

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.46 OF 2017**

**DISTRICT : MUMBAI**

Smt. Mangal Prakash Mhapankar. )  
Age : 56 Yrs., Occu.: Nil, )  
Ex-Assistant, working in Urban )  
Development Department, Mantralaya, )  
Mumbai 400 032 and residing at 501, )  
Suyog Apartments, Liberty Garden Road )  
No.3, Malad (W), Mumbai 400 064. )...**Applicant**

**V E R S U S**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai 400 032. )

2. The State of Maharashtra. )  
Through Principal Secretary, )  
General Administration Dept., )  
Mantralaya, Mumbai 400 032. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for the Applicant.**

**Ms. S.T. Suryawanshi, Presenting Officer for Respondents.**

**CORAM : SHRI JUSTICE A.H. JOSHI, CHAIRMAN  
AND  
SHRI P.N. DIXIT (MEMBER-A)**

**Closed on : 12.06.2018**

**Pronounced on : 10.08.2018**

**PER : SHRI JUSTICE A.H. JOSHI, CHAIRMAN**

**J U D G M E N T**

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents.
2. The present O.A. proceeds in following admitted background :-
  - (a) Applicant's date of birth is 30.06.1960;
  - (b) Applicant belongs to Nathpanthi caste NT(B) category;
  - (c) Applicant had completed 55 years of age on 27<sup>th</sup> January, 2014.
  - (d) Applicant's case was considered by the Respondent No.1 for retirement under Rule 10(4) of Maharashtra Civil Services (Pension) Rules, 1982.
  - (e) The retirement under Rule 10(4) of said Rules has to be on the ground of 'public interest'.
  - (f) The aspect of 'public interest' is elaborated by the Government by issuing Government Circular dated 12th May, 1986. Clause (क) of the Circular dated 12th May, 1986 provides that the criteria on which the subjective satisfaction and public interest (as contemplated by Rule 10(4)) has to be guided, shall be (i) physical capacity (fitness for work), (ii) unquestionable integrity, and (iii) ACRs being not below 'Good'.

Relevant Marathi test is quoted below :

“(क) वर्ग ३ च्या कर्मचा-यांबाबत वयाच्या ५५ व्या वर्षी करावयाच्या पुनर्विलोकनासाठी विहित केलेल्या सध्याच्या शारीरिक क्षमता, निर्विवाद सचोटी व सर्वसामान्यापेक्षा कमी नाही असा अभिलेख या निकषाऐवजी शारीरिक क्षमता, निर्विवाद सचोटी व “चांगला” पेक्षा कमी नाही असा अभिलेख हा निकष विहित करण्यात यावा.”

(Quoted from Page 22, Exh. 'B')

- (g) Another Circular is issued by the Government. The Government Circular dated 19th July, 1998 contains a dictum in Paragraph 5 that the observations contained in the case of Baikuntha Nath Das v. Chief District Medical Officer, Baripada, dtd. 19.2.1992 (1992 (O) AIR (SC) 1020) may be borne in mind while taking decision of compulsory retirement.
- (h) Due to incident of fire which had occurred in Mantralaya by Circular dated 20<sup>th</sup> October, 2014, all Departments were directed to reconstruct the ACRs of Officers and employees for the years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014.

- (i) In the background of aforesaid point, Applicant's ACRs were written by Desk Officer Shri R.K. Jambupatel when he was serving as Desk Officer in Industry, Energy and Labour Department in 2014.
- (j) On Applicant's representation against adverse ACRs, Shri Jambupatel, Desk Officer was called to express his views. Shri Jambupatel wrote that his remarks be treated as 'blank'.
- (k) Applicant's case was considered and processed by the Department for promotion and was favourably considered by granting due upgradation of Applicant's ACRs.
- (l) In the aforesaid background, Applicant's case was simultaneously considered for compulsory retirement by exercising power under Section 10(4) of said Rules and the impugned order has been passed.
- (m) In the present O.A, the Applicant has challenged the order of compulsory retirement.

3. Heard both the sides and perused the record annexed to the O.A. and annexed to the Affidavit-in-reply.

4. In the O.A, the Applicant has averred the background in the pleadings. As regards the benchmark or yardstick to be considered while taking a decision of compulsory retirement of a Class-III Government servant, the Applicant has made averments in Para Nos.6.8 to 6.12. In the grounds, the Applicant has averred as regards her grievance about ACRs in Paragraph No.6.30.

5. The adverbium text of Applicant's pleading as regards ACRs are in Paras 6.8, 6.9 and 6.30 which reads as follows :-

**"6.8]** The petitioner states that admittedly she belongs to Backward Class namely NT[B] and therefore, as per the G.R. dated 7.1.1961, she is entitled for special sympathy being shown to her and therefore, the average gradation of the aforesaid Annual Confidential Reports would be "B", even if the gradation of one single year of the Petitioner is upgraded from "B-" to "B", though according to the Petitioner, she would be entitled for one step up-gradation of her Annual Confidential Reports of each year.

**6.9]** The Petitioner states that as per the aforesaid Government Circular 7.7.1977, that the gradation in terms of marks becomes 1 + 1 + 2 + 3 + 3 of which average comes to 2 which is equal to "B". The required gradation in the context of the premature retirement of the Government servant holding Group-C post is "B". This is fulfilled by the Petitioner.

**6.30]** That according to the knowledge and information of the Petitioner, that even otherwise the gradation of her Annual Confidential Reports for the years 2009-2010, 2010-2011 and 2011-2012 are totally illegal and wrong, since the said Annual Confidential Reports are written by Mr. Jambu Patel, Senior Officer, in whose Desk / Section, the Petitioner only worked between November, 2010 to July, 2011. That apart these Annual Confidential Reports in a bunch are written on one and the same date namely 10.1.2014. This is contrary to law. Thus the Petitioner was not given opportunity to show improvement for which it was necessary for the Respondent No.1 to serve upon the Petitioner in time each year the Annual Confidential Reports even though they are not adverse but coming in the way of the Petitioner for being retained in service and, especially when, the same are utilized against the Petitioner for ordering the premature retirement.”

(Quoted Paras 6.8, 6.9 and 6.30 from pages 6, 7 & 17 of the paper book of O.A.)

6. Applicant's grievance as regards adverse observation about absolute integrity are in Para 6.10 which reads as follows :-

**“6.10]** The Petitioner states that so far as second requirement as per the aforesaid Circular dated 12.5.1986 is “Absolute Integrity”. This is never doubted in the case of the Petitioner and on the contrary the record maintained by the Respondent No.1 in the context of the impugned order, indicates that the Petitioner possesses the absolute integrity.”

(Quoted from page 7 of the paper book of O.A.)

7. Applicant's grievance relating to adverse observations about lack of physical fitness averred in Para 6.11 are as under :-

**“6.11]** The Petitioner states that the third requirement is about “physical fitness” which the Petitioner fulfills, since she is physically fit and mentally sound to discharge her duties as the Government servant. The Petitioner never suffered from any major ailment throughout her career, which made her impossible to render duties as the Government servant effectively and efficiently. The Petitioner states that her mental faculties are intact.”

(Quoted from page 7 of the paper book of O.A.)

8. In the Affidavit-in-reply filed by the Respondents which is pretty long, the Respondents averments need to be referred with reference to relevant paras.

9. Respondent's Answer to Para 6.8, 6.9 and 6.30 done in Government's Affidavit-in-reply reads as follows :-

**“10. With reference to Para 6.8, I say as follows :**

As per General Administration Department policy regarding upgradation of the Backward Class servants Confidential Report to one step up of one year. So Urban

Development Department logically applied said policy to the Applicant case, hence her Confidential Report ratio upgraded as 'B' in the Minutes of the Review Meeting.

(i) However Urban Development Department referred and requested General Administration Department to opine whether said upgradation policy could apply in the premature retirement and in time bound promotion;

(ii) General Administration Department opined that said policy is only applicable for promotion and said policy could not be made applicable to the premature retirement and in time bound promotion;

(iii) Minutes of the Review Committee meeting was finalized, prior to the General Administration Department opinion, therefore, her Confidential Report ratio shown 'B' even though ratio of the Applicant was "B(-)".

(Quoted from pages 72 and 73 of the paper book of O.A.)

**"11. With reference to Para 6.9, I say as follows :**

The marks were wrongly shown as  $1+1+2+3+3=2$  that is (B). However, Applicant's marks are  $1+1+1+3+3=1.8$  that is (B-). Hence Applicant is not holding required gradation. Therefore, contention of Applicant is denied."

(Quoted from page 73 of the paper book of O.A.)

**"31. With reference to Para 6.30, I say as follows :**

I deny contention and say that the record available with the UDD, it reveals that Confidential Report of Applicant for the year 2009-10, 2010-11 and 2011-12 was adverse, but same was not communicated to Applicant by Industries & Energy Department, therefore, Urban Development Department communicated said adverse Confidential Report to Applicant on 11.3.2015 and called her reply / say on the said adverse Confidential Report.

(i) Applicant submitted her Statement on adverse Confidential Report on 12.3.2015 to UDD, Urban Development Department. The Applicant's statement dtd. 12.3.2015 was sent to R & F.D. on 16.3.2015 to be placed before Review and Reporting Officer;

(ii) Reporting and Review Officer declined to change adverse Confidential Report of the Applicant by letter dtd. 27.3.2015. Therefore, department finalized Applicant's Confidential Report and communicated the said decision of the Reporting and Review Officer to the Applicant on 9.4.2015;

(iii) *Meanwhile Applicant given letter dtd. 19.5.2015 to her previous department regarding adverse Confidential Report, so Urban Development Department forwarded her Confidential Report file to the previous Department i.e. Industries & Energy Department, however, Industries & Energy Department did not upgrade Confidential Report and returned the file to Urban Development Department on 19.11.2015;*

(iv) The contention raised in this para about written of ACR for the period between 2009-10 to 2010-11 and 2011-12 are totally new and afterthought. The Applicant has not raised these contentions in her representation dtd. 12.3.2015. As per judgment of the Hon'ble Apex Court in Baikuntha Nath Das & Anr. Vs. Chief

District Medical Officer Baripada, even uncommunicated adverse remarks can be taken into consideration;

(v) It also reveals from the records that the Applicant accepted said decision without preserving her right to challenge, as Applicant submitted application for grant of retirement benefits.”

(Quoted from page 117 to 119 of the paper book of O.A.)

10. In the light of rival contentions, this Tribunal has to find out as to whether the impugned order is passed within the parameters laid down by the Rules and the guidelines for deciding the factual aspect of Physical Fitness, ACRs, and integrity, etc.

11. Therefore, following questions arise for our consideration :-

(a) Whether the State has record before it regarding the aspect of lack of physical fitness of the Applicant while judging her physical fitness to be below mark judging her to be liable for compulsory retirement on that count as one amongst the grounds ?

(b) Whether the Applicant's integrity is liable to be regarded as below the bench mark of 'unquestionable', rendering the Applicant liable for compulsory retirement on that count as one amongst the grounds ?

(c) Whether the Applicant's ACRs are below "Good" thereby making her liable for compulsory retirement on that count as one amongst the grounds ?

12. Discussion and findings are as hereinafter.

13. The form of writing ACRs contains various columns requiring filling of blank spaces. Health and integrity are such columns, while alphabetical gradation has to be done on the basis of information narrated by Reporting Officer, and then he makes remark about alphabetical gradation as a sum effect thereof.

14. Though three questions are framed, entire issue involves around, the text or comments contained in the ACRs for the years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014, and therefore, common discussion about text and effect of entries in ACRs will have to be done, which is done in Paras to follow.

15. Admitted record shows the remarks about Physical Fitness and Integrity as follows :-

Years	2009-2010	2010-2011	01.04.11 to 31.12.11	01.06.12 to 31.03.13	01.04.13 to 04.12.13
<b>Physical Fitness</b>	Good	Good	Good	Very Good	Very Good
<b>Integrity</b>	Good	Good	Good	Good	Good

16. Respondents have placed strong reliance on the documents brought on record with their Affidavit-in-reply as Annexure 'R-1' (Page 121 onwards of paper book), namely :-

Description

- (1) Memo from Desk Officer No.गोअप्र-१५१५/४८३/प्र.क.११२/नवि-३(आस्था), dated 11<sup>th</sup> March, 2015 issued to the Applicant serving adverse ACRs.  
(Page No.121 of paper book)
- (2) Letter from Applicant to Desk Officer, U.D.D, dated 12.03.2015 calling if Applicant wants to represent against ACRs.  
(Page No.122 of paper book)
- (3) Letter from Section Officer, U.D.D. No.गोअप्र-१५१५/प्र.क.११२/नवि-३ to Desk Officer Mr. Jambupatel, dated 16<sup>th</sup> march, 2015 asking his view on retention of adverse comments in ACRs.  
(Page No.123 of paper book)
- (4) Letter from Desk Officer Mr. R.K. Jambupatel to Desk Officer, U.D.D. dated 27<sup>th</sup> March, 2015 informing that ACRs be treated as blank (निरंक).  
(Page No.124 of paper book)
- (5) Letter dated 09.04.2015 (Page 125) informing that request for expunging adverse comments in ACRs is rejected.  
(Page No.125 of paper book)

17. It is necessary to take into account and discuss about the documents listed in foregoing Paragraph.

- (1) Adverse ACRs were served on Applicant on 01.03.2015;
- (2) By letter dated 11<sup>th</sup> March, 2015, the Applicant was called to make any representation as regards adverse remarks;

- (3) By representation dated 12.03.2015, the Applicant made a grievance, but in a vague language, and requested for upgradation of ACRs or expunging those;
- (4) By letter dated 16<sup>th</sup> March, 2015 Shri R.K. Jambupatel, who has written adverse remarks for all five years was called to express his views in the matter.
- (5) Shri Jambupatel (the then Desk Officer in Industry, Energy & Labour Department, who had made adverse comments in the ACRs) wrote as follows :-

“रा.का. जांबु-पटेल  
कार्यसन अधिकारी,  
महसूल व वन विभाग,  
मंत्रालय,  
मुंबई-८२.  
दिनांक- २७ मार्च २०१५

प्रति,  
कार्यसन अधिकारी (नवि-३)  
नगर विकास विभाग, मंत्रालय,  
मुंबई-३२.

विषय:- सन २००९-२०१०, २०१०-२०११ व २०११-२०१२ या कालावधीतील श्रीमती मं.प्र. म्हापणकर, सहायक यांच्या गोपनीय अहवालातील प्रतिकूल शेऱ्याबाबत.

संदर्भ:- आपले पत्र क्र.गोअप्र.१५१५/प्र.क्र.११२/नवि-३, दि. १६.३.२०१५ व सहपत्र.

महोदय,

आपले उपरोक्त विषयाबाबतचे संदर्भाधिन पत्रास अनुसरून कळविण्यात येते की, विषयांकित गोपनीय अहवालाच्या अनुषंगाने माझे अभिप्राय कृपया “निरंक” समजण्यात यावी ही विनंती.

सोबत- संदर्भाधीन पत्र

आपला विश्वासू,  
( रा.का. जांबु-पटेल )”

(Quoted from page 164 of the paper book of O.A.)

- (6) Thus Shri Jambupatel has informed that his remarks in the ACRs may be treated as “निरंक” equal to “blank”.
- (7) Annexure ‘R-1’ to the Affidavit-in-reply of the State consists of a document, which is the letter of rejection of review of ACRs though letter of Shri Jambupatel dated 27.03.2015 is very well referred to in references therein (as a Para of Exh.‘R-1’collectively). Thus Applicant’s representation for expunging adverse remarks was rejected by Urban Development Department.



18. In the aforesaid background, this Tribunal has to consider as to what shall be the effect of the adverse observations noted in the Office Note leading to the decision of compulsory retirement on the grounds of :- (a) Lack of physical fitness, (b) Lack of unquestionable integrity; and (c) ACRs being below 'Good'.

19. Applicant has averred in the O.A. that she made a representation to the Hon'ble Minister of State making a grievance against the decision to compulsorily retire. Applicant has brought to the notice of this Tribunal a representation submitted by her to the Government to show Applicant's health being poor, which are at Exh.'H', Page 51, in which Applicant has been given specific details about the names of Officer under whose control she was working while she was working in Industries Department, details of her posting and the Officer who had written the adverse remarks. The statement contained in the application dated 3<sup>rd</sup> December, 2015 submitted by the Applicant reads as follows :-

“माझ्या गोपनीय अहवालाचा कालावधी खालील प्रमाणे आहे.

१.११.२००८ ते ३१.१२.२००९	उद्योग उर्जा व कामागार का-३ श्रीमती वाघचौरे (१.११.०८ ते ३१.३.०९) श्री. चौधरी (१.४.०९ ते ३१.१२.०९)	श्री. कांबळे सर १ वर्ष
१.१.२०१० ते ३१.३.२०१०	उद्योग उर्जा व कामागार का-७ श्री. पारधी (१.१.१० ते ३१.३.१०)	श्रीम. रानडे ३ महिने
१.४.२०१० ते १७.४.२०१०	उद्योग उर्जा व कामागार प्र-३ श्रीमती मोकल	श्री. व.रा. गोसावी १५ दिवस
१७.४.२०१० ते ७.७.२०१०	जनगणना	३ महिने
८.७.२०१० ते २६.७.११	उद्योग उर्जा व कामागार प्रशासन-५ श्री. जांभुपटेल (८.७.१० ते ३१.३.१०) श्री. पो.द. देशमख (१.४.११ ते २६.७.११)	श्री. व.रा. गोसावी १ वर्ष
२६.७.२०११ ते ६.१.२०१२	निवडणूक	६ महिने
७.१.२०१२ ते ३०.९.२०१२ (आठवड्यातून २ दिवस निवडणूकीकरीता)	उद्योग उर्जा व कामागार / नोंदणी शाखा (श्रीमती मोकल)	५ महिने
१.६.२०१२ ते आतापर्यंत	नगर विकास विभाग	.....

उपरोक्त कालावधी लक्षात घेता मी दिनांक ८.७.२०१० ते दिनांक २६.७.२०११ या कालावधीतच श्री. जांभुपटेल यांच्या कार्यासनात कार्यरत होते. असे असतांनाही माझे सन २००९ ते २०११ या कालावधीचे गोपनीय अहवाल श्री. जांभुपटेल यांनी प्रतिवेदीत केलेले आहे.

दिनांक-२००८-२०१२ या कालावधीत मी ज्या कक्ष अधिका-यांकडे कार्यरत होते. त्यांच्याकडे त्या त्या वर्षीचे गोपनीय अहवाल लिहून सादर केलेले आहे.

मी ३ महिने - ऊर्जा-७, १५ दिवस-प्रशासन-३ व ३ महिने - जनगणना कामासाठी मल नेमण्यात आले होते. दिनांक - २६.०७.२०११ ते ३१.१२.२०११ पर्यंत निवडणूक कार्यालयात कार्यरत होते असे असतानाही वरील कामावधीचे गोपनीय अहवाल पुनर्विलोकन अधिका-यांकडे पाठविण्यात आलेले नाही. तसेच दिनांक दि.६.१.१२ ते दि.२३.३.२०१२ या कालावधीत नोदंगी शाखेत असताना मला २ दिवस निवडणूक कामासाठी आस्थापनेने पाठविले होते.

दिनांक - २१ जून, २०१२ रोजी कंत्रालयाला लागेल्या आगीत सदर अहवाल जळाले असे श्री. मोरस्कर लिपीक (गोपनीय शाखा) मला संगितले व सर्व गोपनीय अहवाल पुन्हा माझ्याकडून जानेवारी- २०१४ ला लिहून घेतले वास्तविक पहाता माझे गोपनीय अहवाल हे आस्थापना प्रशासन ३ शाखेकडून जतन करणे आवश्यक होते. या विभागाच्या आस्थापना शाखेस आगीमुळे कोणतीही हानी पोहचलेली नाही असे असताना माझे गोपनीय अहवाल आगीत जळाले असे श्री. मोरस्कर यांनी तोंडी सांगितले हे संयुक्तीक नाही. याबाबत आस्थापना शाखेने वरील कालावधीचे प्रमाणपत्र देणे गरजेचे होते. तसे न करता श्री. मोरस्कर यांनी माझ्याकडून सर्व गोपनीय अहवाल जबरदस्तीने पुन्हा लिहून घेतले व माझ्या संबंधीत कालावधीतील अधिका-यांकडे न पाठविते सर्व गोपनीय अहवाल श्री. जांभुपटेल, कक्ष अधिकारी यांच्याकडे दिले. त्यांनी मी त्यांच्याकडे केलेल्या कालावधीचे गोपनीय अहवाल लिहिले व ते प्रतीकूल (-ब) असे लिहिले. तसेच ते पुनर्विलोकनही न करता ग्राह्य धरण्यात आले. या प्रतीकूल शे-च्याबाबत उद्योग, ऊर्जा व कामगार विभागाच्या आस्थापनेने सन २००९-२०१०, २०१०-२०११ व २०११-२०१२ या कालावधीत ब-साधारण गोपनीय अहवाल प्रतिकूल श्रे म्णून मला सामान्य प्रशासन विभागाच्या मार्गदर्शक सूचनानुसार कळवीणे अपेक्षित होते. परंतु आस्थापनेने मला तसे एकदाही कळविलेले नाही. तरी संबंधीत कर्मचारी व अधिकारी यांच्यावर नियमानुसार योग्य ती कारवाई करण्यात यावी, ही नम्र विनंती.’’

(Quoted from Exhibit 'H', pages 51 to 53 of the paper book of O.A.)

20. According to the Applicant she had worked under the control of Shri Jambupatel, Desk Officer only for period of about 12 months from July, 2010 to 1<sup>st</sup> January, 2011, yet Shri Jambupatel had written ACRs for years 2009 to 2011, and therefore, Shri Jambupatel was not competent to write adverse report against the Applicant and her ACRs could not be 'adverse' for all five years period of the said Officer, who had not supervised the Applicant's performance for five years.

21. According to the Applicant, Shri Jambupatel's unfavourable ACRs were not submitted to reviewing authority and hence, those are not conclusive and cannot be acted upon.

22. In all fairness, the remarks of the Officer informing that his comments in ACRs be treated as blank (निरंक) ought to have been acted upon as there did not exist reasons to deviate therefrom.

23. It shall be useful to see the text of rejection of request of upgradation of ACRs of Applicant, done through letter dated 09.04.2015, a copy whereof is at Page 125. The text thereof is reproduced below :-

“क्र.गोअप्र-१५१५/प्र.क्र.२९/नवि-३,  
नगर विकास विभाग,  
हुतात्मा राजगुरु चौक, मादाम कामा रोड  
मंत्रालय, मुंबई ४०० ०३२.  
दिनांक:-९ एप्रिल, २०१५.

प्रति,  
श्रीम.मं.प्र.म्हापणकर,  
सहायक, नगर विकास विभाग,  
मंत्रालय, मुंबई.

**विषय:- गोपनीय अहवालातील प्रतिकूल शेरे**

- संदर्भ:- १. आपले सन २००९-१०, २०१०-११ व २०११-१२ या वर्षातील प्रतिकूल शेऱ्यांबाबत आपले दि.१२.३.२०१५ चे अभिवेदन.  
२. शासन पत्र समक्रमांक दि.१६.३.२०१५.  
३. उपरोक्त कालावधीतील प्रतिवेदन अधिकारी यांचे दि.२७.३.२०१५ च्या पत्रान्वये प्राप्त अभिप्राय.

महादेय,

उपरोक्त विषयी आपल्या संदर्भाकीत दि.१२.३.२०१५ च्या पत्रान्वये आपण कार्यरत असतांनाच्या खालील कालावधीतील प्रतिकूल शेरे काढून टाकण्याबाबतचे अभिवेदन या विभागास प्राप्त झाले.

अ.क्र.		गापेनीय अहवाल कालावधी
१.	-	सन २००९-१०
२.	-	सन २०१०-११
३.	-	दि.१.४.२०११ ते ३१.१२.२०११

२. सदर गोपनीय अहवालातील प्रतिवेदन अधिका-यांनी लिहिलेले शेरे (ब-) साधारण असे असल्याने ते आपल्या पदोन्नतीच्या पात्रतेपर्यंत येत नाहीत. सबब शासन निर्णय, सामान्य प्रशासन विभाग दि.१.१.२०११ व दि.१३.२.२०१४ मधील तरतूदीनुसार आपल्या सदर कालावधीतील प्रतिकूल शेरे काढून टाकण्याबाबतच्या अभिवेदनावर सदर कालावधीतील तत्कालीन प्रतिवेदन अधिकारी यांचे संदर्भ क्र.२ येथील दि.१६.३.२०१५ च्या पत्रान्वये अभिप्राय मागविण्यात आले असता प्रतिवेदन अधिकारी यांनी त्यांच्या दि.२७.३.२०१५ च्या पत्रान्वये त्यांचे अभिप्राय “**निरंक**” कळविळे आहेत. तसेच आपल्या दि. १२.३.१५ च्या गोपनीय अहवालातील विशिष्ट प्रतिकूल शे-यांबाबत ते का काढणे आवश्यक आहे याबाबतचे कोणतेही अभिप्राय न नोंदविता गोपनीय अहवालातील प्रतिकूल शेरे काढून टाकण्याची विनंती केली आहे.

३. उपरोक्त वस्तुस्थिती व सामान्य प्रशासन विभागाच्या दि.१.१.२०११ व दि.१३.२.२०१४ रोजीच्या शासन निर्णयातील मार्गदर्शक सुचना विचारात घेता आपल्या पुढील गोपनीय अहवाल कालावधीतील प्रतिकूल शेरे काढून टाकण्याबाबतचे अभिवेदन अंतिमतः फेटाळण्यात येत आहे.

(अ.शि. नाईकवाडे)  
कार्यासन अधिकारी”

24. It is pertinent to note that, despite the fact that the Reporting Officer Shri Jambupatel's remarks were called and he replied in unambiguous terms that his observations be treated as 'blank' rather 'NIL', the Applicant was informed that her representation to upgrade her ACRs is rejected on the ground as incorporated in letter dated 09.04.2015, a copy whereof is at Page 125 of the paper book which shows the attitude of Urban Development Department's Officer being predetermined to compulsorily retire the Applicant by using their own act and filling to revise the ACRs as a foundation of treating the Applicant's ACRs to be below mark.

25. Moreover though the Affidavit-in-reply mentions about Applicant's integrity, and that there were complaints against her such as coming late, taking extra time for lunch etc. The text of complaints against Applicant as has been described in the affidavit of the State do not indicate that her integrity was doubtful on account of any misdeeds whatsoever expressly recorded wherever and in form whatsoever.

26. Further the ACRs do not contain any narration which questions integrity. Rather in all 5 years' ACRs of Applicant, the column of integrity is filled with word 'Good'. Integrity being recorded as 'good' would not be indelible. An entry of good integrity can be converted into bad or worse, provided it is done after following rules and procedure.

27. Thus the reliance on decision to refuse to review the ACRs that too by disregarding unambiguous opinion of Reporting Officer sent through letter dated 27.03.2015 nullifying adversity in reports, goes to prove that the decision to retire the Applicant compulsorily was almost reached at the mind level of Secretary of U.D.D. and what was being done was the show of compliance.

Thus the Applicant's ACRs have to be considered above 'B' particularly in view of Reporting Officer's remark (Shri Jambu Patel's remark) that the ACRs be treated as 'blank'.

28. It is not shown that arriving late at the place of work, etc. is congruent to lack of absolute or unquestionable integrity or that the aspect of integrity be treated as negative.

29. In so far as question of fitness of the Applicant is concerned, the column of Physical Fitness as placed before the Committee, a copy whereof is at Page 30, shows the remarks as follows :-

२००९-२०१०	२०१०-२०११	२०११-२०१२	२०१२-२०१३	२०१३-२०१४
चांगले	चांगले	चांगले	उत्कृष्ट	प्रमाणपत्र

30. On 1<sup>st</sup> office note, copy whereof is at Page 31 which is dated 15.08.2015, Deputy Secretary (Estt.), Urban Development Department wrote as below :-

“१०. उपरोक्त निरिक्षणे विचारात घेता श्रीमती म्हापणकर, सहायक यांच्या सेवा ५५ वर्षांच्या पुढे सुरु ठेवण्यासाठी गोपनीय अहवालाची प्रतवारी जरी चांगली “ब” अशी येत असली तरी श्रीमती म्हापणकर, सहायक यांची शारिरिक क्षमता चांगली नाही. तसेच शासनाची कामे पार पाडण्यासाठी असणारी निर्विवाद सचोटी, कर्तव्य परायणता दिसून येत नाही. सबब, श्रीमती म्हापणकर यांच्या ५५ वर्षांच्या पुढे सेवा सुरु ठेवण्याची आवश्यकता दिसून येत नाही. यानुसार श्रीमती म्हापणकर यांच्या वयाच्या ५५ वर्षांपलीकडे सेवेत राहण्यासाठी पात्रता आजमाविण्याकरीता नियुक्त पूर्विलोकन समितीची मान्यता चक्रीय पध्दतीने मिळण्याकरीता इतिवृत्ताचा मसूदा पृ. १६३/प.वि.वर सादर करण्यात आला आहे.”

(Quoted from Page 31 of the paper book)

31. However, by a note put up in continuation of a suggestion to refer the Applicant to Medical Board for opinion was given, but it is seen that said proposal was over-ruled on the ground that in view of Applicant's own application at Page 113, such a reference is not necessary. Relevant text proposing reference reads as follows:-

“नगर विकास विभागाच्या आस्थापनेवरील श्रीम.मं.प्र.म्हापणकर, सहायक यांच्या सेवा वयाची ५५ वर्ष पूर्ण झाल्यानंतर पुढे सुरु ठेवाव्या किंवा कसे या अनुषंगाने प्रस्तुत टिप्पणीमध्ये प्रस्तावित करण्यात आलेले आहे. उक्त टिप्पणीमध्ये समितीचे सदस्य उप सचिव (आस्थापना) यांनी खालील दोन मुद्दे उपस्थित करून सामान्य प्रशासन विभागाचे अभिप्राय घेण्याबाबत सुचित केलेले आहे.

- १) शारीरिक क्षमतेबद्दल वैद्यकीय मंडळाचे प्रमाणपत्र घेणे उचित होईल.
- २) सचोटी व कर्तव्य परायणता या मुद्दयावर विभागाचे अभिप्राय सामान्य प्रशासन विभागाच्या सल्ल्याने घेणे अधिक योग्य ठरेल.

मुद्दा क्र.१ च्या संदर्भात असे नमूद करण्यात येते की, श्रीम. म्हापणकर यांनी पृ.११३/प.वि. वरील अर्जांनुसार स्वतःच्या आज्ञापणाबाबत सविस्तर खुलासा सादर केला आहे. त्यासअनुसरून श्रीम. म्हापणकर यांच्या शारीरिक क्षमतेबाबत वैद्यकीय मंडळाचे प्रमाणपत्र घेण्याची आवश्यकता नाही अशी धारणा आहे.

मुद्दा क्र.२ बाबत श्रीम. म्हापणकर यांच्या संदर्भात त्या ज्या कार्यासनात कार्यरत होत्या त्या कार्यासनातील आधिकारी यांनी त्यांच्या कामकाजाबाबत सादर केलेल्या तपशिलानुसार त्यांची शासनाची कामे पार पाडण्यासाठी असणारी निर्विवाद सचोटी, कर्तव्य परायणता दिसून येत नाही.

उपरोक्त वस्तुस्थिती विचारात घेता श्रीम. म्हापणकर यांची प्रकरणी विभागाच्या धारणेबाबत अभिप्राय घेण्याची विनंती सामान्य प्रशासन विभागास करण्यात येत आहे.”

(Quoted from Page 32 of the paper book)

32. The Applicant's complaint is about difficulty in climbing stairs/steps while performing election duty and she had requested for change in the location of election work. In the background that the Applicant was serving for such a long time, had there been frequent leave applications on medical ground including her medical bills could have been the best evidence. However, no such material as ever brought forward. The record relied upon by State relates to September 2014 and it is a solitary incident that has been cited while attending the election work.

33. It appears that in the office note, which was reinitiated after the GAD made observations that the matter be re-examined. The note begins with heading “पुर्वपृष्ठावरील सामान्य प्रशासन विभाग/ पंधरा च्या टिप्पणीवर मा. मुख्य सचिव यांनी दिलेल्या निर्देशास अनुसरून सादर”. While writing this note, and the proposal to compulsorily retire the Applicant was reiterated. The Principal Secretary – Dr. Nitin Karir specifically asserted that, all conditions are fulfilled and submitted the matter to Chief Secretary.

34. The Chief Secretary again endorsed that, whether conditions prescribed in G.R. are fulfilled. In subsequent note which is at Page 42 of the paper book, medical examination of Applicant was again proposed as his evidence from record as Para 3 appearing at Page 43 and GAD again endorsed in favour of reconsideration of the matter. After the matter was re-sent to the U.D.D, entire previous record of the Applicant was resubmitted and emphasis was given to unsatisfactory record of the Applicant. In the endorsement at the foot of the note given by Principal Secretary, U.D.D, he endorsed as follows :-

“तीनही निकषांची पूर्तता होत नाही अशी वस्तुस्थिती नाही. किमान २ निकष पूर्ण होतात हे वरील टिप्पणीवरून स्पष्ट होते. समितीने अतिशय जाणीवपूर्वक निर्णय घेतला आहे. कृ. मान्यता असावी.”

The said note came to be approved. It is important to note that, in the said note, it is conceded that out of three conditions, two conditions are fulfilled.

35. The aspect of health has thus gone in favour of the Applicant, and the decision to compulsorily retire the Applicant has been taken only on two grounds viz. integrity and ACRs.

36. There was no record before the Committee showing as to the ground on which the narrations in the ACRs could be disputed. However, while answering the O.A, the State has relied upon Applicant's own admission contained in her request about her ill-health.

37. It is thus evident that the act of Urban Development Department in rejecting the representation of the Applicant for upgradation of ACRs which are adverse, but liable to be treated as 'blank'. The Applicant's period of service in Industries and Labour Department amounts to an act which is potentially arbitrary and malafide in law. Reason assigned in the letter of rejection copy whereof is at Page 125 and text whereof is quoted in Para No.23 is eloquent to prove predetermined object. A view contrary to settled law and factual advise of Industries & Labour Department is brushed aside in a dictatorial manner sheerly to couch a predetermined object of kicking away the Applicant, come what may.

38. In so far as the Applicant's ACRs being below 'B' is concerned, now it is conclusive during 2008 to 2012 that none of the Officers had except Shri Kamble for year 2008-2009 had made sustained observation about the Applicant. Moreover, the Officer, who had written ACRs for the year 2008-2011 had in unequivocal terms communicated that, his remarks be treated as "निरंक" i.e. "Blank".

39. Thus the action of Respondents in concluding that Applicant to possess ACRs below good, adverse on health ground and adverse on the ground of integrity, in the aforesaid premises, amounts to base the judgment on "no evidence".

40. In the aforesaid background, the Judgment in case of **Baikuntha Nath** (supra) has no application to the facts of the present case. Whether adverse ACRs could be

acted upon is not the issue involved in a case because the adversity of remarks is not the fact of the matter and itself is a disputed question.

41. The fact that one and same officer i.e. Shri Nitin Karir, Principal Secretary, Urban Development Department, has presided over the committee taking decision to compulsorily retire, and also on the committee which is reviewing the decision to retire the applicant compulsorily.

42. The fact that Shri Nitin Karir acted as a Judge in his own cause as a difficult facet than the angle from which Applicant has challenged. Applicant's perspective that Shri Nitin Karir acted as a Judge while sitting in the Review Committee is factually inchoate, for the reason that Shri Nitin Karir did not himself take the decision in Review Committee and has submitted his decision for approval to the Chief Secretary and ultimately to the Hon'ble Chief Minister.

43. The role of Shri Nitin Karir does not get absolved from the blame of acting as a Judge in his own cause. It takes the shape of acting as a prosecutor of own case and acting maliciously against the Applicant. Though Shri Nitin Karir submitted the note for approval to the Chief Secretary, after comments from G.A.D came, he has presented his arguments, persisting upon his decision. He thus withdrew from the role of being a Judge in his own cause but became the prosecutor and by making it an issue of personal prestige, insisted upon acceptance of his decision. The type of conduct which Shri Nitin Karir has exhibited shows grave deviation from the basic principles of observance of sense of justice and the principles of natural justice as well.

44. Shri Nitin Karir was functioning as an executive when he took decision to retire the Applicant compulsorily. When he sat in review, his role was quasi-judicial and then he became a Judge. He withdrew from the status of a Judge and stepped into shoes of the prosecutor when he pursued before the Chief Secretary for confirmation of his own decision.



45. This defect discussed in foregoing para is not a procedural lapse or a deviation, but a defect which tends to legal malice, being a matter of bias and consequent violation of principles of natural justice. The executive ought to meticulously observe that justice is not only done but is made to appear to all concerned that justice is done.

46. The fact that one and same Officer has considered the case initially as Secretary and again as Chairperson of Review Committee reflects on the total absence of just application of mind and sense of justice with which executive is expected to work.

47. Thus in respect of all the three criteria prescribed as grounds for retiring the government servant compulsorily, the Respondent does not come clean and has not produced before review committee documentary proof to justify the action, which was proposed.

48. It is thus apparent that impugned order is passed in gross violation of a constitutional guarantee of fairness and order being free from arbitrariness.

49. In the result, we hold that impugned order turns out to be based on surmises and conjunctures than on any material, which could lay foundation for subjective satisfaction that the applicant emerges to be a deadwood needing or warranting weeding out by taking recourse to the power to compulsorily retire a public servant in public interest, and hence it cannot be sustained.

50. Questions framed by this Tribunal in Para No.11 are answered accordingly holding that impugned order suffers from illegality of being passed contrary to the requirements laid down by rules. It suffers from the defect of being arbitrary and based on conjunctures than public interest.

51. Therefore O.A. succeeds and the impugned order is set aside as if it was not issued. Applicant shall be entitled to reinstatement with full back wages and to continue to serve till superannuation.

52. Parties are directed to bear own costs.

Sd/-

**(P.N. Dixit)**  
**Member-A**  
**10.08.2018**

Sd/-

**(A.H. Joshi, J.)**  
**Chairman**  
**10.08.2018**

Mumbai

Date : 10.08.2018

Dictation taken by :

S.K. Wamanse.

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