

(2023) 10 OHC CK 0188

In the Orissa High Court

Case No : Writ Petition (C) No. 37932 Of 2021

Ajit Kumar Mohapatra

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 31-10-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311
Prevention of Corruption Act, 1988 — Section 7

Citation : (2023) 10 OHC CK 0188

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : B. Routray, S. Das

Final Decision : Allowed

Judgement

A.K. Mohapatra, J

1. By filing the above noted writ application, the petitioner has approached this Court to quash the impugned order dated 12.11.2021 under Annexure-5 issued by the Opposite Party No.1 and further for a direction to the Opposite Party No.1 to allow the Petitioner to continue as Deputy Superintendent of Excise and In-Charge of Superintendent of Excise till his superannuation. The Order No.4388/Ex., Bhubaneswar dated 12.11.2021 has been issued in exercise of power under Rule 71(a) of the Orissa Service Code thereby taking a decision to retire the Petitioner from service under the Government, on a review as he has attained the age of 55 years with effect from 12.11.2021, by allowing him three months pay and allowance in lieu of three months notice as provided in the aforesaid rules.

2. The impugned order dated 12.11.2021 under Annexure-5 is nothing but an order of compulsory retirement of the Petitioner from Government service on attaining the age of 55 years. Compulsory retirement as provided under Rule 71 (a) of the Orissa Service Code is a tool to weed out employee of doubtful

integrity or inefficient employee from public service to ensure efficiency in administration. Furthermore, a perusal of the guideline dated 24.09.2019, it appears that before coming to such a conclusion that an employee is not fit to continue in Government service, the Opposite Parties are required to review the performance of the petitioner upon a completion of 30 years of qualifying service or on attaining 50 years of age or on attaining 55 years of age. The decision to retire the Government employee, compulsorily has to be based on the performance of Government servant as is reflected in his Annual Character Role/ Performance Appraisal Report/ CCR. Moreover, the law in this regard is quite well settled that if a Government Employee is given promotion despite the employee having adverse entries made in his ACR/ PAR/ CCR, such fact would go in favour of such Government Employee. In the present case, the Petitioner was given promotion on 20.06.2019 to the post of Deputy Superintendent of Excise under Annexure-6 on the basis of his performance, merit and suitability. Moreover, he had been entrusted with an Additional charge of In-Charge of Superintendent of Excise. Being aggrieved by the aforesaid decision under Annexure-5 the Petitioner has approached this Court by filing the present writ application.

3. The genesis of facts leading to filing of the present writ petition, in a narrow compass, is that the Petitioner was working as Deputy Superintendent of Excise and was In-Charge of Superintendent of Excise of Deogarh District in the State of Odisha. Initially, the Petitioner was appointed by following regular recruitment process as Sub-Inspector of Excise on 09.09.1996 in the scale of pay of Rs. 1350-30-1440-40-1800-EB-50-2200/- + Grade Pay of Rs.1350/- per month. Accordingly, the Petitioner joined in the cadre on temporary basis vide notification/ office order dated 23.08.1996. Initially, he was posted as Sub-Inspector of Excise in the district of Deogarh and accordingly, the Petitioner submitted his joining report on 02.09.1996 and started discharging his duties.

4. While the Petitioner was working as Sub-Inspector of Excise in the district of Deogarh, subsequently upon successful completion of the number of years required for promotion and on being satisfied with his performance, the petitioner was promoted to the post of Inspector of Excise by virtue of Office Order dated 28.11.2013 and was posted in the district of Angul. Thereafter, the Petitioner was promoted to the post of Deputy Superintendent of Excise and was posted as Deputy Superintendent of Excise in the district of Berhampur. It is needless to mention here that, all throughout his career the Petitioner was performing his duties with utmost sincerity and to the satisfaction of the authority. Furthermore, the performance of the Petitioner was being appraised periodically and accordingly, the same was being recorded in his ACR/ CCR. Therefore, the performance of the Petitioner is a matter of record and the same can be found out from the ACR/CCR of the Petitioner.

5. While the Petitioner was discharging his duties as Deputy Superintendent of Excise and he was posted as In-Charge of Superintendent of Excise and as such was entrusted with the duty of Superintendent of Excise. He was transferred and

posted as Deputy Superintendent and In-Charge of Superintendent of Excise of Deogarh district on 08.10.2020. Accordingly, the Petitioner joined in duty on 19.10.2020 at his new place of posting with a new responsibility. While he was continuing as such, all of a sudden Petitioner was arrested on 30.09.2021 and thereafter he was remanded to the custody in connection with his alleged involvement Vigilance P.S. Case No.9 dated 28.09.2021 which was initiated under Section 7 of the Prevention of Corruption Act for demanding and accepting illegally gratification. The Petitioner was remand to custody up to 11.10.2021 till he was released on bail. Although the Petitioner was arrested in connection with Rourkela Vigilance P.S. Case No.9 of 2021, however, no charge sheet has been filed as of now and the matter is still subjudice before the Court of Special Judge (Vigilance), Sambalpur.

6. Basing on the fact of initiation of a Vigilance Case implicating the Petitioner and the detention of the Petitioner in Judicial Custody, the Opposite Party No.1 placed the Petitioner under suspension with effect from 30.09.2021. During such suspension period, the Petitioner was directed not to leave the headquarter without obtaining prior permission of the Excise Commissioner and he was allowed the payment of subsistence allowance as per Rule 90 of Orissa Service Code.

7. While this was so, the Opposite Party No.1 basing on the fact of pendency of a Vigilance case and in exercise of power conferred under Rule 71(a) of the Orissa Service Code passed an order giving compulsory retirement to the Petitioner vide order dated 12.11.2021. It has been stated by the Petitioner that order under Annexure-5 has not been couched with the words as compulsory retirement or any other mode of retirement from service stating therein that on attaining the age of 55 years the order of retirement has been passed. Thus, the main ground of attack in the writ petition is that the Opposite Party No.1 has not acted inconsonance with the provisions of law while passing the impugned order.

8. It is further pleaded in the writ petition that the petitioner has completed only 25 years and on the basis of appraisal of his performance he had been given promotion recently i.e. w.e.f. 20.06.2019 to the post of Deputy Superintendent of Excise. Most importantly he was found suitable and competent enough to handle additional burden of In-Charge Superintendent of Excise in the district of Deogarh. It has been emphatically pleaded in the writ petition that the petitioner does not have any adverse remark/ entries in his CCR/ACR/PAR. As such, the conduct of the Opposite Parties in retiring the petitioner from Government Service on review of his performance under Rule 71(a) of the Orissa Service Code is highly arbitrary, illegal and unreasonable. Moreover, the same is not supported by any material on record.

9. So far the review of service of any Government employee, for the purpose of weeding out dead wood from Government service by giving them compulsory retirement, is concerned, in the case of a Gazetted Officer a review is conducted by a duly constituted Review Committee which ordinarily sits and takes up the

cases of the such officers twice in a year and in the event the meeting could not be held due to non-availability of record or for any other administrative difficulties, the chairman is at liberty to fix the meeting on such other dates which shall be not later than 31st August or 28th February of the relevant year. Further, it has been emphatically pleaded that no such review committee meeting had taken place before passing the impugned order under Annexure-5 whereunder the case of the petitioner is stated to have been reviewed and he has been given compulsory retirement. As such, it has also been pleaded that due to non-compliance of such statutory provision before issuing the impugned order, the impugned order under Annexure-5 is illegal, arbitrary and unsustainable in law. Additionally, it has been stated that the Petitioner is now aged about 56 years. Further, his case had not been reviewed at the age of 50 and 55 years respectively and he was allowed to continue in service and in the absence of any adverse remark in his service book, the issuance of order under Annexure-5 giving compulsory retirement to the Petitioner only on the basis of the fact that the Petitioner is implicated in a Vigilance Case which is subjudice and where no charge sheet has been filed, the impugned order under Annexure-5 is unsustainable in law and accordingly the same is liable to be quashed.

10. So far, the entire service career of the Petitioner is concerned, it has been pleaded in the writ application that there was no material whatsoever to show that there is any adverse remark communicated to the Petitioner. Conversely, considering his performance and merit, the Petitioner had been given promotion in accordance with the provisions of the rules first time in the year 2013 thereafter in the year 2019. Further, on the basis of the promotion granted in the year 2019 after taking into consideration the service record as well as the performance of the Petitioner, the Petitioner has been performing his duties as a Deputy Superintendent of Excise to the satisfaction of the authorities. Moreover, from the date of his last promotion in the year 2019 till the time the petitioner was given compulsory retirement, there exist no adverse comment/ entries in the CCR of the Petitioner. At least no such communication has been made to the Petitioner. Moreover, no review having been taken place as provided under the Rules on attaining the age of 50 years and 55 years respectively, there was no occasion for the Opposite Parties to pass the impugned order under Annexure-5 giving compulsory retirement to the Petitioner.

11. A counter affidavit has been filed on behalf of the Opposite Party No.1. In the said counter affidavit the Opposite Parties have raised the question of maintainability of writ application and further prayed for dismissal of the writ petition on the ground that the same is thoroughly misconceived. It has been stated that there is absolutely no illegality or irregularity in order dated 12.11.2021 under Annexure-5 to the writ petition. Further, the said counter affidavit reveals that while the Petitioner was working as Sub-Inspector of Excise, the major penalty proceeding under Rule 15 of the OCS(CCA) Rules, 1962 was initiated against him vide memo dated 10.01.2007 for unauthorized absence

from headquarter, indulging in unnecessary argument, presenting false facts and failure to discharge his duties properly. The said proceeding was concluded vide order dated 12.03.2010 by imposing a punishment of censure to be recorded in the service book of the Petitioner and the Petitioner was warned to be conscious in future.

12. Counter affidavit further reveals that during the incumbency of the Petitioner as Inspector of Excise, he was placed under suspension vide order dated 08.07.2014 in contemplation of initiation of a Disciplinary Proceeding for demand of bribe from the licensee of liquor shop and for non detection of any NDPS cases during his tenure as Inspector of Excise, Angul. Accordingly, a major penalty proceeding under Rule 15, 1962 Rules was initiated against the Petitioner vide memo dated 01.09.2014 for disobedience of orders of Higher Authorities, dereliction in duty, misconduct and violation of the conduct rule. The said proceeding was concluded vide order dated 20.11.2018 again with the punishment of censure and withholding of one annual increment without cumulative effect.

13. In the year 2021, while the Petitioner was working as In-charge Superintendent of Excise a vigilance case was registered against him vide Rourkela Vigilance P.S. Case No.09 dated 28.09.2021 for demand of illegal gratification of Rs.1,50,000. It has also been stated that in the said Vigilance Case a trap was laid by the Vigilance Officer and accordingly the Petitioner was caught carrying the tainted bribe money in a carry bag from the complainant. The aforesaid tainted bribe money was recovered from the possession of the Petitioner. The Petitioner was arrested on 30.09.2021 and forwarded to the judicial custody. Accordingly, the Petitioner was placed under suspension for his detention in judicial custody exceeding 48 hours.

14. The Opposite Party No.1 in its counter affidavit has pleaded that in order to streamline the efficiency in administration and to make the administration corruption free, the State Government has formulated a set of guidelines which was notified vide GA and PG Department letter dated 24.09.2019. The said guideline provides that in order to streamline the administration and to weed out officers/employees for doubtful integrity or inefficiency a decision has been taken by the Government to retire such officer/employees though prematurely. Such premature retirement is to be given on the basis of a review of the service career of the officers/employees concerned by a duly constituted review committee under Rule 71(a) of Odisha Service Code. Keeping in view the above guidelines and the previous disciplinary action taken against the petitioner, the Excise Department considered it necessary to review the case of the Petitioner through a review committee which was constituted vide notification dated 19.11.2020. The said review committee meeting was held on 30.10.2021 under the chairmanship of the Principal Secretary, Excise Department. The said committee considered the suitability of petitioner's continuance in service keeping in view the parameters for such consideration. After going through relevant records and

keeping in view the entirety of the background facts as well as the involvement of the Petitioner in the vigilance case. Such review committee has recommended the case of the Petitioner for his premature retirement from service under Rule 71(a) of the Odisha Service Code read with proviso (b) under Rule 41 (1) of the Odisha Civil Service (Pension Rules), 1992 by allowing three months pay and allowances in lieu of three months notice under the aforesaid provision. It has also been stated that the recommendation of the review committee has the concurrence of the Govt. of Odisha.

15. Heard Mr. B. Routray, learned Senior Counsel appearing for the Petitioner and Mr. S. Das, learned Additional Government Advocate for the State-Opposite Parties. Perused the pleadings of the parties and considered the contentions raised by learned counsels appearing for the parties.

16. Mr. B. Routray, learned Senior Counsel appearing for the Petitioner, at the outset, drawing attention of this Court to Rule 71(a) of the Orissa Service Code submitted before this Court that while passing the impugned order dated 12.11.2021 under Annexure-5 and thereby giving compulsory retirement to the Petitioner, the Opposite Party No.1 has not followed the rules and the procedure as has been prescribed in the Orissa Service Code. For better appreciation of the provisions of Rule 71(a) of the Orissa Service Code is quoted hereinbelow:-

"Except as otherwise provided in the other clause of this rule the date of compulsory retirement of a Government servant, except a ministerial servant who was in Government service on the 31st March, 1939 and Class IV Government servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in respect of the Government servant in the 55th year of age in order to determine whether he / she should be allowed to remain in service upto the date of the completion of the age of 58 years or retired on completing the age of 55 years in public interest.

Provided that a Government servant may retire from service any time after completing thirty years' qualifying service or on attaining the age of fifty years, by giving a notice in writing to the appropriate authority at least three months before the date on which he wishes to retire or by giving the said notice to the said authority before such shorter period as Government may allow in any case. It shall be open to the appropriate authority to withhold permission to a Government servant who seeks to retire under this rule, if he is under suspension or if enquiries against him are in progress. The appropriate authority may also require any officer to retire in public interest any time after he has completed thirty years' qualifying service or attained the age of fifty years, by giving a notice in writing to the Government servant at least three months before the date on which he is required to retire or by giving three months pay and allowances in lieu of such notice".

17. Learned Senior Counsel appearing on behalf of the petitioner also referred to

the circular guidelines dated 24th September, 2019 under Annexure-7 to the writ application which has been issued by the G.A. and P.G. Dept., Govt. of Odisha in the context of premature retirement of the Government servants to weed out the Officers and employees of doubtful integrity or inefficiency from public service to ensure efficiency in administration. Mr. Routray, learned Senior Counsel in course of his argument specifically referred to para-6, 9, 11 & 12 for better appreciation of those provisions in the guideline the same are quoted hereinbelow:-

6. The criteria to be followed by the Committee in making their recommendation would be as follows:-

- (a) Government employees whose integrity is doubtful, will be retired.
- (b) Government employees who are found to be ineffective will also be retired. The basic consideration in identifying such employees should be the fitness/competence of the employees to continue in the post which he/she is holding.
- (c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the higher post, has been found satisfactory.

Consideration is ordinarily to be confined to the preceding 5 years or to the period in the higher post, in case of promotion within the period of 5 years, only when retirement is sought to be made on grounds of ineffectiveness.

- (d) Ordinarily no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. It is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement in the year preceding retirement.

The above instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest could be marginal if an old employee, in the last year of service, is found ineffective; but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.

9. Premature retirement can be ordered in public interest only and not as a penalty to the employee concerned. Compulsory retirement is one of the major penalties listed under Rule 13 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 and before it is imposed on any employee, the procedure outlined in the said Rules for imposition of major penalties must be complied with. Premature retirement under Clause (a) of Rule 1 of the Orissa Service Cadre is not and must not be used as a substitute that can be resorted to more conveniently. In other words, where it appears that any employee is guilty of

misconduct or negligence induty and that he would probably hve been compulsority retired had disciplinary proceedings been initated against him, the proper course would be to initiate such proceeding instead of trying to circumvent the prescribed procedure and thereby extinguishing the employees's right of defending himself against the charge of misconduct or negligence. Premautre retirement can only be ordered where it is obvious that retention of the employee in service will not be in public interest.

11. The objective of the review is to weed out persons of doubtful integrity or inefficiency from public service. In order however that no such decision is taken arbitrarily or without very careful appraisal of facts, the review committee shall, wherever it recommends retirement of an employee, record the reasons of its findings in adequate detail.

12. The Hon'ble Supreme Court have observed the following basic parameters to deal with the premature retirement of Government Servants in State of Gujarat vs. Umedbhai M.Patel, 2001(3) SCC 314:-

(a) Whenever the services of a public servant are no longer useful to the general administration, the officer can be prematurely retired for the sake of public interest.

(b) Ordinarily, the order of premature retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(c) For better administration, it is necessary to chop off dead wood, but the order of premature retirement can be passed after having due regard to the entire service record of the Officer.

(d) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(e) Even un-communicated entries in the confidential record can also be taken into consideration.

(f) The order of premature retirement shall not be passed as a short-cut to avoid Departmental enquiry when such course is more desirable.

(g) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favor of the officer.

(h) Premature retirement shall not be imposed as a punitive measure.

18. Referring to the above quoted provisions of the guideline dated 24.09.2019, Mr. Routray, learned Senior Counsel appearing for the petitioner submitted before this Court that it is crystal clear that before coming to a conclusion to give compulsory retirement to a Government employee on the ground that such employee like the Petitioner upon completion of 30 years of qualifying service or attaining 50 years of age on their attaining the 55 years of age, the service career of such employee needs to be reviewed on the basis of the performance of

the Petitioner as has been reflected in his ACRs/CCRs. He further emphatically submitted that the law is well settled that if a Government employee is given promotion despite such adverse entries made in the ACR/ CCR, then such fact shall be in favor of the government employee concerned. In the context of the present case, it was contended by Mr. Routray that the petitioner was given promotion to the post of Deputy Superintendent of Excise on 20.06.2019 under Annexure-6 and it is presumed that the authorities must have considered the performance as well as ACR/CCR of the Petitioner to assess the merit before giving such promotion to the Petitioner. Not only that, the Petitioner was given the promotion and was entrusted with the additional responsibility of In-Charge Superintendent of Excise which must be kept in view and the exceptional performance of the petitioner should have been taken note of by the committee. As such, it was argued by Mr. Routray, that the Opposite Parties cannot take a stand that the Petitioner was not efficient or he was not having merit while he was given promotion in the year 2019.

19. With regard to the report of the review committee, learned Senior Counsel for the Petitioner further contended that it appears from the proceeding of the review committee that the said review committee has taken the decision on the basis of the vigilance case initiated against the Petitioner, wherein no charge sheet has been filed as of now. On the basis of such erroneous that the Petitioner is of doubtful integrity, the Review Committee recommended for compulsory retirement of the Petitioner. Therefore, it was contended before this Court that the impugned order under Annexure-5 is not only contrary to the settled position of law, but the same is also not based on the materials on record. Moreover, the finding, if any, with regard to the integrity of the Petitioner by the Review Committee has been arrived at by completely ignoring the CCR/ ACR of the Petitioner which according to the learned Senior Counsel for the Petitioner does not contain any adverse remark so also the service book of the Petitioner.

20. Mr. Routray, learned Senior Counsel also contended that the Petitioner is a Group-B Officer and for such category of Officers the circular dated 24.09.2019 under Annexure-7 clearly provides that the review can only be made on 31st March, 30th August, 30th September and 31st December. However, in the present case, as revealed from the record, the Review Committee considered the case of the Petitioner on 31st October of 2021 in violation of its own guideline as such the impugned under Annexure-5 is liable to be quashed.

21. He also contended that the Review Committee recommended the case of the Petitioner for compulsory retirement basing on the fact that the Petitioner has been entangled in a Vigilance G.R. Case No.21 of 2021 which was initiated against the Petitioner, coupled with the fact that penalties were imposed on the petitioner in two disciplinary proceedings. However, he laid emphasis on the fact that in the above noted vigilance case, it appears, the investigation has not yet been concluded and no final charge sheet has been filed as of now. He further contended that even after the penalties were imposed in the Disciplinary

Proceedings, the Petitioner was given promotion on 20.06.2019. Therefore, the conduct of the Opposite Party No.1 issuing order under Annexure-5 is bad in law and not based on the rules and law applicable to such cases.

22. Mr. Routray, while countering the vigilance case initiated against the petitioner, submitted that in the vigilance case the investigation has not yet been concluded and no final charge sheet has been filed and as such no inference could be drawn that the Petitioner is guilty of the alleged offences. Moreover, he also submitted that assuming that charge sheet has been filed and in the event the Petitioner is found prima facie involved in the alleged occurrence by the vigilance court, however, such prima facie finding is subject to trial and evidence to lead in trial. Further, in the event the Petitioner is acquitted by the trial Court, the order under Annexure-5 would cause an irreparable loss to the Petitioner which cannot be remedied even after the Petitioner succeeds in the vigilance case. Therefore, he emphasized that putting an officer under suspension is altogether different from throwing him out of service.

23. Further, Mr. Routray has vehemently argued that despite the fact that penalties were imposed on the petitioner in a Disciplinary Proceeding, which was initiated earlier, the petitioner was considered for promotion and accordingly he was promoted in the year 2019 to the post of Deputy Superintendent of Police, Excise. Therefore, in view of the aforesaid facts, which were elaborated before this Court, it was argued that the order of compulsory retirement under Annexure-5 is in the nature of punishment imposed on the petitioner by using the power under Rule 71(a) of the Orissa Service Code as a subterfuge to the Disciplinary Proceeding as contemplated under Rule 15 of the OCS CCA Rules, 1962. As such, considering the punitive nature of the order under Annexure-5, it was submitted by learned Senior Counsel that the procedure as contemplated under the OCS CCA Rules, 1962 having not been followed in the case of the Petitioner, therefore, the impugned order under Annexure-5 is unsustainable in law.

24. Finally, it was argued by Mr. Routray, learned Senior Counsel, that the Petitioner was discharging his duties efficiently and sincerely without any doubtful integrity and at no point of time he has been issued with any adverse remark, at least no such entry of adverse remark having been made in his service book from the date of his joining in service, the conclusion drawn by the Opposite Parties while issuing the impugned order under Annexure-5 is unsustainable in law. He further contended that it was only in the month of September, 2021 the petitioner was falsely implicated in the above noted vigilance case wherein the investigation is still open and no charge sheet has been filed as of now. Therefore, it cannot be said that the petitioner is prima facie guilty of offences alleged against him in the above noted vigilance case. In such view of the matter, learned Senior Counsel appearing for the petitioner contended before this Court that the authorities have acted in an arbitrarily, illegally and mala fide manner while passing the order under Annexure-5 giving

compulsory retirement to the Petitioner by reviewing his service although the same is not in consonance with the rules and the guidelines provided for the said purpose.

25. In course of his argument Mr. B. Routray, learned Senior Counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of State of Gujarat vs. Umedbhai M. Patel reported in AIR 2001 SC 1109. Paragraph-11 & 12 of the said judgment which has been referred to by the learned Senior Counsel appearing for the petitioner have been quoted hereinbelow:-

11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

12 . In the instant case, there were absolutely no adverse entries in respondent's confidential record. In the rejoinder filed in this Court also, nothing has been averred that the respondent's service record revealed any adverse entries. The respondent had successfully crossed the efficiency bar at the age of 50 as well 55. He was placed under suspension on 22.5.1986 pending disciplinary proceedings. The State Govt. had sufficient time to complete the enquiry against him but the enquiry was not completed within a reasonable time. Even the Review Committee did not recommend the compulsory retirement of the respondent. The respondent had only less than two years to retire from service. If the impugned order is viewed in the light of these facts, it could be said that the order of compulsory retirement was passed for extraneous reasons. As the

authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the order of compulsory retirement, we are of the view that the Division Bench was right in holding that the impugned order was liable to be set aside. We find no merit in the appeal, which is dismissed accordingly. However, three months' time is given to the appellant-State to comply with the directions of the Division Bench, failing which the respondent would be entitled to get interest at the rate of 18% for the delayed payment of the pecuniary benefits due to him.

26. Learned Senior Counsel for the Petitioner also relied upon the judgment of the Hon'ble Supreme Court in the case of *The State of Gujarat and Ors. vs. Suryakant Chunilal Shah* reported in (1999) 1 SCC 529 paragraph-26 and 27 of which has been referred to have been quoted hereinbelow:-

26. The performance of a Govt. servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty of integrity of a Govt. servant is to look to his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorization of the employee is poor and there is material also to cast doubts upon his integrity, such a Govt. servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "Integrity". If this is missing the whole bundle would disperse. A Govt. servant has, therefore, to keep his belt tight.

27. Purpose of adverse entries is primarily to forewarn the Govt. servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the Govt. servant, to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance.

27. He also referred to the judgment of this Court in *Brundaban Sahu vs. The Orissa State of Road Transport Corporation Company Limited and Ors.* decided in S.A. No.208 of 1989 on 16.08.2022. Paragraph-10 and 11 of the said judgment which are relevant for the purpose have been quoted hereinbelow:-

10. In the case of *State of Gujarat v. Umedbhai M. Patel* reported in AIR 2001 SC 1109, the Apex Court again laid down 8 guidelines to be observed before an order of premature retirement is passed. The said guidelines are as follows:

(i) When the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer is given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

11. From the analysis of the guidelines given by the Apex Court in both the cases referred to above it is clear that when the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest and such compulsory retirement shall not be done as a punitive measure. The purpose of passing an order of premature retirement is for better administration and it is necessary to chop off dead-wood. Now coming to the past C.C.Rs, of the Plaintiff as quoted above. I do not find single adverse entry and on the other hand services rendered by the Plaintiff has been appreciated at some places. The only ground on which the order of premature retirement is based appears to be pendency of a vigilance enquiry which culminated in a final report in favour of the Plaintiff after the impugned order was passed. In connection with the above reference may be made to a decision of this Court in the case of Bhaskar Padhi v. The Orissa Road Transport Co. Ltd. and Anr. reported in 7387 (1) OLR 219. In the said case the delinquent officer was put under compulsory retirement while he was working as a Traffic Supervisor in the year 1982. One of the considerations for passing the order of compulsory retirement was pendency of a vigilance enquiry on certain allegations. This Court while dealing with the said question observed that if some allegation had been made and a case started by vigilance department was pending that could not be a ground to hold that the Petitioner lacked integrity. After all the matter had remained at the stage of adjudication and it had not been established that the Petitioner was dishonest. The Apex Court in the case of M.S. Bindra v. Union of India and Ors. reported in AIR 1998 SC 3058 also dealt with the question in reference to "doubtful integrity". The Apex Court held as follows:

The Appellant Director of Anti Evasion Wing had established in unblemished reputation and earned encomiums from ail concerned for having conducted

series of raids on business houses to unearth huge amount of concealed excise duty. He was dubbed as an officer of doubtful integrity and ordered to compulsory retire. Out of the three instances on which the Screening Committee relied to dub the officer as a case of "doubtful integrity" the first was his action against a business house. The fact is that it was the Appellant who headed the operation. A task which unearthed huge sum of concealed excise duty would normally evoke appreciation for his work. But what was noted against him in that affair was that he wilfully created lacuna in the confiscation proceedings for providing an escape route to the defaulter. One lacuna was that the confiscation order contained nearly 100 pages and the period was too short for preparing such an order. Another lacuna was that he imposed a huge penalty and fine without issuing a show cause notice. Normally it is an achievement that an order of 100 pages was made during such a short period. It cannot be frowned at by inferring that he would have caused it to be written by somebody else. Similarly to say that he imposed penalty without notice, in order to hold the defaulter is too fetched. The second instance was that investigation against some business houses was kept in abeyance by the Deputy Director allegedly at behest of Appellant. The minimum things expected of the screening committee was to ascertain from the Deputy Director, the circumstances under which instructions were issued by him to keep the investigation in abeyance. Attributing a sinister motive to the Appellant for what his deputy had done was seemingly unfair, without adopting the minimum precautions. The third instance was a statement by a owner of a business house that a third person has told them that Appellant was to be paid Rs. 10 lakhs to save them from the proceedings. Neither its truthfulness was checked with the Appellant or with the third person who had made it.

Held, there was utter dearth of evidence for the Screening Committee to conclude that Appellant had doubtful integrity. Order by which premature compulsory retirement was imposed on the Appellant was liable to be set aside.

28. He also referred to the judgment of a Division Bench of this Court in the case of Epari Vasudeva Rao vs. State of Odisha reported in 2014(II) OLR 381 to demonstrate the scope of judicial review in the matter of premature retirement from service of a Govt. employee and submitted that when such an order has been challenged in a Court of law, the Court of law has to examine whether any ground or material germane to issue exists or not. The relevant paragraphs which have been relied upon by the learned Senior Counsel appearing for the petitioner that is Paragraphs Nos.44, 48, 49, 50, 51, 55 & 58 have been quoted hereinbelow:-

44. The first question is if the petitioner was allowed to continue in service at the age of 50 and 55 years despite the incidents of the above two adverse remarks whether at the age of 58 years the selfsame adverse reports can form basis for giving compulsory retirement to the petitioner.

Rule 44 of 2007 Rules extracted above envisages that case of a judicial officer

shall be considered at least three times i.e. when he is about to attain the age of 50 years, 55 years and 58 years for the purpose of giving compulsory retirement. In the present case, the petitioner was allowed to continue in the judicial service at the age of 50 years and 55 years despite existence of the above two adverse remarks against him.

Records reveal that at the age of 55 years, there is a review in the year 2009. At that time it was under consideration as to whether the petitioner shall be allowed to continue in service. The Full Court after considering the entire period of service which obviously includes two incidents of the years 1985 and 1998 allowed the petitioner to pass in the test of review. Needless to say that the standard of consideration for review at the age of 55 and 58 years is same. Therefore, we are unable to reconcile how three years thereafter in the year 2012 i.e. in review at the age of 58 years, the same two incidents weighed the Hon'ble Full Court to retire the petitioner compulsorily.

48. At this juncture, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of *Swami Saran Saksena v. State of U.P.*, (1980) 1 SCC 12. In that case, the Hon'ble Supreme Court quashed the order of compulsory retirement which was found to be in sharp contradiction with his recent service performance and record. In that case, the Hon'ble Supreme Court observed as follows:

"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 materials 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 to 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 the 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."

(Underlined for emphasis)

49. In the case of *High Court of Judicature at Patna, through R.G. v. Shyam Deo Singh and others*, [Civil Appeal No. 2529 of 2002, disposed of on March 28, 2004], a three Judge Bench of the Hon'ble Supreme Court, held as under:

"9.....The subsequent ACRs of the respondent for the years 1997-1998 and 2000-2001 are sufficiently positive and depicts the respondent as an efficient

judicial officer with a good reputation for honesty and impartiality. The respondent was promoted to the post of District and Sessions Judge on 5.9.1998. By Notification dated 17.2.2000 he was promoted to the selection grade of the Bihar Superior Judicial Service with effect from 1.1.1997. Therefore, not only the adverse remark dated 15.12.1995 was not acted upon but subsequent thereto promotion to the highest level in the district judiciary as well as selection grade in the said cadre was granted to the respondent. Promotion to the highest post of District Judge and placement in the selection grade is on an assessment of positive merit and ability. The said promotion (s), therefore, would have the effect of wiping out the adverse remark dated 15.12.1995. Such a view has in fact been expressed in *Brij Mohan Singh Chopra v. State of Punjab* (para 10). In the light of the above facts, we do not see how the High Court, on the administrative side, can be found to be justified in refusing to continue with the service of the respondent beyond the age of 58 years. The order dated 20.2.2001 passed by the High Court setting aside the said decision, therefore, will have to be affirmed and the present appeal dismissed. We order accordingly."

50. Now, let us see what are the performances of the petitioner during later years. The above discussed two adverse remarks relate to the years 1985 and 1998.

51. On 8.8.2008, the petitioner was substantially appointed to the cadre of OSJS (Sr. Branch). On 19.8.2009 the petitioner was permitted to hold Selection Grade at the age of 55 years. It is relevant to note here that after 2009 the petitioner earned "very good" CCR for two years i.e. during the year 2009 and 2010 and "good" CCR for the part of the 2009. On 3.8.2010 the petitioner was granted Super Time Scale. Here it is pertinent to mention that although Rule 5 of Rules, 2007 requires the District Judges to put three years service in Selection Grade in order to be granted Super Time Scale, in the case of the petitioner considering his merit though he did not complete three years such promotion was given relaxing Rule 5 of Rules, 2007. As per Rules 4 and 5 the promotions are based on seniority-cum-merit. If the petitioner was found meritorious in 2009 and 2010, it is difficult on our part to accept the contention of Mr. Sahoo that the petitioner became non-meritorious in 2012 more particularly on the face of the CCR, wherein he was rated "very good" during interregnum period, as per the observation of His Excellency the Governor of Odisha in Note Sheets (Annexure--9)

55. Undisputedly, the two remarks are of remote past, one relates back to 27 years and other 15 years back from the date of compulsory retirement. Despite the same, the petitioner was promoted to the higher post thereafter. Therefore, such adverse remarks lose their stings.

Promotions in the petitioner's case is based on merit and selection. The Full Court has to consider the entire record of service before taking decision in the matter of compulsory retirement and while doing so more importance should be attached to record all performance of later years.

If we compare the two adverse remarks with the subsequent performances of the petitioner certainly the later performance outweighed the former adverse remarks.

58. For the reasons stated above, the notification dated 13.03.2013 (Annexure-6) issued by opposite party No. 1 giving compulsory retirement to the petitioner is quashed. The petitioner be treated to be continuing in service uninterruptedly from the date he was given compulsory retirement. Consequentially, he shall be paid salary from the date he was given compulsory retirement till reinstatement in service in accordance with law and accordingly, on completion of 60 years of age, he shall be entitled to all retiral benefits including pension.

29. In Course of his argument, learned Senior Counsel also relied upon the judgment of this Court in Subhendra Mohanty vs. High Court of Orissa and Ors. reported in 2017(II) ILR-CUT 1273. Paragraph-25 and 26 of the said judgment which are banked upon by the leaned Senior Counsel appearing for the petitioner are also quoted hereinbelow:-

25. Even though adverse remarks/records of a Government employee prior to his promotion is not washed-off for the purpose of taking them into consideration while reviewing service of an employee to decide whether he should be continued in service or be given premature retirement, it does not appeal to conscience that the adverse remarks which have already been considered in a previous review of service and they were not found sufficient to retire the employee on review, the same adverse remarks/records, without any further or additional adverse remarks in the service records would be sufficient to prematurely retire the employee while reviewing his services at a subsequent stage, i.e., at the age of 55 years.

26. In this respect the decision of this Court in the case of Epari Vasudeva Rao v. State of Orissa and another; 2014 (2) OLR 381 is worth noting. The services of the petitioner in that case had been reviewed at the age of 55 years and he was allowed to continue in service/despite he had some adverse remarks/records. On the basis of self-same adverse remarks he was given compulsory retirement while reviewing his service at the age of 58 years, without there being any subsequent or additional adverse remarks/service records, apart from promotions being given to petitioner therein in between. Therefore, this Court quashed the order of compulsory retirement and directed reinstatement of the said employee in service with back wages. In the instant case the three instances of remote past for which the petitioner was cautioned, censured and warned were of very minor nature and the same were considered while reviewing the service of the petitioner at the age of 50 years and the Review Committee as well as the Full Court did not give him compulsory retirement at that stage and allowed him to continue in service, evidently considering the said incidents as not justifying giving of compulsory, retirement. Thereafter the petitioner was promoted to the cadre of District Judge and even those incidents did not furnish

ground for withholding promotion. As to conduct and performance, except for the years 2001, 2006 and the first half of 2008 when his overall rating was 'average', there was no allegation about his integrity. On the other hand, the rating of the petitioner as 'average' for the years 2001, 2006 and the first half of 2008 was also available to the Review Committee as well as to the Full Court of the High Court during the review of his service at the age of 50 years in November, 2008. These ratings and the three adverse remarks described earlier could not persuade the High Court to give compulsory retirement to the petitioner then. His ACR for other years was 'good' and 'very good'. Therefore, without there being any additional or further adverse remark/service record and having regard to the decision of this Court in the case of Epari Vasudev Rao (Supra) we are of the opinion that the Court's decision to retire the petitioner compulsorily is arbitrary and unreasonable and, therefore, the impugned order of compulsory retirement under Annexure-9 cannot be sustained. Accordingly we quash the said order.

The petitioner has crossed the age of superannuation, i.e., 60 years in May, 2017, and, therefore, there is no scope to direct his reinstatement in service. However, we direct that he must be deemed to have continued in service from the date of his compulsory retirement till the date of his superannuation at the age of 60 years and he shall be given his salary at the time scale of pay for the post he was holding at the time of compulsory retirement for the said period and retiral benefits accordingly.

30. In reply to the argument advanced by learned Senior Counsel for the Petitioner, Shri S. Das, learned Additional Government Advocate appearing on behalf of the State-Opposite Parties referred to the counter affidavit and submitted that in exercise of powers conferred under Rule 71(a) of Odisha Service Code read with proviso (b) of Rule 41(1) of the Odisha Civil Service (Pension Rules), 1992 the Opposite Parties have taken a decision which is in larger public interest and to bring efficiency in the administration. Accordingly, a decision has been taken to give premature retirement to the Petitioner. Therefore, he further contended that the Opposite Parties have not committed any illegality or error while passing the impugned order under Annexure-5 to the writ application. Learned Addl. Government Advocate further contended that in order to streamline efficiency in administration and to make the administration corruption free the Government of Odisha in its GA & PG Dept. has formulated a set of guidelines/ principles vide letter No.27037/Gen. dated 24.09.2019 in order to consider premature retirement of Government Servant to weed out officers/ employees on the ground of doubtful integrity or inefficiency from public service. Accordingly, the case of the petitioner was sent to the review committee, which was duly constituted, for consideration of the Petitioner's case to give him premature retirement as per law.

31. Learned Addl. Government Advocate further referring to the proceedings of the meeting of the review committee held on 30.10.2021 under Annexure-F/1 to

the counter affidavit submitted that the minutes of such proceedings speaks for itself. The case of the petitioner was duly considered by the review committee while he was working as In-Charge Superintendent of Excise, Deogarh as he had completed 55 years of age and since no previous review have been done under Rule 71(a) of the Odisha Service Code. The review committee minutes reveals that the Excise Commissioner, Odisha, Cuttack vide letter dated 29.10.2021 reported the performance of the Petitioner which is not up to the satisfaction on the ground of doubtful integrity and corrupt practice and as such the Commissioner has opined that further continuance in service of the Petitioner are detrimental to the public interest.

32. Further referring to the minutes of the proceeding under Annexure-F/1, learned Addl. Government Advocate submitted that review committee while considering the case of the petitioner has taken note of the vigilance case pending against the Petitioner as well as two Disciplinary Proceedings which were drawn up against the Petitioner under Rule 15 of the 1962 Rules. He further contended that the review committee has taken note of the charge memo dated 01.09.2015 whereunder the charge No.4 clearly speaks about the demand of illegal gratification forcefully from the sales man of liquor shops and Mohua flower godowns everyday. The review committee has also taken note of the charge of misconduct the doubtful integrity and collection of illegal money. Such review committee has also taken note of the charge memo dated 10.01.2007 while considering the case of the Petitioner. From the above noted one criminal proceeding and two disciplinary proceedings, the review committee after due deliberation has arrived at a conclusion that the integrity of the Petitioner is doubtful and as such it was held that Petitioner's further continuance in service is undesirable in public interest and accordingly the recommendation was made for premature retirement.

33. Having heard the learned counsels appearing for the respective parties and on a careful consideration of their submission coupled with careful scrutiny of the pleadings of the respective parties as well as materials on record, this Court would now proceed to decide the issue as to whether the conduct of the Opposite Parties in giving premature retirement to the Petitioner pursuant to the recommendation of the review committee is valid in law or not? While deciding the issue involved in the present writ application this Court is required to look into the background of the order under Annexure-5, that is, the proceedings of the review committee meeting dated 29.10.2021 which was set up for the above noted purpose. Therefore, to test the validity of the order under Annexure-5 to the writ petition, this Court is also required to examine the procedure adopted as well as the conclusion arrived at by the review committee in its meeting held on dated 29.10.2021.

34. On perusal of the Government of Odisha GA and PG Dept. guideline dated 24.09.2019 under Annexure-7 to the writ petition, the same reveals that such guidelines have been prepared for premature retirement of Government servants

with the objective to weed out officers and employees of doubtful integrity or inefficiency from public service. Clause-6 of the aforesaid guideline lays down the criteria to be followed by the Committee while making their recommendation. Clause-6 (a) of the guideline provides that Government employee whose integrity is doubtful will be retired. Similarly, Clause 6 (b) provides for premature retirement on the ground of ineffectiveness and the basic consideration provided therein is the fitness/ competence of the employee to continue in the post. The same also provides that no employee shall ordinarily be retired on the ground of ineffectiveness if his service during the preceding 5 years has been found to be satisfactory and he has been given promotion.

35. Since the Petitioner has been given premature retirement on the ground of doubtful integrity, this Court would confine its analysis to such ground only. Further, the guideline provides that once the case of a particular officer/employee is reviewed, the same is no more open to be reviewed for the second time. Most importantly, Clause-9 of the guideline provides that premature retirement can be ordered in public interest only and not as a penalty to the employee concerned. Since Clause-9 of the guideline dated 24.09.2019 is relevant for the purpose of the present case the same is extracted hereinbelow:-

9. Premature retirement can be ordered in public interest only and not as a penalty to the employee concerned. Compulsory retirement is one of the major penalties listed under Rule 13 of the Orissa Civil Services (Classification, Control & Appeal). Rules, 1962 and before it is imposed on any employee, the procedure outlined in the said Rules for imposition of major penalties must be complied with. Premature retirement under Clause (a) of Rule 71 of the Orissa Service Code is not and must not be used as a substitute that can be resorted to more conveniently. In other words, where it appears that any employee is guilty of misconduct or negligence in duty and that he would probably have been compulsorily retired had disciplinary proceedings been initiated against him, the proper course would be to initiate such proceeding instead of trying to circumvent the prescribed procedure and thereby extinguishing the employee's right of defending himself against the charge of misconduct or negligence. Premature retirement can only be ordered where it is obvious that retention of the employee in service will not be in public interest.

36. A careful reading of Clause-9 of the aforesaid guidelines clearly reveals that premature retirement under Rule-71(a) shall not be used as a measure of punishment. The punishment of compulsory retirement has been provided under Rule-13 of the 1962 Rules which is to be inflicted on the delinquent employee by following the procedure outlined in the 1962 Rules. Therefore, a word of caution has been used in Clause-9 not to use premature retirement as a substitute to compulsory retirement that is where it appears that if any employee is guilty of misconduct or negligence in duty and there is a possibility of imposing the punishment of compulsory retirement in a pending Disciplinary proceeding, the proper course would be to initiate such proceeding instead of trying to

circumvent the prescribed procedure by completely extinguishing the employee's right of defending himself against the charges brought against him. In such view of the matter and keeping in view the substance of the guideline dated 24.09.2019 this Court is of the considered view that premature retirement can only be ordered where the review committee is satisfied that the retention of such employee/officer in service would be detrimental to the public interest.

37. A further scrutiny of the guideline dated 29.10.2021 reveals that Clause-11 provides for the objective of such review. Similarly, Clause-12 of the guideline has highlighted the parameters laid down by the Hon'ble Supreme Court for premature retirement of Government servant in the case of State of Gujarat vs. Umedbhai M. Patel 2001(3) SCC 314. Thus, while referring to the judgment of the Hon'ble Supreme Court in Umedbhai M. Patel's case (supra) the authorities have clearly highlighted the fact that the order of premature retirement shall not be passed as a shortcut to avoid departmental enquiry and that the premature retirement shall not be imposed as a punitive measure. Clause-13 (I) provides that the review committee shall consider the entire service records of the Petitioner.

38. Similarly, Clause-15 of the GA and PG Dept. guideline dated 29.10.2021 prescribes a procedure to be followed in a case of doubtful integrity. It further provides that if the enquiry ultimately leads to a reasonable inference of lack of integrity, the employee concerned can be proceeded against either departmentally or under the criminal law, but it would not be correct to conclude that an employee is lacking in integrity merely because some allegations against him are under inquiry. In other words, allegations which have not been inquired into or in respect of which the inquiry is not completed should be ignored. Even in regard to allegations which have been inquired into by the Vigilance organization, a conclusion of lack of integrity may not be drawn straight away. The facts of the case should be carefully considered and it should be examined if the ends of justice will be better served by a Departmental Proceeding. The Rule, normally should be that before any such conclusion is drawn, the explanation of employee concerned should have been considered.

39. Clause-20 of the guideline by referring to the Supreme Court judgment, further prescribes that the review committee shall have to record its reason in writing while recommending a case for premature retirement. The opinion formed by the review committee has to be bona fide and the same has to be in public interest. The objective behind adopting a procedure of giving reasons in writing is to avoid any arbitrary and mala fide exercise of the power conferred under Rule 17 (a) of the Orissa Service Code while recommending premature retirement of a Government employee.

40. Reverting back to the facts of the present case, this Court on a perusal of the decision of the Review Committee under Annexure-F/1 to the counter affidavit observed that the said committee has taken a decision to recommend the case of the Petitioner for premature retirement referring to two Disciplinary Proceedings

initiated against the Petitioner and one Vigilance Case which was registered on 28.09.2021. So far the two Disciplinary Proceedings are concerned, on perusal of the record it appears that the first Disciplinary Proceeding initiated against the Petitioner on 10.01.2007 and concluded by imposing a punishment of censure only and in the second Disciplinary Proceeding initiated on 01.09.2014 against the Petitioner has ended up in imposing a punishment of censure with stoppage of one increment without cumulative effect. After the above noted two Disciplinary proceedings were concluded the Petitioner has been given promotion to the post of Deputy Superintendent of Excise on 20.06.2019 under Annexure-6 to the writ application. Subsequently, he has also been entrusted with the additional charge of In-Charge of Superintendent of Excise. So far the Vigilance Case against the Petitioner is concerned, it appears that the same was initiated on the basis of an F.I.R. dated 28.09.2021. Further, according to the learned Senior Counsel appearing for the Petitioner no charge-sheet in the said case has been filed as of now. Therefore, it is presumed that the investigation is still open.

41. In the ultimate analysis of factual background of the case and further keeping in view the fact that despite two adverse remarks in earlier Disciplinary Proceeding, the Petitioner was given promotion. Moreover, a perusal of the record also reveals that the service rendered by the Petitioner has been duly recognised and appreciated by the Opposite Parties by granting citations/accolades in favour of the Petitioner. In addition to the above, it appears that in recognition of the service rendered by the Petitioner, the Petitioner was given the additional charge of In-charge Superintendent of Excise. So far the Vigilance Case is concerned, the same is of the year 2021 where no charge-sheet has been filed, therefore it cannot be conclusively said at this juncture that the Petitioner is guilty of the offences alleged until and unless the investigation is concluded and the charge-sheet is filed. Keeping in view the aforesaid factual position this Court would examine the conduct of the review committee in considering the case of the Petitioner and retiring him from service compulsorily.

42. Before drawing the final conclusion in the present case on the basis of the factual background, this Court would once again like to refer to the landmark judgment of the Hon'ble Supreme Court in State of Gujarat vs. Umedbhai M.Patel reported in AIR 2001 SC 1109. In para-11 of the said judgment the Hon'ble Supreme Court has laid down the principle for the guidance of the review committee. On a careful scrutiny of the principles laid down in para-11, this Court observed that the Hon'ble Supreme Court has categorically observed that wherever the service of the public servant is no longer useful to the General Administration of the Office, he/she can be compulsorily retired from service for the sake of public interest. However, the same does not appear to be the case so far the petitioner is concerned. Recognising the service of the Petitioner he has been given many letters of appreciation/ allocades and he has also been given the additional charge of Superintendent of Excise. Therefore, by no stretch of imagination it could be construed that he is a dead wood and needs to be chopped off.

43. In the aforesaid judgment of the Hon'ble Supreme Court in Umedbhai M Patel's case (supra), the Hon'ble Supreme Court has also cautioned that the termination of service on compulsory retirement shall not be used as a punitive measure coming under Article 311 of the Constitution. On a conspectus of the entire background facts as well as record, this Court is of the view that the authorities have deliberately resorted to a short-cut to avoid departmental enquiry and accordingly the review committee without any justifiable ground has recommended for compulsory retirement of the Petitioner. This Court is in complete agreement with the view expressed by the Hon'ble Supreme Court that in the interest of better administration dead woods in the public services are required to be chopped off by resorting to compulsory retirement while reviewing their cases periodically. Such appraisal by the review committee is subject to a rider that there must be enough ground to terminate the service of a Government Servant by giving him compulsory retirement. In the present case, the review committee has cited two disciplinary proceedings and a vigilance case which have been discussed in detail hereinabove, moreover after conclusion of the Disciplinary Proceedings the Petitioner was given promotion. Therefore, applying clause-7 of para-11 of Umedbhai M Patel's case (supra), once the Petitioner has been given promotion despite adverse entries made in the confidential record, an inference to be drawn in favour of the Petitioner not in favour of the department. On an overall analysis of the service career as is evident from the materials on record, this Court is convinced that the Departmental Authorities have taken resort to a short-cut to remove the Petitioner from service by suggesting compulsorily retirement instead of initiating a Departmental Proceeding against the Petitioner. Therefore, the conduct of the Review Committee in recommending compulsory retirement fails to pass the test of law as laid down by the Hon'ble Supreme Court in Umedbhai M Patel's case (supra). Therefore, the decision taken by the review committee in the present case calls for interference by this Court.

44. The law laid down by the Hon'ble Supreme Court in Umedbhai M Patel's case (supra) still holds the field. In recent judgment in Captain Pramod Kumar Bajaj vs. Union of India reported in 2023 SCC Online (SC) 234 the Hon'ble Supreme Court referring to the judgment in Umedbhai M Patel's case (supra) was pleased to set aside the order of compulsory retirement, therefore, there is no doubt that the law laid down by the Hon'ble Supreme Court in Umedbhai M Patel's case is valid law and still holds the field.

45. In view of the aforesaid analysis of the facts as well as the legal position and on a careful examination of the materials on record and upon a perusal of the order passed by the review committee, order dated 12.11.2021 under Annexure-5 passed by the Opposite Party No.1 is unsustainable in law and therefore the same is hereby quashed. The Opposite Party No.1 is further directed to reconsider the case of the Petitioner and allow him to continue in service as Deputy Superintendent of Excise and In-Charge Superintendent of Excise within a period of two months from the date of communication of a copy

of this judgment to the Opposite Party No.1. It is needless to mention here that in the event the Petitioner is restored back in service he shall be entitled to all consequential service as well as financial benefits.

46. With the aforesaid observations/ directions, the writ application stands allowed. However, there shall be no order as to cost.

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