf of the appellant and, therefore, the same is rejected.

110.Another point which was pressed into service for consideration of the Court was that the procedure of recording ACR wherein the appellants were given adverse remarks was in violation of rules of principles of natural justice and as there was no material which would justify adverse entries in ACR's of the appellants, the same could not have been taken into consideration while passing orders of compulsory retirement. On behalf of the deceased Mr. Verma it was argued that there was

no material to retire him prematurely and it was admitted by the High Court in his case that premature retirement was not ordered because of complaints, but on the bona fide impression and opinion formed by the High Court. It was also argued on behalf of Mr. Verma that no inspection was made, of the judicial work done by him for the years 1998, 1999 and 2000 and as this fact was not denied in the counter affidavit filed by the High Court, the order retiring him compulsorily from service suffers from vice of malice in law, and should have been set aside by the High Court on judicial side. Mr. Rohilla who had argued his appeal in person had contended that the order of compulsory retirement was expected to have been passed on the basis of all the material available prior to the passing of the order but the material in respect of which he had made representation which was pending to be replied or representation against the material which was still required to be submitted, could not have been relied upon for passing order of compulsory retirement. According to him, the so called material relied upon was only one-sided view and was not the wholesome exercise which was required to be undertaken before passing order of compulsory retirement. Mr. Rohilla had further argued that there was no record of any complaints either oral or in writing nor there was any record to show whether the complaints related to his judicial work on the basis of which ACR of the year 2000 were recorded. The oral communication by members of the Bar or by office bearers of the Bar Association was thoroughly irrelevant in the absence of particulars mentioned in the ACR and, could not have been taken into consideration while passing order of compulsory retirement.

111.On behalf of the appellant Mr. P.D. Gupta, it was contended that for the year 2000 Hon'ble Mr. Justice M.S.A. Siddique was appointed as Inspecting Judge by the High Court but Hon'ble Mr. Justice Siddique had retired on 29.5.2001 without giving any Inspection Report and he had not inspected his Court during the year at all, whereas during the year 2001, three Judges had been appointed as Inspecting Judges namely Hon'ble Mr. Justice Dalveer Bhandari (as he then was), Hon'ble Mr. Justice Mukul Mudgal (as he then was) and Hon'ble Mr. Justice R.C. Chopra, but the report for the year 2000 in his respect was given by Hon'ble Mr. Justice K.S. Gupta who was not the Inspecting Judge either for the year 2000 or for the year 2001 and as Hon'ble Mr. Justice Gupta had visited his Court on 7.9.2001 and stayed only for ten minutes and asked him to send three judgments delivered in the year 2000 which were sent by the appellant on 10.9.2001, the report given by Hon'ble Mr. Justice Gupta grading him as an average officer could not have been taken into consideration by the High Court while passing the order of compulsory retirement. It was further pointed out on his behalf that Hon'ble Mr. Justice Gupta had observed in his report dated 11.9.2001 that on inquiry from the cross section of Bar, he had come to know that Mr. Gupta did not enjoy good reputation and on the basis of this report, the Full Court in its meeting held on 21.9.2001 had graded his ACR as `C' (integrity doubtful) without supplying the material to him and, therefore, order retiring him compulsorily from service was bad in law.

112.In reply to abovementioned contentions it was argued by the learned counsel for the High Court that a single adverse entry indicating that the integrity of the officer is doubtful is sufficient to order his compulsory retirement, even if the said adverse entry relates to a distant past and in respect of all the three appellants the last ACR for the year 2000 is C "integrity doubtful", which by itself is sufficient to sustain orders of compulsory retirement passed against them.

113.So far as Mr. M. S. Rohilla is concerned, it was submitted by the learned counsel for the respondent High Court that there were two adverse ACR's for the years 1993 and 1994 indicating that his integrity was doubtful and the representations made by him against the same were considered and rejected, which decisions were not challenged by him by way of a writ petition before the High Court nor there was any challenge to the ACRs either in the earlier writ petition filed by him challenging his reversion from the Delhi Higher Judicial Service to the Delhi Judicial Service nor in the writ petition challenging the order of compulsory retirement and, therefore, order retiring him compulsorily cannot be regarded as illegal or arbitrary.

114.While dealing with the arguments advanced on behalf of the appellant Mr. P.D. Gupta it was stressed that for two years i.e. 1994 and 1995 his ACRs were C "Integrity Doubtful" which were challenged by him by filing a Writ Petition and though the learned Single Judge of the High Court had allowed the Writ Petition, the Division Bench in appeal had set aside the judgment of the learned Single Judge and upheld the adverse ACRs "C Doubtful Integrity"

> for the years 1994 and 1995, against which Special Leave Petition filed by Mr. P.D. Gupta was also dismissed after which Review Petition was filed by him against the judgment of the Division Bench in Letters Patent Appeal, which was also dismissed and thus those entries having become final, it would be wrong to contend that order of compulsory retirement passed in his case was liable to be set aside.

115.On consideration of rival submissions, this Court finds that there is no manner of doubt that the nature of judicial service is such that the High Court cannot afford to suffer continuance in service of persons of doubtful integrity.

Therefore, in High of Judicature at Bombay Through its Registrar Vs. Shirishkumar Rangrao Patil and Another, (1997) 6 SCC 339, this Court emphasized that it is necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self introspection. It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record upto that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether officer concerned was promoted to higher position or whether he was granted certain benefits like increments etc. Therefore, this Court in State of Orissa and Others Vs. Ram Chandra Das, (1996) 5 SCC 331, observed as under in paragraph 7 of the reported decision :-

> "..... it is settled law that the Government is required to consider the entire record of service..... .... 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."

116.Thus the respondent High Court was justified in taking into consideration adverse ACRs reflecting on integrity of Mr. M.S. Rohilla for the years 1993, 1994 and 2000 while considering the question whether it was expedient to continue him in service on his attaining the age of 50 years. Similarly, in so far as appellant Mr. P.D. Gupta is concerned for two years that is 1994 and again in 1995 his ACRs were C "Integrity Doubtful" and again in the year 2000, the position was the same. Further, for two years, i.e., 1994 and 1995 his ACRs "C Integrity Doubtful" were upheld by the Division Bench of the High Court against which his Special Leave Petition was dismissed. At this stage it would be relevant to notice certain observations made by Division Bench of the High Court while allowing the Letters Patent Appeal filed by the High Court against the judgment of the learned Single Judge by which the ACRs for two years were set aside, which are as follows: -

> "To summarize, it is held:
>
> a) The adverse remarks recorded by the High Court in the Confidential Reports of respondent No.1 for the years 1994 and 1995 were not without any `material'. They were recorded on the basis of material on record and the judgment of the learned Single Judge quashing those remarks is hereby set aside.
>
> b) The learned Single Judge should not and could not have graded B+ to respondent No.1 as it is the function of the High Court to assign appropriate grading. Therefore, the matter should have been referred to the Full Court for giving appropriate grading. This direction of the learned Single Judge is accordingly set aside.
>
> c) Direction of the learned Single Judge in treating the petitioner as promoted w.e.f. 18th May, 1996 is not correct in law and is therefore, set aside."

117.The above findings would indicate that the appellant Mr. Gupta is not justified in arguing that there was no material on the basis of which adverse entries could have been made against him for the years 1994 and 1995 nor is he justified in urging that the order of compulsory retirement also based on those two adverse entries is liable to be set aside.

118.In S.D. Singh vs. Jharkhand High Court through R.G. and others (2005) 13 SCC 737, benefit of enhanced retirement age from 58 to 60 years was denied to the appellant. The Evaluation Committee, after perusing his service record, recommended that he should not be continued in service beyond the age of 58 years. The Full Court, on assessment and evaluation of service record, resolved that the benefit of extension in age up to 60 years should not be extended to him. The appellant relied upon his promotional order superseding several senior officers.

However, he had not alleged mala fide against any one.

The Evaluation Committee had, after considering his ACR, noted that he was an average officer and the vigilance proceedings initiated against him were dropped. While dismissing his appeal, this Court has held that there was material, on the basis of which, an opinion was formed and promotion would not indicate that he was fit to be continued after the age of 58 years. The material, according to this Court, against the appellant in that case, was that he was an average officer and the vigilance proceedings initiated were dropped. If on these materials, benefit of enhanced retirement was denied to Mr. S.D. Singh, this Court has no hesitation in concluding that having regard to the service record of the two appellants and the deceased officer, the High Court was justified in compulsorily retiring them from service.

119.The argument that material was not supplied on the basis of which "`C' Doubtful Integrity" was awarded to the appellants and, therefore, the order of compulsory retirement is liable to be set aside has no substance.

Normally and contextually word `material' means substance, matter, stuff, something, materiality, medium, data, facts, information, figures, notes etc. When this Court is examining as to whether there was any `material' before the High Court on the basis of which adverse remarks were recorded in the confidential reports of the appellants, this `material' relates to substance, matter, data, information etc. While considering the case of a judicial officer it is not necessary to limit the `material' only to written complaints or `tangible' evidence pointing finger at the integrity of the judicial officer. Such an evidence may not be forthcoming in such cases.

120.As observed by this Court in R.L. Butail Vs. Union of India and Others, (1970) 2 SCC 876, it is not necessary that an opportunity of being heard before recording adverse entry should be afforded to the officer concerned. In the said case, the contention that an inquiry would be necessary before an adverse entry is made was rejected as suffering from a misapprehension that such an entry amounts to the penalty of censure. It is explained by this Court in the said decision that making of an adverse entry is not equivalent to imposition of a penalty which would necessitate an enquiry or giving of a reasonable opportunity of being heard to the concerned Government servant.

Further in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the judges of the High Court who go into the question and it is possible that in all cases evidence would not be forth coming about doubtful integrity of a Judicial Officer.

121.As observed by this Court in High Court of Punjab & Haryana through R.G. Vs. Ishwar Chand Jain and Another, (1999) 4 SCC 579, at times, the Full Court has to act on the collective wisdom of all the Judges and if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds.

The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety much faster than the smoke. Sometimes there may not be concrete or

material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence.

122.Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be result of multiple factors simultaneously playing in the mind. Though the perceptions may differ in the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions.

When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ Court under Article 226 or this Court under Article 32 would not interfere with the order.

123.Further this Court in M.S. Bindra's case (Supra) has used the phrase `preponderance of probability' to be applied before recording adverse entry regarding integrity of a judicial officer. There is no manner of doubt that the authority which is entrusted with a duty of writing ACR does not have right to tarnish the reputation of a judicial officer without any basis and without any `material' on record, but at the same time other equally important interest is also to be safeguarded i.e. ensuring that the corruption does not creep in judicial services and all possible attempts must be made to remove such a virus so that it should not spread and become infectious. When even verbal repeated complaints are received against a judicial officer or on enquiries, discreet or otherwise, the general impression created in the minds of those making inquiries or the Full Court is that concerned judicial officer does not carry good reputation, such discreet inquiry and or verbal repeated complaints would constitute material on the basis of which ACR indicating that the integrity of the officer is doubtful can be recorded. While undertaking judicial review, the Court in an appropriate case may still quash the decision of the Full Court on administrative side if it is found that there is no basis or material on which the ACR of the judicial officer was recorded, but while undertaking this exercise of judicial review and trying to find out whether there is any material on record or not, it is the duty of the Court to keep in mind the nature of function being discharged by the judicial officer, the delicate nature of the exercise to be performed by the High Court on administrative side while recording the ACR and the mechanism/system adopted in recording such ACR.

124.From the admitted facts noted earlier it is evident that there was first a report of the Inspecting Judge to the effect that he had received complaints against the appellants reflecting on their integrity. It would not be correct to presume that the Inspecting Judge had written those remarks in

a casual or whimsical manner. It has to be legitimately presumed that the Inspecting Judge, before making such remarks of serious nature, acted responsibly.

Thereafter, the Full Court considered the entire issue and endorsed the view of the Inspecting Judge while recording the ACR of the appellants. It is a matter of common knowledge that the complaints which are made against a judicial officer, orally or in writing are dealt with by the Inspecting Judge or the High Court with great caution.

Knowing that most of such complaints are frivolous and by disgruntled elements, there is generally a tendency to discard them. However, when the suspicion arises regarding integrity of a judicial officer, whether on the basis of complaints or information received from other sources and a committee is formed to look into the same, as was done in the instant case and the committee undertakes the task by gathering information from various sources as are available to it, on the basis of which a perception about the concerned judicial officer is formed, it would be difficult for the Court either under Article 226 or for this Court under Article 32 to interfere with such an exercise. Such an opinion and impression formed consciously and rationally after the enquiries of the nature mentioned above would definitely constitute material for recording adverse report in respect of an officer. Such an impression is not readily formed but after Court's circumspection, deliberation, etc. and thus it is a case of preponderance of probability for entertaining a doubt about integrity of an official which is based on substance, matter, information etc. Therefore, the contention that without material or basis the adverse entries were recorded in the ACR of the appellants cannot be upheld and is hereby rejected.

125.On behalf of deceased R.S. Verma his learned Counsel had argued that ACRs for the years 1997, 1998 and 1999 were written in one go which is arbitrary and constitute malice in law. Pointing out to the Court that normal procedure followed by the Delhi High Court for communicating the ACRs is referred to in the circular dated 4.9.1998, according to which conducting of inspection and making of enquiries before condemning a judicial officer as regards his integrity is necessary, but this was not done in the case of the deceased and, therefore, his ACRs for the years 1997, 1998 and 1999 should have been ignored while deciding the question whether he was fit to be retained in service on attaining the age of 50 years. It was emphasized that all the entries should be communicated within a reasonable period so that the employee concerned gets an opportunity to make representation and that the representation is also decided fairly within a reasonable period, but this was not done in the case of the deceased officer. According to the learned counsel for the appellant, the requirement to write ACR on due date and communication thereof to the employee concerned within reasonable time flows from constitutional obligation of fairness, non-arbitrariness and natural justice as laid down in Dev Dutt Vs. Union of India, 2008 (8) SCC 725, and Abhijit Ghosh Dastidar Vs. Union of India, 2009 (16) SCC 146, and as this requirement was committed breach of in case of the deceased, ACRs for the years 1996 and 1997 had lost their significance and were irrelevant while considering case of the deceased officer for compulsory retirement. On behalf of the respondent High Court it was submitted that it was true that ACRs for the years 1997, 1998 and 1999 were recorded at one point and communicated thereafter, but a detailed note indicating the circumstances in which ACRs for the years 1997, 1998 and 1999 were placed before the Full Court on 13.12.2000 after which ACRs were recorded and, therefore, in view of the explanation offered in the note which was noted by the

Full Court on 13.12.2000, it is wrong to contend that ACRs for those three years could not have been taken into consideration before passing order of compulsory retirement against the deceased officer.

126.On consideration of the argument advanced by the learned counsel for the parties, this Court finds that it has been ruled by this Court that ACRs for several years should not be recorded at one go and communicated thereafter.

Normally, entries in confidential records should be made within a specified time soon following the end of the period under review and generally within three months from the end of the year. Delay in carrying out inspections or making entries frustrates the very purpose sought to be achieved. The mental impressions may fade away or get embellished. Events of succeeding years may cast their shadow on assessment of previous years. In a given case, proper inspection might not have been conducted nor notes/findings of inspection might have been properly maintained. In such a case, there is every possibility of a judicial officer being condemned arbitrarily for no fault on his part. Therefore, recording of entries for more than one year, later on, at the same time should be avoided.

However, the learned counsel for the respondent is right in contending that no decision has taken the view that merely for the reason that ACRs for more than one years are recorded at one point of time, the same are bad or that they would cease to be ACRs for the relevant years or that they should not be taken into consideration for any purpose or for the purpose of compulsory retirement. As stated earlier, in the normal course it would not be appropriate to record the ACRs of number of years at one point of time.

However, at the same time it is not possible to lay down as an absolute proposition of law that irrespective of good, cogent, plausible and acceptable reasons, recording of ACRs of number of years at once should always be regarded as illegal and bad for all purposes. This Court, while deciding the appeals, has gone through the record of the deceased officer, and other relevant documents produced by the High Court. From the record, this Court finds that all the columns of ACR forms for the years 1997, 1998 and 1999 were filled up by the inspecting judges respectively well in time for all these years, but the inspecting judges had not recorded any remarks concerning the judicial reputation for honesty and impartiality of the deceased officer as a corollary the column regarding "Net Result" for these years were left blank by them. Instead the learned inspecting judges had observed that these remarks be recorded by the Full Court.

When such a course of action is adopted, the reason is obvious. There was something amiss in the estimation of the learned inspecting Judges which they wanted entire Full Court to consider and, therefore, refrained from making their observations. If everything had been all right, nothing prevented the learned Inspecting Judges from mentioning that the honesty of the deceased officer was not in doubt at all. However, when an inspecting judge receives certain complaints about the integrity of the officer concerned but has no means to verify the same, he leaves the matter to the Full Court, which appoints a Committee to go into the aspects and records relevant entries after report of the Committee is received. This is what precisely happened in the present case as well. Because of the aforesaid course adopted by the learned Inspecting Judges, the consideration of recording the ACR was deferred by the Full Court and ultimately, in its meeting held on 21.4.2001 in

respect of the deceased officer the Full Court decided as under :-

> "Deferred. Referred to the Committee constituted to look into the allegations against the judicial Officers."

127.The matter was, therefore, examined by the Committee of two learned judges of the Delhi High Court constituted for this purpose. This committee made certain discreet inquiries. The concerned Inspecting Judge(s) were also associated in deliberations by the Committee. The Committee gave its report dated 6.12.2001 as per which the information gathered by the Committee from various sources confirmed the allegation of doubtful integrity against the deceased officer. The matter was thereafter placed before the Full Court and the ACRs of the deceased officer were recorded for the years 1997, 1998 and 1999 on 13.12.2000. Thus there is sufficient explanation for recording the ACRs of three years at one time. It is wrong to contend that the ACRs for the years 1997, 1998 and 1999 should have been ignored while passing the order of compulsory retirement against the deceased officer.

Therefore, the argument that ACRs for those years could not have been taken into consideration while deciding the question of suitability or otherwise to continue the deceased officer in service on attaining the age of 50 years, is hereby rejected. Even if it is assumed for the sake of argument that ACRs recorded for the three years, i.e., 1997, 1998 and 1999 recorded at one go, irrespective of reasons, good, bad or indifferent, must be ignored for all time to come and for all the purposes, this Court finds that the ACRs for the year 1999 were recorded with promptitude and without any delay in the year 2000. It is not argued on behalf of the deceased officer that there was any delay in recording ACRs for the year 1999. For the year 1999, the deceased officer was assessed as "C Below Average". The ACRs for the year 1999 could have been taken into consideration while assessing the service record of the deceased officer for determining the question whether the deceased officer was fit to be continued in service on his attaining the age of 50 years. What is the effect of ACRs for the year 1999 when taken into consideration along with other service record is proposed to be considered at a little later stage.

128.On behalf of deceased officer Mr. R.S. Verma, it was argued that Mr. Verma's ACRs for the years 1997, 1998 and 1999, which were written at one go and also were communicated at one go, suffer from arbitrariness, unreasonableness and constitute malice in law. This Court has come to the conclusion that writing of ACRs for the years 1997, 1998 and 1999 at one time as also communication of the same at one time was justified in the circumstances of the case. Therefore, it is difficult to uphold the contention raised on behalf of Mr. Verma that writing of ACRs for three years at one go and communication of the same at one go suffer from arbitrariness, unreasonableness and constitute malice in law.

129.Similarly, the plea raised by Mr. Rohilla that the impugned judgment is not sustainable in law because the act of the High Court in making recommendation to Lt.

Governor for retiring him compulsorily emanates from mala fide, arbitrariness and perversity, has no substance. The reason given by Mr. Rohilla to treat the order of his compulsory retirement as

mala fide, arbitrary and perverse is that while communicating adverse remarks for the year 2000 vide letter dated 21.9.2001, High Court had granted six weeks' time to make representation, but much before the representation could be caused, the order of compulsory retirement dated 27.9.2001 was communicated, coupled with the fact that on that date, the writ petition filed by him against his reversion was pending.

This Court has already taken the view that merely because Mr. Rohilla did not get any opportunity to make representation against the adverse remarks for the year 2000, those remarks could not have been ignored by the competent authority while passing the order of compulsory retirement against him because the settled law is that even uncommunicated adverse remarks can be taken into consideration while passing the order of compulsory retirement. So far as the writ petition, filed by Mr. Rohilla against his reversion is concerned, this Court finds that the order of compulsory retirement was not passed to render the said petition infructuous. The order of compulsory retirement has been passed on assessment of whole service record of Mr. Rohilla. Thus, Mr. Rohilla has failed to substantiate the plea that the order of his compulsory retirement is either mala fide or arbitrary or perverse.

130.Mr. R. S. Rohilla had argued that the order of the Lt.

Governor compulsorily retiring him from service was by invoking FR 56(j) which was not applicable to his case as he was a member of a Delhi Higher Judicial Service and such an order could have been passed only under Rule 27 of the Delhi Higher Judicial Service read with Rule 16 of the Indian Administrative Services and, therefore, the same should be set aside. It is rightly pointed out by the learned counsel for the High Court that though the said plea was raised by Mr. Rohilla the same was given up before the High Court, and it is so recorded by the Division Bench in paragraph 31 of the impugned judgment. Thus, in normal circumstances, Mr. Rohilla would not be justified in arguing the same point before this Court. However, even if it is taken for granted that he is entitled to argue the point before this Court because it is a pure question of law, this Court does not find any substance what so ever in the same. What is relevant to be noticed is that under both the Rules there is power to compulsorily retire a judicial officer after he attains the age of 50 years in public interest.

Therefore, whether the Lt. Governor had invoked FR 56 (j) or Rule 27 of the DJS is of little consequence since both the Rules make provision for retirement of a judicial officer compulsorily from service after he attains the age of 50 years in public interest. In fact Mr. Rohilla should have pointed out to the High Court the relevant and material fact that for two years that is for the year 1993 and for the year 1994 he had suffered adverse ACR `C' "Integrity Doubtful"

> and that the representations made by him were rejected which were not challenged by him before higher forum. In any view of the matter, it is settled law that when power can be traced to a valid source, the fact that the power is purported to have been exercised under a wrong provision of law, would not invalidate exercise of power.

131.To sum up, this Court finds that so far as deceased officer Mr. Rajinder Singh Verma is concerned, he was appointed in the year 1995 and as on 21.9.2001 his ACRs for six years were available. The grading given to him for these years was as follows: -

Year		Grading
1995	"B" (Average)	No representation was made against this remark, nor was it challenged before any authority.
1996	"B" (Average)	No representation was made against this remark, nor was it challenged before any authority.
1997	"C" (Below Average)	
1998	"C" (Below Average)	
1999	"C" (Below Average)	
2000	"C" (Integrity doubtful)	

132.The report dated September 21, 2001 of the Screening Committee further reveals that the Screening Committee had considered the entire record relevant to his work and conduct and found that throughout his career, he had been assessed and graded either as "average officer" or "officer

below average" and in the year 2000, his integrity was found to be doubtful. The Screening Committee had also found that for the year 1998, the Inspecting Judge of Mr. Verma had made a remark that the judgments and orders written by him were just average; whereas the Inspecting Judges for the year 1996 to 2000 had not recorded any remark concerning his judicial reputation for honesty and impartiality and the column "Net Result" was left to be recorded by the Full Court. The record further shows that the judicial work was withdrawn from him with effect from December 8, 2000 upon the recommendation of the Committee of Judges in its report dated December 6, 2000.

This decision was never challenged by him before any authority. It goes without saying that withdrawal of judicial work from a judicial officer is a serious matter and such a drastic order would not have been passed unless the judicial work performed by him was found to be shocking and perverse. Later on, all work including administrative work was withdrawn from him. Further, pursuant to the decision taken by the Full Court in its meeting held on April 21, 2001 referring the matter to a Committee of Judges to make inquiry into his work and conduct, the Committee had submitted its report dated September 8, 2001 in which it was observed and recorded that he did not enjoy good reputation and integrity. There was gradual down fall in his performance as a judicial officer. The service record of the deceased officer is so glaring that on the basis thereof any prudent authority could have come to a reasonable conclusion that it was not in the public interest to continue him in service and that he should be compulsorily retired from service. Therefore, the order of compulsory retirement passed against the deceased officer is not liable to be set aside.

133.So far as Mr. Rohilla is concerned, he was appointed as a Civil/Sub-Judge in the Subordinate Judicial Services on May 5, 1972. On June 17, 1995, he was confirmed as an officer in the Delhi Judicial Services. He was granted Selection Grade on June 3, 1980 and was promoted to the Higher Judicial Services as Additional District and Sessions Judge on November 1, 1989. One anonymous complaint was received against him and after looking into the same, he was reverted to Subordinate Judicial Services by order dated February 15, 1995, which was challenged by him in Writ Petition No. 4589 of 1995. Meanwhile, he was served with a communication from the High Court of Delhi dated October 23, 1997, wherein his ACR for the year 1996 was graded as "C", i.e., below average. Thereupon, he had made a representation, which was rejected on December 2, 1998. No steps were taken by him to challenge the said decision and thus, the grading awarded to him was accepted by him. Thereafter, he received a communication from the High Court in the year 1999, wherein he was informed that in his ACR for the year 1997, he was awarded "B" grade. Again, by a communication dated February 9, 2000 forwarded by the High Court, he was informed that in his ACR for the year 1998, he was graded "B". He made a representation against his ACR for the year 1998 in the year 2000. As noticed earlier, in the year 2000, he was communicated ACR indicating that his integrity was doubtful. Thus, the service record of Mr. Rohilla indicates that he was an officer "below average" or at the best an average officer and his integrity was doubtful. Under the circumstances, the decision taken by the competent authority to retire him from service cannot be said to be illegal in any manner whatsoever.

134.So also, the record of Mr. P.D. Gupta shows that he joined Delhi Judicial Service on January 28, 1978.

Admittedly, his work and conduct from 1978 to 1992 was graded as "B", which means his performance was that of an average officer. In the year 1995, the Inspecting Judge had reported that though he had not inspected the court of Mr. Gupta, he had heard complaints about his integrity and, therefore, column Nos. 6 and 7 were left blank to be filled up by the Full Court. On May 18, 1986, the Full Court had recorded his ACR for the year 1994-95 as "C" (integrity doubtful) and on the basis of the same, denied promotion to him. He had filed a representation against the same, but it was rejected by the High Court by an order dated September 5, 1997. Again on September 26, 1997, the Full Court of Delhi High Court had recorded his ACR for the year 1996 as "B". Against rejection of his representation, which was made with reference to ACRs for the year 1994- 95, he had filed Writ Petition (C) No. 4334 of 1997 and in the said writ petition he had made a grievance for his non-

promotion to Delhi Higher Judicial Service. Pending the said petition, on May 22, 1998, the Full Court had recorded his ACR for the year 1997 as "B". The writ petition filed by Mr. Gupta was allowed by a Single Judge of the High Court, which decision was set aside in L.P.A. No. 329 of 1999, filed by the High Court administration, and the order passed by the Division Bench was ultimately upheld by this Court when the special leave petition filed by Mr. Gupta against the decision rendered in the L.P.A. was dismissed.

In his ACR for the year 2000, he was categorized as an officer having doubtful integrity. Thus, the record shows that for the year 1994-95 his integrity was found to be of doubtful character. For rest of the years, his performance was that of an average officer and in the year 2000, his integrity was again found doubtful. Under the circumstances, the compulsory retirement of Mr. Gupta can never be said to be arbitrary or illegal.

135.Having regard to their entire service record of the three officers, this Court is of the opinion that the competent authority was justified in passing the order retiring them compulsorily from service. Mere glance at the ACRs of the deceased officer and two other appellants makes it so glaring that on the basis thereof the decision to compulsorily retire them would clearly be without blemish and will have to be treated as well founded. This Court finds that before passing the orders in question, whole service record of each of the officer was taken into consideration. Keeping in view the comprehensive assessment of service record, the Screening Committee rightly recommended that the three officers should be prematurely retired in public interest forthwith. The Full Court after considering the report of the Screening Committee and also after taking into consideration the record of work and conduct, general reputation and service record of the three officers correctly resolved that it be recommended to the Lt. Governor of NCT of Delhi to retire the judicial officers forthwith in public interest. The orders do not entail any punishment in the sense that all the officers have been paid retiral benefits till they were compulsorily retired from service.

136.On a careful consideration of the entire material, it must be held that the evaluation made by the Committee/Full Court, forming their unanimous opinion, is neither so arbitrary nor capricious nor can be said to be so irrational, so as to shock the conscience of this Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out

of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things, it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court. Viewed thus, and considered in the background of the factual details and materials on record, there is absolutely no need or justification for this Court to interfere with the impugned proceedings. Therefore, the three appeals fail and are dismissed. Having regard to the facts of the case, there shall be no order as to costs.

.....J. (J.M. PANCHAL) .....J. New Delhi; (H.L. GOKHALE) September 12, 2011