BALDEV RAJ CHADHA

v.

UNION OF INDIA & ORS.

August 18, 1980.

[V. R. KRISHNA IYER AND R. S. PATHAK, JJ.].

F. R. Rule 56(j)(i)—Compulsory retirement—Officer with continuous service of 14 years and crossing efficiency bar whether can be compulsorily retired—Appropriate authority—Retiring authority—Meaning of.

The appellant, an accounts officer, was promoted and appointed by the Comptroller and Auditor General of India. He was compulsorily retired on 27 August, 1975 in the public interest under F. R. Rule 56[j] [i] by the Accountant General. The appellant chellenged his premature retirement in the High Court by a Writ Petition which was dismissed in limine. In his appeal by Special Leave, the appellant challenged the order of retirement and argued that (i) the Accountant General is not "appropriate authority" within the meaning of the rule and (ii) the retirement was not in the public interest. The respondent contended that (i) the power of the appropriate authority in respect of accounts officers like the appellant was vested in the Auditor General by Notification of the Ministry of Finance dated 19-1-1972 and (ii) the impugned order of compulsory retirement was made by the Accountant General on the basis of the recommendations dated 23-8-1975 of the Reviewing Committee.

Allowing the appeal,

HELD : An officer with continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement cannot be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. The order of compulsory retirement fails because vital material, relevant to the decision, had been ignored and obsolete material, less relevent to the decision, has influenced the decision.

Any order which materially suffers from the blemish of overlooking or ignoring wilfully or otherwise vital facts bearing on the decision is bad in law. Likewise, any action irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon cannot be sustained.

The Fundamental Rules govern the Central Civil Services and ensure the career security which is the *sine qua non* of contended service. But potential compulsory retirement under F. R. 56(j)(i) haunting the afternoon of official life injects an awesome uncertainty which makes even the honest afraid, the efficient tremble and almost everyone genuflect, and is not a happy prospect for a Civil Servant too young to sit idle and too old to get a new job. A jetsam has no option but to become driftwood or join the other profession where everyone, desirable and undesirable, has a chance. This deleterious latency

of F.R. 56(j)(i) is stressed to underscore the unwitting harm to public interest it does in the name of public interest. Judicial monitoring becomes an unpleasant necessity where power may be humour and a career may be a victim. [432 E-G] A

The order to retire must be passed only by the appropriate authority. That authority must form the requisite opinion—not subjective satisfaction but objective and *bona fide* and based on relevant material. The requisite opinion is that the retirement of the victim is in public interest not personal political or other interest but solely governed by the interest of public service. The right to retire is *not* absolutely, though so worded. [433 C-D] B

Since the A. G. has been clothed, from 29-11-1972 with power to appoint substantively Accounts Officers, he has become the appropriate authority for compulsory retirement even though the appellant had been appointed by the C & AG prior to 29-11-1972. In the light of the note which is part of the rule, read with the notification delegating the power to the A.G., there is no flaw in the order impugned. [434 A-B] C

Ordinarily the appointing authority is also the dismissing authority but the position may be different where retirement alone is ordered. The specific provision in the Note to FR 56 must hold good and Art. 311 is not violated either. Nor is there any discrimination, because retirement is a category different from the punishment covered by Art. 311. [434 C] D

Security of tenure is the condition of efficiency of service. The Administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50, your experience, accomplishment and fulness of fitness become an asset to the Administration, if any only if you are not harried or worried. These considerations become all the more important in departments where functional independence, fearless scrutiny, and freedom to expose evil or error in high places is the task. And the Ombudsmanic tasks of the office of audit vested in the C & AG and the entire army of monitors and minions under him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique overaweing is very much in public interest. Under the guise of public interest if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace of public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. The exercise of power must be *bona fide* and promote public interest. [434 F-H, 435 A-B] E F

Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well-settled in administrative law and founded on constitutional obligations. Administration, to be efficient, must not be manned by drones, do-nothings, incompetents and unworthies. It is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision making. [435 D, E-G] G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1390/1978.

Appeal by special leave from the Judgment & Order, dated 26-3-1976 of the Punjab & Haryana High Court in Civil Writ Petition No. 506/76. H

Baldev Raj in person.

U. R. Lalit and *Miss A. Subhashini* for the Respondent.

A The Judgment of the Court was delivered by

KRISHNA IYER, J.—The appellant, an Accounts Officer compulsorily retired betimes, appearing in person, has painstakingly and proficiently presented his case which calls for mercy, if not justice. Obsession with one's own case and inability to see things in perspective are often a frailty of a party who spends the enormity and anguish of his superannuated leisure on the main pursuit of his litigative points, and this makes for prolixity and subjectivity of submissions, which are not the persuasive but the provocative part of the art of advocacy. Even so, we have listened with sympahy to the studious orality and read with patience the manuscript arguments emanating from the appellant. He was an Accounts Officer since December 30, 1961, having been so promoted and appointed by the Comptroller and Auditor General of India (C & AG). The story of his career was snapped when he was compulsorily retired 'in the public interest' on August 27, 1975 under F. R. 56(j)(i) by the Accountant General (A.G.). Had he run his full course, his continuance until April 1980 would have been sure. Finding himself an uneasy casualty when the easy axe of F.R. 56(j)(i) fell on him, the appellant challenged the premature retirement in the High Court only to be greeted with a dismissal *in limine*. Here he has arrived by special leave and argued before us that his forced retirement is dubious and violative, in many ways, of F. R. 56(j)(i).

The Fundamental Rules govern the Central Civil Services and ensure the career security which is the *sine qua non* of contended service. But potential compulsory retirement under F.R. 56(j)(i) haunting the afternoon of official life injects an awesome uncertainty which makes even the honest afraid, the efficient tremble and almost everyone genuflect—not a happy prospect for a civil servant too young to sit idle and too old to get a new job. A jetsam has no option but to become driftwood or join the other profession where everyone, desirable and undesirable, has a chance. We stress his deleterious latency of F.R. 56(j)(i) to underscore the unwitting harm to public interest it does in the name of public interest. Judicial monitoring becomes an unpleasant necessity where power may be humour and a career may be a victim.

The grounds on which the order of retirement has been challenged by the appellant may be formulated immediately after quoting the rule itself :

H 56(j): Notwithstanding anything contained in this rule the *appropriate authority* shall, *if it is of the opinion* that *it is in the public interest* to do so 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. A

(i) If he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty-five years after he has attained the age of fifty-years. B

Note 1 : Appropriate authority, means the authority which has the power to make substantive appointment to the post or service from which the Government servants is required or wants to retire. C

A break-down of the provision brings out the basic components. The order to retire must be passed only by 'the appropriate authority'. That authority must form the requisite opinion—not subjective satisfaction but objective and *bona fide* and based on relevant material. The requisite opinion is that the retirement of the victim is 'in public interest'—not personal, political or other interest but solely governed by the interest of public service. The right to retire is *not* absolute, though so worded. Absolute power is anathema under our constitutional order. 'Absolute' merely means wide, not more. Naked and arbitrary exercise of power is bad in law. These essentials once grasped, the appellant's submissions become self-evident. D E

His principal contentions, not all the secondary details, alone need detain us. His first challenge is to the competence of the Accountant General compulsorily to retire him because, according to the appellant, he is not the 'appropriate authority' within the meaning of the rule. The appointing authority who actually appointed the appellant was the C & AG, but the A.G. retired him on the assumption that he had the requisite power. Article 311(1) insists that a civil servant shall not be dismissed or removed by an authority "subordinate to that by which he was appointed". The appellant, by parity of reasoning, argues that the A.G., being subordinate to the C & AG, has no power to retire him. The fallacy in the argument lies in the confusion between 'dismissal' and 'compulsory retirement'. The two cannot be equated and the constitutional bar cannot be operative. Therefore, we have to find, on an indepedent enquiry, as to who is the appropriate authority under r. 56(j)(i). Under Note 1 to F. R. 56, the authority entitled to make substantive appointments is the appropriate authority to retire government servants under the said rules. From this Note, which is virtually a part of the rule, the respondents contend that the power of the appropriate authority in respect of F G H

A Accounts Officers like the appellant has been vested in the A.G. by Notification of the Ministry of Finance dated 29-11-1972. Since the A.G. has been clothed, from that date, with power to appoint substantively Accounts Officers, he has become the appropriate authority for compulsory retirement even though the appellant Accounts Officer had been appointed by the C & AG prior to 29-11-1972. In the light B of the note which is part of the rule, read with the notification delegating the power to the A.G., we see no flaw in the order impugned.

No doubt, ordinarily the appointing authority is also the dismissing authority but the position may be different where retirement alone is ordered. There, the specific provision in the Note to FR 56 C must hold good and Art. 311 is not violated either. Nor is there any discrimination, as contended for, because retirement is a category different from the punishments covered by Art. 311.

Who is the retiring authority *on a given date?* This is answered by the Note which, in substance, says that he who is empowered to D appoint the Accounts Officer is also the appropriate authority to retire compulsorily, *on that date.* In this view, we cannot nullify the retirement of the appellant for want of competence.

This takes us to the meat of the matter, viz., whether the appellant was retired because and only because it was necessary *in the public* E *interest* so to do. It is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is a terminal step to justify which the onus is on the Administration, not a matter where the victim must make out the contrary. Security of tenure is the condition of efficiency of service. The Administration, to be competent, F must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and the sombre problems of one's own life's evening, your experience, accomplishments and fullness of fitness become an asset to the Administration, if and only if you are not harried or worried by 'what will happen to me and my family?' 'Where will I go if cashiered?' G 'How will I survive when I am too old to be newly employed and too young to be superannuated?' These considerations become all the more important in departments where functional independence, fearless scrutiny, and freedom to expose evil or error in high places is the task. And the Ombudsmanic tasks of the office of audit vested in the C & AG and the entire army of monitors and minions under H him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique over-aweing is very much in public interest. So it is that we must emphatically state that

under the guise of 'public interest' if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected. The exercise of power must be *bona fide* and promote public interest. There is no demonstrable ground to infer *mala fides* here and the only infirmity alleged which deserves serious notice is as to whether the order has been made in public interest. When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well-settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well-known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

We will consider this question to the extent disclosed by the record and in the light of the submissions made by both the parties. The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Art. 311 of the Constitution. After all, administration, to be efficient, must not be manned by drones, do-nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation, in a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed but paper-logged processes and callous cadres are the besetting sin of the Administration. It is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making. The appropriate authority, not the court, makes the decision, but, even so, a caveat is necessary to avoid misuse

We are inclined to ignore the case that the appellant was retired because he had declined 'to proceed on leave forcibly in September 1974'. While it is reprehensible for Government or any in the higher

A echelons to compel a civil servant to go on leave on pain of being suspended, retired or transferred to a far-off place or indifferent post—and the court may readily infer *mala fides* in the subsequent order if there is proof of antecedent pressure to take forced leave—we cannot judge the legality of a compulsory retirement on suspicions and apprehensions invariably urged even by deserving victims.

B

Let us look at the facts from these broad lines of Law. The A.G. has, in vindication of his action, submitted that "the impugned order of compulsory retirement was made by the Accountant General on the basis of the recommendations dated 23-8-1975 of the Reviewing C Committee constituting the following officers:

1. Accountant General
2. Senior Deputy Accountant General (IC)
3. Senior Deputy Accountant General (Administration) Punjab

D

4. Deputy Accountant General (Administration) Office of the Accountant General, Haryana.

The said Committee reviewed the service record of the appellant and found adverse entries in various confidential reports, and *inter-alia*, E held that the appellant was unable to perform his duty efficiently and effectively in the post held by him and recommended compulsory retirement under FR 56(j)(i). The appellant was accordingly retired by the Accountant General on 27-8-1975".

F We are not inclined to agree with the appellant that the Reviewing Committee is an illegal body and taking its recommendations into consideration vitiates the A.G.'s order. On the other hand, it is clear that the decision to retire is surely that of the A.G., and the Reviewing Committee's presence is persuasive, not decisive, and prevents the opinionatedness of one by the collective recommendations G of a few.

Now we will enter the substantive dispute and search for the presence of public interest as the basis of the impugned order. The A.G., Mr. Khanna has, in his affidavit in this court, sworn:

H In this connection I respectfully submit that the Petitioner's work was found to be below average and that fact was noted by the appropriate authority in the confidential reports of the

petitioner as per details given below:

Period of Report	Adverse Remarks	Date of Communication
1961-62	Yes, An Average Officer. Though he did try to tackle the arrears in the GAD section under his charge, I was unhappy to observe that he was trying to shield those who shirked work. I also noticed that while he was anxious to bring to my notice persons who did their duties well, he was willing to play down the lapse on their part, if any, without adequate justification.	5. 12. 1962
14. 12. 64 to 20. 3. 65	A mediocrity who should take more interest in the work.	Adverse remarks noted on 15. 1. 66
29. 7. 69 to 15. 1. 70	Industry and application.	Poor
	Ability to organise and manage sections competently.	Poor. Adverse remarks communicated, on 29th May 1970.
	General Assessment: An average officer who would do better if he showed more initiative and resourcefulness.	
1. 4. 70 to 9. 12. 70	1. Technical ability: Below average 3(a) Ability to organise and manage sections competently	Poor
	(b) Ability to control subordinates and get the best out of them	poor
	10. General Assessment: Below Average. My remarks against 1,3(a)(b) and 10 may be seen. The performance of Shri Chadha as the officer-in charge of the Account Current sections was not upto the mark and consequently he had to be given a change. This officer is definitely below averege.	Adverse remarks communicatd, on 29th Sept. 1971.

A The aforementioned adverse remarks in the confidential reports of the petitioner were communicated in all the cases to the Petitioner and the Petitioner made representation which was rejected by the competent authority after due consideration. At the time of the review of the retention of the petitioner and other accounts officers, a Committee consisting of Accountant General, B Senior Deputy Accountant General (IC), Senior Deputy Accountant General, (Admn.), Office of the Accountant General, Haryana was constituted to review the cases of the Accounts Officers for their retention, on their attaining the age of 50 years. The said Committee was constituted on 23-8-1975. The said Committee C after careful assessment of the performance of the employees concerned depicted in their confidential reports found that the persons including the Petitioner who were not able to perform their duty efficiently and effectively in the posts held by them at that time and the Committee therefore recommended to retire the Petitioner among others under F.R. 56(j)(i). A copy of the D minutes of the meeting held is annexed herewith as Annexure Y.

The Reviewing Committee report runs thus:

"The Committee after a careful assessment of the performance of the employees concerned as depicted in their confidential reports have come to the conclusion that the persons mentioned below are not able to perform efficiently and effectively E the duties of the posts held by them.

(1) Shri Baldev Raj Chadda, Accounts Officer."

A bare glance at the confidential reports of the appellant brings out the striking fact that they relate to 1961-62 to the end of 1970.

F The appellant was promoted only in 1961 and was regularly drawing increment for well over a decade, without let or hinderance. What is far more significant is the further fact that the Reviewing Committee and the A.G. appear to have ignored entries in yearly/half-yearly reports in the seventies. The appellant states categorically:

G "A perusal of the extract from the Confidential reports would show that there were no adverse remarks in the Confidential Reports of the Appellant for the year 1971-72, 1972-73, 1973-74, 1974-75 and 1975-76 till the date of his retirement from service on 27-8-75."

He further rightly points out that the stand of the A.G. before the H High Court was that the impugned order was not grounded on the adverse entries:

Since the adverse entries in the Confidential Reports of the petitioner were not, in terms, stated to be the ground for exer-

cising the powers under F.R. 56(j), it was not necessary for the Respondent to deal with the various allegations levelled by the petitioner against the higher authorities in this regard.

We must read these materials against the further background set out by the appellant:

> If I was considered to be unsuitable to continue to officiate as Accounts Officer even after 14 years of continuous service without break and after I reached the maximum of the scale both old/revised *without being held up or even delayed at E.B. or for increment,* then the proper course open to the authorities was to take action against me under C.C.S. (C.C.A.) Rules 1965 to revert me and not to retire me by taking shelter under F.R. 56(j)(i) to avoid initiating disciplinary action. This is thus a clear case of vindictive misuse of powers by the Appointing Authority under F.R. 56(j).

One wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for *five years immediately before the compulsory retirement,* could be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. A short cut may often be a wrong cut. The order of compulsory retirement fails because vital material, relevant to the decision, has been ignored and obsolete material, less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up obselete circumstances and obsessively reaches a decision based thereon, cannot be sustained. Legality depends on regard or the totality of material facts viewed in a holistic perspective. For these reasons, the order challenged is obviously bad and we quash it. It is, however, open to the A.G. to take a fresh decision based on legal material and guided by legal principles. The appellant has, by now, reached the age of superannuation in the normal course. The result is that the consequence of any fresh order may only be financial. It is for the A.G. to consider whether in the circumstances, a fresh evaluation for the purpose of compulsory retirement is called for. We merely allow the appeal, quash the order of compulsory retirement and leave the law to take its course. The appellant will be entitled to costs which we quantify at Rs. 2,000.

N.K.A. *Appeal allowed.*