

(1997) 09 AHC CK 0175
In the Allahabad High Court
Case No : Writ Petition No. 562 (S/B) of 1997

Nirmal Kumar Jain, Addl. District Judge, Saharanpur	APPELLANT
Vs	
State of U.P. and another	RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Uttar Pradesh Fundamental Rules — Rule 56
Uttar Pradesh Higher Judicial Service Rules, 1975 — Rule 22(3)
Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992 — Rule 2, 4

Citation : (1998) 1 AWC 108 : (1998) 1 UPLBEC 200

Hon'ble Judges : Dev Kant Trivedi, J; A.N. Gupta, J

Bench : Division Bench

Advocate : Shri Narain, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

A.N. Gupta and Dev Kant Trivedi, JJ.—By means of this petition, Sri Nirmal Kumar Jain, Additional District and Sessions Judge, Saharanpur has challenged the Order No. 3637/2-4-97-26/2(28)/87, dated 4th June, 1997, whereby the State Government have compulsorily retired Sri Jain with effect from 19th August, 1997. The petitioner has prayed for quashing of the impugned order and has also sought for a writ of mandamus restraining the respondents from interfering the petitioner in the continuance of service till he attains the age of 60 years.

2. Petitioner was appointed as Munsif-Magistrate in Uttar Pradesh Nyayik Seva and he joined on 6th December, 1976. He was confirmed on 24.7.1982. He was promoted to the next higher rank of Additional Chief Judicial Magistrate on 4.12.1985. The petitioner was promoted to the U. P. Higher Judicial Service as Additional District and Sessions Judge on 27.5.1996. The petitioner claims to have an impeccable service record. He alleged that no adverse entry was ever communicated to him. The petitioner claims that his integrity was never

questioned or doubted at any stage. The petitioner's case is that he will be completing 60 years of age on 19th August, 1999 and will superannuate from service on 31st August, 1999 being the last day of the month in which he attains the age of superannuation. It is contended on behalf of the petitioner that the age of superannuation was raised by the State Government in compliance of the judgment of Apex Court in the case of All India Judges' Association Vs. Union of India and others, and U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992 were notified on 20.10.92 enhancing the age for the retirement of the Judicial Officers from 58 years to 60 years. These rules have overriding effect on the U. P. Fundamental Rule 56 contained in Financial Hand Book Volume II Parts 2 to 4, wherein the age of the retirement of the other Government servants is specified as 58 years, it is alleged on behalf of the petitioner that the impugned order dated 4th June, 1997 is illegal and is not based on any material. It is alleged that the impugned order is arbitrary, discriminatory and unreasonable.

3. The petition has been contested on behalf of the High Court, respondent No. 2. The counter-affidavit has been filed on its behalf by Sri Tariq Manzoor Khan, Officer on Special Duty (Litigation), High Court, Allahabad. It is admitted that the petitioner was appointed under Rule 22 (3) of U. P. Higher Judicial Service Rules, 1975 by means of order dated 27.3.96. It has been averred that the Apex Court while reviewing the judgment in All India Judges' Association and Others Vs. Union of India and Others, , observed that the benefit of the increase of the retirement age of Judicial Officers to 60 years was not to be made automatically available to all Judicial Officers, and the benefit was to be made available only to those who have a potential for continued useful service in the opinion of the respective High Courts. It is averred that in pursuance of the judgment of the Apex Court, the Screening Committee consisting of Hon"ble the Chief Justice as Chairman and two Hon"ble Judges considered the case of the petitioner. The Committee was of the opinion that the petitioner was not suitable for continuance in service beyond the age of 58 years and he should retire on 19th August, 1997, which ultimately resulted in the passing of the impugned order by the State Government. It is thus pleaded that it is a case unfit for interference under Article 226 of the Constitution.

4. A supplementary affidavit has been filed on behalf of the respondent No. 2 by Sri T.M. Khan alleging that the order passed by the Hon"ble Administrative Judge VIth on 30.8."86 was also considered by the Committee, though no further action was decided to be taken as such on 30.8.86.

5. We have heard the learned counsel for the parties and have gone through the record of the case.

6. Before we proceed further, it seems expedient to make a reference to the U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992. These Rules came into effect on October 20, 1992. Rule 4 of the aforesaid Rules provides as follows :

"4. Retirement.--A Judicial Officer shall retire from service on superannuation in the afternoon of the last day of the month in which He attains the age of 60 years."

Rule 2 of these Rules runs as under :

"2. Overriding effect--The provisions of these Rules shall have effect notwithstanding anything to the contrary contained in Rule 56 of the U. P. Fundamental Rules, contained in the Financial Hand Book Volume II, Parts 2 to 4 or any other Rules made by the Governor under the proviso to Article 309 of the Constitution or orders, for the time being in force."

7. It thus would be evident that Rule 56 (a) of Financial Hand Book Volume II, Parts 2 to 4 which earlier governed the age of retirement of a Judicial Officer on attaining the age of superannuation and stood repealed in view of Rule 2 of U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992 wherein it was specifically provided that the Rules in question will have overriding effect to Rule 56 (a) which earlier provided for superannuating a Judicial Officer at the age of 58 years. The case of the Judicial Officers for retirement on superannuation is now covered by the U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992. The effect of Rule 4 is that a Judicial Officer has a right in terms of the U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992 to continue to remain in service till he attains the age of 60 years. This proposition has not been seriously assailed on behalf of the respondents. The respondents have taken recourse to the judgment of Apex Court in Review Petition No. 249 of 1992 of All India Judges' Association and Others Vs. Union of India and Others, Paragraphs 28 and 29 of the said judgment have been relied on by the respondents in order to support their action in retiring the petitioner at the age of 58 years. The Hon'ble Apex Court in the said Judgment observed that the potential for continued utility shall be assessed and evaluated by a Committee of Judges headed by the Chief Justice and the evaluation shall be made on the basis of the Judicial Officer's past record of service, character rolls, quality of judgment and other relevant matters. Those Judicial Officers who are not found fit and eligible by this standard, should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the procedure for compulsory retirement. This assessment is for the purpose of finding out the suitability of a Judicial Officer for the entitlement of the benefit of increased age of superannuation from 58 years to 60 years. It is also mentioned in paragraph 28 of the said Judgment of the Apex Court that the benefit will be available to those who have a potential for continued useful service and should not be a windfall for the indolent and infirm and those of doubtful integrity, reputation and utility.

8. The U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992 notwithstanding, the respondent No. 2 is duty-bound to undertake and complete the exercise in case of officers about to attain the age of 58 years with a view to weed out the indolent, the infirm and those of doubtful integrity, reputation and

utility and to permit the continuance beyond 58 years to only those Judicial Officers who have a potential for continued useful service on the basis of the past record of service, character rolls, quality of judgment and other relevant matters.

9. It is necessary for an incumbent upon the respondent No. 2 to take up the exercise in the light of the law laid down by the Hon''ble Apex Court and it cannot arbitrarily curtail the right conferred on a Judicial Officer by virtue of the U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992. The parameters for arriving at the conclusion for weeding out the employees do find place in the Judgment of the Apex Court. The present case has to be tested on the touchstone of the law laid down by the Apex Court.

10. The evaluation of the Judicial Officer has to be made on the basis of past record of service, character rolls and quality of judgments and other relevant matters which to our mind must be analogous to the work of Judicial Officers in discharge of their duties and personal conduct.

11. The petitioner was appointed to the U. P. Nyayik Seva and he joined on 6th December. 1976. He was promoted to the next higher rank in the hierarchy of Judicial service by means of order dated 4th December, 1985. He was further promoted as Addl. District and Sessions Judge in the Higher Judicial Service by means of order dated 27th May. 1996.

12. The main contention of the petitioner has been that there was no material before the Screening Committee to come to a conclusion that the petitioner was not useful to the judicial organisation or that he had lost the continued usefulness and utility.

13. It has been urged on behalf of the petitioner that there is not even a single adverse entry in the entire service record and character rolls. The character roll and service record of the petitioner was placed before us by the Hon''ble High Court and we have made extracts therefrom relevant for the purpose of scrutiny.

Performance regarding

Year	Judgment	Quantum	Control	Punctuality	Conduct	Integrity	Assessment	Additional remarks
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(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
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1976-77	Satisfactory	Satisfactory	Good	Punctual	Good	Beyond doubt	Good	
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1977-78	Satisfactory	Satisfactory	Satisfactory	Punctual	Good	Beyond doubt	Good	
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1978-79	Well-written	Adequate	Very good	Punctual	Good	Beyond doubt	Very good	
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1979-80	Well-written	Adequate	Very good	Punctual	Good	Beyond doubt	Very good	
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1980-81	Well-discussed	Adequate	Good	Punctual	Good	Beyod doubt	Good	
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1981-82	Sound and well discussed	Quite adequate	Full	Control	Punctual	Good		
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Beyond doubt Very good Intelligent and hard working.

1982-83 Well-reasoned Adequate Satisfactory Punctual Clean Beyond doubt Good Written a Book in Hindi on Arms Act, Good poet and possesses executive capacity.

1983-84 Generally sound, well-reasoned and in good language About standard Good Punctual Good Beyond doubt Good Sweet-tongued; smart and Industrious, takes considerable zeal, pains in doing his work in a systematic manner.

1984-85 Sound and expressed in good language Adequate Very good Punctual Good Beyond doubt Very good Pains-taking, intelligent, soft spoken with pleasant manners. work methodical, maintains diligence in systematic himself abreast with latest case law.

1985-86 No entry awarded by District Judge. Lucknow where he worked till 14.12.85. No entry awarded by District Judge. Meerut where he worked from 21.12.85. No entry awarded by the Hon*ble Court. During this period Sri N. K. Jain had been promoted as A.C.J.M. and he takeover as such at Meerut on 21.12.85.

1986-87 Satisfactory Adequate Fair Punctual Good Beyond doubt Good

1987-88 Well-discussed, well reasoned and written in good language. Adequate Good Punctual Good Beyond doubt Good Well behaved. soft spoken . reliable , extended help in Lok Adalat, Incharge of Electric appliances and Tubewell. could be entrusted with any work of responsibility.

1988-89 Well-discussed and expressed in good language. Adequate Good Punctual Good doubt Beyond Good Reliable and well-behaved, takes interest in Lok-Adalats , especially in Legal Aid Camps and takes interest as Incharge of compound

1989-90 Well-discussed Adequate Fair Punctual Good Certified Good

1990-91 Sound, well-reasoned and expressed in good language, Adequate Good Punctual Good Beyond doubt Very good

1991-92 Sound, well-reasoned and expressed In good language Adequate Good Punctual Good Beyond doubt Good

1992-93 Average Adequate Satisfactory Punctual Good Certified Fair

1993-94 Well-reasoned and expressed In good language. Adequate Satisfactory Punctual Good Beyond doubt Very good

1994-95 Sound, well-reasoned and in good language. Adequate Effective Punctual Good Beyond doubt Good

1995-96 Sound, well-reasoned and expressed in good language. Adequate Effective Punctual Good Beyond doubt Good

14. The above extracts would show that the quality of judgments of the petitioner has all along been good. His Judgments have been constantly adjudged as sound, well-reasoned and expressed in good language.

15. He has always been rated to be good officer except in the year 1992-93 in which he has been rated on overall assessment as "fair". However, in the immediately preceding year, i.e., 1991-92 he was adjudged to be a good officer. The petitioner in the earlier year, i.e., 1990-91 was rated to be a "very good officer". In the year 1993-94 immediately following the year 1992-93 in which he was rated to be as "fair", the petitioner was again assessed to be a Very good officer". In the years 1994-95 and 1995-96 also, he was rated to be a good officer.

16. There has been no material on record to reflect adversely so far his integrity was concerned and all along his integrity has been rated to be "beyond doubt" by the District Judges under whom the petitioner worked. His integrity was always certified by Hon"ble Administrative Judges. Even in the year 1992-93 in which the District Judge rated him on the overall assessment as "fair", his integrity was certified by the District Judge. His outturn in the said year was 131% of the required minimum. Even in that year, he was found to be fair and impartial in dealing with the public and the Bar. He was found by the District Judge to be cool-minded. It was also reported that the petitioner was not used to lose temper. It was also reported that the fixation of cause list was satisfactory and that the petitioner tried to avoid unnecessary adjournments. It was further reported that he made some efforts to dispose of old cases. It was also reported that he granted, refused and retained interim orders and injunctions for sufficient reasons. His inspection notes were found to be satisfactory and so was the control over the office, he was also found having satisfactory relationship with the members of the Bar and the officers. He was found to be punctual in sitting in the court and was amenable to the advice of the District Judge. In the circumstances, even in the year 1992-93 when he was assessed to be a "fair" officer, there was nothing to show either against his integrity or reputation and performance. In successive years, he has been found to be well-behaved, soft spoken and reliable.

17. In the year 1995-96, he was again found to be "a good officer". His integrity was certified. No complaint against him was found to be on record and no enquiry was found to be pending against him. His disposal in the year 1995-96 was more than 178 per cent of the required minimum as has been observed by Hon"ble Mr. Justice R.K. Gulati, the then Inspecting Judge of Aligarh. In the earlier year. i.e., 1994-95 the percentage of outturn was 150.8 of the required minimum, in that year also, Hon"ble Mr. Justice R K. Gulati, the then Inspecting Judge had rated him to be a "good officer" with no complaint against the petitioner.

18. Throughout his career as a Judicial Officer, the petitioner has been found to be punctual in sitting in the Court and has been found to be amenable to the

advice of the District and Sessions Judges. There is nothing in the character roll of the petitioner to show that the petitioner is lazy, shirker or indolent. There is nothing to show that the petitioner is infirm in any manner. There is nothing in the character rolls of the petitioner which may cause any adverse reflection either on the performance or on the integrity and reputation of the petitioner. There is nothing in the character rolls to show that the utility of the officer has in any manner diminished or his spirits dampened. The entire character roll rather shows that he has been proving to be useful to the judicial organisation. There is no evidence whatsoever on record to show that the petitioner will not be of continued utility to the judicial system. There is nothing to show that the petitioner does not have a potential for continued useful service. There has been absolutely nothing on the record of the petitioner to show that his judgments suffer from any infirmity or that the quality of Judgment can be adversely commented upon. There was no material available with the Committee to give a finding against the petitioner regarding his continued usefulness to the Judicial system.

19. The Full Court, the entire body of the Judges of Allahabad High Court; had approved the petitioner for appointment to the Higher Judicial service on the basis of his character roll and service record in the year 1996 itself and he was promoted to the Higher Judicial Service and appointed as Additional District and Sessions Judge on 27th May, 1996.

20. It is evident from the record that the annual remarks for the year 1996-97 have not been received by the court from the District Judge concerned when the Screening Committee met on 16.4.97, and, therefore, neither the report of the District Judge, nor the orders of the Hon"ble Inspecting Judge were available to the Screening Committee when it met on 16th April, 1997. Thus, the entry not being available to us, the benefit has to go to the petitioner that the entry in question was not adverse to the petitioner, neither it is the case of the High Court that the entry for the year 1996-97 was ever considered by the Screening Committee.

21. We are aware of our limitations in exercising the power of Judicial review of the administrative orders, particularly when the same are passed by a high power committee exercising the powers of the High Court on administrative side, but the record shows that the impugned order in relation to the petitioner was based on no material and the conclusion arrived at by the Screening Committee was based on no evidence whatsoever.

22. A last minute attempt had been made on behalf of the respondent No. 2 in justifying the findings made by the Screening Committee by means of a supplementary affidavit wherein it has been stated that a remark of Hon"ble Administrative Judge, Lucknow made as early as on 30th August, 1996 was discussed for arriving at the decision to retire the petitioner compulsorily. In ordinary course, we might have gone by what was averred in the report of the Screening Committee and for that matter by the averments made in the

supplementary affidavit on behalf of the respondent No. 2. However, in the present case in which the remark of 30th August, 1986 has been taken to be the foundation for passing the order of retirement, it appears to us that the said remark being of remote past should not have been relied on. It also appears to us that the remark given by the Hon''ble Administrative Judge, Lucknow in itself was not required to be used any further. The Hon''ble Judge had accepted the apology tendered by the petitioner and the complaint against him was ordered to be filed. It is for that reason that the respondent No. 2 did not think it fit to communicate the remark to the petitioner at any point of time from 30.3.86 onwards. To our mind, the chapter stood closed on 30.8.86 itself and nothing was required to be done against Sri Jain on the basis of the complaint made against him in respect of the entertaining of a suit for permanent injunction during vacations at his residence by the petitioner and handing over the papers to a learned Member of the Bar who had appeared before the petitioner at his residence, filed a plaint and an ad-interim injunction was granted in his favour. We do not wish to express any opinion on the correctness or otherwise of the action of the petitioner in entertaining the suit at his residence on a holiday, as to our mind, no Judicial Officer can decline to entertain an urgent plaint and application at his residence, nor can he decline to pass a suitable order. Rule 13 of General Rules (Civil) meant for the observance by all Civil Courts subordinate to the Hon''ble High Court of Judicature at Allahabad enjoins on every Judicial Officer not to refuse on any gazetted holiday to do any act or make any order urgently required or which may with propriety be done or made out of court. Hence it was within the jurisdiction of the petitioner as Munsif, Lucknow to entertain the plaint and application for temporary injunction and to pass interim injunction order. We do not wish to enter into the sufficiency or otherwise of the cause, nor we wish to sit in appeal over the correctness or otherwise of the handing over of the original papers by the petitioner to a learned Member of the Bar for being produced on the opening day. The fact, however, remains that it was a mere indiscretion, if at all, on the part of the petitioner and even the then Hon''ble Administrative Judge did not think it fit to take any action whatsoever against the petitioner. The petitioner was promoted as Additional District Judge in the year 1996, notwithstanding the said act of the petitioner. We reiterate that the incident dated 12.11.85 which culminated into filing of the complaint could have been of no avail to the respondent No. 2 and no action could have been initiated against him on the basis of the said complaint made by an aggrieved defendant.

23. It may be seen that the petitioner was Munsif, Lucknow from 8.6.83 to 15.12.85 and during this period, he was promoted as ACJM. Even during this period, he was found to be a good officer as reported by the then District Judge, Lucknow on 25.6.84. The Hon''ble Administrative Judge had also endorsed the view of the District Judge on 23.2.85. For the year 1984-85, again he was reported to be a very good officer on 20.5.85 by the District Judge, Lucknow, and on 17.12.85 the same remarks were endorsed by the Hon''ble Administrative

Judge, Lucknow. Entry for the year 1985-86 could not be given either by any of the District Judges or by the Court, and, therefore, it cannot be said that the entry for that year was in any manner adverse. In our opinion, the report dated 30.8.86 was in no way against the petitioner. Moreover the Hon"ble Administrative Judge closed the matter, and, therefore, on this score also, the complaint in question could not have been taken into consideration. Moreover the said remarks were never communicated to the petitioner, nor the order dated 30th August. 1986 was made available to him at any point of time, and, therefore, it could not have been used by the Screening Committee while arriving to the decision to retire the petitioner compulsorily.

24. In fact our view that there was no material available on record which could have resulted in resolving to retire the petitioner compulsorily, stands fortified, and we are of the confirmed view that there was no material whatsoever against the petitioner which could have resulted in the passing of the resolution to retire the petitioner compulsorily.

25. We are, alive to the legal position that this Court cannot sit in appeal against the decision of the Screening Committee, but in the present case, there was no material whatsoever before the Committee to come to a conclusion adverse to the petitioner. It is worth-noting that in view of the U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992, the retirement age of the petitioner is 60 years. It is, therefore, necessary for the respondent No. 2 to act within the parameters laid down by the Hon"ble Supreme Court in the judgment dated 24.8.93 in the Review Petition No. 249 of 1992 All India Judges' Association and Others Vs. Union of India and Others, and it was incumbent upon the respondent No. 2 to act within the framework prescribed by the said Judgment. As has been observed earlier, no finding could have been recorded on the basis of material available before the Screening Committee that the petitioner did not possess the potential for continued useful service. There was no material before the Committee to come to a conclusion that the petitioner was indolent, infirm or of doubtful integrity. There was no material before the Committee to conclude that the petitioner was of doubtful integrity or of ill-repute. There was no material before the Screening Committee in the shape of the past record of service and character rolls to come to a finding that the petitioner was unsuitable for continuation in Judicial Service. There was no material before the Committee to show that the quality of Judgments of the petitioner was not upto the mark. There was no other relevant material before the Screening Committee to come to a finding that the petitioner should not have been retained in the Judicial Service. The order of compulsory retirement of a Judicial Officer has to be in terms of the judgment referred to above and the power has been conferred on the respondent No. 2 to weed out the indolent, infirm and those of doubtful integrity, reputation and utility. The evaluation of the potential of the continued usefulness in service of a Judicial Officer has to be considered on the touchstone of the judgment referred to above. The Judicial Officers are placed under the control and supervision of the respondent No. 2

and they look forward only to the Hon''ble High Court for the protection. Justice has to be meted out to the Judicial Officers if we wish to have a free and impartial judicial service. The solitary act of indiscretion, not amounting to a corrupt practice and ordered to be closed by Hon''ble Judge of the High Court who subsequently rose to the office of Chief Justice of this Hon''ble High Court and also adored the office of Chief Justice of another High Court could not and should not have been made the basis for curtailing the period of service of an otherwise upright Judicial Officer who had put in more than 10 years of service after the remark and approximately 12 years after the said solitary act of which he was accused of.

26. We are also alive to the situation that the order of compulsory retirement is not in the nature of punishment, but the fact remains that it curtails the period of service and though technically, it cannot amount to a punishment, it has all the leanings and incidences of adverse action not only in the eyes of those who are near and dear to a Judicial Officer, but also in the eyes of the persons who come in contact of the Judicial Officer and also of public at large, and, it is, therefore absolutely essential that the scrutiny be made rigorously and the decision be based on sufficient material and not on an entry here and an entry there but the overall picture of the Judicial Officers during the long years of his service after a full and complete analysis of the history of the service. The Screening Committee was thus bound to consider the entire record of service before taking the decision to retire the petitioner compulsorily attaching much more importance to the service record and the performance of the officer in the later years.

27. Reliance has been placed on behalf of the respondent on Haryana State Electricity Board Vs. K.C. Gambhir, . The facts of the said case are entirely different as adverse remark was made against respondent K. C. Gambhir showing that his integrity was doubtful. Departmental proceedings were also pending against him for serious misconduct for shortage of material in which he was found guilty. Another act of financial irregularity was also noticed. Such are not the facts before us.

28. Rather it is conceded on behalf of the respondent No. 2 that no vigilance enquiry was pending against the petitioner, no departmental proceeding was pending against the petitioner and the officer was not under suspension and that his integrity was constantly found to be beyond doubt. His judgments were found to be sound, well-reasoned and expressed in good language. His outturn of work was found throughout adequate and much more than required minimum in the last five years. Hence the benefit of the said authority is not available to the respondent.

29. It has been held in I.K. Mishra Vs. Union of India and Others, that while the courts would not examine the matter of compulsory retirement as appellate courts, but they may interfere if they are satisfied that the order is based (a) on 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. It has also been held in the said case by the Hon"ble Supreme Court that the Review Committee shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record and performance during the later years.

30. In the present case, we are satisfied that the impugned order is based on no evidence and, therefore, even though technically the order of compulsory retirement does not amount to punishment, the impugned order cannot be saved. The character roll entries of the petitioner pertaining to his entire service period are of utmost importance and we are unable to persuade ourselves to agree for affirming the opinion of the Screening Committee to retire the petitioner. None of the entries in the character roll of the petitioner reflected any deficiency in the work and conduct of the petitioner except for an isolated indiscretion when he was in the lowest rung of the judicial service. His performance during the years subsequent to the said isolated indiscretion right from the year 1986 to 1996 including the fact of his promotion to the next higher post and latest promotion to the Higher Judicial Service in the year 1996 go to suggest that the sting of the remark relating to a solitary act of indiscretion which took place in November, 1985 stood lost and the petitioner cannot be dubbed as "dead wood required to be chopped off in public interest" rather he seems to us to be an officer of undoubted integrity and ability. In view of the service record and character roll of the entire service period of the petitioner, we are not satisfied that the petitioner has lost his utility in judicial service and has become a dead wood or has lost his effectiveness and is not suitable to continue in service beyond the age of 58 years. It would be unjust to curtail the service career of the petitioner in the absence of any fall in his performance after the order dated 30.8.86 and more so after his promotions. As there is complete lack and absence of any material to justify the impugned order, it must be held to be invalid.

31. The petition is accordingly allowed and the impugned Order No. 3637/2-4-97-26/2 (28)/87, dated 4th June, 1997 is hereby quashed. We direct that the petitioner shall be treated as being in service without break. The petitioner is entitled to salary, allowances and such other benefits as may be admissible to him under the Rules.