Nand Kumar Verma vs State Of Jharkhand & Ors on 1 February, 2012

Equivalent citations: 2012 AIR SCW 1791, 2012 (2) AIR JHAR R 491, 2012 LAB. I. C. 1546, AIR 2012 SC (SUPP) 66, (2012) 3 ALLMR 413 (SC), (2012) 1 CLR 549 (SC), (2012) 2 SERVLJ 6, (2012) 4 KCCR 266, (2012) 5 CAL HN 230, (2012) 4 JCR 129 (SC), (2012) 3 LAB LN 1, (2012) 1 ORISSA LR 747, (2012) 3 SERVLR 151, (2012) 5 MAD LJ 133, (2012) 2 SCALE 663, (2012) 2 ALL WC 2026, (2012) 133 FACLR 13

Bench: Anil R. Dave, H.L. Dattu

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.

1458

OF 2012

(SPECIAL LEAVE PETITION (C) NO. 5921 OF 2007)

NAND KUMAR VERMA ... APPELLANT

VERSUS

STATE OF JHARKHAND & ORS. ...RESPONDENTS

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Jharkhand at Ranchi in Writ Petition No.2856 of 2002 and Writ Petition No.1620 of 2003 dated 11.07.2006. By the impugned judgment and order, the High Court has sustained the order of reversion and the order of compulsory retirement passed against the appellant.

3. At the outset, we intend to observe that the Judicial Officers are part and parcel of this institution. They should be respected and their career should be carefully protected. But in the present case, it appears to us, after going through the records that the appellant, who was serving as a Judicial Officer, has been treated with scant respect by the High Court. Be that as it may.

4. The appellant was initially appointed as Munsif (now known as Civil Judge, Junior Division) in the Bihar Subordinate Judicial Service in the year 1975 and his services were confirmed as Munsif in the year 1980. Subsequently, in the year 1986, he was promoted to the rank of Sub-Judge (Civil Judge, Senior Division) and confirmed on the same rank w.e.f. 19.01.1988. In the year 1987, the appellant was made Sub-Judge-cum-Addl. Chief Judicial Magistrate. Thereafter, in November 1989, he was posted as Chief Judicial Magistrate by the Patna High Court vide Notification dated 5.11.1989. While he was working as a Chief Judicial Magistrate at Gopalganj, an inspection was made by the portfolio Judge and on noticing certain omissions and commissions in granting bail in certain cases by the appellant, certain adverse remarks were made against him in the note made on 09.03.1994. Further, the appellant had also passed an Order dated 10.2.1994 granting bail to one person accused of offences punishable under Section 302 of the I.P.C. in Mohammadpur Police Station case no. 90/93. This was taken as an exception by the learned District Judge and also by the High Court while deciding the Criminal Miscellaneous Petition No.11327/1994. The High Court of Patna vide Order dated 12.09.1994 in Cr. Misc. No. 11327 of 1994, whilst commenting adversely against the appellant, had observed that the appellant had granted bail in the said matter on extraneous consideration and further directed the matter to be placed before the Hon'ble Chief Justice of the High Court for taking necessary action.

5. In view of the abovementioned adverse comments passed against the appellant, he was directed to offer his explanation if any, by the High Court. In this regard, the appellant had offered his explanation, firstly, on 7.5.1994 for strictures passed by the Inspecting Judge and; secondly on 21.12.1994 for adverse remarks made by the High Court dated 12.09.1994 in Cr. Misc. No. 11327 of 1994.

6. The explanation so offered on 7.5.1994 was placed before the Standing Committee of the High Court on 17.11.1994. In regard to this explanation, the Standing Committee further sought explanation from the appellant for using objectionable language against the Inspecting Judge and directed him to appear before it in its next meeting.

7. Accordingly, the appellant appeared on 1.12.1994 and 2.12.1994 and had promptly stated that he was apologetic for the impertinent language used in the explanation. The Standing Committee, after accepting the unconditional apology offered by the appellant, had condoned his lapses and had transferred him from Gopalganj to Samastipur.

8. The case of the appellant was also considered for promotion from Sub-Judge to the Additional District Judge among 16 Sub-Judges by the Standing Committee in its meeting dated 3.2.1995 and the same came to be deferred because of the pendency of the inquiry proceedings against him.

9. In the second explanation offered by the appellant dated 21.12.1994 he had, specifically, adverted to the allegations made for granting bail indiscriminately even in cases of heinous crimes. The said explanation was placed before the Standing Committee of the High Court for its consideration in its meeting dated 5.1.1995 as an Additional Agenda which was duly accepted by the High Court.

Thereafter, the same was communicated to the appellant by the Registrar General of the High Court vide his order dated 1.2.1995.

10. After accepting the explanations offered, the High Court was still under the impression that the Judicial Officer should not be left in peace. Therefore, it appears to us, that the Standing Committee of the High Court in its meeting dated 11.08.1995 directed the initiation of the departmental proceedings against the appellant by framing the Articles of Charges. Accordingly, the appellant was served Articles of Charges dated 13.12.1995 containing two charges and was also asked to show cause within one month. Both the charges relate to the granting of bail indiscriminately in Mohammadpur Police Station Case No. 90/93, by the appellant while he was discharging his functions as Chief Judicial Magistrate. Pursuant to the Show Cause, the appellant had replied in detail on 16.01.1996 that his explanation on the said charges has already been accepted by the High Court. However, the High Court through the District Judge, Samastipur had served a notice dated 03.04.1996 to the appellant for initiating departmental proceedings against him on the basis of Articles of Charges.

The appellant had submitted his reply statement dated 11.06.1996 and 22.06.1996 wherein he had specifically contended that on the same set of charges, he had already offered his explanation on 21.12.1994 and the same was placed before the Standing Committee consisting of Hon'ble the Chief Justice and also other learned Judges of the High Court in its meeting dated 5.1.1995 and wherein they have accepted his explanation. But the explanation so offered was not accepted by the Enquiry Officer, therefore, he proceeded with the Enquiry proceedings.

11. After recording the evidence of the witnesses and the documents produced by them, the Enquiry Officer had submitted a report to the disciplinary authority, namely, the High Court on 19.07.1996.In the Enquiry Report, the Enquiry Officer was of the view that both the charges alleged against the appellant are proved beyond all reasonable doubt.

12. Based on the report of the Enquiry Officer, the disciplinary authority, viz. the High Court, took a decision to compulsorily retire appellant from service in its administrative jurisdiction and acting on the recommendation made by the High Court, a formal notification dated 20.04.1998 came to be issued by the personnel department, Government of Bihar, reverting the appellant from the rank of Sub-Judge (Civil Judge, Senior Division) to the lower post of Munsif (Civil Judge, Junior Division).

13. Aggrieved by the said order, the appellant had approached this Court in Writ Petition (S) No.547 of 1999 under Article 32 of the Constitution of India.

14. This Court, while admitting the petition, had issued notices to the respondents therein.

15. At this stage, one more factor which requires to be noticed by us is that during pendency of the said Writ Petition, in the month of May, 2001, due to bifurcation of the State of Bihar, the appellant was allotted to the State of Jharkhand and was posted as Judicial Magistrate (First Class) at Koderma vide Order dated 21.04.2001.

Accordingly, the appellant had joined his services under new regime on 5.5.2001. While working as Judicial Magistrate, on the recommendation made by the Full Court of Jharkhand High Court, the State Government has issued notification dated 17.07.2001 compulsorily retiring appellant from service. The said order was served on the appellant on 26.7.2001. This decision was taken by the High Court on the basis of appellant's Annual Character Roll/Annual Confidential Report (hereinafter referred to as "the A.C.R.") pertaining to past service which includes the A.C.R.'s of the selective period of the service.

16. Aggrieved by the aforesaid order of compulsory retirement from service, the appellant had approached this Court in Writ Petition No.5 of 2002. This Court, however, dismissed the W.P. No. 5 of 2002 vide Order dated 18.01.2002 with liberty to avail alternative remedy under Article 226 of the Constitution of India. Accordingly, the appellant filed a Writ Petition no. 2856 of 2002 under Article 226 before the Jharkhand High Court.

17. The respondents herein had brought to the notice of this Court in Writ Petition (C) No.547 of 1999 that the appellant had retired from service and therefore, this Court transferred the pending proceedings in W.P.(C) NO.547/1999 to the Jharkhand High Court for its consideration and decision. On transfer, the same was registered as W.P. No. (S) 1620 of 2003 before the High Court.

18. By the impugned judgment, the High Court has rejected both the writ petitions filed by the appellant. That is how the appellant is before us in this Civil Appeal.

19. Learned counsel for the appellant submitted that the order of reversion, whereby the appellant was reverted from the post of Chief Judicial Magistrate to that of Munsif (Civil Judge, Junior Division) is smacked with arbitrariness and contrary to the norms of service law jurisprudence and therefore, is bad in law. While elaborating his submission, the learned counsel would contend that the High Court, having accepted his explanation to the Show Cause Notice issued to explain the notings made by the Inspecting Judge in Criminal Miscellaneous Petition No.10327 of 1994, could not have initiated departmental proceedings against the appellant. This, the learned counsel would contend, would amount to double jeopardy.

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20. Per contra, learned counsel for the respondents would submit that the explanation was accepted by the Standing Committee only with regard to the impertinent language used by the appellant and not with regard to the allegations of granting of bail/provisional bail to the accused persons even in heinous crimes. Therefore, he submits that the High Court was justified in initiating departmental inquiry proceedings against the appellant for the charges alleged in the charge memo.

21. Learned counsel for the appellant, insofar as his compulsory retirement from service is concerned, submits that the adverse remarks that were taken into consideration by the High Court while terminating the services of the appellant, were never communicated to him and secondly, he would submit that the High Court was selective in taking into consideration the ACR's of the appellant from the date of his entry into service till the date of his retirement.

He further submits that the High Court, while recording the entries made in the ACR's in the impugned judgment, has not made the correct reflection of the actual contents of the ACR's which are in the records. In support of that contention, the learned counsel has invited our attention to the additional affidavit filed before the High Court as well in these proceedings.

22. In reply to the submissions made by the learned counsel for the appellant, the learned counsel for the High Court submits that in the Writ Petition, filed by the appellant, he had not specifically contended that the adverse remarks which were entered in the ACR's were not communicated to him. Even otherwise, learned counsel would contend that the entire service profile of the appellant while in service was not above board and therefore, the High Court was justified in recommending the case of the appellant to the State Government for compulsory retirement from service.

23. The issues that would fall for our consideration and decision in this appeal are: Whether the High Court was justified in passing the order dated 21.4.1998 in reverting the appellant from the post of Chief Judicial Magistrate to the rank of Munsif (Civil Judge, Junior Division); and Whether the High Court was justified in passing the order of compulsorily retiring the appellant from service in public interest.

24. To answer the first issue, we may have to notice the observations made by the learned Inspecting Judge in Criminal Miscellaneous Petition No.11327 of 1994. The same is extracted :-

> "In the present case, as stated above, the grant of bail by the Chief Judicial Magistrate itself was against the statutory provision contained in section 437 of the Code as the materials on the record clearly show that there was reasonable ground for believing that the petitioner has been guilty of an offence punishable with death or imprisonment for life. The grant of bail itself was not permissible in law and virtually the Chief Judicial Magistrate has surrendered his judicial discretion to some other consideration.

25. In pursuance to certain directions issued in the aforesaid Criminal Miscellaneous Petition, the High Court had called for the explanation from the appellant. Pursuant to the direction so issued, the appellant had offered his explanation. The Standing Committee of the High Court had directed

the appellant to appear before it.

Before the Standing Committee, the appellant had expressed his unconditional apology and the same was accepted by the Standing Committee and the Standing Committee had observed in its noting that the case has been closed against the appellant and the same was informed to the appellant also.

26. By yet another explanation, the appellant had justified his action in granting bail. This explanation offered by him was also accepted by the High Court and the same was communicated to the appellant by the Registrar General of the High Court in which specific reference is made to the explanation offered by the appellant in his reply dated 21.12.1994.

27. After accepting his explanation, the High Court was still of the view that disciplinary proceedings requires to be initiated against the appellant for his alleged omission and commission of granting bail indiscriminately even in heinous crimes. The Charge Memo was replied by the appellant and in that he had, specifically, contended that the Standing Committee of the High Court, after accepting the explanation, had informed him that his explanation is accepted and all the allegations made against him are closed. This aspect of the matter, though noticed by the Inquiry Officer, he does not give any finding. He, however, has observed that the charges alleged against the appellant are proved. Based on this, the High Court has passed the order of reversion whereby the appellant was reverted from the post of Chief Judicial Magistrate to that of Munsif and the same was notified by the State Government also. In our opinion, having accepted the explanations and having communicated the same to the appellant, the High Court could not have proceeded to pass the order of initiating departmental proceedings and reverting the appellant from the post of Chief Judicial Magistrate to the post of Munsif. On General Principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charges is permissible. In the present case, a charge memo was issued and served on the appellant. A reading of the charge memo does not contain any reference to the proceedings of the Standing Committee at all. It is also not found as to whether the earlier proceedings has been revived in accordance with the procedure prescribed. In fact, after receipt of the charge memo, the appellant, in his reply statement, had brought to the notice of the enquiry officer that on the same set of charges, a notice had been issued earlier and after receipt of his explanation dated 21.12.1994, the Standing Committee, after accepting his explanation had dropped the entire proceedings and the same had been communicated to him by the Registrar General of the High Court by his letter dated 02.02.1995. In spite of his explanation in the reply statement filed, the enquiry officer has proceeded with the enquiry proceedings and after completion of the same, has submitted his report which has been accepted by the disciplinary authority. Therefore, in these circumstances, there is no justification for conducting a second enquiry on the very charges, which have been dropped earlier.

Even through the principles of double jeopardy is not applicable, the law permits only disciplinary proceedings and not harassment.

Allowing such practice is not in the interest of public service. In the circumstance, we cannot sustain the impugned order reverting the appellant to the lower post.

28. We now proceed to consider the second order passed by the High Court for recommending the case of the appellant to the State Government to accept and issue appropriate notification to compulsorily retire the appellant from Judicial Service. It is now well settled that the object of compulsory retirement from service is to weed out the dead wood in order to maintain a high standard of efficiency and honesty and to keep the judicial service unpolluted.

Keeping this object in view, the contention of the appellant has to be appreciated on the basis of the settled law on the subject of Compulsory retirement. In Baikuntha Nath Das v. Chief District Medical Officer, (1992) 2 SCC 299, three Judge Bench of this Court has laid down the principles regarding the Order of Compulsory retirement in public interest :

> 34. The following principles emerge from the above discussion:
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> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
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> (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.
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> (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.
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> (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. This aspect has been discussed in paras 30 to 32 above.

29. In Madan Mohan Choudhary v. State of Bihar, (1999) 3 SCC 396, this Court was considering the order of compulsory retirement of the appellant, who was a Member of the Superior Judicial Service in the State of Bihar. On a writ petition filed by the appellant in the High Court, challenging his order of compulsory retirement by the Full Court of the High Court, the High Court on the judicial side refused to interfere and dismissed the petition. The appellant came in appeal before this Court. This Court found that while on various earlier occasions remarks were given by the High Court but there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94. The entries for these years were recorded at one time simultaneously and the appellant was categorized as `C' Grade officer. The date on which these entries were made was not indicated either in the original record or in the counter-affidavit filed by the respondent. These were communicated to the appellant on 29-11-1996 and were considered by the Full Court on 30-11-1996. It was clear that these entries were recorded at a stage when the Standing Committee had already made up its mind to compulsorily retire the appellant from service as it had directed the office on 6-11-1996 to put up a note for compulsory retirement of the appellant. This Court held that it was a case where there was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service prematurely. This Court was of the opinion that the entries recorded "at one go" for three years, namely, 1991-92, 1992-93 and 1993-94 could hardly have been taken into consideration. The Court then referred to its earlier decision in Registrar, High Court of Madras v. R. Rajiah, (1988) 3 SCC 211, where this Court said that the High Court in its administrative jurisdiction has the power to recommend compulsory retirement of the Member of the judicial service in accordance with the rules framed in that regard but it cannot act arbitrarily and there has to be material to come to a decision to compulsorily retire the officer. In that case it was also pointed out that the High Court while exercising its power of control over the subordinate judiciary is under a constitutional obligation to guide and protect judicial officers from being harassed or annoyed by trifling complaints relating to judicial orders so that the officers may discharge their duties honestly and independently; unconcerned by the ill-

conceived or motivated complaints made by unscrupulous lawyers and litigants.

30. We are conscious of the fact that there is very limited scope of judicial review of an order of premature retirement from service.

As observed by this Court in Rajiah's case (supra) that when the High Court takes the view that an order of compulsory retirement should be made against a member of the Judicial Service, the adequacy or sufficiency of such materials cannot be questioned, unless the materials are absolutely irrelevant to the purpose of compulsory retirement. We also add that when an order of compulsory

retirement is challenged in a court of law, the Court has the right to examine whether some ground or material germane to the issue exists or not. Although, the Court is not interested in the sufficiency of the material upon which the order of compulsory retirement rests.

31. This Court in High Court of Punjab & Haryana v. Ishwar Chand Jain, (1999) 4 SCC 579, has discussed the purpose, importance and effect of the remarks made during inspection which ultimately become the part of the ACR of the concerned Judicial officer. This Court has observed thus:

32. Since late this Court is watching the spectre of either judicial officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied.

Inspection should act as a catalyst in inspiring Subordinate Judges to give the best results. They should feel a sense of achievement. They need encouragement.

They work under great stress and man the courts while working under great discomfort and hardship. A satisfactory judicial system depends largely on the satisfactory functioning of courts at the grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred.

Inspection of a subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. A casual inspection can hardly be beneficial to a judicial system. It does more harm than good.

32. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the concerned authority but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACR's. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACR's which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted

the contents of the ACRs. The High Court has taken the decision on the basis of selective service record which includes the summarized ACR's, as quoted in the impugned judgment, for the selected years. The ACR for the initial years: 1975-76 and 1976-77 remarks him as capable of improvement against quality of work, the ACR's for the years:

> 1982-83, 1983-84 points that his work is unsatisfactory, the ACR's for the year: 1984-85, 1987-88 remark his work performance as unsatisfactory with bad reputation and quarrelsome attitude, and the ACR for the later years: 1993-94 & 1994-95 refers to some private complaints and remark that his powers were divested by the High Court and the ACR's for the recent years: 1997-98 & 1998-99 points that no defect in judicial work but disposal of cases is poor. Whereas, the appellant furnished certain Service records which includes: the ACR recorded by inspecting Judge in the year 1985 which evaluate the appellant as `B'-Satisfactory against the entry "Net result", further the ACR prepared by the District and Sessions Judge, Samastipur for the year 1997-98 assessed him as an officer of average merit, maintaining good relationship with bar, staffs and colleagues but poor disposal, and the ACR prepared by the District and Sessions Judge, Muzaffarpur for the year 1998-99 assessed him as a good officer but poor disposal. However, his poor disposal during this period is justified up to certain extent in the background of his involvement in the continuous and unnecessary disciplinary proceedings which was based on the charges of granting of bail indiscriminately, even after, the fact that he had been exonerated of these charges long back in the year 1995 by the High Court at Patna. 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. In Swami Saran Saksena v. State of U.P., (1980) 1 SCC 12, this Court has quashed the order of Compulsory retirement of the appellant, therein, in the public interest, which was found to be in sharp contradiction with his recent service performance and record. This Court observed:

> 3. Ordinarily, the Court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a government servant. And we have been even more reluctant to reach the conclusion we have, when the impugned order of compulsory retirement was made on the recommendation of the High Court itself. But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second efficiency bar the appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement.

The entries in between in the records pertaining to the appellant need to be examined and appraised in that context.

There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed. The appellant will be deemed to have continued in service on the date of the impugned order.

33. Moreover, the District and Sessions Judge have the opportunity to watch the functioning of the appellant from close quarters, who have reported favourably regarding the appellant's overall performance except about his disposal, in the appellant's recent ACR for the year 1997-98 and 1998-99. In view of this, the greater importance is to be given to the opinion or remarks made by the immediate superior officer as to the functioning of the concerned judicial officer for the purpose of his compulsory retirement. The immediate superior is better placed to observe, analyse, scrutinize from close quarters and then, to comment upon his working, overall efficiency, and reputation. In Nawal Singh v. State of U.P., (2003) 8 SCC 117, this Court has observed thus:

> 12. ... In the present-day system, reliance is required to be placed on the opinion of the higher officer who had the opportunity to watch the performance of the officer concerned from close quarters and formation of his opinion with regard to the overall reputation enjoyed by the officer concerned would be the basis.

34. In view of the above discussion, we are of the opinion that the High Court was not justified in sustaining the orders passed by the Full Court of the same High Court. Accordingly, we allow this appeal, set aside the orders passed by the High Court. Since the appellant has retired from service on attaining the age of superannuation, he is entitled to all the monetary benefits from the date of his notional posting as C.J.M. till his notional retirement from service on attaining the age of superannuation, as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this order.

Ordered accordingly.

.....J. (H.L. DATTU) .....J. (ANIL R. DAVE) NEW DELHI;

FEBRUARY 01, 2012