

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 258/2001.

Date of decision :

Applicant.

G.A. Choudhary

Advocate for  
Applicant.

Shri M.S. Ramamurthy

Versus

Respondent(s)

Union of India & Ors.

Advocate for  
Respondent(s)

Shri R.R. Shetty for R-1.  
Shri P.K. Raje, Sr. Counsel  
with Shri V.S. Masurkar for  
Respondent Nos. 2 to 4).

CORAM :

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.  
Hon'ble Shri B.N. Bahadur, Member (A).

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

(3) Library.

(B.N. BAHADUR)  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.258/2001.

2003  
Wednesday this the 8th day of January 2002. B.N.B.  
(08-01-2003)

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,  
Hon'ble Shri B.N.Bahadur, Member (A).

D.A.Choudhari,  
91, Poornima,  
Sir Pochkhanwala Road,  
Worli,  
Mumbai - 400 025.  
(By Advocate Shri M.S.Ramamurthy)

...Applicant.

v.

1. Union of India through  
The Secretary,  
Ministry of Home Affairs,  
South Block,  
New Delhi - 110 001.

2. The State of Maharashtra through  
Addl. Chief Secretary (Home),  
Mantralaya,  
Mumbai - 400 032.

3. Hon'ble Shri Chhagan Bhujbal,  
Deputy Chief Minister &  
Minister for Home Department,  
Mantralaya,  
Mumbai - 400 032.

4. Shri M.R.Patil, I.A.S. (Retired),  
Former Addl. Chief Secretary (Home),  
305, Shalaka,  
Maharshi Karve Road,  
Mumbai - 400 032.  
(By Advocates Shri R.R.Shetty for R-1,  
Shri P.K.Rele, Sr. Counsel with  
Shri V.S.Masurkar for Respondent  
Nos.2 to 4).

...Respondents.

: O R D E R :

B.N.Bahadur, Member (A)

The applicant in this OA has come up to the Tribunal,  
challenging the impugned order dt. 16th October, 2000, through  
which order he has been retired from service, in public interest,

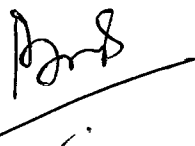
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having attained the age of 50 years. The applicant seeks, from this Tribunal, the relief of quashing and setting aside of the impugned order, and also seeks directions to the Respondents to reinstate him, with all consequential benefits.

2. The facts of the case, as brought forth by the applicant, are that he was recruited by MPSC as Dy. S.P., and was nominated to the Indian Police Service (IPS) in 1980, with 1975 as the year of allotment. The applicant describes his career and claims that he has had an outstanding service record throughout. It is alleged that the action of retiring him prematurely is the malafide action by way of a conspiracy between politicians and bureaucrats to weed out upright officers, who refuse to succumb to their dictates. The applicant also seeks to describe his activity at the helm of an organisation of Police Welfare Housing Project called Maharashtra Police Co-operative Housing Federation. He states that this Federation has created huge assets, and is, therefore, coveted by those politicians who want it to further their own advantage. The applicant goes on to describe what he titles as the backdrop of his long career of 30 years, his own achievements, and their recognitions by his seniors at the highest levels. The applicant then comes to the period of 1998, when he was transferred as Additional Commissioner of Thane Police and where he joined in February, 1998. He states that he had to take leave for a month in April, 1998 and in that period developed back ache which was diagnosed

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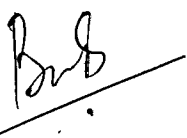


as lumbar spondylitis by the Police Surgeon. He was promoted Special I.G. by order dt.22.6.1998 and posted to Amravati Range. He joined there, but found the field duties strenuous, appeared before Police Hospital Amravati, Civil Surgeon Amravati and later was referred to Police Surgeon, Nagpada on 10.8.1998. He describes the medical examinations undertaken, and how he remained on medical leave for about a year in Mumbai till he joined duties in January, 2000. He was posted Special I.G. Nasik Range in March, 1998 and continued to request D.G.P., Dy. C.M. and C.M. to post him in Mumbai, but claims that his requests were turned down at the instance of Respondent No.3. Further details are described. In para 4.13 and beyond certain other details regarding incidents are described with a view to bringing out the role of the Respondent No.3, against him. The name of one Shri Peter Lobo is mentioned predominantly, and was referred to by applicant's counsel during arguments. The role of Respondent No.3 and the malafide alleged against him are then described, more specifically in paras 4.17 to 4.22.

3. Certain grounds are taken in para 5 of the OA and case-law cited. These, among others, were argued by the applicant's learned counsel, Shri M.S.Ramamurthy. It is with such grievances that the applicant is before us, seeking the reliefs as described above.

4. Written statements of reply have been filed by Respondent No.1 i.e. (Union of India), by Respondent No.2 i.e. State of Maharashtra and by Respondent No.3 Shri Chhagan Bhujbal, Dy. Chief Minister and Minister for Home, Government of Maharashtra.

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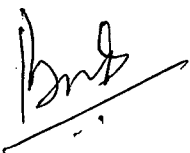


Respondent No.4, arrayed by name, (i.e. Shri M.R.Patil) has not filed any reply, although notices were issued to him.

5. Respondent No.1 states that a Review Committee meeting was held on 28.3.2000 by Respondent No.2 who recommended the case for premature retirement under Rule 16 (3) of AIS (DCRG) Rules, 1958 vide recommendation letter dt. 19.4.2000. Respondent No.1 considered the case and passed the impugned order dated 16.10.2000. There is no stigma or malafide attached on behalf of R-1, as the orders have been made only in public interest, and after due application of mind. In the further part of the statement, the position of relevant Rules is stated, and the averments made in Applicant's case are sought to be met. It is described how the applicant has made efforts for posting in Mumbai throughout, and how the Central Government has come to conclusions keeping in view the proposals of the State Government. A rejoinder is filed by applicant.

6. Respondent No.2 has filed a detailed statement of reply, resisting the claims of the applicant, and contending <sup>B.S.</sup> that the application is premature in view of a pending "Memorial". Parawise comments are offered on the averments in the OA, the salient points of which are as below. The Rule position is explained, and it is stated that a meeting of the Review Committee consisting of Chief Secretary, Govt. of Maharashtra, Additional Chief Secretary (Home), and Director General of Police was held on 28.8.2000, this Committee recommended the case of applicant for retirement in public interest. The proposal was routed for approval through Dy. C.M. (R-3) and was accepted by

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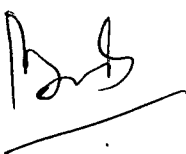
the Chief Minister and the proposal sent to the Govt. of India on 19.4.2000, GOI being the authority competent to take a final decision. All allegations of malafide, conspiracy and personal victimisation are denied and it is stated that the retirement of the applicant is an action recommended in public interest and "is not connected with the activities of the applicant relating to Police Housing Welfare Projects and hence, allegation in this behalf is denied".

7. It is stated that the applicant, who is a senior member of the IPS was holding a high post and was expected to work at any station where a posting was provided. It is alleged that the applicant has avoided to go to postings outside Bombay. His request has been placed before the C.M. of the State and was not turned down by Respondent No.3.

8. The remaining portion of the written statement discusses the position of law and rules, objectives of the Government of India Guidelines dt. 31.7.1987 to weed out dead-wood in order to maintain high standards of efficiency in service etc. It is denied that the Constitution of Review Committee was not proper or that the Director General of Police (DGP) was in the dark. It is stated that the D.G. was the Member of the Committee.

9. Respondent No.3 has filed a written statement of reply, first making the point that his name has been impleaded by applicant with malafide intention with a view to malign his reputation, and also to prejudice the Court. He denies the allegations made as baseless and frivolous. Coming to his reactions to the averments in the O.A., R-3 first outlines the facts and position of Rules

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and states that the entire record of the applicant has been considered by the Review Committee comprising Chief Secretary, Secretary (Home) and Director General of Police.

10. It is denied that, the action is malafide by way of a conspiracy between politicians and bureaucrats to weed out upright officers who refuse to succumb to their dictates. It is further stated that the applicant appeared to avoid working on his place of working when he was promoted on 22.6.1998 and posted to Amravati. It is contended that the applicant had been making applications for transfer back to Mumbai in the guise of his ailment, and that in any case, service matters of All India Services are placed before the Chief Minister for final discussions. Respondent No.3 denies that the request of the applicant for the transfer to Mumbai was turned down at his instance. Respondent No.3 states that the allegations are false and are denied. The point is highlighted in the letter dt. 13.4.2000 addressed to D.G. of Police is written after the decision of the Committee on 28.3.2000.

11. We have seen all papers in the case, including the Rejoinders/Sur-Rejoinders and have also seen the original files produced both by the Union Government and the State Government. We have heard Learned Counsel Shri M.S.Ramamurthy who appeared on behalf applicant, Shri R.R.Shetty, appeared on behalf of Respondent No.1 and Shri P.K.Rele who appeared along with Shri V.S.Masurkar for Respondent No.2 and 3.

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12. Learned Counsel Shri M.S.Ramamurthy argued the case at length and attempted to explain case on the following main grounds:

(1) There was no material available with either Union or State Government for retiring the applicant.

(2) No public interest is sought to be served by the retirement.

(3) That the order is malafide and engineered by Respondent No.3.

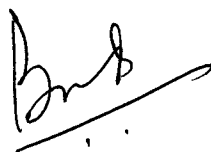
(4) The Review Committee which recommended the retirement was not properly constituted, in that the Director General of Police was not present. It was also argued that orders under this Rule can be made only at the time of Officer reaching 50 and not when the officer had reached the age of 53 or 54 years, as was the case here.

(5) The two essential ingredients for such retirement viz. officer outliving utility or being dead wood are non-existent as the applicant's performance is excellent throughout.

(6) The compulsory retirement is made on grounds of suspicion only; the Government could have proceeded under disciplinary rules.

13. Learned Counsel Shri Ramamurthy argued that applicant's record was 'outstanding' and that he could not, therefore, be considered as dead wood, or someone who had outlived his utility. He expounded on this argument by citing examples of the medal with which Officer was decorated, the certificate at page 44 of paper book etc. The point that no public interest being served was also argued at some length with reference to paras 4.3 to 4.8 of the OA which we have seen. Learned Counsel stated that Rule 16 (3) (supra) allows retirement only in public interest and sought to take support from the case-law in the matter of State of Gujarat Vs. Patel reported at 2001 SCC (L&S) 576. He urged

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the Bench to go through record and see if material was on record vis-a-vis public interest being served.

14. Learned Counsel went on in detail in regard to the stand taken by applicant that he was unwell (as described above) and that it was not that he was feigning illness. He then took us over the chronology from 22.06.1998 when applicant was promoted Special I.G., how he had applied for leave and how Government Hospitals/authorities have themselves certified his illness. The chronology was discussed with reference to records/averments in O.A. Learned Counsel stated that the reason cited about applicant feigning illness could not be a ground for such retirement and if Respondents felt that applicant was pretending to be sick, then proceedings under relevant Rules could be initiated, but the remedy for retirement under aforesaid Rule 16 (3) could not be legally available to Government. Learned Counsel for applicant, then took up the argument regarding the malafide alleged against Respondent No.3. Here, the Learned Counsel depended on the written averments made by the applicant in the OA and read them over to us. He first took us over the synopsis of events in para 4.13 onwards and read some of the speeches made by one Shri Peter Lobo, whose role has been detailed in the OA. Copies of the speeches annexed in the OA ~~(page :.)~~ were sought to be read out. The point was made that R-3 was instrumental in, and really at the back of, the decision taken to retire the applicant compulsorily, since applicant did not succumb to his pressures and demands as alleged, R-3 could impress the Officers in the Committee due to his official

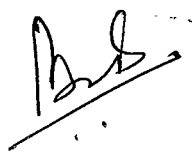
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position. Para 4 at page 424 was referred to, as also the points made by R-3 in written statement filed by him; support was taken from the Rejoinder of the applicant filed in reply to the statement of R-3 (Rejoinder at page 429 of paper book). The record of assembly proceedings it was also discussed to buttress the contentions taken by applicant.

15. The case was argued on behalf of Respondent Nos.2 and 3 by Learned Counsel Shri P.K. Rele (with Shri V.S.Masurkar). Shri Rele, inter alia sought to deal with the points made by Shri Ramamurthy. He first argued that enough material was available on record to justify the action/decision of Government. He took us through the synopsis to argue that after 10 years in Mumbai, the applicant was posted to Thane. In the letter of applicant dt. 12.8.1998 (page 28) no ground of illness was at all taken by the applicant. This point was strongly made by Shri Rele, pointing out that the grounds taken by him related to the necessity of applicant's presence in Mumbai due to the Projects under the Housing Federation. Shri Rele argued the point that all procedure necessary was followed viz. by a Review Committee considered the case, decision taken by the Competent Authority in the State Government and then by the Competent Authority in the Union Government. He contended that the transfer was not punitive, as alleged, and stressed the point that action for retirement at/after 50 could be taken against an Officer who became unavailable to Government for nearly two years. The Officer had lost his utility in view of his not being prepared to work at the place posted. Even if earlier record of the Officer

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was good, it was not as if the Officer could then make himself unavailable for two years, with impunity. The Review Committee did not say that the ground was one of feigning illness, and hence the stand could not be taken that a departmental enquiry was necessary; the action was not punitive in nature.

16. Referring to the letter at page 221 dt. 13.4.2000 addressed by applicant to DG Police, Mumbai, Maharashtra, Shri Rele contended that the Officer had, in fact, thanked the Government for his posting as Special IGP, Nasik Range on 22.3.2000. In the letter of that date he had also stated that the posting was very "prestigious", and had then gone on to talk about his illness, as also the Housing Project, requesting for retention at Mumbai.

17. Learned Counsel for the Respondents stated that if no material was available or if the action was not in public interest, the Review Committee would not have taken the decision. It was constituted with the Members as per Rules who were Senior Persons and thereafter, a decision was taken independently by two Governments. The case-law in the matter of Union of India Vs. M.E.Reddy (A.I.R. 1980 SC 563) (paras 9 and 11) was cited for support. On the ground of Officer losing utility etc. the case-law in State Government of Gujarat Vs. S.C.Shah (1993 SCC (L&S) 313) Paras 11 & 22) was cited for support. If an Officer has lost his utility, he argued, certainly public interest can be said to be served in not retaining him, and this would be a reasonable view, it was contended.

18. Learned Counsel Shri Rele produced the records of the

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State Government of Maharashtra and said that these may be gone through, in regard to Constitution of the Committee also. Shri S.C.Malhotra, Director General was present in the Committee meeting he stated. He also argued that as per provisions in the rule itself, the action could be taken any time after the age of 50 years.

19. Shri Rele then went on to defend the matter as regards mala fides alleged against R-3. He argued that no material had been made available to show that influence by R-3 was made on the Review Committee or any other authority. The Review Committee consisted of very senior officers and, well as two of them were directly under R-3, it could not be assumed, as alleged, that such senior officers would merely carry on instructions made by the Minister. He reiterated the point that decision was taken finally at the level of Chief Minister in the State Government and by the Appointments Committee of the Cabinet (ACC) in the Union Government. There was no way in which the Dy. Chief Minister could be assumed to be influencing ACC Members in the Union Government. The following case-law on mala fides was cited for support:

1) M/s.Bharat Iron Works Vs. Bhagubhai Balubhai Patel & Ors. (1976 (1) SCC 518) - Para 11.

2) State of Punjab Vs.V.K.Khanna & Ors.(2001 (2)SCC 330)

Para 25

Shri Rele argued that a case was being made out that Respondent No.3 had a omnipresent influence over the Officers in the Committee, over the authorities taking final decision in the

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State Government and over ACC Members in the Union Government and that this kind of argument could not have any force. In regard to the point about the speeches of Shri Lobo he stated that Shri Lobo was not made a party in the case, and that in the allegations made about demands by R-3, certain persons were vaguely cited as friends, relatives etc. But, no names were given. This was against the legal requirements in respect of allegations of mala fide. Stating that proceedings of Legislative Assembly/Council could be used as allowed by law, he argued that these would not be relevant in the present case, and that it would be more relevant to see the record of the State & Union Governments.

20. The case on behalf of Union of India Respondent No.1 was argued by their Learned Counsel, Shri Ravi R.Shetty, who at the outset, stated that he adopted Shri P.K.Rele's argument. He further went on to say that public interest was the foremost consideration of the Government. Whenever this officer was posted out, he stated that he was not available and insisted on a Mumbai, posting either on ground of illness or of necessity of his presence for the Housing Project. Shri Shetty stated that it was not correct to assume that R-3 would influence the Government in Delhi. He argued that it was for the person who alleges mala fide to prove it, and that the applicant had not been able to prove mala fide by way of influence on the Union Government which had taken its decision on merits and upon recommendations of the State Government. Shri Shetty also produced the record (file) of

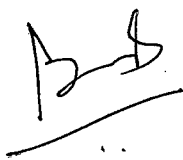
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the Union Government for our perusal and urged for the record to be gone through.

21. We have considered the arguments made before us by respective sides. We have seen the papers filed on behalf of the parties, and have also gone through the original records produced for our perusal by the Union and State Government. At the outset, let us take up the two short points made. The first is as to whether the Review Committee was correctly constituted by State Government, and the second as to whether the action for retirement cannot be taken except immediately after an officer attains the age of 50 years. We have seen the record regarding Constitution of Review Committee at State Government level and found that Shri S.C. Malhotra, Director General and Inspector General of Police, Maharashtra, was a Member of the Committee. We gave out this information to the Counsel in Open Court during arguments, and it was confirmed by applicant's Learned Counsel that at that time Shri S.C. Malhotra was indeed the Director General of Police. Hence allegations made by the applicant's Learned Counsel that the D.G.P was not a participant in the Committee are not borne out by the record. The second point is a legal point. Here we find that in Rule 16(3) of All India Services (Death-cumRetirement Benefits) Rules, 1958, it is stated inter alia that "the action could be taken on any date thereafter to be specified in the notice". We also have support on this aspect of the ratio in the matter of Government of Tamil Nadu Vs. P.A. Manikam (1996 SCC (L&S) 1029). It is decided that power can be exercised at any time after the employee has attained the

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prescribed age/completed prescribed length of service. Hence, there is nothing illegal in the action of the Respondents, just because the applicant was retired around the age of 53-54.

22. The other doubts that were sought to be made relate, broadly, to the availability or otherwise of material on record for retiring the applicant prematurely, the serving of public interest by such action and the ground of mala fide against Respondent No.3. Learned Counsel Shri M.S.Ramamurthy had also argued that what has really been held against the applicant is that he was feigning illness, with a view to securing a posting at a particular station viz. Mumbai.

23. From the chronology of the career of the applicant presented to us, it is seen that after joining the Force in 1970, he served in various Districts, was promoted DIG in 1992 and was posted in Mumbai from January, 1993. In February, 1998, he was posted as Additional C.P. Thane from where he states he proceeded on Medical Leave, as he was suffering from lumber spondylitis. He was promoted on 22.6.1998 as Special I.G. and posted to Amravati Range, where he joined on 25.6.1998, and where again, he states that his lumber spondylitis aggravated and he again proceeded on leave from 12.8.1998, taking treatment in Government/Police Hospitals. He then reported for duty after about 1 1/2 years having been declared fit, requesting for a Mumbai posting. Thereupon he was posted in March, 2000 as Special I.G., Nashik Range. He did not join at Nashik as, he contends, he needed treatment. Thereafter, the events are as described until 10.2.2001, when he was served with the impugned order.



24. The Applicant has stated that the period of absence, from 11.6.1998 to 1.1.2001, has been covered by medical certificates from Competent Authorities in Government Hospitals. The point was also made that in January, 2001 he had been assigned some important work by the DGP. What is, however, true is that the applicant was unavailable for work, to the Government, virtually continuously from the time that he was promoted as Special I.G. in June, 1998. In other words, it was after being posted out of Mumbai that he had been unavailable for work. His contention, of course, is that he was suffering from lumbar spondylitis, and that the period of his absence right upto January, 2001 is covered by medical certificates. We note the point that throughout by various applications the applicant had been insisting on a Mumbai posting, and he has been urging that he could have facilities only at Mumbai and he requested for a ~~not-to-taxing~~ <sup>B&B</sup> a posting. It is to be observed that it is not as if the applicant has been stating that he was totally unfit for work. It is also to be observed that throughout when he was making his applications he had kept up the refrain of the need for his presence in Mumbai for continuing what he calls the work of Housing for deserving people. It is not as though he is stating that he is totally unfit for work <sup>at B&B</sup> Mumbai or anywhere. The above factors cannot be ignored by us, in the face of the contentions made by Respondents Learned Counsel to the effect that if an Officer becomes unavailable for work or was making the point that he could work only on non-field postings at a

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particular station, then he had lost his utility to the Government for public service.

25. It is not disputed that it is not as if the record of the Officers performance prior to this period (1998) is adverse. It is admittedly good. We do, however, agree with the contentions of the Respondents counsel that if an Officer become unavailable for work to the Government, the fact of his earlier career record being 'good'/'very good' etc. cannot prevent Government from exercising its powers under the relevant provisions for retirement at/beyond the age of 50. This contention is well taken. The quality of efficiency/competence by an officer cannot make him immune to the infirmity of his not being available for work or justify his laying conditions that he could work at only a particular station. The argument taken on behalf of the applicant regarding the need for his presence at Mumbai, in view of what he calls the 'very good' work he was doing for the Housing Projects for the needy, cannot weigh with us. It is the accepted position in administrative law, that a Government Officer will do the work for which he is employed by the Government, and he is duty-bound and cannot force such extraneous issues upon the Government.

26. In view of the above position, we are not persuaded by the arguments raised by Learned Counsel Shri Ramamurthy that the relevant provisions {Rule (16(3))} cannot be used against the applicant as he could not be considered as "dead wood" because of his good record prior to 1998, or that the Respondents are only

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making the excuse of applicant's justifiable absence on medical grounds, to remove him from the service. The issues of public interest are also common to the above facts and circumstances. We do take note of para 11 of the Judgment in the matter of State of Gujarat Vs. S.C.Shah (1999 SCC (L&S) 313). We reproduce para 11 as below :

"What is "public interest" was explained in the classic decision of this Court in Union of India v. Col. J.N.Sinha. It was pointed out that the object of premature retirement of a government servant was to weed out the inefficient, corrupt, dishonest employees from the government service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead wood, are to be dispensed with. The Court observed: (SCC pp. 461-62, paras 9-11).

"Compulsory retirement involves no civil consequences. The aforementioned 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 embodied 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 than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may 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 the fact that in all organisations and more so in government organisations, there is a good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance 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.

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It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired but then as the Rules provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment.

In our opinion, the High Court erred in thinking that the compulsory retirement involves civil consequences."

27. We now come to the aspect regarding the allegations of malafide against Respondent No.3. We have seen the allegations as listed by the applicant in the relevant paras in the OA. These paragraphs indeed were mainly upon by the Applicant's Learned Counsel during arguments. We have also seen the replies made by R-3, and the Rejoinders etc. filed. The point that was taken by Shri Rele was that it is not that Respondent No.3 can be stated to have an omnipresent influence upon the officers of Review Committee, upon the Chief Minister, who took the final decision for reference to the Union Government, and even less upon the Members of the ACC of the Union Government. In the detailed papers annexed in OA, that we have gone through, we find that there is very heavy dependence on the utterances of one Shri Peter Lobo. Indeed the role and linkage of Shri Peter Lobo is alleged to be a serious one. But, there is merit in the contention of Respondents that if this was the position, then the said Shri Lobo should have been arrayed as a party respondent, and after arraying him and hearing him, only could conclusions have been drawn. The inaction of the applicant in arraying the said Shri Lobo as party respondent is a legal flaw, and in its

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absence and in the absence of an opportunity to Shri Peter Lobo, it will not be possible to draw conclusions, as alleged. On a similar legal plank, we find that the role of a 'friend' in the allegation regarding demands made by R-3 has been stated. Again, as per requirements of law, the name of this 'friend' has to be given by the applicant in his OA affidavit. This has not been done, which makes the allegation non-verifiable. These two infirmities make us difficult to draw conclusions on the allegations made by the applicant.

28. Since the burden of proving the allegations of mala fides is upon the person who makes them, it will be a logical consequence that it will have to be concluded that the allegations are not substantiated.

29. We have carefully taken note of the averments of the applicant and seen the record, specially with a view to see, as per settled laws, whether there is any arbitrariness or mala fide in the action of the Respondents. Also an analysis has been attempted to be made to see if correct procedure has been followed. We see from the record whether the decisions has been taken by the Competent Authorities. We also cannot go beyond a limit and sit in Judgment as if the matter has come up before the Appellate Authority. We are constrained by the settled law in this regard.

30. In view of the above position, we are not convinced that the applicant has made out a case for our interference with the impugned order. This OA, is therefore dismissed, with no orders as to costs.

*B.N. Bahadur*

(B.N. BAHADUR)  
MEMBER(A)

8/1/2003

*B. Dikshit*

(BIRENDRA DIKSHIT)  
VICE-CHAIRMAN