CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 190 OF 1988.
~~TxAxxNx~~

DATE OF DECISION 29-11-1991

Vishrambhai N. Parmar, Petitioner

Mr. M.R. Anand, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. R.P. Bhatt, Advocate for the Responden(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? } No
4. Whether it needs to be circulated to other Benches of the Tribunal? }

MGIPRRND—12 CAT/86—3-12-86—15,000

Vishrambhai N. Parmar,
Income-tax Officer
(Group B)(Retired)
Plot No. 516/2, Soham Park,
Near Jain Upasre,
Sector No. 22,
Gandhinagar. ..... Applicant.

(Advocate:Mr. M.R. Anand)

Versus.

1. Union of India,
(Notice to be served through
the Secretary, Ministry of
Finance, Central Secretariat,
New Delhi.)

2. Chief Commissioner of
Income-tax, Gujarat-I,
Ayakar Bhavan,
Ashram Road, Ahmedabad. ..... Respondents.

(Advocate: Mr. R.P.Bhatt)

J U D G M E N T

O.A.No. 190 OF 1988

Date: 29-11-1991.

Per: Hon'ble Mr.M.M.Singh, Administrative Member.

The applicant has, inthis application filed under section 19 of the Administrative Tribunals Act, 1985, impugned the order of his compulsory retirement (Annexure A-1) from the post of Income Tax Officer, Class II issued by the second respondent in exercise of his powers under F.R. 56(J)(i).

2. The applicant had started service in 1959 as direct recruit Upper Division Clerk and earned his promotions from time to time. He claims that he has absolutely clean and meritorious record of service but for an adverse remark communicated to him way back in the year 1972 which was expunged after he made representation against it.

In the latest inspection report (Annexure A-2) of his performance as Income Tax Officer, the Commissioner of Income Tax, Rajkot had appreciated the applicant's performance as 'good'. The applicant has averred that the instructions dated 5.1.78 (Annexure A-3) of Government of India prescribed that an Officer should not be prematurely retired on the grounds of ineffectiveness if his service during the preceeding five years has been found satisfactory. The applicant's assertion is that after he was promoted to Class II post in 1978, neither any adverse remark was communicated to him nor was he punished in any Departmental Enquiry and there can therefore be no question of his service record being held to be less than satisfactory. He asserts that there is no allegation that his integrity is doubtful. The applicant made representation dated 2.6.1987 (Annexure A-4) against the impugned order dated 26.5.1987 and also a supplementary representation dated 12.6.87, (Annexure A-5). These representations came to be rejected by order dated 8.2.1988 (Annexure A-6) which is not a speaking order and is passed in a mechanical manner. His further contention is that the review for suitability to be continued in service could be undertaken at the age of 50 years or 55 years only and that review at any other age for the purpose will be without jurisdiction. He had not completed 30 years of service and had completed only 28 years of service when he was compulsorily retired at his age of 53 years and 11 months. He also alleges that his retirement is punitive

removal from service. On 19.3.1986 he had received a confidential office memo dated 27.2.86 (Annexure A-7) saying that he had erroneously granted double Income-tax (DTA) reliefs for which his explanation was asked. By memorandum dated 22.5.1986 (Annexure A-8) the applicant was given the list of cases in which he had given the alleged reliefs. He had submitted his explanations to the two memoranda (Annexure A-9 and A-10) justifying his action on the basis of such relief granted by his predecessors in Jamnagar Range saying that he had followed similar practice and that such relief cases were inspected by the internal audit party but never any objection came to be raised and the applicant therefore took the procedure as not disapproved and followed it. The applicant alleges that even if he had committed a mistake in passing the D.T.O. orders, the same was bonafide. The applicant's contention is that Income-tax Department's decision to the contrary is under challenge in the High Court of Gujarat in Civil Application No. 1330 of 1986. The applicant's contention therefore also is that it cannot be said in the absence of decision of the Gujarat High Court in the C.A. that the applicant had even committed a mistake. The applicant's contention is that the Income-tax Department was under the belief that D.T.A. benefit was available only to non-resident regular Shipping Lines and not to Occasional Shipping or tramp steamers to which he had given the D.T.A. reliefs. The said memorandum(Ann.A-8)

accused the applicant of gross negligence and lack of devotion to duty. However, there was no suggestion against the integrity of the applicant. The applicant's allegation is that twelve or thirteen other officers had also followed the procedure the applicant had followed for giving the D.T.A. relief. But no action was taken against any of them. But the applicant was singled out for compulsory retirement. His further allegation is that whether D.T.A. relief could be given to Occasional Shipping or tramp Steamers is a question of law and when the matter is subjudice, question of lack of integrity cannot arise more so when the action of the applicant was approved by this superiors and there was no objection from the audit parties in any case in which such relief was granted by the applicant and other officers. The applicant's further contention is that the Chairman, Central Board of Direct Taxes, had given assurance that no officer will be punished for bonafide mistake. As the applicant received no further communication after he had submitted his reply, he presumed that the Department had realised that he was not guilty of any misconduct. However, the Department decided to remove him from service by retiring him compulsorily. He further alleges thatthis is not a case of simple retirement but a case of removal from service without holding any enquiry as prescribed by the C.C.S.(Discipline & Appeal) Rules which is illegal and bad in law. The applicant's further case is that no action has been taken against other officers who had followed procedure similar to he had followed and in some

cases only simple warning had been given without causing prejudice to the future promotion of the officers warned. He therefore alleges discrimination and arbitrariness and violation of provisions of Article 14 and 16 of the Constitution of India and that the impugned order is actuated by malafides and extraneous considerations and not by any consideration of public interest which is the condition precedent to exercise of power under F.R.56(J). The applicant's contention is that there has been no revenue loss to the Government by any confusion of jurisdiction regarding whether Jamnagar I.T.O. could give the relief to the parties or the Bombay I.T.O. and that on ground of jurisdiction a "mountain is made out of a mole".

3. The second respondent filed a written reply. His contentions is that when a Government servant has become entitled for pensionary benefits, the Government has the right to make overall assessment of his service record and performance to determine whether he should be continued in service or needs to be retired. The applicant's service record was thus taken under review on 9.4.1985 by the screening committee consisting of four senior officers of the Income Tax Department. The Screening Committee, after considering the overall performance of the applicant, was of the view that any further continuance of the applicant in service will be highly detrimental to the interests of revenue. The committee therefore recommended retirement of the applicant in public interest. It is further stated that the decision to retire the applicant was taken

as he had already attained the age of 50 years. The applicant's claim to clean and meritorious record of service is denied. It is further averred in the reply that the applicant, between March 1983 to June 1985, while working as Income Tax Officer, Ward-H, Jamnagar, had caused loss of revenue to the tune of Rs. 17,74,616/-, to quote from the reply

> "..... in the matter of granting D.T.A. relief alone to certain non-resident assessees who operate occassionally shipping or tramp steamers to India. Further, on inspection of certain cases selected on random basis in which assessments were completed by the applicant when he was I.T.O. at Jamnagar during 1984-85 it was found that the applicant had uncritically accepted the claims of the assessees regarding expenditure, introduction of fresh capital, introduction of new deposits, etc., and had shown undue haste in completing assessments and thereby caused serious loss to the revenue. It was on the basis of these materials that the screening committee was of the view that any further continuance of the applicant in service will be highly detrimental to the interest of the revenue".

The reply denied that the applicant had acted according to the standard procedure of the Income Tax Department with regard to the D.T.A. relief or that he had strictly followed the procedure followed by his predecessors. The reply also points out that when the applicant was working as Income-tax Officer, Ward-H, at Jamnagar, he had completed assessments in five cases of occasional or tramp shipping without granting D.T.A. relief. The applicant's predecessors had

completed 25 such assessments without granting D.T.A. reliefs. However, the applicant rectified these assessments under section 154 of the Income-tax Act and thus granted D.T.A. relief in all these 30 cases. The written reply further says that it would be pertinent to note that 28 orders of rectification were passed by the applicant in a single day i.e., on 11.1.1984. The total amount of relief granted by the applicant by rectifying these 30 assessments was Rs.15,96,850/-. It is averred that the fact that the applicant had completed the rectification in as many as 28 cases on a single day shows the applicant's eagerness to oblige the assessees by going out of his way. It is further averred that moreover, the refund vouchers, after carrying out the rectification as above, were handed over to the Indian agents of the shippers who were not authorised by the foreign ship operators to receive the refunds. It is further averred that in 27 out of 30 cases above, the Indian agent of the foreign shippers was only one firm and that this fact further strengthens the belief that the applicant's action in this regard was clearly malafide. It is averred in the reply that reasons for rejection of representation against the impugned order are not required to be communicated. It is further averred that the applicant was retired from service on the first ever review conducted in his case after his attaining the age of 50 years. It is averred that if no review is conducted immediately on the applicant attaining the age of 50 years or before,

that does not mean that no review can be conducted subsequently. It is averred that there is no bar to review being conducted at any time after an official attains the age of 50 years if the review could not be conducted at the first opportunity available for such review. It is averred that the Government's instructions on the subject of review have been followed and the applicant has not been treated discriminatorily, arbitrarily or in violation of Articles 14 and 16 of the Constitution. It is denied that the impugned order was passed by way of punishment. It is further averred that the explanations of the applicant were asked but asking explanations in a particular matter does not mean that the order of retirement passed after such explanations are submitted becomes punitive.

4. The applicant filed rejoinder to the respondents' reply. The rejoinder callsupon the respondents to place before the Tribunal the record considered by the screening committee and the minutes of the meeting of the screening committee. His further contention in the rejoinder is that according to Rules, review can take place six months prior to completion of 50 years or 55 years of age and not at any time. The applicant has reiterated the allegation of discrimination and arbitrariness made in the application as no action was taken against other officers who had passed similar orders as the applicant passed. He asserts that no revenue loss was caused by his orders. He

contends that the only question was whether relief was to be given under section 172(4) or under section 172(7) of the I.T.Act. But that relief in any case had to be given and he exercised quasi-judicial discretion and if he was wrong his decision could be reversed under section 263 of the I.T.Act by the Commissioner or under section 154 by the applicant himself if the mistake was brought to his notice by higher authorities. His further contention is that such procedure was not followed and a short-cut of compulsory retirement instead of Departmental Enquiry which could have been held was resorted. It is also averred that the assessees had complained to the Central Board that the I.T. Officers' were not giving relief under section 172(4) of the Income Tax Act which complaint led to issue of Central Board Circular No.915 dated 30.1.1976 asking the I.T.Officers to give D.T.A. relief. When this relief was sought to be withdrawn on the ground that it was not available under section 172(7), some assessees had approached the High Court against this decision of the Income-tax Department and Writ Petition was also filed in the High Court of Gujarat, being Special Civil Application No. 1330 of 1986. The applicant's contention is that if the High Court accepts the view of the assessees, the entire basis of the Department against him will be knocked out. His further contention is that he could not be penalised when he has exercised his quasi-judicial powers in discharging his duty and that the amount of relief given appears to be large because the revenue collection in his charge was to the tune of Rs. 11 crores and that he was posted in a Port City.

Contesting the respondents' reply regarding the applicant uncritically accepting the claims of the assessees regarding expenditure, production of fresh capital and production of new deposits, the applicant's contention is that not a single such instance was brought to his notice and he was never given the opportunity to explain his position and that the whole exercise was carried out behind his back which also shows that impugned action is punitive and could not be taken without holding an enquiry. His further contention is that he has been penalised for his quasijudicial work which could never be the subject matter of allegation of misconduct and that too for punishing a person without holding any inquiry. The applicant describes as absolutely irrelevant part of the written reply where it says that in some cases his predecessors had not granted D.T.A relief. He denies having passed 28 orders in one day and giving relief of refund of more than Rs.15,00,000/-. The applicant's contention is that rectification order is a standard eight line order. He produced its sample (Annexure A-11). His contention is that the orders have been passed on common mistake which was submitted before the applicant for rectification in September 1983, and the orders were passed in January 1984. His contention is that whole group consisting of hundreds of matters are decided by the Courts by one order if they involve the same point and there is therefore nothing wrong if he did so in 28 matters. His contention is that there is no suggestion that he knew the parties and was working in collusion with them or had any dishonest

intention in discharging his quasijudicial function. The applicant disputes that in 27 of the 30 cases Indian agents of the foreign shippers were the same and says that the figure given by the respondents is not accurate. He says that these very agents have filed Special Civil Application No. 1330/86 in the High Court of Gujarat. He has stated that it is not his fault if the Indian agent "have more work and if the foreign shippers give work to him" for business purpose and not for Income-tax purpose and for filing return or claiming refund. The applicant therefore reasserts himself in describing the allegations as malafide, malicious and baseless made to create prejudice. The applicant further avers that the names of the members of the committee which considered his representation against compulsory retirement have not been disclosed and whether it was the same committee which took adverse decision of retiring him or any other committee should be disclosed by the respondents. His contention is that if his representation was considered by the same members who were members of the screening committee which decided to retire him, the same was bad in law. His further contention is that as the decision to retire being punitive, reasons were required to be given for rejecting his representation. The applicant calls upon the respondents to produce any evidence of material to show that his integrity was doubtful or that he had fraudulently discharged his duty. His further contention is that no such adverse remark came to be made in his Confidential Report in his entire tenure of service. His say

is that the termination of his service for exercising his quasijudicial power to the best of his ability can never be in public interest. He has argued that wrongly withholding assessee's money is not in the public interest and amounts to harassment of the innocent people and results in unnecessary litigation.

5. We have heard learned counsel for the applicant and perused the record. None appeared at the final hearing for the respondents. Learned counsel for the applicant relied upon the case law State of U.P. vs. Chandra Mohan Nigam, AIR 1977 SC 2411, Brij Mohan Singh Chopra Vs. State of Punjab, AIR 1987 SC 948, Ram Ekbal Sharma Vs. State of Bihar & Anr. AIR 1990 SC 1368(1990(1)SLJ)98), H.C. Gargi Vs. State of Haryana, AIR 1987 SC 65, Girdharsinh Ramsinh Parmar Vs. DIG of Police, 1988(2) GLR 1095 and Kantilal G. Shah Vs. State of Gujarat, 1984 GLH 386.

6. In Chandra Mohan Nigam case (supra), the Supreme Court held that an order of compulsory retirement simplicitor under Rule 16(3) of All India Services (Death-cum-Retirement Benefit) Rules 1958 does not effect any right of the Government servant and that such an order cannot be equated with a penal order of removal or dismissal. But such an order can be challenged in the Court of law if it is arbitrary or is actuated by malafides and when so challenged it will be necessary for the Government to produce all the necessary materials to rebutt such pleas

to satisfy the Court. In Chopra's case (supra) it has been held that adverse entries of period before promotion cannot be taken into consideration while forming opinion to retire a Government servant prematurely as such entries lose their significance after promotion of employee. It is also held in this case that Punjab Civil Services (Premature Retirement) Rules, 1975, rule 3 vests absolute power to retire in public interest and in the absence of guidelines in the rule, the Government is competent to issue guidelines which will be binding in character. It was also held that adverse remarks not communicated or against which representation is pending cannot be considered. In Ram Ekbal Sharma's case (supra), case of compulsory retirement under Bihar Service Code, 1979, Rule 74(b)(ii), order of compulsory retirement was found to have been passed on the basis of memorandum and report charging the appellant with grave financial irregularities and misconduct. No hearing or opportunity to defend was given to the appellant. The Supreme Court held that the order though couched in innocuous terms has not been made bonafide and is made by way of punishment for misconduct and is illegal as violative of principles of natural justice and of Article 311. The Supreme Court held that in appropriate cases the Court can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bonafide and not with any oblique or extraneous purposes and that mere form of the order in such cases cannot deter the Court

from delving into the basis of the order if challenged. The Gargi case (supra) is also of compulsory retirement in public interest under provisions of Punjab Civil Services Rules where the adverse entries relied upon were pertaining only to performance of employee and not to his integrity. Opinion of State Government that it was in public interest to compulsorily retire employee was held as cannot be said to be based on any material and the order therefore struck down as arbitrary. In Parmar case (supra), Bombay Civil Services Rules, Rule 161(1)(AA)(I)(i) providing for premature retirement was used to order compulsory retirement. The High Court of Gujarat held that the guidelines contained in various circulars have to be strictly adheared to and as the order violated various circulars issued by the State Government, it was set aside. In Kantilal Shah's case (supra), it has been held that adverse remarks not communicated within a reasonable time or representation not disposed of cannot form the basis of compulsory retirement.

7. That State can retire a person prematurely in public interest as an absolute right is no more res integra as seen from the case law above. But the guidelines issued for the exercise of the absolute right have to be followed being binding. It is also settled law that the order of compulsory retirement can be challenged in a court of law.

8. Considering the grounds of challenge to the order, we first take up the question of time of undertaking the review. The rival contention on the one side is that such a review can be undertaken at any time after 50 and on the other that it can only be undertaken six months before attaining the age of 50 by the employee. Implied in the latter contention is the corollary of the contention that if undertaken late, the same will be illegal. Let us first see the statutory rules. The applicant was 53 years and 11 months old when he received the impugned order. F.R.56(j) reads as follows:

> "(j) 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 allowance 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, or in a Group 'C' post or service in a substantive capacity, but officiating in a Group 'A' or Group 'B' post or service 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 55 years :
>
> Provided that nothing in this clause shall apply to a Government servant referred to in Clause (e) who entered Government service on of before 23-7-66;

Provided further that a Government servant who is a Group 'C' post or service in a substantive capacity, but is holding a Group 'A' or Group 'B' post or service in an officiating capacity shall, in case it is decided to retire him from the Group 'A' or Group 'B' post or service in the public interest, be allowed on his request in writing to continue in service in the Group 'C' post or service which he holds in a substantive capacity."

The applicant is a Group 'B' employee. According to the above Rule (j)(i) he can be retired after he has attained the age of 50 years. The applicant was retired when 53 years and 11 months old. The respondent's contention is that it was for the first time that the applicant's case was taken up for review which therefore and because it was undertaken after he attained the age of 50 years, the review stands undertaken in accordance with the provisions of the F.R. Now let us see the instructions on this point. The applicant has produced at Annexure A-3 a copy of "Instructions Regarding Premature Retirement of Central Govt. Servants". These instructions have been issued by the Ministry of Home Affairs Memorandum dated 5.1.1978. The subject of the Memorandum is "Strengthening of administration - Premature retirement of Central Government servants - Issue of consolidated instructions regarding". This copy produced by the applicant is not full copy of the memorandum as the rest of it upto the designation of the officer who issued it and endorsing copies of the memorandum to the concerned does not figure in it. Even annexures and schedules

mentioned in the part of the copy of the memorandum have not been produced. For example Annexure I and schedule in Part IV(1) which finds mention in it have not been produced. We need to take note of this feature of Annexure A-3 for the reason that a set of instructions is required to be examined and considered in its entirely with regard to all that may figure in them for a proper decision on a point at issue instead of considering only what figures in the part of the instructions produced as the same may result in miscarriage of justice either way in a challenge of the nature of adversary proceeding.

9. The part of the instructions of which copy has been produced contains Caption II Criteria, Procedure and Guidelines on its last page the whole of which from the caption to the end of the page is reproduced below:

> "II. Criteria, Procedure and Guidelines
>
> In order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily, it has been decided to lay down the procedures and guidelines for reviewing the cases of Government employees covered under the various aforesaid rules as mentioned below:-
>
> (1) The cases of Government servant covered by F.R.56(j) or Rule 48 of the C.C.S. (Pension) Rules, 1972 or C.S.R. 459(h) should be reviewed six months before they attain the age of 50/55 years or complete 30 years service /40 years of qualifying service, whichever occurs earlier. (See Schedule in Part IV(1)).
>
> (2) Committees shall be constituted in each Ministry/Department/Office, as shown in

Annexure II, to which all such cases shall 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.

(3) The criteria to be followed by the Committee in making their recommendations would be as follows:

(a) Government employees whose integrity is doubtful, will be retired.

(b) Government employees, who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be the fitness/ competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his present post, his fitness/competence to continue in the lower post from where he had been previously promoted, should be considered.

(c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the proceeding 5 years, or where he has been promoted to a higher post during that 5 years period his service in the highest post, has been found satisfactory.

(d) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on super-annuation within a period of one year from the date of consideration of his case.

(4) The appropriate authority shall take further action for the recommendations of the committee. In every case, where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule(s), the appropriate authority should

record in the file that it has formed its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule(s) in the public interest. In the case of Union of India versus Col.J.N. Sinha, the Supreme Court had observed that "the appropriate authority should bona fide form an opinion that it is in public interest to retire the officer in exercise of the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collateral grounds".

10. The full text of the Office Memorandum above has been printed in Swamy's Pension Compilation, Eleventh edition (corrected upto 1st October, 1987) as Appendix 10 which starts on page 337. Under the caption above II Criteria Procedure and Guidelines of the above memorandum of instructions figures instruction (7) on page 340 of the compilation above which reads as below:

"(7) Once a decision has been taken by the appropriate authority to retain a Government employee beyond the age of 50 years in the case of employees referred to in F.R.56(j)(i) or beyond the age of 55 years in the case of others or beyond the date of completion of 30 years service under F.R. 56(1) or 30 years of qualifying service for pension under Rule 48 of the C.C.S.(Pension) Rules, he would ordinarily continue in service till he attains the age of retirement. If, however, the appropriate authority considers at any time after a review aforesaid that the retention of the Government employee will not be in the public interest, that authority may take necessary action to retire the officer by following the procedure laid down in this O.M."

The above instructions thus provide for a review even after reviews at the age 50 or 55 of a government servant provided the appropriate authority, after such reviews, considers that the retention of the Government servant will not be in public interest. The appropriate authority then has to take necessary action to retire an officer by following the procedure laid down in the office memorandum above, namely a fresh review in the same terms as is required to be undertaken at the ages 50 and 55 and consequential steps accordingly. On this question of second review, the Supreme Court judgment in Chandra Mohan case (supra) reads as follows :

> "29. The correct position that emerges from Rule 16(3) read with the procedural instructions is that the Central Government, after consultation with the State Government, may prematurely retire a civil servant with three months' previous notice prior to his attaining 50 years or 55 years, as the case may be. The only exception is of th se cases which had to be examined for the first time after amendment of the rule substituting 50 years for 55 where even officers, who had crossed the age of 50 years, even before reaching 55, could be for the first time reviewed. Once a review has 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 upto the next barrier at 55 and, if he is again cleared at that point, he is free and untrammelled upto 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 reason."

In the same judgment, part of para 35 of the judgment abhors fresh reviews at regular intervals after reviews relevant to attaining ages 50 and 55 years have been undertaken. The part of the para 35 is reproduced below:

> "35..... The principle behind this instruction is that the sword of Damocles must not hang over the officer every six months after he attains the age of 50 years."

From the above in the Supreme Court judgment read together, all doubts about the legality of a second review stand completely cleared. Such review is both legal and permissable in the light of provision of (7) above and parts above of the judgment of the Supreme Court. Though the parts of the judgment above bring out the correct position in regard to rule 16(3) of All India Services (Death-cum-Retirement Benefit) Rules 1958 and procedural instructions in connection with that rule, the same constitute common ground with the Rule 56(J) of the Fundamental Rules and the procedural instructions above in regard to legality of reviews after reviews relevant to ages 50 and 55 of a Government servant.

11. With further review after review relevant to ages 50 and 55 of a government servant also legal and permissible if the appropriate authority considers that necessary after the reviews relevant at attaining these two ages as above seen, the applicant's contention that review relevant for his age of 50 years not undertaken but undertaken at his age of over 53 years would be illegal has

to be rejected as illogical and devoid of any legal and procedural support. The law and procedural instructions we above discussed do not directly or by implication give an irrevocable warrant of service to a Government servant after review relevant at his ages of 50 or 55 years has been undertaken and he found to be suitable to continue in service. An argument therefore of the nature that such a warrant should be presumed to have been given even though review relevant at the age of 50 or 55 years has not been undertaken, as seen from the respondents reply that it was not undertaken in the applicant's case for his age 50 years, has to be held to be preposterous. We therefore reject such contention of the applicant.

12. Contention of the respondents in their written reply is that the applicant caused serious revenue loss and therefore it was not in public interest to continue the applicant in service. We should here first understand in abstract whether causing serious revenue loss is against public interest. 'Public interest' has not been defined in the F.R.56. The instructions dated 5.1.78 (Ann. A-3) also do not define 'public interest'. In its literal meaning 'public interest' means act beneficial to general public. In the case Babu Ram Vs. State of UP(All) 1971 SLR 659, Hon'ble Justice K.N. Singh of Allahabad High Court, as he then was, speaking for the Bench, summarised the meaning and scope of 'public interest' as follows

> "17. What is the meaning and scope of "Public interests"? Public interest in common parlance means an act beneficial

(34)

to the general public. An action taken in public interest necessarily means an action taken for public purpose, public interest and public purpose are well-known terms, which have been used by the framers of our Constitution in Articles 18, 31 and 304(b). It is impossible to precisely define the expression 'public interest' or 'public purpose'. The requirements of public interest vary from case to case. In each case, all the facts and circumstances would require a close examination in order to determine whether the requirements of public interest or public purpose were satisfied. In Kalyani Stores v. State of Orissa, validly of a notification issued under Section 27 of the Bihar and Orissa Excise Act (2 of 1915) imposing a new rate of Rs.70/- per L.P Gallan as duty on liquor was challenged on the ground that it was violative of Article 304 of the Constitution. While discussing the reasonableness of the restriction and the requirement of public interest Shah,J., speaking for the Court, made the following observations:-

> "Reasonableness of the retriction would have to be adjudged in the light of the purpose for which the restriction is imposed, that is, "as may be required in the public interest". Without entering into an exhaustive categorization of what may be said that restrictions which may validly be imposed under Article 304(b) are those which seek to protect public health, safety, morals and property within the territory."

The requirement of public interest in the context of Government Service may well be the efficient working of the Government machinery. It cannot be questioned that the Public interest would well be served if there was efficiency in public administration and Government service, and, in order to effectuate that purpose, if the Government was bona fide satisfied that a particular Government servant should be compulsorily retired, that would be in the public interest."

In M/s. McDowell & Co.Ltd. v. Commercial Tax Officer, (AIR 1986 SC 648) Hon'ble Justice Chinnappa Reddy of the Supreme Court, as he then was, while entirely agreeing with the judgment proposed to be delivered by Hon'ble Justice Ranganath Misra, as he then was, added a few paragraphs to it. In these paragraphs, while discussing at length the evaluation of the judicial attitude and thinking towards tax avoidance, the learned judge observed that the latter now is not liable to be viewed with a smile as was the case in the begining but with a deep frown. While dealing with the manifold evil consequences of tax avoidance, he observed that when there is loss of revenue, public interest suffers because much needed public revenue in a welfare state is lost, because disturbance to economy of the country by the piling up of mountains of black money results which directly causes inflation and other hidden loss to the community. In the case before us, the Screening Committee took notice of material placed before the committee which showed that loss of revenue had been caused by the applicant. Irrespective of the cause of loss of revenue, public interest as above seen suffers by loss of revenue. Thus a tax officer whose actions cause unwarranted loss of revenue can be noticed to be acting against public interest. Thus the condition in the Rule 56(J) above, namely of public interest, has to be held as eminently and completely satisfied if a taxman who causes unwarranted substantial loss of revenue is compulsorily retired.

13. Analysing this aspect of unwarranted loss of revenue further, the same may be caused through negligence, mistake or corruption. The latter may be perceivable from noticeable slant in the manner of application of the laws and rules though windowdressed or even sought to be explained as their proper application in exercise of quasi-judicial authority. The applicant's contention that he should have been given opportunity to correct his orders or the Commissioner could also correct the same if the orders were, in the Department's approach, found to be incorrect, could perhaps have some force had the concerned orders been original orders issued by the applicant. The original orders were, as above seen from respondent's reply and minutes of the Screening Committee, issued by the applicant's predecessors in 25 cases and by the applicant himself in five cases. The applicant interfered with these orders in the exercise of his authority contravening the instruction of his Central Board. A mistake should have the essential characteristic of an original mistake for its author to claim to deserve consideration of opportunity to correct it. But it is different when what had already been done in accordance with Central Board's instruction in exercise of quasijudicial authority even by the applicant himself and his predecessors is interfered with by the applicant in the exercise of his quasijudicial authority simultaneously contravening the instructions. Opportunity to correct mistake in a sphere revenue of lakhs of rupees is at stake cannot be figured and as an exercise in digging

holes to fill them only to dig them again for every order gives the beneficiary of the order legal rights and opportunity to frustrate such cycle of official exercise, presuming there are reasons to take it as mistake. Attendant circumstances like 28 orders of relief being issued in one day have their inevitable shadow which serves to strengthen the fears of the authority. When quasijudicial orders which are right according to the instructions of the Department are upset in exercise of quasijudicial orders contrary to instructions of the Department, this situation provides reasonable grounds to the authority in a Department in which and the instances in which financial stakes both for the Department and the assessees are very high as in the case before us to discharge its supervisory duty of examining the situation and taking due steps as per rules and laws.

14. Regarding applicant's contentions against substantial loss of revenue as motivation to issue the impugned order of compulsory retirement, the central point of these contentions is whether, because the applicant passed quasijudicial orders, the department cannot draw any reasonable inferences and conclusions therefrom about the applicant's causing serious loss of revenue. The reply to this question must depend upon the nature of the functioning of the supervisory authority over the applicant. An idea about it is available in the record. The applicant has himself relied upon the contents of the Inspection Report of the

Commissioner of Income Tax, Rajkot, on his work for the period 1.4.1983 to 31.3.1984 (Annex.A-2). This report covers several items of applicant's duties including collection of taxes, disposal of audit objections, disposal of penalties and liquidation of pendency under Section 154 of the Income-tax Act. There is the observation in the report that the applicant should also try to liquidate pendency under section 155. Thus the applicant's superiors are seen to exercise supervisory jurisdiction by giving directions some of which may have their impact on revenue. Respondents have quoted Central Board's instruction No. 915 dated 30.1.76 which the applicant allegedly violated in giving D.T.A. relief. It is not the contention of the applicant that he is not bound to obey these instructions in his quasijudicial decisions. It will therefore be supervisory responsibility of higher supervisory ranks over the applicant to take note of state of efficiency of the applicant in quasi-judicial spheres of the applicant's functioning. The working of the applicant was taken under reveiw as provided in statutory rule above by screening committee of four senior officers of the department who came to the conclusion that the applicant in the manners above mentioned caused serious loss of revenue. While the quasijudicial decisions taken by the applicant may or may not be upheld in the High Court or in any other appeals, the materials in respondent's reply which is based on the minutes of the screening committee convinces us that the impugned order of compulsory

retirement was not an exercise in watchhunting. The administration could not be required to await the judicial outcome of the cases challenged in the High Court for that would, by the time such cases may take in their decision, defeat the purpose of the provisions of F.R.56(J). The material is neither skimpy nor unrelated to the formation of prescribed authority's view on the cause of serious loss of revenue. The applicant admits loss of revenue though has explanation and justification as above and his contentions tantamount to saying that the Department's exercise of administrative authority should have awaited the judicial outcome. We therefore do not accept such contentions of the applicant for reasons discussed.

15. The applicant, in his rejoinder, called upon the respondents to place before the Tribunal the record considered by the Screening Committee and its minutes. We have gone through the minutes. We notice from the minutes of the review committee held on 7.5.1986 that the same was held to examine the cases of Income-tax Officers Group B who completed 50 years of age or will be completing 50 years of age as on 30.6.1986, the applicant being one of them. In the case of the applicant, the committee decided in the first instance that the material available may be examined further before coming to a conclusion. Accordingly, the screening committee met again on 9.4.1987 and further examined the material pertaining to the applicant. The material of the period the applicant was working at Jamnagar weighed with the

committee. The committee went into considerable details to closely examine the cases of assessment and orders passed by the applicant while working as Income-tax officer, Ward(H), Jamnagar, and concluded that the applicant had committed fraud on revenue by violating the provisions of law to the extent of Rs. 17,74,616 with regard to occasional ships operating and a random inspection of his work during 84-85 in high income cases, the applicant uncritically accepted various claims of assessees causing serious loss of revenue. There are examples like grant of reduction in taxes by 50% for non-resident assessees operating occasional shippers or tramp steamers to India in clear violation of Central Board's instruction No. 915 dated 30.1.1976 which applied only to those who operated regular shipping lines to India. While the applicant had himself completed assessment in five such cases without granting D.T.A. relief even as his predecessors had completed twentyfive such assessments without granting D.T.A. relief, the applicant, however, rectified these assessments under section 154 of the Income-tax Act to grant D.T.A. relief in all these thirty cases. In twenty-eight cases orders of rectification were passed on 11.5.1984 involving in all 30 assessments and relief to the tune of Rs. 15,96,850/-. The Committee noted that section 154 of the Income Tax Act provides for rectification of mistake apparent from the record. But the mistake which could be determined by detailed process of reasoning or where there can be no mistake appearing from the record under the

provisions of law could not be taken as cases of mistake apparent from the record. In any case, the question is whether the assessees given relief were operating regular shipping line or only tramp steamers was a matter about which there can be two opinions and the matter could therefore not fall under the ambit of provision of Section 154 under which mistakes apparent from the record alone could be rectified. Eagerness to oblige the assessees was seen from grant of relief in 28 cases in single day and refund orders handed over to Indian agents of the shippers who were not even authorised by foreign operators to receive the same. In 27 cases only one agent was involved. The committee also considered the applicant's explanation dated 7.10.1986 in which the applicant raised the question of ambiguity as to whether shipping line was regular shipping line to constitute occasional or tramp shipping and according to the applicant regular shipping could be termed as occasional shipping or vise-versa. The committee felt that when the applicant himself admits of ambiguity, it becomes clear to him that the matter was not free from doubt and therefore in any case it was not covered by Section 154 which permitted rectification of only apparent mistake from the record. His explanation of past practice to grant relief was found totally wrong as 25 assessments which he had rectified were earlier completed by his predecessors in which no such relief was granted and he had himself completed five such assessments without granting such relief.

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16. The next question is whether the impugned order is peanl in nature. In Chandra Mohan Nigam's case (supra) as said above, it has been held that the order of compulsory retirement cannot be equated with penal order of removal or dismissal. In para 32 of this judgment has been observed that "Compulsory retirement under the service jurisprudence is not by way of punishment, as understood in service jurisprudence, however unsavoury it may be otherwise". The question nevertheless arises whether, as viewed for the applicant, the order is made by way of punishment for misconduct and is illegal and violative of principle of natural justice. In Ram Ekbal Sharma's case, supra, in the fact finding inquiry report it was held that grave financial irregularities were committed and instead of recommending disciplinary action against Sharma, compulsory retirement was recommended. The Supreme Court therefore found that the inquiry officer having held that items of charges are proved against Sharma and the State Government having decided that there is no question of going into the formality of Departmental Proceeding and therefore decided to retire Sharma compulsorily, it became clear that the order of compulsory retirement came to be issued as a measure of punishment. The facts in the case before us are distinguishable. A committee of senior officers while examining the case of the applicant and others for suitability for retention in service looked into the orders passed by the applicant. From this exercise, it came to the conclusion that the applicant had caused

serious loss to revenue and therefore recommended his retirement in public interest. No doubt the applicant had received memo dated 27.2.1986, (Annexure A-7) from the Inspecting Assistant Commissioner in which figures :

> "It has recently come to the notice that in some of shipping cases of non residents you had granted the DIT relief at the time of provisional assessment u/s 172(4) or by passing an order u/s 154 of the Act when you were assessing ITO in Ward-H. Jamnagar. The relief so granted is contrary to the Board's instruction No.915 dated 30.1.1976. In this connection, I would like to know the circumstances under which such relief had been granted. You may obtain list of such cases from the present ITO and submit your report to the undersigned within 10 days of receipt of this letter."

In the above, applicant was asked to obtain the list of the cases and furnish explanation. Then another memorandum produced at Annexure A-8, dated 22.5.86, from the Commissioner of Income-tax (Recovery) Gujarat, Ahmedabad, giving details of the above cases about which the Inspecting Assistant Commissioner had written to the applicant came to be sent. These explanations demanded were not asked after a conclusive fact finding inquiry and decision of the nature that instead of takingdisciplinary action the applicant should be compulsorily retired. Thus the facts of Ram Ekbal Sharma's case are distinguishable from the case before us. We are of the view that the screening committee was bonafide satisfied on material placed before the committee that the applicant should be compulsory retired

in public interest. This recommendation of the Committee was not made by way of a short cut on any factfinding report that the applicant was guilty and that instead of taking disciplinary action, he should be compulsorily retired.

17. The applicant has also above alleged that other Income-tax Officers who had given similar relief were dealt with either leniently or not at all. When the order of compulsory retirement is not an order of punishment, to satisfactorily raise defence on grounds of discriminatory treatment, the applicant will be required to show that the persons who allegedly gave similar relief also fell in the category of persons whose cases were due for review to assess their suitability for continuation in service and that though in their cases also loss of revenue of about the same magnitude as caused by the orders of the applicant was involved, the administration took a view different from taken in the case of the applicant. This has not been shown by the applicant. On the contrary, the respondents have denied the allegations of discrimination even as made by the applicant. Not only that, the respondents have shown the contrary, namely that the applicant had himself taken different decisions in five cases which he later not only revised but he also revised the decisions taken by the predecessor Income-tax Officers of his Ward in 25 cases. The allegation of discriminatory treatment thus has no substance.

18. Then the applicant has questioned the manner in which his representation against the order of

compulsory retirement was disposed of without any Speaking order and without showing that the officials who recommended his compulsory retirement were not the officials who decided his representation. With the order of compulsory retirement itself not being a speaking order as it is not required to be speaking having been issued as an administrative order in absolute right of the authority, the argument of representation against such an order to be decided by speaking order cannot hold water. Such representation does not acquire the character of an appeal application and hence the order deciding representation does not have to meet the character of an appellate order. An appeal application is to be decided by authority different and higher from the one which issued the final order of punishment under the relevant disciplinary rules. In the present case governed by the office memorandum dated 5.1.78, supra, the following procedure for deciding representation is laid down :

> "III.(2) On receipt of a representation, the Administrative Ministry/Department/Office should examine the same to see whether it contains any new facts or any new aspect of a fact already known but which was not taken into account at the time of issue of notice/ order of premature retirement. This examination should be completed within two weeks, from the date of receipt of the representation. After such examination, the case should be placed before the appropriate Committee for consideration. The composition of the Committee for the purpose of considering the representations against premature retirement shall be as indicated in Annexure II."

The respondents' reply avers that

> "the representations of the applicant were considered by a duly constituted Representation Committee. However, the Committee found no merits in the representations made by the applicant."

We are thus satisfied that the representation was not required to be decided in the manner asserted by the applicant and the impugned order of compulsory retirement of the applicant not bad in law because the representation was not decided in the manner asserted by the applicant.

19. It is seen from our above discussion that the applicant's challenge to the impugned order of compulsory retirement fails. The application is therefore liable to be dismissed. We hereby do so without any order as to costs.

(S.Santhana Krishnan)
Judicial Member

29.11.96
(M.M. Singh)
Administrative Member