R.C. Chandel vs High Court Of M.P. & Anr on 8 August, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2962, 2012 (8) SCC 58, 2012 AIR SCW 4759, 2012 LAB. I. C. 4515, (2013) 1 MAH LJ 503, (2013) 1 RAJ LW 346, 2012 (7) SCALE 244, 2012 (3) SERVLJ 304 SC, 2012 (3) SCC(CRI) 782, (2012) 5 ALLMR 486 (SC), (2012) 3 SERVLJ 304, (2012) 10 ADJ 10.2 (SC), (2012) 4 JCR 170 (SC), 2012 (5) ALL MR 486, AIR 2012 SC (CIVIL) 2616, (2012) 7 MAD LJ 78, (2012) 4 ESC 555, (2012) 5 MPHT 1, (2012) 5 ALL WC 4367, (2012) 134 FACLR 949, (2012) 4 SCT 399, (2012) 5 SERVLR 578, (2012) 7 SCALE 244

Author: R.M. Lodha

Bench: R.M. Lodha, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5790 OF 2012
(Arising out of SLP(C) No. 1884 of 2007)

R.C. Chandel ……
Appellant

Vs.

High Court of M.P. & Anr.
…… Respondents

JUDGMENT

R.M. LODHA, J.

Leave granted.

2. On 13.09.2004, the appellant, who was working on the post of District and Sessions Judge, Punna was compulsorily retired from the service in the public interest by the Government of Madhya Pradesh (for short, 'the Government') on the request of the Madhya Pradesh High Court (for short,

'High Court'). The order of compulsory retirement was issued by the Government in exercise of its power under amended Rule 56(2)(a) of the Fundamental Rules, as made applicable in the State of Madhya Pradesh, Rule 14 of the Madhya Pradesh Higher Judicial Service (Recruitment and Service Conditions) Rules, 1994 (for short, '1994 Rules'), Rule 42(1)(b) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short, '1976 Rules') and Rule 1-A of Madhya Pradesh District and Sessions Judges (Death- cum-Retirement Benefits) Rules, 1964 (for short, '1964 Rules'). In lieu of notice of three months, it was directed in the order that the appellant shall be entitled to three months' salary and allowances which he was receiving prior to his retirement.

3. The appellant challenged the above order of compulsory retirement by filing a writ petition before the High Court. The Single Judge of that Court by his order dated 20.04.2006, allowed the writ petition; quashed the order of compulsory retirement dated 13.09.2004 and directed that he be reinstated with all consequential benefits.

4. The High Court on the administrative side challenged the order of Single Judge in writ appeal. The Division Bench of that Court on consideration of the entire matter held that the challenge to the order of compulsory retirement was ill-founded and, accordingly, set aside the order of the Single Judge vide its judgment dated 23.11.2006. It is from this order that the appellant has preferred this appeal by special leave.

5. The appellant was selected in the higher judicial service of Madhya Pradesh by direct recruitment. He joined the judicial service as an Additional District Judge on 17.10.1979. On 26.06.1985, he was confirmed as a District Judge. The appellant was awarded lower selection grade on 07.09.1990 with effect from 24.03.1989. He was awarded super time scale in May, 1999 and above super time scale in 2002. As noted above, by the order dated 13.09.2004, the appellant was compulsorily retired in public interest.

6. We have heard Mr. Rohit Arya, learned senior counsel for the appellant and Mr. Ravindra Shrivastava, learned senior counsel for the High Court on the administrative side.

7. Mr. Rohit Arya, learned senior counsel for the appellant vehemently contended that the Division Bench was not at all justified in setting aside the judgment and order of the Single Judge. The observations made by the Division Bench in the impugned order and the findings recorded therein are founded on incorrect and misleading facts. The service record of the appellant speaks otherwise.The appellant has been largely assessed in his ACRs 'Good' or 'Very Good'. He highlighted that the appellant was confirmed as District Judge in 1985, he was awarded lower selection grade in 1990, he was given super time scale in 1999 and above super time scale in 2002 on merits and, on the basis of his judicial work he was also recommended for elevation as a High Court Judge by the High Court collegium in March, 2004.

8. Learned senior counsel for the appellant submitted that compulsory retirement of the appellant on the basis of an adverse entry recorded in 1989 and two subsequent adverse entries for 1993 and 1994 was wholly unjustified. As regards 1989 adverse entry, learned senior counsel submitted that the appellant was awarded lower selection grade in 1990 and, therefore, the said entry had lost its

efficacy. In respect of entries recorded in 1993 and 1994, learned senior counsel submitted that the said entries also lost their significance since the appellant was awarded super time scale in 1999 and above super time scale in 2002. In between in 2001, he was allowed to continue in service. Moreover, learned senior counsel would submit that the adverse remarks recorded in 1993 and 1994 were challenged by the appellant on the judicial side of the High Court. The Single Judge of that Court accepted the appellant's challenge and expunged these remarks. The High Court on administrative side challenged the order of the Single Judge in writ appeal. The Division Bench of the High Court although set aside the order of the Single Judge but observed that 1993 and 1994 entries shall not be read adverse to the appellant for all times to come.

9. Learned senior counsel referred to the guidelines dated 22.08.2000 issued by the Government and submitted that in view thereof no order of compulsory retirement could be passed on the basis of incapacity if the officer was promoted within the last five years and during that period his performance remained satisfactory. He submitted that throughout his work, the appellant achieved the norms for disposal of cases fixed by the High Court and his reputation and integrity as well as the judicial performance was found to be good and it is because of that that he got lower selection grade and super time scale from time to time. Learned senior counsel, thus, submitted that the Single Judge of the High Court was fully justified in interfering with the order of compulsory retirement after dealing with each and every complaint made against the appellant and none of these complaints was found meritorious justifying compulsory retirement of the appellant. Learned senior counsel for the appellant, in support of his arguments, heavily relied upon a recent decision of this Court in Nand Kumar Verma v. State of Jharkhand and others[1].

10. On the other hand, Mr. Ravindra Shrivastava, learned senior counsel for the High Court on administrative side (respondent no.1) stoutly defended the impugned judgment. He submitted that the High Court recommended the compulsory retirement of the appellant to the Government as he was not found fit for continuation in judicial service in public interest. While making such recommendation the Full Court considered the entire service record of the appellant. Mr. Ravindra Shrivastava, learned senior counsel referred to ACRs of the appellant recorded for the years 1982, 1989, 1993, 1994, 1997 and 1998 and submitted that the decision of the Full Court to compulsorily retire the appellant cannot be said to be unjustified.

11. Learned senior counsel for the respondent no. 1 placed reliance upon a decision of this Court in Rajendra Singh Verma (Dead) Through LRs. and others v. Lieutenant Governor (NCT of Delhi) and others[2].

12. Rule 56(2) of the Fundamental Rules provides that a government servant (read judicial officer) may, in the public interest, be retired at any time after he has completed 20 years' qualifying service, or on his attaining the age of 50 years, whichever is earlier without assigning any reason by giving him a notice in writing. The notice period is three months. However, he may be retired forthwith and on such retirement he is entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before retirement or, as the case may be, for the period by which such notice falls short of three months. Sub-rule 1-A added to 1964 Rules provides that with regard to age of compulsory

retirement, the permanent District and Sessions Judge shall be governed by the provisions of Fundamental Rule 56. Rule 42(1)(b) of the 1976 Rules provides that the appointing authority may in the public interest require a government servant (read judicial officer) to retire from service at any time after he has completed 20 years' qualifying service or on his attaining the age of 50 years whichever is earlier by giving three months' notice in Form 29 provided that he may be retired forthwith and on such retirement he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing immediately before his retirement or, for the period by which such notice falls short of three months, as the case may be. Rule 14(1) of the 1994 Rules provides that the age of superannuation of a member of the Madhya Pradesh Higher Judicial Service shall ordinarily be 60 years, provided he is found fit and suitable to continue after 58 years in service of the High Court. Sub-rule (2) makes a provision that without prejudice to the provisions contained in Rule 56(3) of the Fundamental Rules and Rule 42(1)(b) of the 1976 Rules, a member of the service not found fit and suitable shall be compulsorily retired on his attaining the age of 58 years.

13. Article 235 of the Constitution vests in the High Court the control over the subordinate judiciary within the State. It reads as follows :

> "Control over subordinate courts.—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

14. In Samsher Singh v. State of Punjab and another[3], a seven- Judge Bench of this Court considered the ambit and scope of the word "control" and while elaborating the powers included in the High Courts with regard to control over subordinate judiciary within its respective state, inter alia, exposited the position that such power included pre- mature or compulsory retirement of Judges of the district courts and of subordinate courts.

15. In Chandra Singh and others v. State of Rajasthan and another[4], the above position laid down by this Court in Samsher Singh 3 has been reiterated.

16. The above position laid down by this Court in the cases of Samsher Singh3 and Chandra Singh4 has been reiterated in a recent decision of this Court in Rajendra Singh Verma2 . In paragraph 82 (Pg. 43) of the Report, this Court in Rajendra Singh Verma2 stated as follows :

> "82. As explained by this Court in Chandra Singh v. State of Rajasthan [(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 dead wood, and this constitutional power of the High Court cannot be circumscribed by any rule or order."

17. Following a decision of this Court in High Court of Judicature at Bombay Through Its Registrar v. Shirishkumar Rangrao Patil and another[5] , this Court in Rajendra Singh Verma2 reiterated that the High Court had to maintain constant vigil on its subordinate judiciary.

18. A three-Judge Bench of this Court in All India Judges' Association (2) and others v. Union of India and others[6] has emphasized that the benefit of increase of retirement age to 60 years shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit is available to only those who, in the opinion of the respective High Courts, have a potential for continued useful service. The Bench said, "It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility".

19. That power of the High Court to recommend to the Government to compulsorily retire a judicial officer on attaining the required length of service or requisite age and consequent action by the Government on such recommendation are beyond any doubt.

20. The appellant, as noted above, was selected in Madhya Pradesh Higher Judicial Service in 1979 by way of direct recruitment. At the time of issuance of the order of compulsory retirement on 13.09.2004 he had completed 25 years or so in judicial service. The available materials show that for the period from 01.04.1981 to 31.03.1982, the appellant was given grade 'D' (Average).

21. In 1988-89, the appellant was assessed "D". ACR for that year also records that he never enjoyed clean reputation although no such complaint was received in writing. It also records that his quality of judgments and orders was not satisfactory.

22. For the period ending 31.03.1991, the appellant was graded "C" (Good) but it records, "the descriptive report of the then Chief Justice dated 28.06.1991 is that no inspection of Betul District Judge was made, however, the appellant was reported to be an average judicial officer".

23. For the period ending 31.03.1992, the appellant has been given grade "D" (Average).

24. For the period ending 31.03.1993, the appellant has been graded "E" (Poor). Inter alia, the remarks read, "Inspection note shows that the quality of his performance is poor. His disposals were below average, his reputation was not good".

25. For the period ending 31.03.1994, the appellant has been graded "E" (Poor). The entry reads, "His performance qualitatively and quantitatively has been poor. The officer does not enjoy good reputation".

26. The questions that fall for consideration are: whether the recommendation made by the High Court on the basis of unanimous opinion to the Government for compulsory retirement of the appellant and the order of compulsory retirement issued by the Government suffer from any legal flaw? Is the order of compulsory retirement so arbitrary or irrational that justifies interference in judicial review? Is the view of the Division Bench upholding the order of appellant's compulsory retirement so erroneous warranting interference by this Court in an appeal under Article 136 of the Constitution of India?

27. In Rajendra Singh Verma2 , this Court restated what has been stated in earlier decisions that compulsory retirement from service is neither dismissal nor removal; it differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences inasmuch as the person retired is entitled to pension and other retiral benefits proportionate to the period of service standing to his credit. An order of compulsory retirement being not an order of adverse consequence, principles of natural justice have no application. This Court took into consideration a long line of cases including State of U.P. and another v. Bihari Lal[7], Union of India v. V.P. Seth and another[8], Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another[9], Baidyanath Mahapatra v. State of Orissa and another[10], Union of India v. Col. J.N. Sinha and another[11], All India Judges' Association (1) v.

Union of India and others[12] and All India Judges' Association (2)6 and culled out the legal position in paragraph 183 (Pg. no. 75) of the Report as follows :

> "183. 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 up to 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 the officer concerned was promoted to higher position or whether he was granted certain benefits like increments, etc."

28. Few other features based on service record of the appellant highlighted in the counter filed by the respondent no. 1 in opposition to the writ petition as well as in response to the special leave petition before this Court may be noticed. The appellant was informed of his having been assessed in grade "D" for the period 01.04.1981 to 31.03.1982 by communication dated 15.09.1982. The said adverse grading was not assailed by the appellant and it remained on the record as it is. The appellant was also intimated on 06.11.1989 about the adverse remarks recorded in his ACR for the period 1988-89 that he never enjoyed clean reputation and that his quality of judgments and orders

was not satisfactory. The appellant made representation against the above remarks but the same was rejected and they hold the field as it is. For the period ending 31.03.1992, the appellant was graded "D" and that grading remains as it is.

29. The adverse remarks recorded in the ACR for the period ending on 31.03.1993 and 31.03.1994, were communicated to the appellant. He made two separate representations for expunging the adverse remarks recorded for these years. His representations were rejected by the then Chief Justice on 27.08.1994 and the appellant was informed of the said rejection on 30.08.1994. Despite rejection of the two representations made by the appellant, he again made two representations to the Chief Justice for expunction of these adverse remarks. These representations were also rejected and the appellant was communicated of the same on 05.01.1995. The representations made by the appellant having been rejected twice by the Chief Justice, the appellant yet again made representation on 02.08.1995 for expunction of these remarks. This representation also came to be rejected by the Chief Justice on 21.08.1995 by observing that the remarks in the ACR for the above period do not call for any modification. The appellant sought administrative review of the decision taken by the Chief Justice and the administrative review was also rejected by the Chief Justice on 06.01.1996. The appellant then filed a writ petition (No. 413 of 1996) on the judicial side of the High Court. The Single Judge of that Court allowed the appellant's writ petition vide his judgment and order dated 18.10.1996 and quashed the adverse remarks in the appellant's ACR for the years ending on 31.03.1993 and 31.03.1994. The High Court on administrative side filed LPA against the judgment and order dated 18.10.1996. The Division Bench of that Court allowed the LPA and set aside the judgment and order of the Single Judge dated 18.10.1996. While doing so the Division Bench in its judgment and order dated 25.02.1997 observed in para 69 as follows :

> "69. Before parting with this case in all fairness, we consider it necessary to observe that the adverse remarks on the reputation of respondent conveyed to him in the relevant years should not haunt him all through his judicial career and hamper his prospects for all times. The above remarks cannot be read to his prejudice in future if he shows improvement in his work and performance and is able to achieve the requisite grade for being admitted to higher Selection Grade. The very purpose of communicating adverse remarks is not to condemn an officer but to caution him at the right time so as to give chance of improvement."

30. Against the judgment and order dated 25.02.1997 passed by the Division Bench, the appellant filed a special leave petition before this Court but that was dismissed on 28.04.1997. Thus, advance remarks for the period ending 31.03.1993 and 31.03.1994 remain as it is.

31. From the counter affidavit filed by the respondent no. 1 it also transpires that the benefit of super time scale was not given to the appellant as soon as it became due. Rather, the administrative committee in its meeting held on 25.03.1995, on consideration of the case of the appellant for grant of benefit of super time scale, deferred his case with remarks, "his work performance and conduct will be kept under watch". The view of the administrative committee was accepted by the Full

Court in its meeting held on 29.04.1995. The appellant's case for grant of super time scale was again considered by the Full Court in the subsequent year 1996 and the Full Court in its meeting held on 20/21.04.1996 found that the appellant was not suitable for grant of super time scale. It was only in 1999 that the appellant was given super time scale and 2002 that he was granted above super time scale.

32. In 2002, the appellant was warned for claiming false units. His explanation that there was typing mistake was not found to be credible.

33. From the above, it is clear that the appellant did not have unblemished service record all along. He has been graded "Average" on quite a few occasions. He was assessed "Poor" in 1993 and 1994. His quality of judgments and orders was not found satisfactory on more than one occasion. His reputation was observed to be tainted on few occasions and his integrity was not always found to be above board. In 1988-89, the remark reads, "never enjoyed clean reputation". In 1993, the remark "his reputation was not good" and in 1994 the remark "officer does not enjoy good reputation", were recorded. His representations for expunction of these remarks failed. The challenge to these remarks on judicial side was unsuccessful right upto this Court. In 1993, it was also recorded that quality of performance of the appellant was poor and his disposals were below average. In 1994, the remark in the service record states that the performance of the appellant qualitatively and quantitatively has been poor. With this service record, can it be said that there existed no material for an order of compulsory retirement of the appellant from service? We think not. The above material amply shows that the material germane for taking decision by the Full Court whether the appellant could be continued in judicial service or deserved to be retired compulsorily did exist. It is not the scope of judicial review to go into adequacy or sufficiency of such materials.

34. It is true that the appellant was confirmed as District Judge in 1985; he got lower selection grade with effect from 24.03.1989; he was awarded super time scale in May, 1999 and he was also given above super time scale in 2002 but the confirmation as District Judge and grant of selection grade and super time scale do not wipe out the earlier adverse entries which have remained on record and continued to hold the field. The criterion for promotion or grant of increment or higher scale is different from an exercise which is undertaken by the High Court to assess a judicial officer's continued utility to the judicial system. In assessing potential for continued useful service of a judicial officer in the system, the High Court is required to take into account the entire service record.

Overall profile of a judicial officer is the guiding factor. Those of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age.

35. That the appellant's challenge to 1993 and 1994 entries was unsuccessful right upto this Court is not in dispute. However, learned senior counsel for the appellant has placed heavy reliance upon the observations made by the Division Bench in its judgment and order dated 25.02.1997, particularly, paragraph 69 thereof wherein the Division Bench held that adverse remarks on the reputation in the relevant years should not haunt him all through his judicial career and hamper his prospects for all times. We are afraid the above observations by the Division Bench while upholding the remarks in no manner restricted the power of the Full Court in taking into consideration these adverse remarks in its exercise to find out whether or not the appellant should be retained in service after he has attained the required length of service. The consideration of the appellant's case for grant of selection grade and super time scale stood on different footing. The entire service record and overall profile of a judicial officer guide the High Court in reaching its satisfaction about the continuance or otherwise after the judicial officer has attained the required length of service or age. When the entire service record of a judicial officer is under consideration, obviously the High Court is alive to such judicial officer's having got promotion/s, increments, etc. during the service.

36. It was argued by the learned senior counsel for the appellant that the administrative committee-1 had recommended the appellant's continuation in service and there was no justification for the Full Court to take a contrary view. The view of the administrative committee is not final. It is recommendatory in nature. It is open to the Full Court to accept the committee's report or take a different view. In the present case, the Full Court on the basis of the entire service record of the appellant formed a unanimous opinion that the appellant must be compulsorily retired and recommended to the Government, accordingly. On the basis of the material which existed and which we have referred to above, it can hardly be said that the recommendation by the Full Court to the Government for compulsory retirement of the appellant was arbitrary or based on material not germane for such recommendation.

37. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.

38. The most shocking and unbecoming conduct of the appellant highlighted by the respondent no. 1 before the High Court in opposition to the writ petition and in response to the present appeal is his act to overreach the administrative decision on the review petition filed by him before the Chief Justice after his representations for expunction of adverse remarks for the period ending on

31.03.1993 and 31.03.1994 had been thrice earlier rejected. The appellant approached Shri R. K. Malaviya, Member of Parliament and Chairman, House Committee (Rajya Sabha) for his grievance concerning rejection of his representations for expunction of remarks for 1993 and 1994. Though the appellant has denied that he ever approached Shri R.K. Malaviya but to falsify his claim, the learned senior counsel for the respondent no. 1 placed before us xerox copy of the letter dated 14.02.1996 written by Shri R.K. Malaviya to Shri H.R. Bhardwaj, Minister of State for Law, Justice and Company Affairs, Government of India, New Delhi and the copy of the letter dated 08.03.1996 sent by the Ministry of Law, Justice and Company Affairs (Department of Justice), Government of India addressed to the Chief Secretary to the Government of Madhya Pradesh, Bhopal and the Registrar, High Court. The letter dated 14.02.1996 addressed by Shri R.K. Malaviya to Shri H.R. Bhardwaj, the then Minister of State for Law, Justice and Company Affairs reads as follows :

"R.K. Malaviya
MEMBER OF PARLIAMENT
CHAIRMAN
HOUSE COMMITTEE
(RAJYA SABHA)

Off. : 66, PARLIAMENT HOUSE
NEW DELHI – 110001.
TEL.: 3017048, 3034699

RES.: 30, CANNING LANE
KASTURBA GANDHI MARG
NEW DELHI -110001
TEL. : 3782895
RES. : 19, TILAK NAGAR, MAIN ROAD

INDORE (M.P.)
TEL. : 492412, 492588, 495054
14 February 1996

Dear Shri Bhardwaj Ji

Enclosed is a representation of Shri R.C. Chandel, District & Sessions Judge, Rewa [MP], which is self-explanatory.

I shall be grateful if you kindly get it examined and do the needful.

Yours sincerely, [R.K. MALVIYA] Shri H.R. Bhardwaj, Minister of State for Law, Justice & Company Affairs, Government of India, NEW DELHI."

39. The forwarding letter sent by the Government of India, Ministry of Law, Justice and Company Affairs (Department of Justice) dated 8.3.1996 reads as follows :

> "No. L-19015/3/96-Jus Government of India Ministry of Law, Justice and C.A. (Department of Justice) Jaisalmer House, Mansingh Road New Delhi, the 8/3/96.
>
> 1) The Chief Secretary
> to the Government of
> Madhya Pradesh,
> BHOPAL.
> 2) The Registrar,
> Madhya Pradesh High Court,
> JABALPUR.

> Subject : Reference from Sh. R.K. Malaviya, Member of Parliament and Chairman, House Committee, Rajya Sabha on representation of Sh. R.C. Chandel District and Sessions Judge, Rewa (M.P.) Sir, I am directed to forward herewith a copy of letter dated 14.2.1996 alongwith its enclosure, received from Shri R.K. Malaviya, Member of Parliament and Chairman House Committee, Rajya Saba on the above subject for taking such action as may be considered appropriate.

Yours faithfully, (P.N. SINGH) Under Secretary to the Government of India"

40. The conduct of the appellant in involving an M.P. and the Ministry of Law, Justice and Company Affairs, in a matter of the High Court concerning an administrative review petition filed by him for expunging adverse remarks in ACRs of 1993 and 1994 is most reprehensible and highly unbecoming of a judicial officer. His conduct has tarnished the image of the judiciary and he disentitled himself from continuation in judicial service on that count alone. A Judge is expected not to be influenced by any external pressure and he is also supposed not to exert any influence on others in any administrative or judicial matter. Secondly and still worst, the appellant had an audacity to set up a plea in the rejoinder that he never made any representation to Shri R.K. Malaviya, M.P. for any purpose whatsoever. But for the appellant's approaching Shri R.K. Malaviya and his request for help, Shri R.K. Malaviya would have never written the letter quoted above to the then Minister of State for Law, Justice and Company Affairs. On this ground also his writ petition was liable to be dismissed.

41. The learned Single Judge examined the administrative decision of the Full Court to recommend to the Government to compulsory retire the appellant as if he was sitting as an appellate authority to consider the correctness of such recommendation by going into sufficiency and adequacy of the materials which led the Full Court in reaching its satisfaction. The whole approach of the Single Judge in consideration of the matter was flawed and not legally proper. The learned Single Judge proceeded to examine the materials by observing, "The entire record pertaining to complaints against the petitioner has also been produced before me during the course of argument by learned senior counsel for respondent no. 1. Thus, I am dealing each and every complaint one by one". We are afraid, the learned Single Judge did not keep the scope of judicial review in view while examining the validity of the order of compulsory retirement. The Division Bench of the High Court in the intra-court appeal was, thus, fully justified in setting aside the impugned order.

42. Learned senior counsel for the appellant placed heavy reliance on a decision of this Court in Nand Kumar Verma1. Having carefully considered Nand Kumar Verma1, we find that the decision of this Court in Nand Kumar Verma1 has no application on the facts of the present case. This is clear from para 36 (Pg. 591) of the Report which reads as follows:

> "36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant

material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service." Nand Kumar Verma1 , thus, turned on its own facts.

43. In view of the above, we are satisfied that the recommendation made by the High Court to the Government for compulsory retirement of the appellant and the order of compulsory retirement issued by the Government do not suffer from any legal flaw. The order of compulsory retirement is neither arbitrary nor irrational justifying any interference in judicial review. The impugned judgment of the Division Bench is not legally unsustainable warranting any interference by this Court in an appeal under Article 136 of the Constitution of India.

44. Civil Appeal is, accordingly, dismissed with no order as to costs.

..... J.

(R.M. Lodha) .....J. (Anil R. Dave) NEW DELHI.

AUGUST 8, 2012.

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[1] (2012) 3 SCC 580
[2] (2011) 10 SCC 1
[3] (1974) 2 SCC 831
[4] (2003) 6 SCC 545
[5] (1997) 6 SCC 339
[6] (1993) 4 SCC 288
[7] 1994 (Suppl) 3 SCC 593
[8] (1994) SCC (L&S) 1052
[9] (1992) 2 SCC 299
[10] (1989) 4 SCC 664
[11] (1970) 2 SCC 458
[12] (1992) 1 SCC 119