(26) (43)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No. 2/1986

Mr. Narayanrao Balvantrao Sonavane
an Ex-Officer on Special Duty,
Office of the Narcotic Commissioner,
Gwalior, at present residing at
9-A, High Peak Apartment, S.V. Road
Bandra (West), Bombay-400050 .. Applicant

Versus

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

Coram : Hon'ble Vice Chairman B.C.Gadgil
Hon'ble Member(A) P. Srinivasan

Appearance :

1. Shri K.K. Singhvi
2. Shri B.N. Singhvi, and
3. Shri I.B. Sonawane,
Advocates for the applicant
S/Shri
1. P.M. Pradhan,
2. Subodh Joshi, and
3. M.I. Sethna.
Advocates for the respondents

JUDGEMENT (PER P. SRINIVASAN, MEMBER(A)) Dt. 30-1-1987

In this application the applicant who was an Officer of the Indian Customs and Central Excise Service, Group'A', holding the rank of Collector of Central Excisce challenges order dated 9.10.1985 (Ex. A page 37 of the Paper Book) communicated to him by the Under Secretary, Ministry of Finance, Department of Revenue, by which he was retired from service with immediate effect in pursuance of Fundamental Rule 56(j). By the same order he was also paid a sum equivalent to the amount of his pay plus allowances for a period of three months in lieu of notice.

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2. The matter had to be heard in several stages. Soon after the application was filed, the applicant moved a miscellaneous application dated 10.3.1986 under Sec. 22(3)(b) of the Administrative Tribunals Act, 1985, seeking directions from this Tribunal to the Respondents Viz., the Union of India and the Secretary, Ministry of Finance, Department of Revenue to produce certain documents at the hearing of the case. The request for production of documents was ~~sought~~ said to be a sequel to the reply filed on behalf of the Respondents by Shri J. Datta, Chairman, Central Board of Excise and Customs to the main application. At our instance the applicant filed an affidavit dated 21.3.1986 justifying his request for discovery and production of documents to which Shri J. Datta filed an affidavit in reply dated 10.4.1986 objecting to the request and reserving the right of the respondents to claim privilege at an appropriate stage. Thereupon both the parties to the litigation were heard, on 17.4.1986; 25.4.1986 and 29.4.1986 both on the applicant's request for discovery and production of documents as well as on the merits of the main application. During this stage of the hearing Shri P.M. Pradhan, learned counsel for the respondents filed another affidavit dated 23.4.1986 sworn by Shri V.C. Pande, Secretary Department of Revenue, claiming privilege in respect of the same documents. The applicant resisted this claim of privilege as well as the earlier objection to the production of documents filed by Shri J. Datta; the rejoinder and the reply of the applicant in this regard form part of the record. By our interim order dated 16.6.1986 we overruled the objections of Shri Datta as well as the claim of privilege by Shri Pande and directed the Respondents to

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produce the documents specified in that order for perusal by this Tribunal though we also held that the said documents were not to be shown to the applicant. Prior to this, the matter had been fully argued on merits, but we thought it fit to give both sides another opportunity of being heard, if they had something more to say, on 30.6.1986, the date on which we also directed respondents to produce the documents referred to earlier.

3. The matter could not be taken up for hearing on 30.6.1986. Thereafter, the Tribunal could not take up matters for hearing at New Bombay as a result of a direction of the Bombay High Court, till the Supreme Court passed a clarification order permitting it to do so. Regular hearing of cases by the Tribunal in New Bombay could be resumed only from 4th September 1986. On that date the applicant made a written request that he should be allowed to cross examine Shri J. Datta, Chairman, Central Board of Excise and Customs with reference to the affidavit filed by the latter which, according to the applicant, was "full of inconsistencies and is mis-leading". Thereafter, the application came up for hearing before us on 27.10.1986 when Shri Pradhan learned counsel for the Respondents produced the documents as directed in our aforesaid order dated 16.6.86. At that time the applicant Shri Sonavane himself addressed us and pointed out ~~that~~ what according to him were the inconsistencies in the affidavit filed by Shri Datta and reiterated his request that Shri Datta be summoned for cross examination. We rejected the applicant's request in this regard, as in our opinion what the applicant sought to achieve by summoning Shri Dutta was to show that certain statements made by Shri Dutta and certain views expressed by him in his affidavit in regard to matters relating to compulsory retirement

under FR 56(j) and the procedural circulars issued thereunder were not correct. It was not, in our view, necessary to summon Shri Dutta for this purpose, ~~so far as~~ As far as factual inaccuracies, if any, the applicant was at liberty to draw our attention to them during the hearing of the case, and so far as the views of Shri Dutta on FR 56(j) and connected matters were concerned we were not bound to accept them as necessarily correct views and we would ~~hear~~ have the benefit of arguments addressed at the bar before expressing our conclusions thereon.

4. When the hearing concluded on 27.10.1986 we reserved judgment to be delivered on 29.10.1986. Meanwhile, when going through the documents furnished by the Respondents we noticed that the constitution of the Review Committee which had recommended the case of the applicant for retirement under Rule FR 56(j) was not the same as the one set out in Department of Personnel and Administrative Reforms Office Memorandum dated 5.1.1978. We also felt that it was necessary, in view of the importance of the issue involved in this application, that we should hear counsel for both sides about the appropriate procedure to be adopted when processing a proposal for retiring a senior officer like the applicant under FR 56(j). It was also, in our opinion necessary, to determine as to which of the instructions and guidelines issued by the Department of Personnel and Administrative Reforms in the matter of premature retirement of Central Government servants under FR 56(j) in their Office Memoranda dated 5.1.1978 and 7.8.1985 were mandatory and which of them were merely directory in nature, because both sides relied on these Office Memoranda to justify their respective stands. In order to hear the views of counsel on these matters and to

ascertain where necessary whether the mandatory instructions, if any, in the said Office Memoranda had been carried out in this case we again fixed the matter for hearing on 5.1.1987. On that date both Shri K.K.Singhvi Counsel for the applicant and Shri P.M. Pradhan, counsel for respondents agreed that the instructions in the Office Memorandum dated 5.1.1978 about the constitution of the Review Committee which had to make recommendations to the appropriate authority for retiring a Government servant under FR 56(j) were mandatory. Shri Pradhan, ~~however~~, clarified that the Review Committee in respect of an officer of the rank of Joint Secretary like the applicant was to consist of the members of the Senior Selection Board as constituted from time to time. When it was pointed out to him that the proceedings of the Review Committee produced before us showed that the members thereof were different from those of the Senior Selection Board, Shri Pradhan further clarified that the applicant's case had subsequently gone to the Senior Selection Board also and thereafter to the Appointments Committee of the Cabinet which is empowered to take all decisions relating to appointments and termination of services of officers of the Government of India holding the rank of Joint Secretary and above. In order to satisfy ourselves ~~that~~ of the factual position in this regard and that the appropriate authority had on the basis of the recommendations placed before it formed the opinion that it was in the public interest to retire the applicant under Rule FR 56(j), we requested Shri Pradhan to produce the original documents on the subject. The case had to be adjourned again to 27.1.1987 for this purpose. On the last mentioned date the relevant

records were handed over to us by Shri Pradhan for our perusal. Shri K.K. Sanghvi for the applicant took the opportunity to address us in some detail about the essential requirements which according to him should have been fulfilled before the applicant could have been validly retired under FR 56(j) particularly the recording of opinion by the appropriate authority under that Rule. We had also the benefit of the views of Shri P.M. Pradhan for the respondents on this subject.

4. We may now proceed to set out the facts giving rise to this application.

5. The applicant was appointed as an Assistant Collector of Customs and Central Excise in 1958 in the Indian Customs and Central Excise Service Class-I as a result of a competitive examination held by the Union Public Service Commission in 1957. He belongs to one of the Scheduled Castes as recognised by the Government of India. He worked in various capacities in the Customs and Central Excise Department, earning promotions from time to time. He was posted as Collector, Customs and Central Excise Baroda in June 1983 and was later transferred to Gwalior in the same rank as Narcotics Commissioner by an order dated 24.6.1985. By another order dated 27.6.1985 his posting as Narcotics Commissioner was cancelled and he was posted as Officer on Special Duty in the office of the Narcotics Commissioner, Gwalior. It was when the applicant was holding the post of OSD at Gwalior that he was served with the impugned order dated 9.10.1985 retiring him under FR 56(j). The applicant's date of birth was 16.7.1934 and he completed 50 years of age on 16.7.1984. It would be convenient at this stage to

extract below, Rule 56(j) of FR as much of the argument in this case was centered round the interpretation and application of this rule to the facts of the present case:

> ...(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 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, 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;
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> (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 23rd July 1966;
>
> Provided further that a Government servant who is in 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 public interest, be allowed on his request in writing to continue in service in Group 'C' post or service which he holds in a substantive capacity".

The case of the applicant against his premature retirement was put forth primarily by Shri K K Singhvi, Senior Advocate. In addition Shri B.N. Singhvi, Advocate and the applicant himself addressed us. Oral arguments were backed up by written submissions from time to time.

The arguments put forward may be broadly divided into those relating to the procedure adopted for retiring the applicant and those concerning the justification for action under Rulr FR 56(j). We will first advert to the objections based on what the applicant considers to be irregularities in procedure which vitiated the action taken against him. As will be seen from the extract of Rulr FR 56(j) reproduced above, Government have the absolute right to retire a Government servant if he is in Group A service like the applicant after he has attained the age of 50. In order to ensure that the power was not exercised in an arbitrary manner detailed instructions as to the procedure to be followed had been issued by the Government of India, Department of Personnel and Administrative Reforms in two Office Memoranda dated 15.1.1978 and 9.8.1985. Any departure from the procedure laid down in these Office Memoranda, particularly the time schedule for undertaking the review of cases of Government servants for the purpose of Rule 56(j) would, according to the applicant, render an order passed under that rule arbitrary and illegal. According to the Office Memorandum dated 5.1.1978 cases of Government servants falling in the category to which the applicant belongs had to be reviewed six months before they attained the age of 50. A specific time schedule had also been fixed in this regard to ensure that such reviews were undertaken regularly and in time. Employees who were due to retire between July and September of a calendar year were to be reviewed in the first quarter of the same year i.e., from

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January to March of that year. The applicant was due to attain the age of 50 on 16.7.1984 and therefore his case should have been reviewed in the quarter from January to March 1984. The argument is that this time schedule should be treated as mandatory so as to be followed in every case as a rule and if that be so the inference should be drawn that such a review was made in the applicant's case after which he was allowed to continue in service because no order of retirement under FR 56(j) was served on him till October 1985. Further according to the same Office Memorandum, once a decision is taken by the appropriate authority to retain a Government servant beyond the age of 50 he would ordinarily continue in service till he attained the age of retirement. Therefore, on the presumption that the applicant had been cleared for continuing in service beyond the age of 50 years as a result of review conducted between January to March 1984, he should not once again have been subjected to another review for the same purpose after the lapse of only one year in 1985 unless there were some special developments to justify it. If, on the other hand, no review was undertaken in the case of the applicant during January to March 1984 that would constitute a violation of the requirement of Office Memorandum dated 5.1.1978 and any review undertaken for the first time thereafter as well as any order passed as a result of such a review to retire the applicant would be illegal and arbitrary. According to the applicant, the time schedule for reviewing cases of Government servants for the purpose of Rule 56 (j) was fixed in the said Office

Memorandum to ensure uniformity and to avoid arbitrary action in individual cases. Otherwise, it was possible, according to Shri Singhvi, that, in a given case, the review is undertaken later to enable that the Government servant concerned to earn a good confidential report while the case of another Government servant is reviewed earlier to his disadvantage because of adverse reports standing against him at the time. It was contended that is why it was provided that in every case the review should be undertaken at the same time e.g., in the first quarter of the calendar year where the Government servant concerned is to retire in the third quarter of the same year. Similarly such reviews are to be made in the second, third and fourth quarters of the calendar year where the 50th birth day falls between 1st October to 1st December of the same year, 1st January to 31st March of the next calendar year or 1st April to 30th June of the next calendar year respectively, leaving no scope for discriminatory treatment as between individual officers. Another submission is that the purpose of fixing the retirement schedule was that immediately on crossing the age of 50 years the Government servant knows whether he is to continue in service thereafter or whether he has to retire from service. No review was normally to be undertaken after the attainment of the age of 50 so that the Democles sword of possible premature retirement does not keep hanging over Government servants till the age of superannuation, thereby effecting their efficient functioning. It was hotly contended on behalf of the applicant that Shri Datta, Chairman, Central Board of Excise and Customs had sought to mislead this Tribunal by making statements in his affidavit which suggested that the review for the purpose of rule 56(j) can be undertaken at any time after a Government servant attains the age of 50 and the impression

was also sought to be given that the applicant had been retired immediately on attaining the age of 50 years while he had actually crossed 51 when the impugned order retiring him was passed.

On the procedural aspects of the case itself Shri Singhvi elaborated further at the hearing on 27.1.1987. He drew our attention to the Allocation of Business Rules 1961 as amended upto 24.4.1986 brought out by the Cabinet Secretariat of the Government of India. According to these rules, all matters relating to the Central Board of Excise and Customs and to the Customs and Central Excise Departments were to be looked after by the Ministry of Finance and therefore the competent authority for the purpose of FR 56(j) in respect of an officer of the Customs and Central Excise department would be the Finance Minister. Alternatively the Minister in charge of Personnel, Public Grievance and Pensions may also be considered as the appropriate authority because under item A sub-item V of the rules relating to that Ministry the entry at S.No.37 reads (page 49) "all aspects of senior management (i.e., Joint Secretaries and above and other equivalents) including developments of personnel for it". Therefore, it was the Minister concerned who, as the appropriate authority, had to record his opinion in terms of FR 56(j) that it was in the public interest to retire the applicant. The role of the Review Committee is only advisory and even for that matter that of the Appointments Committee of the Cabinet. It was contended that an approval by the Finance Minister at an earlier stage of a proposal to

retire the applicant would not constitute compliance will the requirement of FR 56(j): he has to record his opinion after the recommendation of the Review Committee is made and also after the matter is considered and approved by the Appointments Committee of the Cabinet. If the ground on which the applicant was retired is alleged doubtful integrity, there was a prescribed procedure for dealing with cases of doubtful integrity which had been circulated in Office Memorandum dated 20.5.1972 of the Department of Personnel, It was submitted that unless this procedure was followed, doubtful integrity could not be made a ground of premature retirement in the applicants case. It was also urged that adverse remarks not communicated to the applicant cannot form the basis for passing the order under FR 56(j) in his case. In this connection Shri Singhvi distinguished the facts of this case from those of M.E. Reddy's case, AIR 1980, SC 563, where Rule 16(3) of the All India Services Rules came to be considered and not FR 56(j).

We may now summarise the arguments on behalf of the applicant to show that the entire action under FR 56(j) was not justified in his case. The action, it was contended was malafide, capricious and was an abuse of statutory power. There was no material on the basis of which the competent authority could form the opinion that it was in the public interest to retire him. So far as the charge of malafides is concerned, the applicant had no specific grievance against any of his superior officers, but he had reason to believe that persons against whom he had taken strict action in the execution of his duties as Collector of Central Excise and Customs had made complaints against him which probably led

to the action. In this connection we may notice copies of certain letters and representations containing instances of such complaints made against him from time to time : these form part of the paper book filed along with the application. A Member of Parliament Shri Kalpanath Roy had made a complaint against the applicant to the then Finance Minister by a letter dated 29.1.1980. In that letter Shri Kalpanath Roy had alleged :

1. That as Additional Collector of Customs Bombay the applicant had seized gold ornaments from two dealers in a raid without paying heed to their valid explanations and had harrased them. The applicant wanted to adjudicate the case himself but on the representation of the dealers, another Collector was appointed by the Board to do so, as a result of which all the seized articels were returned to the dealers after they had undergone considerable hardship.

2. In another case of a certain Hemant Vyas who had committed serious violation of the Customs Act and had been punished in adjudication with heavy penalty and was ordered to be arrested and prosecuted, the applicant had managed to ensure that no action was taken against him, and

3. In another case where two ladies caught smuggling diamonds were arrested and prosecution proceedings started against them, the applicant managed to drop the prosecution proceedings after the father of these ladies approached him. Shri Kalpanath Roy had requested the Finance Minister to order enquiry by the Central Bureau of Investigation, alleging that the then Members of the Board, particularly one of them, were friendly with the applicant and would not take any action against him. Subsequently Shri Kalpanath Roy had retracted on his complaint: in a letter dated 21.7.1980 addressed to the then Finance Minister he had clarified that the information

earlier given by him was derived by him at a meeting with some people in Bombay but that on re-verification he understood ~~it~~ that was not correct. "Hence", Shri Kalpanath Roy wrote, "I withdraw my letter of January, 29th 1980 and no action need be taken on that". Such wrong information about him, the applicant suspects, may have been sent to the higher authorities who had acted on such information without giving him an opportunity of clearing himself. Another instance when he was wrongly held to be at fault was in connection with a raid on textile processors of Surat organised by the Director of Anti Evasion, New Delhi in May 1985. He had himself initiated some action on newspaper reports of alleged evasion of Central Excise by these persons eventhough the allegations according to him were far fetched. He was at that time Collector, Central Excise at Baroda. When this action was in progress he went on a short leave of 16 days in May, 1985 and during that time the Director of Anit Evasion raided about 40 shops and a few processing houses in the Textile Market at Surat which created a big commotion, the staff of the Central Excise Department being beaten up in the process. He was blamed for the failure of this raid eventhough he came on the scene after all that had taken place when he rejoined duty. He completed the raids which had been interrupted by the commotion. He rushed to Delhi immediately and explained that he was not at fault and that hiw own staff were not involved in the raid but the authorities seemed annoyed with him and threatened action against him. The applicant had reason to believe that certain other events also led to the action under FR 56(j) against him.

As Collector of Central Excise he had been asked by the Board to complete adjudication in a case involving evasion of Central Excise to the extent of several crores by Sarabai Chemicals Pvt. Ltd. within an unreasonably short time and on his failure to do so another officer had been sent post-haste to complete the adjudication. His explanation had been called for his visit to Delhi in this connection which was alleged to be unauthorised. In another case he had expressed frank views on evasion of Central Excise running into crores of rupees by a concern manufacturing rock wool in Daman and he felt that this ~~had~~ may have also led to the action against him.

Only a short time before the order retiring the applicant was passed, ie., on 20.9.1985 the daily press reported that the Central Government was setting up internal screening committees to weed out corrupt officials, those of doubtful integrity or consistently poor performance and these officials would be proceeded against under FR 56(j). The news report also mentioned that the personal records of the officers and documents dealing with allegations or doubts about their integrity would be taken into account. Another news item which appeared on 2.10.1985 announced a list of officers who were being compulsorily retired before the following April as a part of the drive to clense the administration of officers of doubtful integrity: the names of 7 Commissioners of Income-Tax figured in that report and the applicant came to know that these officers had been posted as Officers on Special Duty like him. He had reason to believe that like those officers, in his case also the same policy was followed namely appointing an officer first as Officer on Special Duty and then retiring

him under FR 56(j). After he was retired there was a news report on 13.10.1986 entitled "vigorous drive to weed out the corrupt officials" which stated that under a selective weeding process corrupt and inefficient officials in the Income-tax and Central Excise Departments were being prematurely retired including several top Customs and Excise Officials. The report specifically mentioned the name of the applicant. According to the applicant, all this showed that some persons who had been adversely affected by his strict action in the course of performing his duties had carried tales to the higher authorities and they had acted against him on such information. It was urged that in view of this blare of publicity, the retirement of the applicant was in the nature of a punishment.

The next contention on behalf of the applicant is that there was no material on the basis of which an opinion could be formed that it was in the public interest to retire him. His record throughout had been excellent, his integrity never questioned, he had never been called upon to offer any explanation either official or personal, he had received letters of appreciation from his superiors, had earned promotions and ~~ceased~~ crossed efficiency bars on time and had even received awards on two occasions. The averments made by him in this regard had not been specifically contradicted in the reply filed by Shri Dutta. It was submitted that the respondents had declined to produce before this Tribunal for inspection by him any material they may have had with them to justify his premature retirement. On the other hand he had been responsible for detection of evasion of Central Excise and Customs of large amounts over the years and it was, therefore, against the public interest to retire him. Persons whom he had superseded in earlier promotions had been retained in service like Shri R K Audim,

Shri C.S. Ramakrishna and Shri A.K. Patnaik while he had been retired. This amounted to discrimination against him. Instead of producing all the material on the basis of which he had been retired before this Tribunal and allowing him to inspect the same, Shri Dutta had merely asserted that it was the absolute right of the Government to retire him and that the action had been taken after following the procedure laid down in the Office Memoranda dated 5.1.1978 and 7.8.1985. The position taken by the respondents was unreasonable suggesting that a mere assertion by them in this regard is sufficient and no Court could interfere with their decision thereafter. The Supreme Court had in A.I.R. 1977 S.C.2411 (Chandramohan Nigam's Case) held that where an order of compulsory retirement is challenged as arbitrary or malafide by making clear and specific allegations to that effect, it would be necessary for Government to produce all the necessary material to rebut such a plea by voluntarily producing such documents as would constitute a complete answer to the plea. The applicant felt that the order dated 16.6.1986 passed by us directing that the documents specified therein should not be shown to him was not correct and that this Tribunal should decide the matter without reference to those documents because he was not in a position to clarify what is stated in those documents nor even to say whether the information contained in those documents was at all relevant for deciding whether he was rightly retired under FR 56(j).

Shri Pradhan, learned Counsel, for the respondents strongly refuted the arguments advanced on behalf of the applicant. On the question of procedure, he contended that

though the Office Memoranda dt. 5.1.1978, and 7.8.1985 were issued to ensure that the power of retiring a Government servant under FR 56(j) is not exercised arbitrarily, every word of these memoranda should not be regarded as mandatory. The time schedule for reviewing cases of persons for the purpose of that rule was not a mandatory provision. The rule itself requires that the Government servant concerned be retired "after he has attained the age of 50 years". It does not stipulate that a government servant should be retired immediately on attaining the age of 50 years. The memorandum dt. 15.1.1978 speaks of a time schedule only to ensure that an undesirable government servant is retired at the earliest possible date i.e., when he attains the age of 50, in the interest of government itself. The Memorandum therefore should not be taken as taking away the right of Government to take such action after the government servant has attained the age of 50, say at 51 or 52. Merely by way of ensuring that review of persons falling within the scope of FR 56(j) is undertaken systematically, the various quarters for review with reference to the quarters in which government servants attain the age of 50 were fixed. No legal right could be founded on this time schedule to claim that a departure from this schedule would render the action under FR 56(j) illegal, particularly when there was no such indication in the Rule itself. 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 ~~the~~ a first review made earlier. Therefore, the impugned order cannot be challenged on the ground of a procedural lapse as contended by the applicant. So far as the approval of the apprcpriate authority is concerned, Shri Pradhan agreed that the Finance Minister is the appropriate authority in the present case and it was his opinion that it was in the public interest to retire the applicant which was material. However, it did not matter when this approval was given. The matter went to the Senior Selection Board after the Finance Minister had approved the action against the applicant. The Finance Minister was also a Member of the Appointments' Committee of the Cabinet. The other two ministers who were members of the said Appointments' Committee had approved of the proposal to retire the applicant and since the proposal was initiated after obtaining the approval of the Finance Minister it did not have to go back to him onceagain as a Member of the Apppintments Committee or as the appropriate authority for recording the requisite opinion under rule 56(j). In substance, the Finance Minister who was the appropriate authority had, by recording his approval of the recommendations from below to retire the applicant in accordance with FR 56(j), ~~had~~ clearly come to the requisite opinion namely that it was in the public interest to retire the applicant. Therefore, there was no legal infirmity in the action finally taken in respect of the applicant.

Coming to the justification for taking action under FR 56(j) in this case, Shri Pradhan vehemently argued that there was no element of mala fides, there was sufficient material for holding that it was in the public interest to retire the applicant and that the action was perfectly in order. Beyond vaguely alleging mala fides, the applicant had not made any specific allegation in this regard. According to the observations of the Supreme Court in Chandra Mohan Nigam's case A.I.R. 1977 SC 241 Government was required to produce documents in support of its action before the Court only if there were clear and specific allegations against individuals who participated in the decision making process to retire the applicant. The applicant has stated more than once that he had nothing against his superior officers or against individuals constituting the Screening Committee, Review Committee or the Appointments Committee of the Cabinet. He had only alluded to certain cases which he had dealt with as Collector of Customs and Central Excise in which according to him the affected parties may have made complaints. On the other hand by making a vague allegation of mala fides the applicant was merely trying to obtain inspection of secret documents and thus to indirectly bring the principle of natural justice into play. As held by the Supreme Court in J.N. Sinhas case A.I.R. 1971 SC 40 the principles of natural justice are clearly excluded from the perview of FR 56(j) and the applicant should not be allowed to circumvent this prohibition by throwing in a vague allegation of mala fides. The material placed before the various authorities for processing the case of the applicant under FR 56(j) were being shown to the Tribunal and it is for the Tribunal to decide after perusing them whether the discretion conferred on Government in FR 56(j)

had been properly used. The power to retire a Government servant after he has attained the age of 50 as in this case is only a facet of the doctrine of pleasure and the Supreme Court had held in several cases that there was no element of punishment involved therein. The fact that if the applicant had not been retired, he would have continued to earn full salary till the age of superannuation or that his pension would have been of a larger amount does not amount to any civil consequences being visited on him by his premature retirement under FR 56(j). It is true that FR 56(j) is intended to weed out dead wood i.e., persons whose integrity is in doubt or who were found ineffective in the performance of their duties, but that did not mean that Rule 56(j) invoved a punishment on the individuals concerned. The news item which appeared in newspapers were not official announcements by the Government. Even so all that these news items stated was that inefficient persons and persons of doubtful integrity were being weeded out under FR 56(j), a fact which was very well known and had been noticed in several judgments of the Supreme Court. The applicant, therefore, cannot complain on this ground that the action, in his case, was mala fide or that he had been punished by being prematurely retired.

We have given the most anxious thought to the contentions urged by Counsel on both sides. We may at this stage briefly review the law on the subject as evolved by the Supreme Court in a number of cases. In Union of India V/s. Col. J.N. Sinha, AIR 1971 SC 40, it was pointed out that Rule 56(j) embodies one of the facets of the "pleasure" doctrine enshrined in Article 310 of the Constitution. The Rule does not require that any opportunity be given to the Government servant to show

cause because he holds office at the pleasure of the President. The Rules of natural justice, the Supreme Court observed, "are not embodied rules nor can they be elevated to the position of fundamental rights". They "can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". Rule 56(j) being a rule framed in pursuance of Article 309 of the Constitution, was a statutory provision and since it excludes the application of the principles of natural justice, "the Court cannot ignore the mandate of the legislature". The right conferred on the appropriate authority under Rule 56(j) is absolute, exercisable subject to the condition that the authority concerned is of the opinion that it is in the public interest to do so. A party aggrived by an order under FR 56(j) can however contend that the requisite opinion had not been formed or that the decision is based on collateral grounds or that it is an arbitrary decision. Since the person who is retired under 56(j) gets all terminal benefits as if he had retired at the time in the normal course, it involves no civil consequences and does not amount to a penal action. The same view was reiterated in Chandramohan Nigam's case AIR 1977 SC 2411. In fact, the Court went a step in that case to say that "the order of compulsory retirement is passed in respect a Government servant who has ceased to have any right as such to continue in Government service under the rules governing his employment" (emphasis supplied). That compulsory retirement is neither a punishment nor a stigma is now settled law. It is also settled that the object of FR 56(j) is to weed out deadwood in order to maintain a high standard of efficiency and initiative in the public services. Having said so much, we may now notice the circumstances under which action

under FR 56(j) may be challenged. It can be challenged on the ground that the requisite opinion had not been formed by the appropriate authority that it ~~may~~ was in the public interest to retire the official concerned. It can be challenged on the ground that there was no material for coming to such an opinion or that the entire action was mala fide and was the result of personal animosity. Finally an order of compulsory retirement can be challenged on the ground that it is arbitrary or is based on irrelevant material.

Before dealing with the justification for the action under FR 56(j) in this case, we may first consider the objections based on the procedural lapses pointed out by the applicant. There can be no doubt that the detailed instructions and guidelines issued by the Government in the matter of processing cases under FR 56(j) have a very important place in the entire scheme. As pointed out in Chandramohan Nigam's case, AIR 1977, SC 2411, they "fill up the yawning gaps in the rules and are embedded in the conditions of service". They are binding on the Government and cannot be violated to the prejudice of the Government servant". Some of them may not be mandatory. Not that every syllable in the instructions is material. Some of them may be described as prefatory and clarificatory". In that case, the court held that one condition in the executive instructions was absolutely imperative, viz., that once a Review Committee had considered a case of an employee and had taken no decision to retire him, there was no warrant for a second review. That was ofcourse a case under Rule 16(3) of the All India Services (conditions of service - residuary matters) Rules 1960, but it seems to us that the same principles would apply to instructions and guidelines issued in respect of FR 56(j) as well. Now, is the

time schedule set out in the Memorandum dated 5.1.1978 mandatory? We think not. As pointed out by learned counsel for the respondents the rule itself contemplates retirement of an officer only "after he has attained the age of 55". The Memorandum of 5.1.78 is only an expression of the anxiety of the Government to weed out deadwood at the earliest possible ~~max~~ opportunity but that should not be taken as something which the rule itself requires. For otherwise, merely because a review has not been undertaken strictly in terms of the time schedule laid down in the Memorandum, officials whose cases should have been so reviewed would go scotfree, even if they otherwise deserved to be retired, thereby frustrating the very purpose of the Rule. We entirely agree that the dominant factor in FR 56(j) is the public interest and not the timing of the review. We therefore see no merit in the objection that in so far as the review in the case of the applicant was not undertaken between January and March 1984, the entire action became vitiated. So far as the approval of the appropriate authority is concerned, we are satisfied that if the appropriate authority approved the proposal at some stage of consideration of the matter after it had been initiated by a competent screening committee that would be sufficient. We would not like to be hyper technical and insist that the competent authority, the Finance Minister, in this case, should have recorded his approval only after the matter had passed through the stages of the Senior Selection Board and the Appointments Committee. What is required here is that the appropriate authority, the Finance Minister, should have considered the matter in the light of the Comprehensive brief prepared by the Screening Committee and recorded his approval of the action in terms of FR 56(j). That, we

have seen, has been done in this case and so the order cannot be flawed on that ground. What the memoranda of 5.1.1978 and 7.8.1985 require is that a Committee of Senior Officers who are familiar with the work of the applicant, sitting as a Screening Committee should express their views on the suitability of the Government servant concerned to continue in service after the age of 50, a Review Committee constituted in accordance with the memorandum of 5.1.1978 should, after considering the "comprehensive brief" of the Screening Committee, make its recommendations and finally the competent authority, with a full awareness of the facts of the case should approve the proposal under FR 56(j). All these procedural requirements have been substantially fulfilled in this case and we see no merit in the contention to the contrary urged on behalf of the applicant.

Incidentally the Office Memorandum dated 20.5.1972 referred to by Shri Sighvi is primarily concerned with the manner in which Confidential Reports have to be prepared. The portion particularly relied upon by Shri Singhvi explains how the column relating to integrity is to be filled up. From this no conclusion can be drawn that no entry in the Confidential Report which is not communicated should be taken into account for the purpose of action under section 56(j). The Supreme Court has also not said so categorically. In M.E. Reddy's case, AIR 1980 SC 563, it was held that it was not every adverse entry or remark that has to be communicated to the officer concerned and therefore taking into account such adverse remarks would not necessarily vitiate action under 56(j). In Brijbiharilal Agarwal's case 1981(1) SLJ 412 SC one of the factors which influenced the

final decision was that certain remarks made against the official concerned had not been communicated to him. It would therefore appear that whether it was right to take into account uncommunicated adverse remarks for the purpose of compulsory retirement would depend on the facts of each case. In this case the applicant has asserted that his Confidential Character Roll was very good, a contention which has not been specifically denied by the respondents. Therefore, we would go along with the applicant in assuming that there was nothing wrong with his Confidential character roll and in that view of the matter the point about uncommunicated adverse remarks therein becomes purely academic.

Having thus cleared the ground in regard to procedure we may now consider what we may call the merits of the case. The applicant has alleged that the action taken against him was mala fide. He says that certain persons who had been affected adversely by action taken by him in the course of his official duties may have carried complaints against him to the higher authorities. In order to understand the nature of his grievance in this regard, we have set out above, as an illustration, a complaint made by a Member of Parliament tothe Finance Minister which was later withdrawn. We have also recorded earlier the applicant's statement before us that he had no grievance against his erstwhile superiors. Even in regard to persons adversely affected by his official actions, he is unable to name anybody specifically who may have carried a complaint against him and the superior officer in the Government who might have been prejudiced against the applicant ~~has not been~~ as a result of such complaint. Thus the applicant has not been able to make specific

allegations of mala fide or illwill towards him against any named person. In these circumstances, we cannot be expected to launch on a fishing expedition to locate the person who may have borne illwill to him. The reason why such a specific allegation is required to be made is that the court can go into the allegation, call for an affidavit in reply by the person named in the allegation and arrive at the correct state of facts. This being impossible, we have necessarily to reject what at best is a vague allegation of mala fides against unknown persons.

The next contention of the applicant is that there was no material against him on which the competent authority could form an opinion that it was in the public interest to retire him. He has, in this connection, referred to his confidential charatter rolls. We may straightaway state that though confidential character rolls constitute an important element in judging the fitness of a person to be continued in service beyond the age of 50 under FR 56(j), they do not constitute the only material to be examined for this purpose. All other relevant material will have also to be considered. The applicant's complaint is that in order to counter his claim that there was no material to adjudge him as unfit for being continued in service, respondents should have produced their confidential records before this Tribunal and allowed him to inspect the same and offer his clarification which they had declined to do. We have in our interim order dated 16.6.1986 held that the confidential records produced by the respondents should not be shown to the applicant because that would go against the clear mandate of FR 56(j) not to give an opportunity of being heard to the official

concerned. Essentially FR 56(j) contemplates a unilateral action, without hearing the other side, thus excluding the principles of natural justice and this has been upheld by the Supreme Court in J.N. Sinha's case, AIR 1971 SC 40 as falling squarely within the doctrine of pleasure embodied in Article 310 so far as the Government servants are concerned. The applicant also contended that if the confidential records of the respondents on the basis of which he was retired were not shown to him, thus denying him an opportunity to explain his case, this Tribunal should not also look into the material for the purpose of deciding this application. We do not agree with this contention. Though FR 56(j) contemplates unilateral action, it is subject to judicial review. The Court before which an action under FR 56(j) is challenged has to be satisfied that the absolute discretion conferred on the appropriate authority under that rule has exercised ~~that~~ discretion fairly and judicially on relevant material placed before it. The legality of the action of the appropriate authority has to be examined by the court and for that purpose the court has to see the confidential records.

As stated earlier the minutes of the Screening Committee and the material which was submitted to the Senior Selection Board, the Appointments Committee and the Finance Minister who was the appropriate authority have been shown to us by the respondents. We have perused them very carefully and after doing so we are satisfied that the material considered was relevant for the purpose of FR 56(j) and that the appropriate authority formed an opinion that it was in the public interest to

retire the applicant. We do not agree that the newspaper reports converted the action under FR 56(j) in respect of the applicant into a punishment. First of all as pointed out by the counsel for the respondents they did not represent any official handout as such and were, therefore, not attributable to the authority who decided to retire the applicant. Secondly they only represented what several decisions of the Supreme Court have said, namely, that persons of doubtful integrity or who are ineffective in their work are to be removed as dead wood from Government service and action to remove such dead wood did not amount to punishment against the officials concerned. That as a result of amendment to the pension rules, the applicant would have got some additional benefits if he had retired in the normal way on attaining the age of superannuation does not mean that by being retired prematurely under FR 56(j) he had been visited with civil consequences. The comparison has to be made with another person who would have sought voluntay retirement at the same age at which the applicant was retired under FR 56(j). If that were made the applicant got all terminal benefits which the other person would have got and so it cannot be said that civil consequences were visited upon him.

The application, therefore, in our opinion, deserves to be dismissed. In the result the application is dismissed. Parties will bear their own costs.

(B.G. GADGIL)
VICE CHAIRMAN

30/1/87

(P. SRINIVASAN)
MEMBER (A)