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UNION OF INDIA ETC.

v.

M. E. REDDY AND ANR.

September 19, 1979

B [S. MURTAZA FAZAL ALI AND A. P. SEN, JJ]

Compulsory retirement—Order passed in terms of Section 16(3) *of the All India Services (Death-cum-Retirement) Rules,* 1958, *whether in violation of Articles* 311(2) *of the Constitution.*

The respondent in the two appeals was compulsorily retired by an order C dated 20-4-74 under Rule 16(3) of the All India Services (Death-cum-Retirement) Rules, 1958. The respondent challenged the said order by filing a Writ Petition before the Andhra Pradesh High Court. A single Judge of that Court allowed the petition. The said decision was affirmed by the Division Bench in appeal.

Allowing the appeals by certificate the Court,

D HELD : 1. An analysis of Rule 16(3) of the All India Services (Death-cum-Retirement) Rules, 1958 clearly shows that the following essential ingredients of the Rule must be satisfied before an order of compulsorily retiring a Government servant is passed : (i) that the member of the service must have completed 30 years of qualifying service or the age of 50 years (as modified by notification dated 16-7-1969); (ii) that the Government has an absolute right to retire the Government servant concerned because the word E "require" confers an unqualified right on the Central Government servant; (iii) that the order must be passed in public interest; and (iv) that three months' previous notice in writing shall be given to the Government servant concerned before the order is passed. [742 G-H, 743 A-B]

The provision gives an absolute right to the Government and not merely a discretion, and, therefore impliedly it excludes the rules of natural justice. [743 B]

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2. Compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311(2) of the Constitution. In fact, after an employee has served for 25 or 30 years and is retired on full pensionary benefits, it cannot be said that he suffered any real prejudice. [743 C-D]

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3. The object of Rule 16(3) is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State service. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly H in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest. Since

they have almost reached the fag end of their career and their retirement would not cast any aspersion, nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But, this is not an absolute right which can be claimed by an officer who has put in 30 years of service or attained the age of 50 years. Rule 16(3) does nothing of the sort of attaching stigma. [743 D-H]

4. The jurisprudential philosophy of Rule 16(3) and other similarly worded provisions like F.R. 56(j) and other rules relating to Government servants is noteworthy. Rule 16(3) as it stands is 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. [744A-C]

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 malafide, 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 peruse it for its own satisfaction without using it as evidence. [744 C-E]

The main object of Rule 16(3) 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 work or has outlived his utility has to be weeded out. Rule 16(3) provides the methodology for achieving the object. [744 E-G]

Before the Central Government invokes the power under Rule 16(3), it must take particular care that the rule is not used as a ruse for victimisation by getting rid of honest and unobliging officers in order to make way for incompetent favourites of the Government which is bound to lead to serious demoralisation in the service and defeat the laudable object which the rule seeks to sub-serve. If any such case comes to the notice of the Government the officer responsible for advising the Government must be strictly dealt with. [744 G-H]

Compulsory retirement contemplated by Rule 16(3) is designed to infuse the administration with initiative and activism so that it is made poignant and piquant, specious and subtle so as to meet the expanding needs of the nation which require explanation of "fields and pastures now". Such a retirement

A involves no stain or stigma nor does it entail any penalty or civil consequences. In fact the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of the administration. [745 A-B]

An order of compulsory retirement on one had causes no prejudice to the Government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the service made in the larger interest of the country. Even, if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to the country for every good cause claims its martyr. [745 B-D]

C *Shyam Lal* v. *State of U.P.*, [1955] S.C.R. 26; *T. G. Shivacharana Singh and Ors.* v. *The State of Haryana* A.I.R. 1965 S.C. 280; *Union of India* v. *Col. J. N. Sinha and Anr.*, [1971] 1 SCR 791; *M. V. Puttabhatta* v. *The State of Mysore and Anr.*, [1973] 1 SCR 304; *State of Assam & Anr. etc.* v. *Prasanta Kumar Das etc.* [1973] 3 S.C.R. 158 @ 167; *Tara Singh etc.* v. *State of Rajasthan and Ors.* [1975] 3 SCR 1002; *Mayenghoan Rahamohan Singh* v. *The Commisioner (Admn.), Manipur and Ors.*, [1977] 1 SCR 1022; applied.

Before passing an order under Rule 16(3), it is not an entry here or an entry there which has to be taken into consideration by the Government but the overall picture of the officer during the long years of his service that he puts in has to be considered from the point of view of achieving higher standards of efficiency and dedication so as to be retained even after the officer has put in the requisite number of years of service. [750 C-D]

Under the various rules on the subject, it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not possible to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character, not only of his performance but also of the reputation he enjoys. Therefore on the ground of non communication of adverse remarks, the impugned orders cannot be set aside. [748 G-H, 749 A]

G *R. L. Butail* v. *Union of India and Ors.*, [1971] 2 SCR 55 and *Union of India* v. *Col. J. N. Sinha and Anr.*, [1971] 1 SCR 791; applied.

State of Uttar Pradesh v. *Chandra Mohan Nigam & Ors.*, [1978] 1 SCR 721; referred to.

Madan Mohan Prasad v. *State of Bihar and Ors.*, [1973] 4 S.C.C. 166= H [1973] 1 SCR 630; distinguished.

All that is necessary is that the Government of India, before passing an order under Rule 16(3) should consider the report of the Review Committee

which is based on full and complete analysis of the history of the service of the employee concerned. [753 F-G] A

In the instant case, it was clearly pleaded by the appellants in the High Court that the report of the Review Committee was in fact considered by the Government of India before passing the impugned order. An examination of the confidential file also confirms this. [753 G-H, 754 A] B

State of U.P. v. *Chandra Mohan Nigam and Ors.* [1978] 1 SCR 721 and *S. R. Venkataraman* v. *Union of India and Anr.*, [1979] 2 SCR 202; distinguished.

Chief Security Officer, Eastern Railway & Anr. v. *Ajay Chandra Bagchi* [1975] 2 SLR 660 (Calcutta); overruled.

In the instant case (a) there is no legal error in the impugned order passed by the Government of India, retiring Mr. Reddy. The order is not arbitrary as could be seen from the material on the record. The Government of India acted on the orders passed by the Home Minister concerned who had considered the report of the Review Committee in its various aspects. There is nothing to show that Reddy was victimised in any way. On the other hand, the history of his service shows that he was always given his due. He was taken to the I.P.S. and allotted the year 1952. He was promoted to the selection grade also at the proper time. The order of suspension was withdrawn and the departmental enquiry was dropped and the officer was reinstated and later promoted as D.I.G. These facts completely militate against the concept of victimisation. [756 F-H, 757 A] C D

(b) The impugned order is a bonafide order and does not suffer from any legal infirmity. [757 G] E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12 and 13 of 1977.

From the Judgment and Order dated 17-11-1976 of the Andhra Pradesh High Court in Writ Appeal Nos. 591—592/76.

U. R. Lalit, R. N. Sachthey and *Girish Chandra* for the Appellant in C. A. 12/77. F

M. Abdul Khadar and *G. Narayana Rao* for the Appellant in C.A. 13/77.

T. S. Krishna Murthy Iyer and *A. Subba Rao* for the Respondent. G

The Judgment of the Court was delivered by

FAZAL ALI, J.—These two appeals (one by the State of Andhra Pradesh and the other by the Union of India) by certificate are directed against a Division Bench Judgment of the Andhra Pradesh High Court dated 17-11-1977 confirming the decision of a Single Judge by which an order passed by the Central Government compulsorily retiring M. E. Reddy, respondent No. 1 (hereinafter referred to H

as Reddy) from service in public interest was quashed in a writ petition filed before the High Court.

The facts of the case lie within a very narrow compass particularly in view of the fact that we have decided not to go into the question of malafide alleged against respondent No. 3, Mr. K. Brahmanand Reddy before the High Court because Reddy in a previous writ filed in the High Court against the order of suspension had expressly withdrawn all the allegations against Mr. K. Brahmanand Reddy, respondent No. 3 in the High Court. We shall, however, touch the fringes of this question so far as it directly affects the order impugned passed by the Government of India.

Reddy started his career in the Police Service as Deputy Superintendent of Police in the year 1948. In the year 1958 Reddy was appointed to the Indian Police Service and 1952 was the year of his allotment. On 31-7-1958 Reddy was promoted as Superintendent of Police in the State of Andhra Pradesh and held charge of a number of Districts from time to time. Reddy was also awarded the President Police Medal near about the 14th August, 1967, but the award of the President Police Medal was withheld as Reddy was placed under suspension by the Government on 11-8-1967 pending departmental enquiry into a number of allegations made against him. It is not necessary for us to detail those allegations which are not germane for the purpose of deciding these appeals.

In 1969 Reddy filed a writ petition in the Andhra Pradesh High Court praying that the order of suspension passed against him dated 11-8-1967 may be quashed as it was passed on false allegations and at the instance of Mr. K. Brahmanand Reddy who was the Chief Minister of Andhra Pradesh at that time. A large number of allegations in support of the plea of malice were made by Reddy. The writ petition was admitted by the High Court which passed an order dated 17-7-1969 staying all further proceedings including the written statement by Reddy to the six charges framed against him by the department. When the writ came up for hearing before the single Judge, the State Government represented to the High Court that it had decided to withdraw the order of suspension and reinstate the respondent No. 1, Reddy. The State Government accordingly withdrew the order of suspension and directed that the period of suspension may be treated as on duty. Thereafter Reddy filed an application before the High Court seeking permission to withdraw the petition as also the allegations made in the petition against the Chief Minister, respondent No. 3 in the High Court. The High Court accepted the

prayer of Reddy and allowed the petition to be withdrawn and passed the following order :— A

> "It seems that orders reinstating the petitioner and virtually cancelling the suspension order are being issued. The learned Advocate for the petitioner therefore desires to withdraw the writ petition. The writ petition is therefore dismissed as withdrawn". B

As a result of these developments the departmental proceedings against Reddy were dropped and he was given Selection Grade which appears to have been withheld because of the order of suspension passed against Reddy. On 27-4-1971 Reddy was given the Selection Grade with retrospective effect from 6-6-1969. Thereafter by an order dated 28-4-1971 Reddy was promoted to the Rank of Deputy Inspector-General of Police by the State Government. It appears that during the course of the departmental enquiry the following entry appears to have been made in the Annual Confidential Report of Reddy :— C D

> "He is under suspension. Allegation against him is that he concocted a case against Venugopala Reddy (attempt to rape) to please the Inspector-General of Police K. K. Nambiar. There is also a strong suspicion about his integrity. The Anti-corruption Branch are enquiring into the allegations. In this enquiry allegations are proved". E

After the proceedings were dropped and Reddy was promoted as Deputy Inspector-General of Police he made a representation to the Government that the adverse entry contained in the Annual Confidential Report may be expunged. The Government of Andhra Pradesh after considering the representation of Reddy passed the following order dated 20-4-1974 : F

> "The Government, after careful consideration, have decided that as the statements are factual it would be sufficient if a suitable entry is made in the said confidential report to the effect that the suspension was subsequently lifted and the period was treated duty and that further action was stayed as there were no good grounds to hold him guilty of any of the charges levelled against him. G
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> (3) A suitable entry has accordingly been made in the confidential report for the year ending 31-3-1968". H

We have expressly referred to this order of the Government to show that it completely demolishes the case of malafide pleaded by

A Reddy against Mr. K. Brahmanand Reddy, respondent No. 3 in the High Court because if Mr. K. Brahmanand Reddy had any animus against the officer he would not have accepted his representation and denuded the effect of the adverse entry made at the time when Reddy was suspended. According to the allegations made by the State of Andhra Pradesh on the 7th August, 1975 a Review Com-
B mittee consisting of the Chief Secretary, Home Secretary and the Inspector-General of Police considered various cases of police officers including the case of Reddy and made their recommendations. On 11th September, 1975 the Government of India after considering the report of the Review Committee ordered compulsory retirement of
C Reddy in public interest on the expiry of three months' notice from the date of service of order on him. This order was passed by the Central Government in consultation with the State Government (hereinafter referred to as the impugned order) as may be extracted thus :—

> "In exercise of the powers conferred by Sub-rule 3 of Rule 16 of the All India Service (Death-cum-Retirement)
D Rules, 1958, the President, in consultation with the Government of Andhra Pradesh, is pleased to order the retirement of Sri M. E. Reddy a member of the Indian Police Service borne on the cadre of Andhra Pradesh, in the public interest, on the expiry of three months from the date of service of this order on him".

E This order purports to have been passed under sub-rule (3) of Rule 16 of the All India Service (Death-cum-Retirement) Rules, 1958 which reads as follows :—

> "16(3) The Central Govermnent, in consultation with the State Government, may require a member of the Service
F who has completed 30 years of qualifying service or who has attained the age of 55 years to retire in the public interest provided that at least three months' previous notice in writing will be given to the member concerned".

An analysis of this Rule clearly shows that the following essential
G ingredients of the Rule must be satisfied before an order compulsorily retiring a Government servant is passed :

1. That the member of the Service must have completed 30 years of qualifying service or the age of 50 years (as modified by notification dated 16-7-1969),
2. That the Government has an absolute right to retire the
H Government servant concerned because the word "require" clearly confers an unqualified right on the Central Government;

3. That the order must be passed in public interest; A

4. That three months' previous notice in writing shall be given to the Government servant concerned before the order is passed.

It may be noted here that the provision gives an absolute right to the Government and not merely a discretion, and, therefore, impliedly B it excludes the rules of natural justice. It is also not disputed in the present case that all the conditions mentioned in Rule referred to above have been complied with. It is a different matter that the argument of Reddy is based on the ground that the order is arbitrary and *mala fide* with which we shall deal later. C

On a perusal of the impugned order passed by the Government of India it would appear that the order fully conforms to all the conditions mentioned in Rule 16 (3). It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employee has put in a sufficient number of years of service having D qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Art. 311 (2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the E State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement F of an officer who fulfils the conditions of Rule 16 (3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it G entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, the general impression which is carried by most of the employees that compulsory H retirement under these conditions involves some sort of stigma must be completely removed because rule 16 (3) does nothing of the sort.

A 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 rules 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 B 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 appli- C cation 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 *mala fide* it can always be struck down. While examin- D ing 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 *mala fide*. The Court has, however, the undoubted power subject to any privilege or claim that may B be made by the State, to send for the relevant confidential personal file of the Government servant and peruse it for its own satisfaction without using it as evidence.

It seems to us that the main object of this Rule is to instil a F 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. Rule 16 (3) pro- G vides the methodology for achieving this object. We must, however, hasten to add that before the Central Government invokes the power under Rule 16 (3), it must take particular care that the rule is not used as a ruse for victimisation by getting rid of honest and unobliging officers in order to make way for incompetent favourites of the Government which is bound to lead to serious demoralisation in the H Service and defeat the laudable object which the rule seeks to subserve. If any such case comes to the notice of the Government the officer responsible for advising the Government must be strictly dealt

with. Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative and activism so that it is made poignant and piquant, specious and subtle so as to meet the expanding needs of the nation which require exploration of "fields and pastures now". Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of the administration.

An order of compulsory retirement on one hand causes no prejudice to the Government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the Services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the Service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country for every good cause claims its martyr.

These principles are clearly enunciated by a series of decisions of this Court starting from *Shyam Lal's*(1) case *to Nigam's* (2) case which will be referred to hereafter.

In the case of *Shyam Lal* v. *The State of Uttar Pradesh & Anr.*(1) This Court clearly held that compulsory retirement does not amount to removal or termination nor does it involve any stigma. In this connection, a Bench of 5 Hon'ble Judges of this Court observed as follows :—

> "There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twentyfive years' service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to article 465-A

(1) [1955] S. C. R. 26.

(2) [1978] 1 S. C. R. 521.

A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity".

"The more important thing is to see whether by com-
B pulsory retirement the officer loses the benefit he has earned as he does by dismissal or removal. The answer is clearly in the negative. The second element or determining whether a termination of service amounts to dismissal or removal is, therefore, also absent in the case of termination of service brought about by compulsory retirement.

C

The foregoing discussion necessarily leads us to the conclusion that a compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution or of rule 55".

D The same principle was reiterated by another Bench of 5 Hon'ble Judges of this Court in the case of *T. G. Shivacharana Singh & Ors.* v. *The State of Mysore.*(1) In this case, the Court was considering the scope of rule 285 which was almost in the same terms as rule 16 (3) and provided that a Government servant could be retired after completing qualifying service of 30 years or on attaining the age of
E 50 years if such retirement was considered in public interest. In this connection, the Court observed as follows:—

"It would thus be clear that though the normal age of retirement under R. 95 (a) is 55 years, under R. 285 it is competent to the Government to retire compulsorily a
F government servant prematurely if it is thought that such premature retirement is necessary in the public interest.. .....Mr. Venkataranga Iyengar contends that this Rule is invalid, because it contravenes Art. 14 as well as Art. 16 (1) of the Constitution. In our opinion, this contention can no longer be entertained; because it is
G concluded by a long series of decisions of this Court".

Even the constitutionality of the provisions concerned was upheld by this Court.

The leading case on the subject which has been decided some
H years before and has been consistently followed by latter decisions

(1) A. I. R. 1965 S. C. 280.

of this Court is the case of *Union of India v. Col. J. N. Sinha & Anr.*(1). This Court was considering the scope and ambit of rule 56 (i) which is also worded in the same terms as rule 16 (3). Rule 56 (j) runs thus:— A

> "Notwithstanding anything contained in this Rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. B
>
> (i) if he is in Class I or Class II Service or post the age for the purpose of direct recruitment to which is below 35 years, after he has attained the age of 50 years. C
>
> (ii) In any other case after he has attained the age of 55 years. D
>
> Provided that nothing in this clause shall apply to a Government servant referred to in clause (e) who entered Government service on or before 23rd July 1966 and to a Government servant referred to in clause (f)".

After considering the various shades, aspects, purpose and object of such provision this Court observed as follows:— E

> "But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice". F
>
> "The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority *bona fide* forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is G H

(1) [1971] 1 S. C. R. 791.

A an arbitrary decision.....
Compulsory retirement involves no civil consequences. The aforementioned rule 56 (j) is not intended for taking any penal action against the government servant. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution.
B Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding.
C It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more
D so in government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to
E energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest".

The observations made above clearly reveal the object of this rule and lay down that where an officer concerned is of doubtful integrity he can be compulsorily retired under this rule.

F Mr. Krishnamurthy Iyer appearing for Reddy submitted that the order impugned is passed on materials which are non-existent inasmuch as there are no adverse remarks against Reddy who had a spotless career throughout and if such remarks would have been made in his confidential reports they should have been communicated to
G him under the rules. This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the various rules on the subject it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some
H of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence

that a particular officer is dishonest but those who has had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys. The High Court has also laid great stress on the fact that as adverse entries had not been communicated to Reddy, therefore, the order impugned is illegal. We find ourselves unable to agree with the view taken by the High Court or the argument put forward by learned counsel for Reddy. Moreover, the appellant had denied in their counter-affidavit at page 59 Vol. II that there was no adverse entry against the officer concerned prior to 1968. This averment is contained in para 6 of the counter affidavit filed by Under Secretary to the Government of India in the High Court. This aspect as considered by this Court in the case of *R. L. Butail v. Union of India & Ors.*(1) and the matter is concluded by the very apt observations made by Hidayatullah, C.J. who spoke for the Court and observed as follows :—

> "These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant. In such a case the officer making the order has to give a reasonable opportunity to the Government servant to present his case. The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of that omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated".
>
> "It may well be that in spite of the work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors, such as the history of the appellant's entire service and confidential reports throughout the period of his service, upon which the appropriate authority may still decide to order appellant's retirement under F.R. 56 (j)".

(1) [1971] 2 S. C. R. 55.

A In this case the Court followed and endorsed the decision of this Court in the case of *J. N. Sinha* (supra). Here we might mention that the appellants were fair and candid enough to place the entire confidential personal file of Reddy before us starting from the date he joined the Police Service and after perusing the same we are unable to agree with Mr. Krishnamurthy Iyer that the officer had a B spotless career. The assessment made by his superior officers from the very beginning of his service until the impugned order was passed show that at best Reddy was merely an average officer and that the reports show that he was found to be sometimes tactless, impolite, impersonated and suffered from other infirmities though not all of them C were of a very serious nature so as to amount to an adverse entry which may be communicated to him. We might also mention that before passing an order under rule 16(3) it is not an entry here or an entry there which has to be taken into consideration by the Government but the overall picture of the officer during the long years of his service that he puts in has to be considered from the D point of view of achieving higher standard of efficiency and dedication so as to be retained even after the officer has put in the requisite number of years of service. Even in the last entry which was sought to be expanded through a representation made by Reddy and other entries made before it appears that the integrity of Reddy was not above board.

E Even in the case of *State of Uttar Pradesh v. Chandra Mohan Nigam & Ors.*(1) on which great reliance has been placed by Mr. Krishnamurthy Iyer, it was observed thus :—

> "We should hasten to add that when integrity of an officer is in question that will be an exceptional circumstance for which F orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government".

Thus, even according to the decision rendered by this Court in G the aforesaid case the fact that an officer is of doubtful integrity stands on a separate footing and if he is compulsorily retired that neither involves any stigma nor any error in the order. We might also refer to an observation made by the Single Judge of the High Court whose judgment was confirmed by the Division Bench, who appears to have misconstrued a judgment of this Court and by the H process of such misconception seems to have ignored the later decisions of this Court given by small Benches on the exact question at

(1) [1978] 1 S. C. R. 521.

issue. The learned Judge relied on the decision in the case of *Madan Mohan Prasad* v. *State of Bihar & Ors.*(1) in support of the view that the order of retirement even if it is in public interest violates Article 311(2) of the Constitution even though no punishment was intended. The learned Judge observed as follows:—

> "In *Madan Mohan v. State of Bihar* (supra) the Supreme Court considered the validity of retirement order of a Judicial Officer who for the reason that he worked for seventeen years asserted was permanent member of the service when his retirement was ordered under Bihar pension Rules of 1950 questioned the order under Art. 32 of the Constitution of India that it was a punishment within the meaning of Art. 311(2) of the Constitution of India".

and then relies on certain observations of this Court in order to hold that the termination of service of the officer casts a stigma on his character and attracts Article 311(2) of the Constitution. The learned Judge further relied on a decision of this Court in support of the proposition that a judgment rendered by 5 Judges of the Supreme Court would prevail over a judgment of a smaller Bench. So far this part of the observation is concerned, there can be no doubt. But the learned Judge appears to have completely misconstrued the decision in *Madan Mohan's* case (supra) which was not a case of compulsory retirement at all, nor was it a case where the officer concerned was retired under a rule like rule 56(j) or 16(3) as we have indicated in this case. On the other hand, in that case what happened was that the officer was appointed as a temporary Munsif and under the terms of the notification by which he was appointed it was provided that the appointment of temporary Munsif could be terminated by giving one month's notice. The High Court it appears, was not satisfied with the work of Munsif and accordingly decided to terminate his services. But the Chief Minister in one of his speeches on the floor of the House had made certain observations implying that the services of the Munsif were being terminated on account of inefficiency and misconduct. In these peculiar circumstances, therefore, this Court held that the termination of the Munsif even though he was a temporary servant cast a stigma and, therefore, attracted Article 311 of the Constitution. In this connection, the Court observed as follows :—

> "It seems to us that on the facts of this case, the order dated January 15, 1972 violates Article 311(2) of the Constitution. The petitioner had first been holding a temporary post and then a permanent post for nearly seventeen

(1) [1973] 4 S. C. C. 166=(1973) 1 S. L. R. 630.

A years. The Chief Minister's statement in the Assembly that his services were not satisfactory and the Government was considering serving show-cause notice and the fact that his services were terminated without any enquiry being held would inevitably lead the public to believe that his services had been terminated on account of inefficiency or misconduct. This did cast a stigma on his character".

B

It is, therefore, manifest that the facts of this case and the points involved were absolutely different from the facts of the present case. The aforesaid case relied upon by the High Court would have absolutely no application to the present case where Reddy was neither a C temporary servant nor was his service terminated. The Single Judge of the High Court was, therefore, absolutely wrong in equating the principles of compulsory retirement under rule 16(3) with termination of the services of a temporary employee under the rules.

Similarly, the case of *J. N. Sinha* (supra) was followed and relied D on by later decisions of this Court in the case of *N. V. Puttabhatta v. The State Mysore & Anr.*(1) as also in the case of *State of Assam and Anr. etc.* v. *Basanta Kumar Das etc. etc.*(2)

Again, in the case of *Tara Singh etc. etc.* v. *State of Rajasthan & Ors.*(3) it was pointed out that compulsory retirement under the pro- E visions similar to rule 16(3) cannot amount to a stigma, and the incidents of compulsory retirement were adroitly summed up by Ray, C.J. who observed as follows :—

"The right to be in public employment is a right to hold it according to rules. The right to hold is defeasible according to rules. The rules speak of compulsory retirement. F There is guidance in the rules as to when such compulsory retirement is made. When persons complete 25 years of service and the efficiency of such persons is impaired and yet it is desirable not to bring any charge of inefficiency or incompetency, the Government passes orders of such com- G pulsory retirement. The Government servant in such a case does not lose the benefits which a Government servant has already earned. These orders of compulsory retirement are made in public interest. This is the safety valve of making such orders so that no arbitrariness or bad faith creeps in".

H

(1) [1973] 1 S. C. R. 304.
(2) [1973] 3 S. C. R. 158, 167.
(3) [1975] 3 S. C. R. 1002.

"There is no stigma in any of the impeached orders of compulsory retirement". A

The learned Chief Justice pointed out that having regard to the safeguards contained in the rules particularly the fact that the retirement was in public interest the safety valve of safeguarding malafide or arbitrariness in the order was clearly contained in the provision itself. B *J. N. Sinha's* case (supra) was endorsed and followed in this case also.

In a recent decision of this Court in the case of *Mayenghoam Rahamohan Singh* v. *The Chief Commissioner (Admn.) Manipur & Ors.*(1) the Court observed as follows :— C

"Compulsory retirement is not a punishment. There is no stigma in compulsory retirement".

"The affidavit evidence is that the order of compulsory retirement was made in public interest. The absence of recital in the order of compulsory retirement that it is made in public interest is not fatal as long as power to make compulsory retirement in public interest is there and the power in fact is shown in the facts and circumstances of the case to have been exercised in public interest". D

In this case, the Court was considering the scope of rule 56(j) which, as already indicated, is couched in the same terms as rule 16(3). E

Learned counsel for Reddy heavily relied on the decision of this Court in the case of *State of Uttar Pradesh v. Chandra Mohan Nigam & Ors.* (supra) and contended that as the Government of India while passing the impugned order had not considered the report of the Review Committee the order is vitiated by an error of law. We F have gone through this decision and we are unable to agree with the contentions put forward by learned counsel for Reddy. The decision referred to above is not an authority for holding that the decision of the Review Committee is binding on the Government of India. All that is necessary is that the Government of India should, before passing an order under rule 16(3) consider the report of the Review G Committee which is based on full and completed analysis of the history of the service of the employee concerned. In the instant case, it is clearly pleaded by the appellants in the High Court that the report of the Review Committee was in fact considered by the Government of India before passing the impugned order. The confidential file placed H before us also clearly shows that on the note sheet the notes by the

(1) [1977] 1 S. C. R. 1022.

A Secretary on the recommendations of the Review Committee the Home Minister, Mr. K. Brahmananda Reddy has appended his signatures and has passed the order that Reddy should be compulsorily retired. Furthermore, in *Nigam's* case (supra) referred to above what had weighed with the Court was that after the Review Committee had submitted its report to the Government, the Government ordered a B second Review Committee just in order to enable the Review Committee to give an adverse report against the officer concerned. Such a course of action was condemned and deprecated by this Court. In the instant case, however, there is no allegation by Reddy that any second Committee was ever appointed. Even so in *Nigam's* case C (supra) this Court did not depart from the ratio laid down in *Sinha's* case (supra) and followed by later cases but observed as follows :—

> "As stated earlier, even in the case of compulsory retirement under rule 16(3), an order may be challenged in a court if it is arbitrary or *mala fide*. If, however, the Government reaches a decision to prematurely retire a Government servant, bona fide the order, *per se*, cast any stigma on the employee nor does the employee forfeit any benefit which he has already earned by his service, nor does it result in any civil consequences".

D

E The Court at page 531 of the Report clearly pointed out that the instructions issued by the Government for constituting the Review Committee were not mandatory. We have already indicated above that this Court made it absolutely clear that where a person was retired under Rule 16(3) on the ground that his integrity was in question, the observations made by this Court would have no application. In the F instant case, it has been clearly averred by the appellants that the integrity of Reddy was not beyond suspicion and the remarks were not expressly expunged by the Chief Minister.

Reliance was also placed by learned counsel for Reddy on a recent decision of this Court in the case of *Smt. S. R. Venkataraman v.* G *Union of India & Anr.*(1) The facts of this case, however, are clearly distinguishable from the facts of the present case. In that case there was a finding of fact by this Court that the order of retirement was *mala fide* and amounted to victimisation and the allegation made by the appellant before this Court were not only not disputed but counsel for the Union of India went to the extent of saying that H he was not in a position to support the impugned order which was

(1) [1979] 2 S. C. R. 202.

unfair. It was in the background of these circumstances that the Court held that the order was *malafide* and observed as follows :— A

> "The appellant has pointed out in this connection that her service record was examined in March, 1976 by the Departmental Promotion Committee, with which the Union Public Service Commission was associated, and the Committee considered her fit for promotion to the selection grade subject to clearance in the departmental proceedings which were pending against her, and that she was retired because of bias and animosity. Our attention has also been invited to the favourable entry which was made in her confidential report by the Secretary of the Ministry. B C
>
> Mr. Lekhi, learned counsel for the Union of India, produced the relevant record of the appellant for our perusal. While doing so he frankly conceded that there was nothing on the record which could justify the order of the appellant's premature retirement. He went to the extent of saying that the Government was not in a position to support that unfair order". D
>
> "The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of government servants only in the 'public interest', to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power". E F

These observations, however, do not apply to the facts of the present case.

Lastly, Mr. Krishnamurthy Iyer, learned counsel for Reddy heavily relied on a decision of the Calcutta High Court in the case of *Chief Security Officer, Eastern Railway & Anr.* v. *Ajoy Chandra Bagchi*(1) On a perusal of this decision we are of the opinion that this case was not correctly decided as it is directly opposed to the *ratio decidendi* of *J. N. Sinha's case* (supra) where this Court held that the rule in question expressly excludes the principles of natural justice and, therefore, it is manifest that the Calcutta High Court was in error in basing G H

(1) (1975) 2 S. L. R. 660.

its decision on rules of natural justice. The Calcutta High Court in this case had observed as follows :—

> "Thus even if the Railway authorities had absolute right to retire the Respondent petitioner subject to the requirements as mentioned hereinbefore and in terms of paragraph 3 of Chapter XVII of the Regulations read with item 6 of the instructions in the Form in Appendix XVIII in the admitted position of the case, viz., certain adverse entries were taken into consideration in having him compulsorily retired, the action as taken is thus certainly against all principles of natural justice and norms of fair play and as such the action so taken cannot be supported. The said right under paragraph 3 of Chapter XVII read with item 6 of the instructions in the Form in Appendix XVIII can be used and those principles can be applied or resorted to subject to the principles of natural justice, which incidentally is the restraint put on the pretended misuse of power".

The High Court seemed to rely on certain adverse entries which were taken into consideration when the order of retirement was passed. We have already pointed out relying on the *dictum* of this Court laid down by Hidayatullah, C.J. that the confidential reports can certainly be considered by the appointing authority in passing the order of retirement even if they are not communicated to the officer concerned. Thus, the two grounds on which the Calcutta decision was based are not supportable in law. For these reasons, therefore, we hold that the decision of the Calcutta High Court referred to above was wrongly decided and is hereby overruled.

On a consideration of the authorities mentioned above we are satisfied that there is no legal error in the impugned order passed by the Government of India retiring Reddy. It was, however, contended by counsel for Reddy that reading the order as a whole it contains an odour of victimisation, so as to make the order arbitrary. We are, however, unable to find any material on the record to show that the order was in any way arbitrary. The Government of India acted on the orders passed by the Home Minister concerned who had considered the report of the Review Committee in its various aspects. There is nothing to show that Reddy was victimised in any way. On the other hand, the history of his service shows that he was always given his due. He was taken in the I.P.S. and allotted the year 1952. He was promoted to the selection grade also at the proper time. The order of suspension was withdrawn and the departmental enquiry was dropped

and the officer was reinstated and later promoted as D.I.G. These facts completely militate against the concept of victimisation. It appears that on an overall consideration of the entire history of the service of Reddy and the various stages through which he had passed it was considered in the interest of administration and to ensure better initiative and efficiency to retire him in public interest. We are also unable to find any element of arbitrariness in the impugned order. For these reasons, therefore, the first contention raised by learned counsel for Reddy must be rejected.

It was then contended that the order was *mala fide* and passed because Respondent No. 3, the Chief Minister of Andhra Pradesh bore serious animus against Reddy and wanted him to do certain things which he refused to do, hence he was compulsorily retired. Apart from the fact that all the allegations regarding *mala fide* stood withdrawn as indicated in the earlier part of the judgment it is alleged in the counter affidavit and this averment has not been disputed before us that on 5-1-1970 the following Memo was filed on behalf of Reddy before the High Court :

> "The petitioner withdraws the writ petition including the allegations against the Hon'ble Chief Minister of Andhra Pradesh. The writ petition may kindly be dismissed as withdrawn".

Furthermore, the counter affidavit at p. 73 Vol. IV contains a letter submitted by the Second Government Pleader on 5-12-1970 the relevant part of which runs thus :—

> "I have discussed the matter with the Advocate for the petitioner. He agrees to withdraw the writ petition as also the allegations made thereunder against the Hon'ble Chief Minister and is prepared to file a Memo. Copy of which is enclosed herewith".

Once Reddy had withdrawn the allegations of malafide against respondent No. 3 in the High Court, it is not open to him to revive those allegations in these proceeding when the impugned order is passed.

The impugned order as held by us is a *bona fide* order and does not suffer from any legal infirmity, and, therefore, we cannot permit Reddy to play a game of hide and seek with the Court by withdrawing the allegations of *mala fide* against respondent No. 3 in the High Court and then reviving them when after some time an adverse order against him was passed. Moreover, if respondent No. 3 was really inimically disposed towards Reddy he would not have either dropped the departmental enquiry or reinstated him, or have promoted him to the rank

A of D.I.G. Furthermore, the Chief Minister Mr. K. Brahmananda Reddy has himself filed a personal affidavit before the High Court which is contained at page 235 Vol. III wherein he has categorically denied all the allegations made against him by Reddy. The assertions made in the affidavit are fully supported by circumstantial evidence and the conduct of Reddy himself. For these reasons, therefore, the second B contention regarding the impugned order being *mala fide* is also rejected.

The result is that all the contentions raised by counsel for Reddy fail. We are clearly of the opinion that the High Court committed a clear error of law in quashing the impugned order which was fully C justified by rule 16(3), and did not suffer from any legal infirmity and was also in consonance with the law laid down by this Court starting from *Shyamlal's* case upto *Sinha's* and *Nigam's* case (supra) discussed above.

We, therefore, allow the appeals, set aside the order of the High D Court and restore the impugned order retiring Reddy. In the peculiar circumstances of the case there will be no order as to costs.

S.R. *Appeals allowed.*