IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1212/94
T.A. No.

(31)

DATE OF DECISION 5-12-97

P.S Chauhan — Applicant (s)

Sh. B.B Raval — Advocate for the Applicant (s)

Versus

Union of India — Respondent (s)

Sh. R.L Dhawan — Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. JOSE P VERGHESE, V.C (J)

The Hon'ble Mr. K. MUTHUKUMAR, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No.1212/94

New Delhi, this the 5th day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri K.Muthukumar, Member (A)

P.S.Chohan,
s/o Shri Rao Pithi Singh,
R/o Q.No. 23/B,
Northern Railway Officers Colony,
Sardar Patel Marg,
New Delhi. ..Petitioner

(By Advocate: Shri B.B.Raval)

Vs.

Union of India through

1. Secretary,
   Railway Board,
   Rail Bhawan,
   New Delhi.

2. The General Manager,
   Northern Railway,
   Baroda House,
   New Delhi.

3. The Divisional Superintending Engineer(Estate)
   Office of the Divisional Railway Manager,
   Northern Railway,
   State Entry Road,
   New Delhi. ....Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R
[Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)]

The petitioner in this case had joined the Indian Railway Traffic Service (IRTS) on 29.6.1964 and was holding the Junior Administrative Grade in the pay scale of Rs. 3700-5000/-. The petitioner was sent for a tenure posting to the North-East Region initially for two years but continued for four years and it was stated that he was entitled to his choice posting thereafter. The respondents instead of posting him at Delhi, where he had retained his

quarter to accommodate his parents, the only dependants, himself being a bachalor, was posted in Bikaner and sought vacation of his quarters at Delhi. These orders were challenged by the petitioner in an OA No. 701/91 and this court directed the respondents to post the applicant by transfer from Bikaner to a post of the status and cadre of the applicant at Delhi on the priority basis on the first available and suitable vacancy irrespective of the fact that the applicant belongs to IRTS. The respondents were also directed by the said order dated 23.1.1992 to allow the applicant to retain the allotted premises at Delhi so long as the applicant remained posted at Delhi after transfer from Bikaner on payment of usual premium for use and occupation according to rules. After the said order was passed, when the petitioner found no implementation of the order was forthcoming, filed a petition under the Contemt of Courts Act, and the same was also disposed of. Thereafter by an order dated 28.10.1993, the petitioner was compulsorily retired under rule 1802 (a) of the Indian Railway Establishment Code, Vol.II on the ground that the petitioner had already attained the age of 50 years on 6.11.1989.

2. Petitioner filed an appeal/representation against the said order and the same was rejected by an order dated 22.8.1994 stating that the retirement was in public interest and the same was based on the ground of poor performance of the petitioner as reflected in his Annual Confidential Reports (ACRs) over the years, and the allegation of the petitioner, in the petition/ representation, the order of premature retirement was based

on extraneous factors or the same was passed as an act of vengeance,was also rejected stating that the allegation has no substance.

3. Aggrieved by these two orders of retirement as well as the order by which his appeal/representation was rejected, on 28.10.1993 and 22.8.1994 respectively, the petitioner has filed this OA for relief on various grounds.

4. The main ground alleged by the petitioner against the said orders was that the respondents are acting vindictively against him since he had been insisting to come back from North-East Region after two years of his posting and thereafter out of vengeance the respondents posted him in Bikaner instead of Delhi which was the posting the petitioner had opted and the case of the petitioner was that he was entitled to a choice-posting under the rules. Thereafter the petitioner had to appraoch this court by an OA vide OA No. 701/91 and adverse orders had been passed against the respondents both in the OA as well as in the Contempt Petition that proceeded. Therefore, the order passed by the respondents retiring the petitioner compulsorily is based on extraneous grounds and not the germane to the rules. According to the petitioner, the foundation of both the orders was malafide, arising out of ill-will nurtured by the respondents against the petitioner and the petitioner relied upon the decision of the Hon'ble Supreme Court in Union of India & Ors. Vs. Dalal Dutt reported in JT 1993 (3) SC P. 706. That decision was rendered by the Supreme Court relying upon the

case of Baikuntanath Dass and Anr. vs. Chief District Medical officer, Baripada & Anr. reported in JT 1992 (2) SC Page 1.

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5. Respondents on the other hand stated that the order of compulsory retirement passed against the petitioner was in terms of rule 1802 (a) of Indian Railway Establishment Code Vol.II - 1987 Edition and the appointing authority had formed an opinion that it is in the public interest to do so and respondents have the absolute right to retire a Group A government servant after he has completed 35 years of service or has attained the age of 50 years by giving him notice of not less than three months, or three months' pay and allowance in lieu thereof. According to the respondents the petitioner had attained the age of 50 years by 6-11-1989 and accordingly the order of compulsory retirement passed by the appointing authority was in accordance with the rules. It was also stated that the appeal submitted by the petitioner has been considered by the competent authority namely the President and stated that the order, retiring the petitioner after his attaining the age of 50 years, passed by the respondents was in terms of the relevant rules and after following the prescribed procedure, in public interest and the retirement was based on his poor performance over the years as reflected in his ACRs. It was also stated that the allegations that the order of premature retirement was based on extraneous factors or was passed as an act of vengeance, were considered and rejected by the order of the respondents dated 22.8.1994. As such this petition deserves to be dismissed with costs.

6. This court has considered the rival contentions of the parties and perused the records pertaining to the case of the petitioner produced by the respondents, heard the submisions of the counsel on either side. It is not necessary for us to go into the entire allegation of malafide or the allegation that orders are passed on extraneous purposes, for the reason that there is a definite finding that the foundation of the order was the poor performance of the petitioner. Apart from the factors constituting the malafide submitted by the petitioner and replied to by the respondents, there is no overwhelming reason appearing from perusal of the record, to set aside an order passed by the respondents stated to be in accordance with the rules on the basis of poor performance of the petitioner. The petitioner has not challenged the order on the basis of arbitrariness nor has stated that these orders are perverse and no reasonable man could arrive at such a decision as one now arrived at by the respondents, perhaps for want of appropraite materials. It is also a fact that the petitioner had made a representation to seek the relevant materials from the respondents but the same were not granted rather the entire record has been presented to us for perusal. In view of our finding that there is no substance in the allegation of malafide, especially because of the overwhelming finding recorded by the respondents that the foundation of the retirement order as well as the appellate order, is the poor performance of the petitioner himself as reflected in his own ACRs, we are not inclined to interfere in the

orders passed by the respondents on 28.10.1993 and the order by which his representation/appeal was rejected namely one dated 22.8.1994.

7. It is further clarified that a decision based on poor performance of the petitioner can still stand on its own ground, even if some extraneous factors have incidently influenced or was present while the impugned orders were passed by the respondents. But in our opinion that is not sufficient to show that the orders passed were solely on the basis of extraneous consideration. The poor performance of the petitioner is strictly on petitioner's own making and such a ground for the respondents to retire the petitioner under the rules will still remain intact provided the performance of the petitioner is itself not upto the mark in the estimates of the respondents and on the basis of their subjective satisfaction.

8. Hon'ble Supreme Court in Bainkuntnath Dass's case (Supra) had stated that the Government has power to retire a public servant after it arrives at a decision on the basis of its subjective satisfaction on the basis of the entire record of service of the petitioner and the principles of natural justice have no place in the context of an order of compulsory retirement. Therefore, it is not necessary to give reason in the impugned order itself. To quote:

> "An order of compulsory retirement has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government. The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course

attaching more importance to record of and performance during the later years. The record to the so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 53(j) of a rule corresponding to it.

The court also observed:-

"An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. Principles of natural justice have no place in the context of an order of compulsory retirement. Since the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the government, there is no room for importing the audi alteram partem rule of the natural justice in such a case"

It was further observed by this court that :

"However, this does not mean that judicial scrutiny is excluded altogether.While the High Court or the Supreme Court would not examine the matter as an appeallate court, they may interefere if they are satisfied that the order is passed (a) malafide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would from the requiste opinion on the given material; in short, if it is found to be a perverse order. The remedy provided by Article 225 is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action."

9. The question whether a speaking order is to be passed while the order of compulsory retirement is made, has been considered by various courts including the Hon'ble Supreme Court. In the case of Dalal Dutt (Supra) this aspect has also been considered relying on two decisions of the same court namely, R.L. Butail vs. Union of India (1970) 2 SCC P. 876 and Union of India vs. J.N.Sinha reported in (1970) 2 SCC P.458, wherein it was held that an order of compulsory retirement is not an order of punishment and it is the prerogative of the Government that they can pass an appropriate order of compulsory retirement based on the material avilable on the record.

It was also observed in the said case that often, on enquiry by the court, the Government may disclose the material but that does not go to show that the petitioner has a right for a speaking order while the order of compulsory retirement is passed.

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10. We do not intend to rest the matter at this, since the records were produced before us. We perused the record on our own. The respondents were not directed to produce any record rather it was submitted to the court for perusal and we found that the subjective satisfaction arrived at by the respondents to retire the petitioner compulsorily was stated to be in accordance with their own guidelines prescribed in OM dated 9.1.1989. A copy of the same was also produced before us. The subjective satisfaction, referred to in the above said decisions of the Hon'ble Supreme Court, has been, in this case, arrived at admittedly on the basis of these guidelines and, following the guidelines of this nature, would have saved the respondents from the said order becoming an arbitrary or perverse order. It is in this context that we have perused the record. As per the declared guidelines, the officers,who had obtained only 11 points or below,are not to be retained in service. An officer having 14 and above points are to be retained in service , unless the last three ACRs have a total of 6 points and below. The said guidelines are reproduced hereinbelow:-

> "Board at their meeting held on 07.01.1986 considered the note placed at F/A.
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> 2. Following guidelines have been approved for considering the cases of premature retirement of officers due to the ineffectivenss under Rule 2046 - R-II:-

(i) Officers having 11 points or below not to be retained in service;

(ii) Officers having over 11 points but less than 14 points shall comprise the 'grey area'. While the performance record of all officers coming within the ambit of review is to be considered by the Board, the officers having earned points within this bracket have to be viewed for compulsory retirement from the point of view of the assignments they have held during the last 5 years, whether in the field or in the sedentary job, like RDSO, COFMOW, etc., and the number of Reporting/Reviewing Officers who have observed the performance of the appraisee officer; and

(iii) Officers having 14 and above points are to be retained in service unless the last three Annual CRs have a total of 6 points and below.

3. Board decided that a collective view could be taken by the full Board for review of officers on grounds of doubtful integrity taking into account the information from the Vigilance Directorate to be tabulated in the format evolved for the purpose.

4. Board also directed that a consolidated review of the JAG Officers and above who have attained the age of 50 years as on 01.01.1986 or have the requisite qualifying service should be undertaken, even though the performance of some of the officers would have been already reviewed on completion of the prescribed limited of service/age."

11. It is further shown on the record that these guidelines have been further considered by the Board in a meeting held on 20.2.1986 and the Railway Board has decided to review all the cases in accordance with these guidelines.

12. During the arguments the respondents had stated that, 5 points are awarded for'excellent'report, 4 for 'very good', 3 for 'good', 2 for 'average' and '0' for 'below average'. On this basis it was stated that the respondents have calculated the total number of points, and

had presented the record of the petitioner to the President, for appropriate orders. The initial review had taken place on 20.8.1993 wherein it was stated that there was no vigilance case pending against the petitioner and there was no report against his integrity either. Rather the order of compulsory retirement was recommended solely on the basis of the performance of the petitioner reflected in his ACRs for the last 5 years which showed that he had earned only 11 points in total.

13. Thus the initial review report dated 20.8.1993 showed that the subjective satisfaction of the President is based on the said report which again is in accordance with the guidelines of the respondents themselves as stated above. The review report was appended by a statement of assessment/fitness for 5 years and the review report has awarded the following points to the petitioner:

For the report ending March,1988	2 points
For the report ending March,1989	2 "
For the report ending March,1990	2.5 "
For the report ending March,1991	2 "
For the report ending March,1993	2.5 "

14. Thus, according to the said review report based on the statement, petitioner has received only 11 points for the past 5 years. It was based on this report an order of compulsory retirement was passed on the ground of 'poor performance',which in turn was based on the guidelines, namely, 'poor performance' means, 11 points and below, for past 5 years. We further proceeded to have a look at the annual reports of the petitioner and we found that the petitioner has obtained in the year 1993 a report of 'good' by all three authorities and the overall grading

in part VI of the report is also 'good'. That being so in March 1993, the statement of 20.8.1993 could not show that the petitioner had obtained 2.5 points. On the statement of the respondents themselves at the Bar, a 'good' report earns 3 points. Prima facie, therefore, we are of the opinion that the first review held on 20.8.1993 had misrepresented the case to the President that the petitioner has received 11 points in total and that in accordance with guidelines, that would amount to 'poor performance',while the record itself shows, that the petitioner has obtained 13 or 14 points, on court's perusal. The report ending March, 1990 also has shown granting the petitioner 2.5 points. That report also being 'good', the petitioner should have been granted full 3 points according to the criteria adopted by the respondents themselves. Similarly, the report ending March, 1991 the statement dated 20.8.1993 had given 2 points, probably on the assumption that the report is 'average'. But the perusal of the ACRs show that no report of the 'review' officer or 'accepting officer' is available on record. Some previous years such as 1978 and 1980, when the petitioner obtained 'below average' report from the reporting officer,the General Manager, the accepting authority, had changed the said report as 'good' and stated that the reporting officer's report was biased. Therefore, in the absence of the report by the reviewing officer as well as the accepting officer, the report of 1991, taken as one of the reports for the purpose of assessing the records of the petitioner, seems to be doubtful. Thus, if the records of one subsequent year, namely that of one ending

March, 1987 is taken, there again the overall report is shown to have been 'good', whereby the petitioner obtains 3 points.

15. Even though this court has perused the record presented by the respondents and this court prima facie finds that the order, retiring the petitioner compulsorily on account of performance of the petitioner in the past 5 years has been shown as 'poor', as he has obtained only 11 points and in accordance with the guidelines any person who has obtained 11 points shall not be retained in service, seems to have been wrongly passed. But, whether the order passed by the President retiring the petitioner compulsorily on the basis of a possible misrepresentation that the petitioner is covered by their own guidelines, is a matter which requires detailed consideration. Since the petitioner has not made any such representation, pleadings or grounds, we are unable to give any final findings on these assessments, except that we are inclined to direct the respondents to make the entire ACRs pertaining to the petitioner as well as the reports of the reviewing authorities and other relevant orders for perusal of the petitioner within a reasonable time. It is upto the petitioner to look into the entire material on his own and liberty may be granted to the petitioner to re-agitate the matter on the ground of arbitrariness or perversity as available under the law. We find that the petitioner was not given any opportunity to see these reports, in spite of the fact that he had made a request for the same in his appeal/representation and in view of the prima facie finding of this court as stated above, on perusal of the record on our own, when records were submitted by the

respondents on their own, we would leave it to the petitioner to re-agitate the matter in an appropraite manner, in an appropriate forum.

16. We have also considered the question whether these records can be disclosed to the petitioner or not. Since the respondents have produced the record on their own, without claiming any previlege and we too on the perusal of the record found that some injustice has been done to the petitioner, we are of the opinion that the records must be made available to the petitioner so that he may have his own remedy against a possible illegal order. After all these are individual records pertaining to the petitioner only and after the petitioner has already retired, we do not see how disclosure of these documents affects, the security of State or the same can be withheld on such similar reasons. We have also considered this aspect of the relief now being granted, in the light of the decision of the Hon'ble Supreme court in the case of R.K. Jain vs. Union of India 1993 (4) SCC P. 119 wherein it was stated that the court was aware of the natural temptation for people in the executive position to regard the interest of the department as paramount forgetting that there is yet another greater interest to be considered, namely, the interest of justice itself. Inconvenience and justice are often not on speaking terms. No one can suppose that the executive will never be guilty of sins common to all people. According to the said decision thecourt must be alive to that position of executive committing illegality in its process exercising its power, reaching a decision, which no reasonable authority would reach otherwise abuse its powers. In this context we have

to examine the present case and analyse the reasons given in the affidavit by the head of the department and arrive at an independent decision where this court should allow disclosure or allow the respondents to withhold the same. To quote:

> "46. There is a natural temptation for people in executive position to regard the interest of the department as paramount forgetting that there is yet another greater interest to be considered, namely, the interest of justice itself. Inconvenience and justice are often not on speaking terms. No one can suppose that the executive will never be guilty of the sins common to all people. Sometimes they may do things which they ought not to do or will not do things they ought to do. The court must be alive to that possibility of the executive committing illegality in its process, exercising its powers, reaching a decision which no reasonable authority would have reached or otherwise abuse its powers, etc. If and when such wrongs are suffered or injustice encountered by an individual what would be the remedy? Just as a shawl is not suitable for winning the cold, so also mere remedy or writ of mandamus, certiorari, etc. or such action as is warranted are not enough, unless necessary foundation with factual material, in support thereof, are laid. Judicial review aims to protect a citizen from such breaches of power, non-exercise of power or lack of power etc. The functionary must be guided by relevant and germane considerations. If the proceeding, decision or order is influenced by extraneous considerations which sought not to have been taken into account, it cannot stand and needs correction, no matter what the nature of the statutory body or status or stature of the constitutional functionary though it might have acted in good faith. Here the court in its judicial review, is not concerned with themerits of the decisions, but its legality. It is, therefore, the function of the court to see that lawful authority is not abused. Every communication that passes between different departments of the Government or between the members of the same department inter se and every order made by a Minister or Head of the Department cannot, therefore, be deemed to relate to the affairs of the State, unless it relates to a matter of vital importance, the disclosure of which is likely to prejudice the

17. Justice Krishna Iyer in Menka Gandhi vs. Union of India reported in 1978 (1) SCC P. 248 stated that a government which revels in secrecy, not only acts against democratic decency but busies itself with its own burial. Right to know the truth is paramount vis-a-vis most other rights. Government openness is a sure technique to minimise administrative faults. As light may be a guarantee against theft, so government openness could be a guarantee against administrative misconduct.

18. In S.P. Gupta vs. Union of India 1981 (Suppl) SCC P. 87, the Hon'ble Supreme Court has raised the right to know, to the status of constitutional rights and has been held to a 'sine-qua-non' of really effective participatory democracy. In a society governed by rule of law those who rule are not entirely at the mercy of those who are ruled. This is because the accountability of those who rules is always monitored by public opinin. Professor Massey in his 'Administrative Law' at page 392 states : " In a society like ours where freedom suffer from atrophy and activism, it is essential for participative democracy that the narrow pedantry which now surrounds the privilege of the government to withhold information must be replaced by the 'right to know' mobilization". Justice K.K. Mathew wrote in "Nature and Scope of Right to Know in a Demoractic Republic": "the secrecy system has become much less a means by which government protects national security than a means by which the government safeguards its reputation, dissembles its purpose, buries its mistakes, manipulates its citizens maximizes its power and corrupts itself." (Quoted from 1979 (3) SCC (Jour) at 19).

19. Before parting with this case, in the light of what is stated in the paras just here-in-above, we would like to observe that the system of writing ACRs and not communicating the same, even if the reports are not adverse cannot be considered to be altogether in public interest. We find that the reports of the reporting officer for the years 1978 and 1980 giving an overall grading of 'below average' was criticised by the General Manager, 'the accepting authority' and stated on record that these reports of the reporting officer were biased. What can be the remedy available to the petitioner when the reporting officers are bent upon spoiling the CRs of the petitioner for certain extraneous considerations, not germane to the rules? The superior authorities in this case had on their own corrected the findings of these kinds of reports, but quite often it goes undetected, and as such the petitioners in such cases do have a right to know what is being said agianst him or reported against him adversely at the initial stage and subsequently corrected by the respondents. Moreover a government servant has also a right to know, may not be a statutory right, that if his performance is 'good' or 'excellent', even then, the knowledge of the same would certainly be an incentive to perform better; therefore, why should a 'good' report as well should not be disclosed to the petitioner. Afterall excellence in service is the main goal of these parafernalias of writing CRs. How much of these reports should remain confidential and keep them away from the government servant himself, and for what purpose, all these need a new look. To our mind, confidentiality should be confined only to the "process" of writing reports, by the

Reporting Officer, Reviewing Officer and by the Accepting Officer. Thereafter it may remain confidential against the whole world, except the petitioner. We are of the firm opinion that in the circumstances of the case a copy of the entire CRs should have been given to the government servant as well immediately after the accepting officer finally enters his remarks. In some of the reports we have found that there is no entry by the reviewing officer by the accepting officer, that is to say, that the petitioner has a right to know that if, in the some cases,where his reports were otherwise excellent, for want of any report or final report by the reviewing officer or by the accepting officer, some vested interested authorities among the respondents can seriously spoil the career-interest of the petitioner, by not presenting the CRs to the reviewing authority or accepting authority resulting in exclusion of that report altogether wyhile considering his career prospects under the rules. We are of the opinion that the respondents may consider to review the entire rules pertaining to writing of CRs, in the light of what is stated herein and provide for supplying copies of the same to the concerned persons, even if the report is 'good; or 'excellent', within 30 days after the accepting authority finally enters the remarks on the said report. We are of the opinion that doing so, the public interest both in the case of the government servant as well as that of the establishment are better maintained.

20. In the circumstances, for the reason stated above, this OA challenging the orders of the respondents passed on 28.10.1993 and 22.8.1994 stands rejected granting liberty to the petitioner to reagitate

the matter in accordance with law after obtaining the records of the case as stated in para 15 above. There shall be no order as to costs.

(K.Muthukumar)
Member (A)

(Dr.Jose P. Verghese)
Vice-Chairman (J)

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HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

With due respect I am unable to pursuade myself to agree to some of the general observations of my Learned Brother contained in paras 15 to 19 regarding the question of making the Annual Confidential Reports available for perusal of the petitioner and also on the other observations relating to the system of writing of the ACRs and communicating the same even if reports are not adverse and the petitioner's right to know about his ACRs etc. and whether his report should remain confidential or not. While I agree that the application can be rejected, I am unable to agree with my Learned Brother in granting the liberty to the applicant in the manner mentioned in the order. In view of my reservations on his general observations in regard to disclosure of Annual Confidential Reports to the Government employees in general and to the petitioner in the present case.

2. Although the maintenance of character rolls is not enjoined by any statute or rules framed under Article 309 of the Constitution, Confidential Reports are meant primarily for the benefit of the Government as a master to make his own estimate of the caliber of its servants in the discharge of their duties assigned to them by the Government. The aforesaid orders and circulars in regard to the maintenance of these Annual Confidential Reports

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which are in the nature of administrative instructions. As the name itself suggests confidentiality in the maintenance and up-keep of the reports is fundamental sine qua non in the system of maintenance of ACRs, even as against the individual concerned reported upon in the Annual Confidential Reports, confidentiality is inherent in the system. The instrutions provide for communication of any adverse entries in the Confidential Reports, so that on the principles of natural justice, the concerned Government employee is given opportunity to represent against such adverse entries and the rules and procedure prescribe for due review of the representation by the Reviewing Officers. Instructions also exist for timely communication of adverse entries and disposal of the representations against such communication.

3. While dealing with the question of Annual Confidiential Reports, a Division Bench of the Punjab and Haryana High Court in **State of Punjab Vs. Janak Roy Jain, 1987 (1) I.L.R (P&H) 412** held as follows:-

> " Recording of annual confidential reports is, in essence, subjective and administrative. The recording of such reports is in the sheer public interest and in a large governmental organisation, the same would be imperative and equally, its confidential nature must also be maintained to a certain extent. Once that is so, either on the basis of a large public policy or usually in compliance with the Government instructions on the point, the superior officers are ejoined and indeed duty bound to put down their subjective assessment of the public servants conducted in the shape of confidential reports. A superior officer

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> may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact.....The recording of Annual Confidential Reports being that a matter of subjective satisfaction of the concerned officer in the very nature of things, the correctness there of would not be gone into by a Civil Court."

The aforesaid judgment was also relied upon in other judgments including **Kuldip Singh VS. State of Punjab, 1992(5) SLR 189 (P&H)**.

4. The extent to which the Annual Confidential Reports is to be disclosed or whether the Confidential Report should be disclosed at all to the Government servant concerned is, in my humble opinion, a matter of Government Policy. As far as the Government servant is concerned, he is duly communicated as is required under the instructions any adverse remark on his work and conduct as recorded by his superior officers and is given due opportunity to represent against such adverse remarks. The superior officers, by their assessment aid and advise the Government about the work and conduct of the officials subordinate to them, not only from the point of view of career advancement of the subordinate staff but also on their continued utility to Government. Complete disclosure of the Annual Confidential Reports would inhibit a fearless, fair and subjective assessment and will not be in the overall public interest/on efficiency of Public Service. It would, therefore, not be appropriate for the Courts to direct complete disclosure of the Annual Confidential

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Reports. In the present case, which is a case of compulsory retirement, law is well settled that a compulsory retirement issued under the relevant provisions of the Railway Establishment Code or Fundamental Rules is not by way of punishment. Government as a employer has the necessary right to review the overall performance of its servants and to weed out deadwood among them in accordance with the rules and instructions in this behalf. These rules concerned are satutory rules.

5. In the circumstances, a petition challenging the order of compulsory retirement as in the present case can be subject to judicial review only within the broad parameters of law laid down in **Baikunthnath Dass and Others Vs. Chief Administrative Medical Officer/and S. Ramachandra Raju Vs. State of Orissa, 1994(24) ATC 443; JT 1994(5) SC 15.** AIR 1992 SC 1020

6. In the light of the above, the petition has to be dismissed. On the basis of the documents pursued by the Court and as per the observations in para 14 of the order of my Learned Brother, I am of the view that while rejecting the O.A., it can only be said that it will be open to the respondents to review the case of the petitioner in the light of the aforesaid observations, if a representation is made in that behalf by the applicant within one month from the date of receipt of a copy of this order.

7. In view of the difference in the nature of the direction, the matter could perhaps be placed

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before Hon'ble Chairman for reference to the Third Member or the Full Bench, as he may deem fit.

(K. MUTHUKUMAR)
MEMBER (A)

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Per: Hon'ble Dr. Jose P. Verghese, Vice Chairman (J).

I have perused the opinion of my learned brother and tried to achieve what is known as judicial comity. Since no privilege has been claimed against disclosure, I am unable to see how the liberty granted to the petitioner in this case go contrary to any government policy in any manner, nor can the service records of the petitioner be allowed to rest in secrecy even after his retirement.

2. In view of the two separate judgements above, there is no case for reference to Hon'ble Chairman, either for constitution of a Full Bench or for reference to a third Member. Since both of us agree to dismiss the petition, and since there is no difference of opinion on any point, as contemplated by Sec.26 of Administrative Tribunal Act of 1985, for the conclusion that the petition is to be dismissed, this OA stands dismised, leaving the parties to take recourse to any remedy available in law.

(Dr. Jose P. Verghese)
Vice Chairman (J)