

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No.588/86

Date of decision: 3/12/92

Shri M.S.Bindra

.. Applicant.

Versus.

Union of India & Ors. .. Respondents.

CORAM:

Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

Hon'ble Sh.I.P.Gupta, Member(A).

For the Applicant .. Shri Kappil Sibal, Sr. counsel with Shri Man Mohan Counsel

For the respondents .. Shri K.C.Mittal, Counsel. 2(a) to 2(c)
Shri R.P.Khurana Counsel. 2(d)

✓ 1) Whether Reporters of local papers may be allowed Yes
to see the Judgement?

✓ 2) To be referred to the Reporter or not? Yes

J U D G E M E N T
(Delivered by Hon'ble Shri I.P.Gupta, Member(A)).

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of the impugned order dated 9.10.1985, compulsorily retiring the applicant prematurely at the age of about 52½ years and to allow him consequential benefits. It has also been prayed that the respondents should be restrained from evicting the applicant from Government accommodation - 34, Lodi Estate, New Delhi.

2. By interim order dated 6th August, 1986 eviction order was stayed. The interim order is continuing.

3. The applicant was compulsorily retired under rule 56(j) of FR which is reproduced below:-

contd..2p...

"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;

- i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
- ii) in any other case after he has attained the age of fifty-five years;

Provided that nothing in this clause shall apply to a Government servant referred to in clause (e), who entered Government service on or before the 23rd July, 1966".

4. The learned counsel for the applicant contended that the applicant had crossed the age of 50 and a mid-term review could not be done, as there were no exceptional circumstances warranting a review before he attained the age of 55 years. He further contended that the required opinion to retire him was not formed according to law. He added that the compulsory retirement was done without considering the last two ACRs and the order was based on collateral ground and was arbitrary. He went on to say that the applicant was approved for appointment as Joint Secretary as recently as June 1985, whereafter he was on leave and the order of compulsory retirement was suddenly issued on 9.10.1985. He argued that the compulsory retirement was against the guidelines

and was motivated in that the applicant had detected large evasion of excise duty as borne out by Annexure B.

5. The learned counsel for the respondents said that detailed instructions were issued by the Department of Personnel & Administrative Reforms in their O.M. dated 5th January 1978 and 7th August, 1988 laying criteria, procedure and guidelines for reviewing the cases for retention or otherwise of Government servant in service beyond the age of 50. The instructions said that the cases of Government servant should be reviewed six months before they attain the age of 50/55 years. Committees shall be constituted in each Ministry/Department/Office to which also cases should be referred for recommendation as to whether the officer concerned should be retired from service in the public interest or whether he should be retained in service.

6. The learned counsel for the applicant quoted the case of R.Narasimhaiah Vs. The Postmaster General & Ors. (ATR 1990 (2) CAT 517) where it was held that 'once it is decided to retain a government employee beyond the prescribed age, he could be compulsorily retired later, but before he attains the age of superannuation, only in extraordinary circumstances to be specifically mentioned'. ^{We find that} The application under our consideration is not of a case where it was decided to retain the applicant beyond the age of 50. The first review in his case was done at the age of about $52\frac{1}{2}$ years. The following quotation from R.Narasimhaiah's case (supra) would also be relevant.

"We are fortified in our conclusion by the following observation of the Supreme Court in State

of U.P. Vs. CHANDRA MOHAN NIGAM a case arising under a service rule analogous to FR 56 (j):

"Once a review had taken place and no decision to retire on that review has been ordered by the Central Government, the officer gets a lease in the case of 50 years up to the next barrier at 55 and, if he is again cleared at that point, he is free and untrammelled up to 58 which is his usual span of the service career. This is the normal rule subject always to exceptional circumstances such as disclosure of fresh objectionable grounds with regard to integrity or some other reasonably weighty reasons".

7. The learned counsel for the applicant also quoted the case of 'J.H. Athar Vs. U.O.I. (ATR 1987(1) CAT 372) where it was observed that Review Committee must meet six months before an employee attains the age of 50 years. It will be relevant to point out that in that case, both the petitioners alleged that the Committee had taken into consideration certain extraneous material relating to period subsequent to the completing of 50 years of age. Some adverse entries of later period were taken into account. Be that as it may, that was a case where act of promotion on the part of respondents had the effect of washing away any adverse material prior to their promotion.

8. We observe that no legal right could be founded on the time schedule laid down in the memorandum dated 5th January, 1978 to claim that a departure from the schedule for review would render the action under FR 56(j) illegal, particularly when there is no such indication in the rule itself. The memorandum

dated 5th January, 1978. stated that 'in order to ensure that the review is undertaken regularly and in due time, Ministries/Departments are requested to maintain a suitable register of employees under their control or who belong to cadres/services controlled by them, who are due to attain the age of 50/55 years or completed 30 years of service..... The schedule shows that the review was to be done six months in advance before the employees attain the age of 50/55 years. These instructions cannot be said to be mandatory. It is the public interest which is dominant in FR 56(j) and not the time schedule laid down in the office memorandum. The rule says that an officer of Grade 'A' or Grade 'B' can be retired after he had attained the age of ~~58~~⁵⁰ years. Therefore, if the review was not done on the eve of attainment of the age of 50, there is no bar as such in the rule for the Appropriate Authority to consider a case after the attainment of the age of 50. The rule does not stipulate that a Government servant should be retired immediately on attaining the age of 50. The instructions dated 5th January, 1978 cannot, in any case, over-ride the rules. It was also not a case of second review undertaken after first review made earlier. In this connection the following is quoted from the judgement dated 30th January, 1987 given by the new Bombay Bench of CAT in O.A. No.2/1986 Mr.Narayanrao Balvantrao Sonavana V/s Union of India and others:-

"It would lead to the absurd result that if, by mistake, a review was not undertaken in the quarter in which it should have been made, all persons whose cases should have been reviewed

then get an automatic right to continue in service irrespective of whether it is in the public interest to retain them. It is the public interest which is dominant in FR 56(j) and not the time schedule which appears in the Memorandum. Shri Pradhan categorically stated that the case of the applicant was not reviewed between January and March, 1984 and that the first time when his case was reviewed in 1985, it was decided to retire him. It was not a second review undertaken after a first review made earlier. Therefore, the impugned order cannot be challenged on the ground of a procedural lapse as contended by the applicant".

The above settles the law and the delay in review in this case would not by itself invalidate it.

9. The learned counsel for the applicant further contended that the applicant was retired prematurely by letter dated 9th October, 1985 after having attained the age of 50 years, and the order was arbitrary in that the required opinion was not formed according to law. He added that the order was issued in colourable exercise of power for collateral purposes on collateral grounds and the applicant was victimised on account of powerful business lobby. To support his contention the learned counsel raised several points, which would be discussed in the following paragraphs.

10. The learned counsel for the applicant said that the ACRs of the officer was not complete before taking the decision to retire him prematurely by

(27)

order dated 9th October, 1985. He said that the ACRs for 1983 and 1984 were not on record and that of 1984 was added subsequently as could be seen from the dossier. We have gone through the ACR dossier of the officer. It is true that his ACR for 1983 was not on record. It is also true that though the ACR for 1984 is on the dossier of the officer yet the date on which it was written is not indicated. The index shows that against 1983 there is a cross mark and against 1984 the page numbers of the dossier are indicated and below that the word 'added' is written. It was further contended by the learned counsel for the applicant that but for some vague entry in the undated entry for the year 1984 the service records of the officer are more than good. There was no communication to the officer in regard to any adverse entry for the year 1984.

11. An order for compulsory retirement under FR 56(j) can be made in public interest on grounds of 'doubtful integrity' and 'ineffectiveness or ^{being} deadwood'. This is laid down in the office memorandum dated 5.1.1978 (Annexure I to the counter). The office Memorandum dated 7th August, 1985 lays down guidelines relating to action where integrity of the Government servant is doubtful. It has been stated therein that the term 'service record is all-embracing and review should not be confined to the consideration of only the Annual Confidential remarks recorded on the officer. The guidelines are in the nature of instructions to the Appropriate Authority for forming an opinion regarding the premature retirement of a Government servant. The following extracts from the letter of 7th August, 1985 are reproduced below:-

"It is likely that each allegation that comes to notice against the integrity of the officer may have been handled on a separate file and that details thereof may not be available on the personal file of the officer, which is confined only to establishment matters, like increments, promotions, leave, P.F. Advances etc. In such a situation, well ahead of the meeting of the Review Committee, the Ministry/Department will have to compile together all the data available in the separate files and prepare a comprehensive brief for the consideration of the Review Committee.

12 There are a number of judicial pronouncements, in support of the instructions above that a total assessment of the performance of the Government servant can be made. There have also been observations that have approved any measure by which the assessment by superiors, with an opportunity to watch the work and conduct of an officer, is taken into account while deciding premature retirement. In Union of India Vs. M.E. Paddy and another (AIR 1980-SC 563) the Supreme Court observed:-

"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 in close quarters are in a position to know the nature and character not merely on his performance but also of the reputation that he enjoys.' In R.L.Butail Vs. Union of India and another (1971) 28 C.R.55, the observation was:-

"It may well be that inspite of the work of the applicant 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 the service, upon which the appropriate authority may still decide to order appellant's retirement under F.R. 56(j)".

For preparing a comprehensive brief on each officer, for being placed before the Review Committee, each Ministry/Department may consider the setting up of an internal Screening Committee to assist the Reviewing Committee consisting to the extent possible of those senior officers who have had the occasion to know about the work and conduct of the officer proposed to be reviewed. Such Screening Committee may be constituted for each different rank of each different functional area, as may be necessary or convenient. These may be set up as a standing arrangement and a Screening Committee is not to be constituted as a separate ad-hoc measure, only at the time when the case of a particular officer is taken up for consideration of premature retirement."

3. The ACR dossier of the officer for 1984 is undated. It has been mentioned therein that 'there have been few complaints about his integrity but nothing established'. The point that arises is whether the ACRs for 1984 were there at all when the applicant's case was reviewed for premature retirement. We may state here that even the resume for the year 1984 given by the applicant was undated though signed. Does it take away the validity of his resume? The answer obviously will be in the negative. Even during 1982,

his resume was unsigned but his report was written for 1982 and the resume was duly kept in his ACR dossier. Therefore, we cannot conclude that the ACR for the year 1984 is invalidated because the Member, CBEC, who has written it and signed it, has not given the date though the form says that the period for which the ACR relates to is 1.1.1984 to 31.12.1984. Further, an order of compulsory retirement is not liable to be quashed merely on the showing that while passing it, uncommunicated adverse remarks were also taken into consideration. That circumstances by itself ~~by itself~~ cannot be a basis for interference (Baikunth Nath Das V/s Chief Medical Officer & Another ATR 1992 (1) SC 508).

14. Further, if it is assumed for a moment, though we do not come to such a conclusion, that the ACR for 1984 was added only after the order of premature retirement was passed, the point to be borne in mind is that the Government (or the Screening/Review Committee as the case may be) can consider the ^{entire} record of service. The entire record of service would include not only the ACRs but other records that may be relevant. In this connection the following instructions of the Ministry of Personnel & Training dated 7th August, 1985 quoted above are relevant - ' It is likely that each allegation that comes to notice against the integrity of the officer may have been handled on a separate file and that details thereof may not be available on the personal file of the officer, which is confined to only establishment matters. In such a situation well ahead of the meeting of the

contd....11p...

Review Committee the Ministry/Department will have to compile all the data available on separate files. For preparing a comprehensive brief on each officer for being placed before the Review Committee, each Ministry/Department may consider the setting up of an Internal Screening Committee to assist the Reviewing Committee consisting to the extent possible of those senior officers who have had occasion to know about the work and conduct of the officers proposed to be reviewed. The counter filed by the respondents has stated that the applicant's case was considered duly by the Screening Committee consisting of senior officers of the Department and thereafter by a Review Committee consisting of Secretary, Department of Revenue and the Establishment Officer to the Government of India, Department of Personnel & Training. The Review Committee recommended that the applicant should be retired prematurely under the provisions of FR 56(j). Thereafter, the matter went up to the Appointments Committee of the Cabinet and it was decided by the Government in October 1985 to retire the applicant. We have been shown the minutes of the Screening Committee and the Review Committee. The Screening Committee consisted of members ^{seven} viz. Chairman, Central Board of Excise & Customs, Shri M.V.N. Rao, Member (Cumstoms), KS Dilipsinhji, Additional Secretary (Administration), Shri S. Venkataraman, Member, Central Excise, Shri T.S. Swaminathan, Member (Personnel), Shri M.L. Wadhawan, Member, Anti-Smuggling, Shri S.C. Saldanha, Member (L&J). The minutes said that 'on the basis of personal knowledge and/or experience of those present the following officers of the Indian Customs and Central Excise Service were selected for detailed scrutiny and in respect of the applicant

following observations was made in the minutes:-

"Shri M.S. Bindra: On the basis of the specific cases and other material at Annexure IV hereto, he is found to be of unreliable integrity and unfit to be entrusted with any position of responsibility and systematically indulged in extortion of money from the parties and adopted methods which have the effect of bringing down the esteem of the Government in the public eye."

15. Annexure IV was ^{an} unsigned note which was attached to the minutes. Some extracts of Annexure IV are reproduced below:-

'In this connection the most notorious instance that can be cited is the case of adjudication of M/s. Orkay Silk Mills Limited. In this case a lot of publicity has been given to the orders passed as this involved a total amount of fine and penalty of slightly over of Rs.10 crores in respect of one firm alone. But the general information in the market is under the guise of a harsh order arrangements have been made for ensuring that the order does not stand any appellate scrutiny from a legal point of view. Some of the points mentioned in this connection are -

- (a) The order running into nearly 100 pages was passed on the day following the last hearing clearly indicating that this must have been already got ready even before the hearing was complete.
- (b) A penalty of Rs.50 lakhs was imposed on the proprietor without issuing him a show cause notice, and
- (c) Huge sums of duty have been demanded in respect of unaccountal of production without fully going through the claims of the party that these unaccountal are more than off-set by the wastages claimed and kept away for verification.'

A careful scrutiny of a very important case i.e. of Golden Tobacco Co. where the duty evasion involved is several crores of rupees and the evidence prima facie is strong, shows that the case was lying unattended for quite some time and instructions were issued by the Deputy Director, Shri Bhattacharjee to the Zonal Units to keep further investigations in abeyance. It is difficult to accept that such a direction would have gone from a Deputy Director in such an important case unless it was issued by the Director himself. Even after Shri M.S. Bindra took over as Director, Anti-Evasion, the investigation was not taken up and was kept dormant till he handed over his charge.

The third long para related to the case of two brothers Ashok Jain and Pradeep Jain of Bombay.

16. The learned counsel for the applicant took a strong exception to this unsigned note being considered by the Screening Committee. He said it was not clear who prepared the note, what was the basis for this note, how did it come in possession of the Screening Committee etc. He argued that no material behind the back of the applicant should have been used by the Screening Committee. He added that even if there were some complaints but if they were not proved, they should have been of no consequence. The Learned Counsel for the respondents also alleged malafide on the part of the respondent No.3, Shri M.L. Wadhawan, who was one of the members of the Screening Committee. In the application filed by the applicant it has

been stated that respondent No.3 was promoted as a Member of the Central Board of Excise and Customs in July 1985 and subsequently made Head of the Bureau of the Economic Offences. He was inimical to the petitioner. His difference with the petitioner as well as animus with the petitioner was open. A perusal of DAE/84-PA in the Office of the Anti-Evasion would substantiate this averment.

17. We shall first examine in regard to the value to be attached to Annexure IV referred to above. It may be stated here that Annexure IV is not hanging as such, attached to the munutes of the meeting of the Screening Committee held on 9.8.1985. Annexure IV has been referred to clearly against the applicant in the main body of the minutes which has been signed by all the Members. Therefore Annexure IV is very much a part of the minutes of the meeting of the Screening Committee. Now the question arises as to what is the basis of Annexure IV. The learned counsel for the respondents have mentioned in an affidavit filed by the Under Secretary, Ministry of Finance, Department of Revenue that the office records pertaining to the adjudication of M/s. Orkay Silk Limited and Golden Tobacco Limited and the two brothers namely, Ashok Jain and Pradeep Jain as find mention in Annexure IV for purposes of screening the case of the applicant was the basis on which the Screening Committee examined in addition to the other material. The Screening Committee had made a gist of the material which has been reproduced in the form of Annexure IV based on the record available in the office pertaining to these cases. The learned

contd...15p..

counsel for the applicant in their counter affidavit ^{has} have said that the aforesaid affidavit filed by the Under Secretary should be rejected as the Under Secretary is not competent to affirm the declaration given therein as at the time the Screening Committee met in August 1985 he was neither posted as Under Secretary nor holding any other assignment as a privy to the Screening Committee. Leaving the question of affidavit filed by the Under Secretary, Department of Revenue aside for the moment, we find that according to the instructions issued by the Government of India on 7th August, 1985 that 'for preparing a comprehensive brief on each officer for being placed before the Review Committee, each Department may consider the setting up of an internal screening committee to assist the Reviewing Committee consisting to the extent possible of those senior officers who have had occasion to know about the work and conduct of the officers proposed to be reviewed. The Screening Committee met on 9th August, 1985 and in their minutes they have stated ^{that} on the basis of personal knowledge and/or experience of those present the applicant amongst other was selected for detailed scrutiny in terms of FR 56(j). On the basis of specific cases and other material at Annexure IV, he was found to be of unreliable integrity, Annexure IV as mentioned is part and parcel of the minutes and cannot be ignored. Now the question arises whether Annexure IV is based on no evidence. The respondents have produced for our scrutiny the departmental files relating to M/s. ^{Cirkay} ~~R.K.~~ Silk Mills Ltd., Golden Tobacco Company Ltd. ^{etc} and the two brothers namely Ashok Jain and Pradeep

Jain. We also notice that in the case of Orkay Silk Mills Ltd. a writ was filed by the said Mill against the applicant and others in the High Court at Bombay and the case was decided on 25.2.1986 (Orkay Silk Mills Ltd. and Another Vs. M.S. Bindra and Others (1988(33) ELT 48 (Bombay)). The aforesaid orders had set aside the order dated June 1, 1985 signed by respondent No.1 in that case (applicant in the present case). The court had observed, inter alia, that 'there was some thing wrong in the working or method of working of respondent No.1 (applicant)'.

18. In the judgement there is also a mention that the order in respect of Orkay Silk Mill was either kept ready by respondent No.1 (the applicant) even before the conclusion of the hearing or that the order was dictated by some one other than respondent No.1 or respondent No.1 merely put his signature. Later in the writ No.1379 of 1985 filed by the applicant it was observed by the High Court that 'on either of the two possibilities indicated by the Judge, the order passed was required to be struck down.

19. The Screening Committee, according to the instructions of the Department of Personnel, were to prepare a brief for the Review Committee and the Screening Committee on the basis of personal knowledge and/or experience of the Members scrutinized the case of the applicant on the basis of specific cases and other material at Annexure IV. Therefore, the specific cases were obviously before them or were within their personal knowledge. The Committee deliberated upon each officer at great length listening

to and discussing the material brought before it by each Member. The files relating to the three cases cited in the note are with the Department. Whether the files or materials brought before the Committee were considered are not of much consequence. As we have observed before the case relating to Orkay Silk Mills was also the subject matter of a Writ Petition before the High Court and the observations of the High Court have been mentioned earlier. That there were cases of M/s. Golden Tobacco Company & Jain Brothers are not disputed by the applicant. Whether the allegations are proved at all or whether the material is adequate or not for forming an opinion would not be relevant for us to examine in view of what follows. We have therefore refrained ourselves from examining the files of the three cases.

20 As observed by the Principal Bench of the Central Administrative Tribunal on 21st August, 1987 in OA No.179/86 (B.N. Rangawani Vs. Union of India & Ors.) Rule 56(j) of FR is meant to provide for cases where allegations may exists but may not be such as to be susceptible to proceedings. It is only after disciplinary proceedings that it can be said whether allegations are proved or not but if disciplinary proceedings are to be launched in each case of doubtful integrity, FR 56 (j) would be rendered inoperative in so far as premature retirement on ground of doubtful integrity is concerned. Therefore, even if the allegations are not proved, the Appropriate Authority

is not precluded from forming an opinion.

21. As observed by the Apex Court in the case of Baikuntha Nath Das ^{JT 1992 SC p.11} 3 principles of natural justice have no place in the context of an order on compulsory retirement. A court can interfere 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.

22. The learned counsel for the respondents have alleged malafide on the part of respondent No.3 Shri M.L. Wadhawan, Member) who was also a Member of the Screening Committee. Shri M.L. Wadhawan has filed his reply denying that he was inimical to the petitioner. He has said that as Head of Department he was personally answerable for financial sanctions and not only in the case of petitioner's proposals but also wherever any proposals for financial sanction from elsewhere were not found to be justified the proposers had to be asked for further clarification to satisfy him with regard to their reasonableness.

According to the counter
File No. DAE/1/84-PA concerns (i) the applicant's confidential letter dated 12th March 1984 forwarding the list of issues where recommendations for financial sanctions were made either by his predecessor or by him, (ii) his reply dated 20/21 March, 1984 thereto and (iii) the applicant's counter reply dated

gpt

23rd March 1984. The financial sanctions asked for by the Directorate of Anti-Evasion were given for all the items where justification received was to his satisfaction.

23. Malafides is easy to allege but difficult to prove. The applicant had inspected some record i.e. ACR dossier from 1958 to 1984 & File on Retirement of Collectors under FR 56 (j) - S/Shri K. Srinivasan, M.S. Bindra, J.N. Verma and N.V. Sonavane. The ACRs for 1980, 1981 and 1982 were written by Shri M.V.N. Rao, Member who had said that the applicant was a Competent officer. The ACR of 1984 was written by Shri T.S. Swaminathan. In 1979, the ACR was written by Shri S. Venkataraman. Thus at least three officers, also who were members of the Screening Committee were aware of the ability of the officer and had watched their performance. It is difficult to believe that one Member against whom malafide has ^{been} attributed could ^{make} bring the other members of ^{who} whom had seen the performance of the officers closely in the past to believe all that he only said. This was not a case of weeding out the dead wood. It was a case of doubtful integrity. The three cases cited in Annexure IV related to periods around 1984 or 1985. Further, the Screening Committee recommended not only the applicant's case for premature retirement but the cases of three others. In respect of them ~~two~~ Annexures containing the material concerning them were attached. The Review Committee comprising the Revenue Secretary

and the Establishment Officer took up the consideration of the cases of the four officers covered by the minutes of the Screening Committee. The Review Committee 'carefully considered the minutes of the Screening Committee and examined the material referred to therin' and only thereafter the Committee concurred in the recommendations of the Screening Committee. The ACC therefore approved them.

24. We would also like to mention about a point raised by the learned counsel for the applicant that the applicant was approved for appointment as Joint Secretary in June 1985 itself. The respondents have produced the records in this regard also. They have said in the counter that the post of Joint Secretary and the post held by the applicant were in the same scale of pay. The applicant was recommended for appointment as Joint Secretary in the Department of Revenue with the approval of Finance Minister but before the approval of the Appointments Committee of the Cabinet could be obtained, the Finance Minister agreed to withdraw the proposal from ACC in respect of the applicant. He was, therefore, not appointed. Further the post being in the same scale the appointment as Joint Secretary should not, in any case, be treated as promotion though it could be treated as selection.

25. In view of all that has been said above, we conclude that an order of compulsory retirement can be assailed, according to the judgement of the Apex Court in Baikuntha Nath Das & Another (supra), on the ground that it is (a) malafide, or (b) based on no evidence or (c) arbitrary. We fail to get convinced in view of what has been said above that the order was malafide. Annexure IV attached to

the minutes of the screening Committee is not hanging as such, unsigned and undated. It has been referred to in the body of the minutes which have been duly signed by all the seven members. The members of the Screening Committee included not less than three members who had watched the ^{performance} ~~programme~~ of the officer ⁱⁿ in the past and were quite satisfied with his performance. Complaints about integrity were mentioned for the first time in ACR of 1984. Whether this ACR was there before review or added after review under FR 56(j), apart, the fact remains that some allegations had come to notice of the Government. The Screening Committee made their recommendations after 'deliberating upon each officer at great length listening to and discussing the material brought before it by each Member.' The Chairman CBEC was also in the Committee and its recommendation was unanimous. The Review Committee 'carefully considered the minutes of the Screening Committee and examined the material referred to therein' and concurred in the recommendations. The ACC approved them. We cannot conclude that there was no foundation at all ^{nor can we say that it is arbitrary in} of the order FR 56 (j) is liberally couched so as to enjoin upon the appropriate authority to form an opinion. The Bench cannot look into the question as to whether the materials are adequate or inadequate from its point of view. We have to see whether the professed satisfaction is no satisfaction at all or whether there was a total lack of application of mind. We have to see whether there was any foundation

of fact at all. The fact that different formation of opinion or satisfaction is possible for this Bench on the same very facts and circumstances is not a ground to quash the order in question. May be the grounds are in general terms, may be that the allegations are not proved ones. If disciplinary proceedings are to be launched in each case of doubtful integrity, FR 56' (j) in so far as premature retirement on ground of doubtful integrity is concerned would be rendered inoperative and may as well not remain on the statute.

26. In the conspectus of the aforesaid facts, we are of the view that the order of compulsory retirement cannot be termed as malafide or based on no evidence or arbitrary. The application is therefore, dismissed with no order as to costs. The interim order which was passed by the Tribunal on 6th August, 1986 staying the eviction of the applicant from the Government accommodation and which interim order has been continuing, ^{now} ~~is not~~ vacated. The eviction orders of the respondent ^{Opulent} No.4 will have its effect after 15 days from the date of communication of a copy of this order.

I.P. Gupta
(I.P. GUPTA) 3/12/92

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)

VICE CHAIRMAN (J)