IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.569 OF 2008

Mahesh Prabhakar Kamat,
Dy. Financial Controller, currently
holding the post of Dy. Financial
Controller (C &B) of the Kadamba
Transport orporation Ltd., & r/o
2F/2, Shivnery, Co-operative
Housing Society, Comba Margao. ….. Petitioner

V e r s u s

1. The Kadamba Transport Corporation
Limited.,
(K.T.C.L) a Government of Goa
undertaking having its office at
Paraiso De Goa, Alto-Porvorim,
Bardez, Goa, through its
Managing Director.

1. The Managing Director,
Kadamba Transport Corporation
Limited, a Government of Goa
undertaking having its office at
Paraiso De Goa, Alto-Porvorim,
Bardez, Goa, through its
Managing Director.

2. The STATE OF GOA
through The Chief Secretary
having its office at Secretariat,
Porvorim, Goa. ….. Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. N. Patil, Advocate for the Petitioner.

Mr. Sudesh Usgaonkar with Ms. Rosette Pereira, Advocates for Respondent no.1.

Mr. Pradosh Dangui, Additional Government Advocate for Respondent no.2.

CORAM: F. M. REIS &
Z. A. HAQ, JJ

RESERVED ON : 15th April, 2014.
PRONOUNCED ON : 7th May, 2014.

J U D G M E N T (PER Z. A. HAQ) :

The petitioner challenges his compulsory retirement on the ground that it is punitive in nature and not in public interest and therefore, the decision of compulsory retirement could not have been taken without conducting an inquiry as contemplated by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The petitioner has further raised the ground that the Resolution no. 71 of 2007 passed by the Board of Directors on the basis of which the petitioner is retired compulsorily does not record satisfaction of the Board of Directors to the effect that the petitioner has ceased to possess the level of competency and efficiency and therefore, the decision of retiring the petitioner compulsorily is unsustainable in

law.

2. The case of the petitioner is:

The petitioner was appointed as Accountant in the Respondent no.1/Corporation on 13/12/1982. The petitioner was appointed as Assistant Financial Controller in 1985 promoted as Deputy Financial Controller in 1990 which is a Grade "A" post and transferred to the post of Statistical Officer which is a Grade "B" post in 1996. According to the petitioner, this transfer from the post of Dy. Financial Controller to the post of Statistical Officer amounted to reversion of the petitioner. However, this is not relevant for the purpose of the adjudication of the present writ petition.

The petitioner was suspended on 25/10/1997 for the alleged misconduct and the charge-sheet was issued on 3/11/1997 and inquiry was initiated against the petitioner. The suspension of the petitioner was revoked on 17/12/1997. The petitioner reported on duty on 30/12/1997 and he was asked to continue at the head office without giving him any specific post or duties to discharge. The petitioner was served with a charge-sheet and an inquiry was initiated against him on 4/3/1998. The petitioner had filed Writ Petition no.198 of 1998 before this Court in which the respondent no.1-

Corporation had made a statement that the petitioner would be provided appropriate space for discharging his duties and on the basis of the above mentioned statement, the Writ Petition was disposed of on 26/6/1998. The petitioner had filed Regular Civil Suit no.18/2000 (renumbered as Regular Civil Suit No.319/2004) for recovery of the amount due towards his salary. In the civil suit, consent terms were filed and the respondent no.1-Corporation had agreed to pay the arrears of the salary and the petitioner had waived the interest and the costs of the civil suit.

3. The petitioner was again suspended on 24/2/2001 and he was served with a charge-sheet on 27/8/2002 and an inquiry was initiated against the petitioner. The suspension of the petitioner was revoked.

4. On 4/4/2003, the Inquiry Officer submitted a report initiated against the inquiry pursuant to the first charge- sheet. It was found that the charges levelled against the petitioner were not proved. The Disciplinary Authority of the Respondent no.1-Corporation accepted the above mentioned report on 20/1/2003 and the petitioner was exonerated.

The period of suspension was directed to be treated as the time spent on duty and the petitioner was paid the pay and allowances for the period.

5. On 28/9/2005, the Inquiry Officer submitted his report (in the third inquiry) concluding that the respondent no.1-Corporation had failed to prove the charges levelled against the petitioner.

On 19/7/2007, the order was issued retiring the petitioner compulsorily w.e.f 20/10/2007. The petitioner had filed Writ Petition no.492/2007 before this Court challenging the above mentioned order of compulsory retirement. At the time of hearing of the writ petition, a submission was made on behalf of the respondent no.1-Corporation that the Board wanted to reconsider the matter and the impugned order of compulsory retirement was withdrawn. In view of this, the writ petition was disposed on 30/10/2007. The matter was considered by the Board and a decision was taken by the Board to retire the petitioner compulsorily. The order was issued on 20/6/2008 compulsorily retiring the petitioner w.e.f 19/9/2008. This order is challenged by the petitioner in the writ petition.

6. Shri Lotlikar, the learned Senior Counsel appearing for the petitioner has submitted that the earlier history shows that the impugned order passed is malafide and shows blatant abuse of the powers by the Officers of the respondent no.1-Corporation. It is submitted that the F.R. 56 can be invoked to compulsorily retire the employee only after a conscious decision that he has ceased to possess the level of competency, utility and efficiency and allowing the employee to continue till the age of superannuation would not be in the public interest. It is submitted that the impugned order is stigmatic and could not have been passed without there being an inquiry in respect of the matter which is considered by the Board for compulsorily retiring the petitioner. The learned Senior Counsel has submitted that the petitioner is required to face two inquires and in both the matters the petitioner has been exonerated. Not only this, according to the petitioner, the Inquiry Officer in the report dated 13/10/2006 has given a specific finding that the charge-sheet has been filed against the petitioner out of personal vendetta. It is submitted that it is observed that there is personal enmity between some members of the institution and the petitioner and inquiry against the petitioner was to score over the ego of the vested interests. The learned Senior Counsel for the petitioner has pointed out from the

inquiry authority's report dated 28/7/2005 that after extensive cross examination, Shri George Fernandes, the witness of the management had stated that he was withdrawing his entire deposition along with exhibits placed on the record through him on the ground that he had deposed falsely. It is pointed out from the above mentioned report that out of the nine witnesses proposed to be examined by the management, the Presenting Officer had failed to produce the other seven witnesses and only one more witness Nandakumar Pednekar was examined, who was working as a Peon with the Respondent no.1-Corporation. The malicious attitude of the Respondent no.1-Corporation is pointed out by the petitioner on the basis of the facts of Writ Petition no.198/1998 which was filed by him for getting proper space at the working place and filing of the civil suit no.319/2004 for claiming the unpaid salary. It is submitted on behalf of the petitioner that the note dated 6/6/2007 (page 203 of the paper book) is not accepted and signed by the Personal Manager and the Managing Director and therefore there is no decision of the Board in the eyes of law to compulsorily retire the petitioner. The learned Senior Counsel has submitted that the petitioner has not been communicated any adverse remarks, if they exist, in the Annual Confidential Reports and therefore, there is no basis for compulsorily

retiring the petitioner and the decision in that matter is arbitrary.

7. Shri Sudesh Usgaonkar, the learned Counsel for the respondents no.1 and 2 has submitted that the petitioner was creating an atmosphere because of which his fellow workers and officers avoided to work with him and he diplomatically boycotted the work. To substantiate this submission, the learned Advocate has relied on the pleadings in paragraphs no.13 to 21 of the reply filed by the respondents no.1 and 2 and the documents filed along with it. Shri Usgaonkar, the learned Advocate has pointed out from the documents at page no. 230, 239, 241, 242 and 247, the cantankerous attitude of the petitioner and his calculated harassment to the other officers and employees of the Respondent no.1-Corporation by seeking unnecessary and unwanted information under the Right to Information Act. The learned Advocate for respondents no.1 and 2 has submitted that because of the mischievous action of the petitioner of seeking information regarding the other employees of the Respondent no.1-Corporation, the officers and other employees of Respondent no.1-Corporation were required to waste substantial time unnecessarily on giving the unwanted and unnecessary information to the petitioner under the Right to Information Act. The learned

Advocate has submitted that compulsory retirement is not a punishment and the impugned order cannot be said to be stigmatic and therefore the petitioner is not entitled for any relief. It is submitted that though the Annual Confidential Reports(ACRs) of the petitioner were not written, the material on the record shows that the decision taken by the Respondent no.1-Corporation to compulsorily retire the petitioner is proper. In support of his submissions he relied on the following Judgments :

(i) 1980 2 Supreme Court Cases 15 in the case of U*nion of India Vs. M. E. Reddy and Another and State of Andhra Pradesh Vs. M. E. Reddy and Another.*

(ii) (1992) 2 Supreme Court Ca3es 299 in the case of *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and anr.*

The respondents no.1 and 2 submitted that the petition filed by the petitioner be dismissed.

8. Shri Lotlikar, the learned Senior Counsel, in reply, has submitted that the petitioner was constrained to seek information under the Right to Information Act as the petitioner was not informed

about the progress of the inquiry which was initiated against the petitioner. It is submitted that the applications under the Right to Information Act were made only to know about the progress of the inquiry which was pending against the petitioner and it cannot be said that the petitioner had sought any unwanted or unnecessary information. The learned Senior Counsel has relied on the judgment reported in AIR 1981 SCC 594 given in the case of *Brij Behari Lal Agarwal Vs. Hon'ble High Court of Madhya Pradesh and others* and in the judgment reported in (2012) 3 SCC 580 given in the case of *Nand Kumar Verma Vs. State of Jharkhand and others.*

9. We have considered the submissions made on behalf of the respective parties and have examined the record with the assistance of the learned Advocates.

10. It is a fact that the Respondent no.1-Corporation had initiated three inquiries against the petitioner and out of these three inquiries, the petitioner was exonerated for the charges in respect of which the first two inquiries were held. In the case of the third inquiry also the petitioner was exonerated by the order dated 18/12/2010 which is subsequent to the order of compulsory

retirement. It is undisputed that the Annual Confidential Reports (ACRs) of the petitioner are not maintained by the Respondent no.1-Corporation and consequently there is no question of communicating any remarks to the petitioner as far as work and behaviour is concerned. However, the issue which arises in the matter is as to whether the Respondent no.1-Corporation can invoke its powers under F. R. 56 and compulsorily retire the petitioner on the ground that the continuation in the service till he attains the age of superannuation will not be in public interest?

11. In the case of *Union of India Vs. M. E. Reddy* the Hon'ble Supreme Court has laid down as follows:

> "*10. Apart from the aforesaid considerations we would like to illustrate the jurisprudential philosophy of rule 16 (3) and other similarly worded provisions like Rule 56 (j) and other rule relating to the Government servants. It cannot be doubted that rule 16 (3) as it stands is but one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution and is controlled only by those contingencies which are expressly mentioned in Article 311. If the order of retirement under rule 16 (3) does not attract Article 311 (2) it is manifest that no stigma of punishment is*

involved. The order is passed by the highest authority, namely, the Central Government in the name of the President and expressly excludes the application of rules of natural justice as indicated above. ***The safety valve of public interest is the most powerful and the strongest safeguard against any abuse or colourable exercise of power under this rule. Moreover, when the Court is satisfied that the exercise of power under the rule amounts to a colourable exercise of jurisdiction or is arbitrary or made it can always be struck down. While examining this aspect of the matter the Court would have to act only on the affidavits, documents, annexures, notifications and other papers produced before it by the parties. It cannot delve deep into the confidential or secret records of the Government to fish out materials to prove that the order is arbitrary or malafide. The Court has, however, the undoubted power subject to any privilege or claim that may be made by the State, to send for the relevant confidential personal file of the Government servant and peruseit for its own satisfaction without using it as evidence.***

11. *It seems to us that the main object of this Rule is to instil a spirit of dedication and dynamism in the*

working of the State Services so as to ensure purity and cleanliness in the administration which is the paramount need of the hour as the Services are one of the pillars of our great democracy. ***Any element or constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has outlived his utility has to be weeded out.***

Keeping in view the law laid down by the Hon'ble Supreme Court we have considered the documents and the other material placed on the record.

(i) The communication dated 10/1/2006 sent by the petitioner to the Managing Director of the Respondent no.1-Corporation by which the petitioner requested that his transfer from the post of Dy. Finance Controller to the post in the Accounts Department should be stayed. The reasons given by the petitioner requesting for keeping his transfer in abeyance shows the mind set of the petitioner.

(ii) The information sought by the petitioner by the

communication dated 14/6/2007 under the Right to Information Act shows that the petitioner indulged in some unwanted and unnecessary activities.

(iii) The information sought by the petitioner by the communications dated 23/7/2007, 25/07/2007, 26/06/2008 under the Right to Information Act again shows the unwanted activities of the petitioner. The information sought by the petitioner under the Right to Information Act was about the purchase procedure followed by the purchase committee during the year 1993-1994, the payment procedure followed by the Disbursing Officers of the Respondent no.1-Corporation, about the Disciplinary proceedings initiated against the Head of the Finance Department in 1995-1996 because of the audit objections, agenda and minutes of 154th Board meeting held on 11/6/2007, copy of the memorandum issued to Shri George Fernandes by the Managing Director of the Respondent no.1-Corporation and in other such matters.

(iv) The communication dated 22/2/2007 from the petitioner to the Managing Director of the Respondent

no.1-Corporation shows that the attitude of the petitioner towards his work and responsibilities was not proper.

12. The Affidavit filed by the Respondent no.1-Corporation before this Court and the documents placed on the record along with the Affidavit show that there was sufficient material before the Respondent no.1-Corporation to take decision for compulsorily retiring the petitioner. The respondent no.1 which is the employer has assessed the material and has come to the conclusion that the continuation of the petitioner in the service till he attains the age of superannuation was not in public interest. This Court while exercising the jurisdiction under Article 226 of the Constitution of India is not sitting as an appellate authority over the decision of the Respondent no.1-Corporation in the matter. Therefore, the submission made on behalf of the petitioner cannot be accepted.

13. The parameters which are to be applied while taking the decision pursuant to the departmental inquiry are different from the parameters which are to be considered while taking the decision for compulsorily retiring the employee. The decision which is taken consequent to the departmental inquiry is a penalty in the service

jurisprudence but compulsorily retiring the employee is neither penalty nor punishment as per the settled law. The Hon'ble Supreme Court in the case of (1992) 2 SCC 299 *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and anr.* has laid down as follows:.

"34 ....The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is

arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting,more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) ***An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.***

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been

discussed in paras 30 to 32 above.”

14. The Judgment reported in AIR 1981 SCC 594 given in the case of *Brij Behari Lal Agarwal Vs. Hon'ble High Court of Madhya Pradesh and others* relied upon on behalf of the petitioner deals with the necessity of communicating the adverse entries in the ACRs and the necessity to give weightage to the confidential reports of the years immediately preceding the decision of compulsory retirement. In the Judgment reported in (2012) 03 SCC 580 in the case of Nand Kumar Verma Vs. State of Jharkhand and others relied upon on behalf of the petitioner, the Hon'ble Supreme Court has considered the facts of the case and found that the High Court while holding that the track record and service record of the appellant in that case was unsatisfactory by selectively considering the service record for certain years only and making extracts of those contents of the ACRs. In this factual background, the Hon'ble Supreme Court has held that considering selective material from the service records of the employee is not permissible.

In the facts of the present case, we find that there was material before the Respondent no.1-Corporation to make the assessment for the purpose of compulsorily retiring the petitioner. The

documents are placed on the record of this Court by the Respondent no.1-Corporation along with the Affidavits filed by it. The submissions made by the Respondent no.1-Corporation in the Affidavits and the documents filed by it show that the decision of the Respondent no.1-Corporation to compulsorily retire the petitioner cannot be said to be arbitrary or contrary to the provisions of F. R. 56.

14. The submission made on behalf of the petitioner that the note dated 6/6/2007 is not signed by the Personal Manager and the Dy. Director and therefore there is no legal sanctity to the decision taken by the Respondent no.1-Corporation for compulsorily retiring the petitioner is misdirected. The impugned order is issued by the Managing Director of the Respondent no.1-Corporation and the reply filed on behalf of the Respondent no.1-Corporation before this Court is also sworn by the Managing Director of the Respondent no.1-Corporation. Furthermore, the petitioner has not raised any specific ground in respect of this challenge, in the petition. Without there being any foundation in the pleadings and without affording an opportunity to the respondents no.1 and 2, it is inappropriate to deal with this submission made on behalf of the petitioner.

15. The concept of compulsory retirement came into force to remove a public servant whose services are no longer useful to the general administration or in public interest, if it is felt that for better administration, for augmenting efficiency it is necessary to chop of the deadwood. The order of compulsory retirement has to be made having regard to the entire manner in which the services have been rendered by the Government servant. As has been pointed out herein above, the order of compulsory retirement is not to be treated as a punishment and carries no stigma. The rule of compulsory retirement has been held to hold the balance between the rights of the individual government servant and the interest of the public administration. The rule is intended to enable the Government to energise its machinery and to make it efficient by compulsorily retiring those who, in its opinion, should not be continued in Government employment, in the public interest. In the present case, as has been pointed out herein above, the petitioner had been challenging any directions which were issued by the superiors and in such circumstances, no doubt, the efficiency in performing the duties would be affected. Hence, we find that there is no reason to interfere in the impugned order passed by the respondents.

16. In view of the above, the Writ Petition is dismissed.

Rule is discharged.

Under the circumstances, the parties to bear their own costs.

Z. A. HAQ,J F. M. REIS, J.

AP/-