(17)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No.738/87, 130/88 and 125/88

O.A.NO.738/87

Pisupati Ramasethu .. Applicant

Vs.

1. The Union of India,
through Central Board
of Direct Taxes,
North Block,
New Delhi-110 001.

2. The Chief Commissioner
of Income Tax (Admn.),
Bombay-400 020.

3. Mr. A.K.Ghatak,
Commission of Income Tax
at relevant time,
Central-III,
Bombay.

4. Mr. P.K.Gupta,
at present Commissioner
of Income Tax,
Bombay City-II,
Bombay. .. Respondents

This application is filed by the applicant under section 19 of the Administrative Tribunals Act for the relief to expunge the adverse remarks recorded in the Confidential Report of the applicant by the respondents No.3 and 4, for the years 1984-85 and 1985-86 and for certain other relief.

O.A.NO.130/88

Pisupati Ramasethu .. Applicant

Vs.

1. Union of India,
through the Ministry of Finance,
Department of Revenue,
New Delhi.

contd...

2. The Director General (INV),
South, Bombay,
Aayakar Bhavan,
Bombay 400 020.

3. Mr. P.K.Gupta,
Commissioner of Income Tax,
Bombay City-II,
Aayakar Bhavan,
Bombay 400 020. .. Respondents

O.A.No.130/88 is another application filed by the applicant to direct the respondents to expunge the Adverse remarks recorded in the Confidential Report by the Respondent No.4 for the year 1986-87 and some other relief.

O.A.NO.125/88

Pisupati Ramasethu .. Applicant

Vs.

1. Union of India, through
The Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. Under Secretary, to the
Govt. of India, Ministry of Finance,
Dept. of Revenue,
North Block,
New Delhi-110 001. .. Respondents

O.A.No.125/88 is an application under section 19 of the Administrative Tribunals Act to quash the order of compulsory retirement dated 4.2.1988 and to direct the respondents to reinstate and take the applicant back in service from 9.2.1988 with all consequential service benefits.

contd....

In all these three applications, the parties are one and the same. All these applications are inter-connected. As all the three applications are inter-connected, they are clubbed, heard together and are disposed of by a common judgment today.

The facts giving rise to these applications in brief may be stated as follows:-

The applicant in all these applications as already pointed out is one and the same person. The applicant was appointed in Income Tax Department as Income Tax Inspector in May 1959. He was promoted as Income Tax Officer Class-II in August 1964. He was promoted as Class-II, Junior Income Tax Officer in 1979. He was promoted as Senior Income Tax Officer in the year 1983. In the year 1984, the applicant was posted as Income Tax Officer (Headquarters) Central-II to work under the Commissioner of Income Tax, Central-II, Bombay. In June 1987, he was posted as Income Tax Officer, Special Audit with special pay of Rs.200/- per month. While the applicant was working as Income Tax Officer (Headquarters) under the Commissioner of Income Tax, Central-II, Bombay, he was served in the year 1984-85 with the following adverse remark:-

> "Routine type of officer with no particular flair for investigation or legal issue noticed. Able only to carry out routine work of office. No flair for work as ITO (HQ) noticed, memo issued warning him for absence and punctuality. Routine performance."

contd....

(20)

For the year 1985-86, the following adverse remark was served on the applicant:-

> "This officer has throughout displayed a very casual attitude to his work with no initiative, enthusiasm, drive or sense of devotion to duty. Inspite of repeated admonitions, he has observed neither regular hours nor punctuality in attendance. He devotes no personal attention even to most important jobs and cannot consequently be depended upon as he tends to be careless and has little sense of responsibilities."

As against the said adverse remarks that were communicated and that were recorded in the ACR of the applicant for the year 1984-85, 1985-86, the applicant made representation to the competent authority. The competent authority after considering the representation of the applicant, rejected the same. It is the case of the applicant that the said adverse remarks recorded by the Commissioner of Income Tax, Central-II, Bombay as against the applicant are purely one sided, lacks balance, sense of objectivity and is characterised by bias and so the said adverse remarks for the year 1984-85, 1985-86 which are recorded in the ACR of the applicant are liable to be quashed. So the applicant filed O.A.No.738 of 1987 for the relief aforesaid.

In the year 1986-87, the Commissioner of Income Tax, Bombay City-II had recorded the following adverse remarks as against the applicant:-

contd....

"Below the mark in all respects. He did not even observe office hours and was regularly un-punctual. He lacked dedication to work and duty, and against the applicant's general observations the following adverse remarks were made:-

> "Below the mark in all respects. He did not even observe office hours and was regularly unpunctual. He lacked dedication to work and duty."

The said adverse remark that were recorded in the ACR of the applicant for the year 1986-87 was duly communicated by the said Commissioner of Income Tax, Bombay City-II. So, the applicant on 20.7.1987 put in a representation to the competent authority to expunge the adverse remarks recorded in the applicant's ACR for the year 1986-87. The competent authority by its order dated 25.1.1989 rejected the representation of the applicant dated 20.7.1987. So, the applicant has filed O.A.No.130/88 to quash the adverse remarks of the year 1986-1987 that are recorded in his ACR by the said Commissioner of Income Tax, Central City-II and for other reliefs as already pointed out. The case of the applicant here also is, though he was given some memos in connection with late attendance and non-attendance in time to the office, the same did not warrant any adverse remarks and the whole approach in the recording of the adverse remarks in the ACR of the applicant was arbitrary and unreasonable and recording of the adverse remarks was bad in law being based on imaginary faults and deficiencies and so was required to be struck down.

contd....

The case of the respondents in O.A.No.738/87 and 130/88 is that the said adverse remarks in the ACR of the applicant for the year 1984-85, 1985-86 and 1986-87 had been recorded purely on the performance of the applicant and so no bias can be attached to the controlling authority when it recorded the said adverse remarks for the said years and that the applicant inspite of warnings and memos served on him never improved his performance during the said three years.

The applicant, as already pointed out, was compulsorily retired with effect from 9.2.1988. The compulsory retirement of the applicant had been made under FR 56(j) of the Fundamental Rules. According to the applicant, his compulsory retirement under Rule 56(J) of the Fundamental Rules is malafide and arbitrary. According to the respondents, the compulsory retirement of the applicant under FR 56(J) had been made on an objective appraisal of the service record of the applicant by the appropriate committee constituted under the procedure prescribed in this regard.

Validity and legality of the compulsory retirement of the applicant in O.A.No.125/88 will be dealt with after first deciding O.A.No.738/87 and O.A.No.130/88 which are filed as already pointed out to expunge the adverse remarks recorded in the ACR of the applicant for the years 1984-85, 1985-86 and 1986-87.

contd....

During the course of the hearing of these O.As., Mr. V.M.Pradan, the learned counsel for the respondents had taken us through all the relevant papers and files that had prompted the controlling authority to record the adverse remarks in the ACR of the applicant for the years 1984-85, 1985-86 and 1986-87. The said papers and files would disclose the draw backs and short comings of the applicant. The controlling authority had made all efforts to inform the applicant both verbally as well as in writing as to what were the short-comings of the applicant. The controlling authority had also given the applicant advice, guidance and assistance to correct the applicant's faults and deficiencies. But there was no improvement on the part of the applicant. As seen, the controlling officer had, however, come to the conclusion that though the applicant was assigned responsible work, a responsible officer of the rank of the applicant had been doing the work in a very casual manner without devotion to the same. Regarding the placing of the files before the higher authorities, the applicant had been doing this part of the work also in the most casual manner. The applicant does not appear to have applied his mind in the proper way in the matter of placing the files before the higher authorities. So, the controlling authority had taken into consideration the various memos that were served on the applicant that were to be taken note of. It is only after going through the various notings, the said confidential reports which were adverse to the applicant had been made.

contd....

(24)

The adverse remarks in the confidential reports of the applicant for the said years as seen is based on relevant material. As the adverse entries are recorded by the controlling authority on the performance of the applicant and as the same are in no manner arbitrary and as they are recorded on the basis of relevant material, we are unable to understand how we could interfere with regard to the said remarks against the applicant.

The record also discloses as regards the applicant's work that the applicant's approach as already pointed out was casual and that the applicant was also lacking enthusiasm and drive as was required by a person of the applicant holding an important post. As seen, the applicant had also been served with mamos in the disposal of matters pending before him. Admittedly the applicant was also a controlling authority of the subordinates. The material placed before us disclosed that the applicant used to come late to the office frequently and used to accuse the Railway service for his late coming to the office. The applicant though holding a responsible post had failed to set an example to his subordinates. So, it will be absurd to say that there is no material to write the said adverse remarks against the applicant. After going through the records, we do not see any arbitrariness either on the part of the controlling authority or the reviewing authority with regard to the recording of the said adverse remarks against the applicant.

contd....

No doubt it is contended by the applicant that there is no sufficient or adequate material for the controlling authority to record the said adverse remarks for the said years against the applicant. But we may point out that the Tribunal had to see whether there is any material at all and whether it is relevant. The sufficiency or adequacy of the material for making the said adverse remarks cannot be gone into by us. This is not a case where there is no material at all against the applicant for recording the said adverse remarks. Hence, the contention of the learned counsel for the applicant cannot be accepted.

We may also point out that it is not open for the Tribunal to sit as an appellate authority over the decision of the controlling authority and the reviewing authority with regard to the recording of the said adverse remarks. It is not open for the Tribunal to reapprise and assess the applicant's work and conduct for the periods in question and see whether the assessment made by the immediate competent authority and the reviewing authority was appropriate or not. We do not see any malafides on the part of the controlling authority regarding the recording of the said adverse remarks against the applicant. As already pointed out, we do not see any arbitrariness on the part of the competent authority in recording the said adverse remakrs. For the above reasons, the O.A.No.738/87 and O.A.No.138/88 are liable to be dismissed.

contd....

(26)

As already pointed out, the applicant was compulsorily retired with effect from 25.1.1988. The order retiring the applicant compulsorily is passed on 4.2.1988 which is exhibit 'A' of the paper book. The said order retiring the applicant compulsorily does not give any reasons. So, it is the contention of the learned counsel for the applicant that that the said order of compulsory retirement is bad and is also illegal as no reasons are assigned for the compulsory retirement of the applicant. In this context, it will be appropriate to note the decision of the Supreme Court rendered in "Baldevraj Chedda Vs. Union of India (1988(3) SLR 1), wherein it was laid down as follows:-

> "When an order is challenged and its validity depends upon being supported by public interest, the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which to a reasonable man, reasonably instructed in law is sufficient to sustain the grounds of public interest justifying the forced retirement of the public servant....."

From the said decision, it is clear that the order of compulsory retirement cannot be rendered illegal merely on the ground of absence of reasons. We are not shown any statutory or administrative provision that requires the competent authority to record reasons for compulsorily retiring a Government servant.

contd....

Hence in the absence of any statutory or administrative provision requiring the Competent Authority to record reasons for compulsorily retiring a Government Servant, the order compulsorily retiring a Government servant cannot become illegal or bad in law. Hence the contention of the learned counsel for the applicant cannot be accepted.

As this is a case of compulsory retirement, it will be appropriate to refer to the judgment rendered in Union of India Vs. JN Sinha & another (AIR 1971 SC 40), wherein it is held as follows :-

> ".....But, if on the other hand, a Statutory provision either specifically or by necessary implication excludes the application of any or all the Rules or principles of natural justice then the court cannot ignore the mandate of the legislature of the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.
>
> Now coming to the express words of Fundamental Rule 56(j) it says that the appropriate authority has the absolute right to retire a Government servant if it is of the

....

opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the Rule one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bonafide forms that opinion, the correctness of that opinion cannot be challenged before the Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of malafide. But that ground has failed. The High Court did not accept that plea. The same was pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the Ist respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. <u>Compulsory retirement involves no civil consequences.</u> The afore-mentioned Rule 56(j) is not intended for taking any penal action against the Government servants. That

....

rule merely embodies one of the facets of the 'pleasure' doctrine embodies in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the Rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent that the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authoritymay prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying that fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Funamental Rule 56(j) holds the balance ~~of~~ between the rights of the individual Government servant and the interest of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

...

The proposition [redacted] of law relating to compulsory retirement under FR 56(j) may be stated a s follows :-

(1)An order of compulsory retirement made in exercise of the power vested under Rule 56(J) of the Fundamental Rules is not a punishment and Article 311(2) of the Constitution is not attracted:

(2)The power under the Rule can be exercised at any time after the Government servant attains the age of 50 or completes 30 years of qualifying service and the contention that unless it is exercised at the time when either of the two events happens it can no more be exercised during the remaining tenure of service, is not tenable;

(3)In the case of compulsory retirement, misconduct or inefficiency provide the background while in cases of dismissal or removal such considerations constitute the foundation;

(4)Compulsory retirement does not involve civil consequences as it doesnot take away any accrued right or benefit arising out of past services;

(5)If there be no express words of stigma in [redacted] order of retirement it is not for the Court to go behind the order and look into the background and delve into official records to discover some kind of stigma;

(6)If the competent authority forms the opinion to retire a Government servant bonafide, it is not for the Court to examine the correctness of the conclusion because the power to direct

....

compulsory retirement is vested only in the appropriate authority;

(7) It is open to an aggrieved Government servant to challenge that order of his retirement under the Rule on the ground that the requisite opinion has not been formed or that the same is based on collateral considerations and that it is an arbitrary and capricious order. The burden to establish such grounds lies on the petitioner.

(8) In such a dispute, it is open to Government or the appropriate authority to place some materials before the Court to indicate that the impugned order of retirement was neither arbitrary nor founded on collateral considerations. Once some materials germane and relevant supporting the action are before the Court, it is not open to the Court to test the adequacy thereof or to exercise its jurisdiction-appellate in character to reach a different conclusion on the same materials; and

(9) The Court can, however, interfere in a case where the order is based upon no material or on materials upon which no reasonable person can come to the same conclusion as is impugned.

We have already held that O.As 738/87 and 130/88, filed by the applicant to expunge the adverse remarks for the year 1984-85, 1985-86 and 1986-87 are liable to be dismissed.

contd....

In view of the ACRs of the applicant for the year 1984-85, 1985-86 and 1986-87, we are of the view that the requisite opinion to retire the applicant compulsorily had been formed on application of mind and that the said retirement is not based on arbitrary or capricious grounds. Hence, the compulsory retirement of the applicant is certainly sustainable in law.

It is one of the contentions of the learned counsel appearing for the applicant that the adverse reports for the said years were prepared in violation of the instructions of the Government of India dated 20.5.1972 and hence the said ACRs are ab-initio void and hence the compulsory retirement based on the said ACRs is bad in law. As seen from the record, the applicant had been given opportunity to represent in regard to the adverse entries that were passed against him for the said three years. The applicant had been asked to show that the said adverse remarks were unjustified. The representations of the applicant were duly considered and rejected. Taking overall picture of the service record of the applicant and also ACRs for four years prior to his retirement, the applicant had been compulsorily retired. We do not find the assessment of the applicant made for the purpose of recording ACRs ~~making entries~~ in view of the facts of this case, is arbitrary so as to make this Tribunal intervene in regard to the ACRs of the applicant for the said three years. Hence, the compulsory retirement of the applicant being bad in law cannot be accepted.

contd....

As already pointed out, the adverse remarks as against the applicant are for the years 1984-85, 1985-86 and 1986-87. The confidential reports for the years, 1984-85, 1985-86 and 1986-87 are on record. So far columns 14, 15 and 16 of the said confidential reports are concerned, there are no adverse remarks for the said years 1984-85, 1985-86 and 1986-87. So, it is the contention of the learned counsel for the applicant that the adverse remarks for each of the said years read together with other remarks, the said ACRs for each of the years would be self-contradictory and so the said adverse remarks cannot be acted upon. As seen from the ACRs of the applicant for the years 1985-86 and 1986-87, it is noted against the column 17 that the "speed", "soundness", "control of staff", "Investigating capability", "capacity to handle the pressure of work" are below the mark in all respects. For the year 1986-87, against the column 17, it is further observed that he is below the mark and that he did not even observe the office hours and he lacks dedication to work and duty. The columns 14, 15 and 16 of the ACRs which are with regard to the technical abilities and relation of the applicant with superiors and subordinates and public, the remarks therein are not adverse for any of the years 1984-85, 1985-86 and 1986-87. The "General Observations" of the applicant as against column 19 as already pointed out for all the said three years, are adverse. We do not find any inconsistency in the remarks recorded as against the "other qualities"

contd....

of the applicant and as against "General observations". He might have been good in his technical abilities and in relations with superiors and subordinates and public and might have been poor for the said years in the work of the office. The said "adverse remarks" that are found in the ACRs of the applicant are supported with ample material and it is not open for us to reapprise and assess the applicant's work, which was in question, as already indicated by us. As we do not find any inconsistency and self-contradiction in the ACRs of the applicant for the years 1984-85, 1985-86 and 1986-87, the contention of the counsel for the applicant cannot be accepted.

The Annual Confidential Reports of the applicant for the year 1987-88 is without any adverse remark. As a matter of fact, as against "General Observations" for the year 1987-88 (column 19 of the ACR), it is recorded, "He has put up a very good performance during the relevant period. I rate his over-all performance as Very Good". There appears to be no adverse remarks for the year 1983-84 against the applicant in his CRs. So, the contention of the learned counsel for the applicant is that as there is no adverse entry in the ACR of the applicant for the year 1983-84 and as the entry for the year 1987-88 in the ACR of the applicant is "Good", the competent authority and also reviewing authority were not justified in acting on the ACRs of the applicant for the years

contd....

(35)

1984-85, 1985-86 and 1986-87. The "good" entry for the year 1987-88 and there being "no adverse remark" for the year 1983-84 are far outweighed by the "adverse remarks" during the relevant period in the applicant's service record for the years 1984-85, 1985-86 and 1986-87. We may also point out further that the ACRs containing the adverse remarks for the years 1984-85, 1985-86 and 1986-87, would not outweigh the conclusions passed on his performance for the said three years, and the "Good" remark for the year 1987-88. As a matter of fact, the screening committee had taken the decision to retire the applicant compulsorily after taking into consideration the three ACRs of the applicant for the years 1984-85, 1985-86 and 1986-87 and accepted by the reviewing authority also. It cannot be said that the ACRs of the applicant are without any basis and the ACRs containing the adverse remarks are not based on the proper material. However, before passing an order of compulsory retirement under FR 56(J), an overall picture of the applicant during long years of service that he puts in has to be considered. In the present case, the competent authority had considered the report of the screening committee as well as the review committee and the applicant was found even not average. The applicant had not come up to the expected standard in the year 1984-85, 1985-86 and 1986-87 inspite of the number of opportunities offered to him to improve himself.

contd....

In these circumstances we have to hold that the order of compulsory retirement cannot be said to be illegal, and that the impugned order does not suffer from arbitrariness, lack of application of mind or is based on extraneous considerations or vitiated by malafides. The adverse remarks against the applicant in the ACRs for the years 1984-85, 1985-86, 1986-87, do establish that the applicant was rated below average and was of no assistance in other words a "dead wood". During the relevant period, the applicant had been working under two officials i.e., Commissioner of Income Tax, Central (I) and Commissioner of Income Tax, Central (II) of Bombay. The ACRs of the applicant for the years 1984-85, 1985-86 and 1986-87 are written by the Commissioner of Income Tax, Central (II), Bombay. There is no material to show that while writing the said ACRs the Commissioner of Income Tax, Central (II) had consulted the Commissioner of Income Tax, Central (I). Hence, it is contended by the counsel for the applicant that the said ACRs written by the Commissioner of Income Tax, Central (II) without consulting the Commissioner of Income Tax, Central (I) are not proper and hence the same cannot be acted upon. It is the case of the respondents that the Commissioner of Income Tax Central (II), (Respondent No.4) had made adverse entries against the applicant in consonance with the view of the Commissioner of Income Tax, Central-I. No material is placed before us showing that the Income Tax Commissioner Central-I has ever assessed the work and performance of the applicant. The major and the important part of the work of the applicant was doing all these years was under

contd....

the Commissioner of Income Tax, Central-II. The applicant was mainly under the control of the Commissioner of Income Tax, Central (II). So, that being the position, it cannot be said that the entries of the ACRs of the said three years are in any way improper and especially as we do not see any malafides on the part of the Commissioner of Income Tax, Central (II).

It is contended by the learned counsel for the applicant that the said adverse remarks are general in nature and without any relation to the type of the work which the applicant was doing and so the adverse remarks are not sustainable. It can be seen from the various memos and warnings issued to the applicant for improving himself were in regard to the work, which the applicant was doing. Hence, the contention of the learned advocate that the said remarks against the applicant are of a general nature and without relation to the type of work which the applicant was doing cannot be accepted at all.

The screening committee had met on 25.1.1988 and rejected the representation of the applicant for expunging the adverse entries for the year 1986-87. As already pointed out, the applicant had been retired prematurely on 4.2.1988. So the contention of the Advocate appearing for the applicant is that the whole exercise of retiring the applicant in 10 days i.e., beginning on 25.1.1988 and ending on 4.2.1988 is arbitrary. We may straightaway say

contd....

that the Commissioner of Income Tax, Central (II) who was an officer superior to the applicant may not write adverse confidential reports against the sub-ordinate official without any basis. Because he had written adverse remarks against the applicant on the basis of the material coming to his notice during the course of discharging the normal duties, no bias can be attributed to him. The order of compulsory retirement has been passed on the basis of objective evaluation of the service record of the applicant by the screening committee consisting of different senior officers of the Income Tax Department and the final orders were passed with the approval of the competent authority. The ACRs were written by the then Commissioner of Income Tax, Central (II) (Mr.P.K.Gupta) and the adverse entries made therein were duly confirmed by the competent authority. The said Commissioner of Income Tax, Central (II), (Mr.P.K.Gupta) was neither a Member of the Screening Committee nor reviewing committee. It may also be mentioned herein that the service record of the applicant was duly considered first by the screening committee consisting of Central Excise Chief Commissioner of Income Tax, Director of Inspection (Vigilance) and the Chief Vigilance Officer of Income Tax Department. The recommendations of the screening committee were examined by the Reviewing Committee headed by a Secretary to the Government of India and none of the Members of the Review Committee was an officer of the Income Tax Department.

contd....

So far as the contention of the Advocate appearing for the applicant that the whole exercise of retiring the applicant had been done within 10 days, we may refer to Binapani's case and Trivedi's case of the Supreme Court, referred to by the Supreme Court in Sinha's case, where the Supreme Court had declared that it was open to the appointing authority to rely on uncommunicated ACRs to exercise power under Fundamental Rule 56(J). The reason being compulsory retirement on completion of 25 years of service or on attaining 50 years was no punishment and consequently involved no civil consequences so as to attract the principles of natural justice. The fact that the ACR of the applicant for the year 1986-87 had been considered by the screening committee and as well as by the other competent authority before he was compulsorily retired cannot be doubted. It makes no difference whether ACR for the year 1986-87 was considered on the same day when the decision was taken to compulsorily retire the applicant or on the dates prior to the date of compulsory retirement, as already pointed out, as it was open to the competent authority to rely on uncommunicated ACRs also to exercise power under FR 56(J). So, that being the position, it may not be proper to attribute arbitrariness or bias in the matter of retiring the applicant compulsorily.

Admittedly, the applicant was holding Group 'A' post at the time he was compulsorily retired. It is the

contd....

contention of the learned counsel appearing for the applicant that in view of the material that was before the competent authority, it would have been fair to revert the applicant to a lower post i.e., from the post of Group 'A' to the post of Group 'B' instead of compulsorily retiring the applicant from Group 'A' post. But, the 2nd proviso to FR 56(J) says that, when a Government servant is holding Group 'A' or Group 'B' post in an officiating capacity shall in case it is decided to retire from Group 'A' or Group 'B' post or service in public interest, the said Government servant shall be allowed on his request in writing to continue in service in the Group 'C' post or service which he held in substantive capacity. The applicant was not holding Group 'A' post in officiating capacity. So, that being the position, we are unable to understand how the applicant can advance the contention that he should have been reverted to Group 'B' post from Group 'A' post in case he was not found fit in Group 'A' post.

We see no merits in these three Original Applications. Hence, all these three O.As viz., O.A.Nos.738/87, 130/88 and 125/88 are liable to be dismissed and they are accordingly dismissed. The parties shall bear their own costs in all these original applications.