REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
****

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 18 DEC 1986

Application No. 132,435,500,735,761,877& 879/86. /86(F)

W.P. No _____

Applicant

SB Aswatha Narayana & ors. Vs. The Secretary, M/o Finance, (Dept. of Revenue), New Delhi & 2 ors.

To

1. Dr. MS Nagaraja,
(Advocate for Applicants)
No.35, (Above Hotel Swagath)
1st Main Road, Gandhinagar,
BANGALORE-9.

2. Shri MS Padmarajaiah,
Central Govt. Stng. Counsel,
High Court Bldgs.,
BANGALORE-1.

3. The Secretary, *
Ministry of Finance,
(Dept. of Revenue),
NEW DELHI.

4. The Central Board of Direct Taxes,
by its Chairman,@
NEW DELHI-2.

5. The Chief Commissioner(Admn) &
Commissiner of Income Tax, Karnataka-I **
BANGALORE.

Sublect: SENDING COPIES OF ORDER PASSED BY THE BENCH IN APPLICATION NO. As above.

Please find enclosed herewith the copy of the Order/~~Interim Order~~ passed by this Tribunal in the above said Application on 28-11-86.

Encl : as above.

SECTION OFFICER
(JUDICIAL)

*Respondent No.1 in A.Nos.435,735, 877 & 879/86.
@ Respondent No.2 in A.Nos.132,435,735,877,879/86
Respondent No.1 in A.Nos.500 & 761/86.
Balu* ** Respondent No.1 in A.Nos.132.
" No.2 in A.Nos.500 & 761/86
" No.3 in A.Nos.435,735,877,879/86.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH :BANGALORE

DATED THIS THE 28TH DAY OF NOVEMBER 1986.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr.~~Justice~~ L.H.A.Rego, .. Member(A)

APPLICATIONS NOS.132,435,500,735,761, 877 AND 879 OF 1986.

1. S.B.Aswatha Narayana,
Tax Recovery Officer (Retd.),
Aged about 53 years,
Son of SriS.Bheema Rao,
Opposite Govt.College,
Tumkur. .. Applicant in A.No.132/86.

2. K.Narasimhan,
Income Tax Officer (Retd),
Aged 53 years, No.32/2, II Floor,
11th Cros, 8th Main,
Malleswaram,Bangalore-3. .. Applicant in A.No.435/86.

3. T.Janardhana Raju,
Income Tax Officer (Retd.),
Aged about 55 years, no.28,
Income Tax Lay-out,
Kadugondanahalli,
Bangalore-45. .. Applicant in A.No.500/86.

4.C.Govindan,
Aged about 55 years,
Son of late Chottu Ram,
Income Tax Officer (Retd).
No.19/B, I MainRoad,
Jayamahal Extension,
Bangalore 560 046. .. Applicant in A.No.735/86.

5. S.Yoganarasimhan,
Aged 51 years, S/o late S.Yadavachar,
8th Income Tax Officer(Retd.),Circle-II,
No.130,4th Block, IV Stage, West of
Chord Road, Bangalore-79. .. Applicant in A.No.761/86.

6. M.V.Ramachandran,
Aged about 49 years,
S/o Sri Visweswara Dixit,
3806,13th Cross,B.S.K,
II Stage, Bangalore-70. .. Appolicant in A.No.877/86.

7. K.Satyanarayana,

7. K.Satyanarayana,
Aged 54 years,S/o K.Suryanarayan,
Income Tax Officer (Retd),
109, 'Mukthidham',20th Main,
B.S.K.,I Stage, II Block,
Bangalore-560 050. .. Applicant in A.No.879/86.

(By Dr.M.S.Nagaraja,Advocate)

v.

1. Government of India,
by its Secretary,
Ministry of Finance,
(Department of Revenue)
New Delhi. .. Respondent No.1 in A.Nos. 435. 735, 877 & 879/86.

2. The Central Board of Direct Taxes
by its Chairman,
New Delhi-110002. .. Respondent No.2 in A.Nos. 132,435, 735,877,879/86.
..Respondent No.1 in A.Nos. 500 and 761/86.

3. The Chief Commissioner (Admn.),
and Commissioner of Income Tax,
Karnataka-I,
Bangalore. .. Respondent No.1 in A.Nos. 132/86
.. Respondent No.2 in A.Nos. 500 and 761/86.
.. Respondent No.3 in A.Nos. 435, 735, 877,879/86.

(By Sri M.S.Padmarajaiah, Central Govt. Standing Counsel)

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These applications coming on for hearing Vice-Chairman made the following:

ORDER

As the questions that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. All the applicants who started their career in one or the other lower posts like clerks, stenographers or typists in the Income Tax Department of the Government of India secured more than one promotion from time to time and in the year 1985 were working as Income Tax Officers ('ITOs') Group-A or Group-B in one or the other office of the Department of 'Karnataka Circle'. While the applicants in Applications Nos.435, 735 and 879 of 1986 were working as ITOs Group-A, the applicants in other applications were working

as

as ITO's Group-B in 1985.

3. In exercise of the powers conferred by Rule 56(j) of the Fundamental Rules (FR) in the case of all the applicants except applicant in A.No.877 of 1986 and the corresponding Rule 48 of the Pension Rules in the case of that applicant, the Government of India or the Chief Commisioner Administration and Commissioner of Income Tax, Karnataka-I, Bangalore ('Commissioner') by separate but identical orders made on 6-1-1986 and 15-1-1986 have compulsorily retired the applicants from service with effect from 15-1-1986 and 16-1-1986 afternoon on payment of three months' salary in lieu of three months' notices. We will hereafter refer to these Rules as Rule 56(J)FR. In their separate but identical applications made under Section 19 of the Administrative Tribunals Act of 1985 ('the Act'), the applicants have challenged the respective orders made against them on certain grounds that are common and peculiar to each of them also.

4. On receipt of the respective orders of retirement each of the applicants made representations before Government and the Commissioner, for re-consideration which has not found favour with them. In the absence of orders of stay issued by this Tribunal, the applicants have retired from service from the date of their reliefs. But, these facts hardly make any difference to adjudge on the validity of the orders, if the applicants were to succeed in their applications.

5. In support of the orders made, the respondents have filed their separate but identical replies.

6. Dr. M.S.Nagaraja, learned Advocate had appeared for the applicants in all these cases. Sri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel had appeared for the respondents in all these cases.

7. On the pleadings and the contentions urged before us, the following four points arise for our determination and they are:-

(1)Whether

(1) Whether Rule 56(j) FR was valid or not,

(2)Whether before retiring a civil servant under Rule 56(j)FR,was the appropriate authority required to issue him a show cause notice, consider the representations, if any, to be filed by him thereto and then provide him an opportunity of oral hearing or not,?

(3) Whether compulsory retirements were 'concealed punishments'made in violation of Article 311(2) of the Constitution or not?

(4) Whether the compulsory retirement of each of the applicants was valid or not?

We will now proceed to examine these points in their order:

RE: POINT NO.1.

8. Dr. Nagaraja has urged that Rule 56(j) FR conferring absolute and unguided power on the appropriate authority to compulsorily retire a civil servant at its sweet will and pleasure, was violative of Articles 14 and 21 of the Constitution and was void. In support of his contention Dr. Nagaraja has strongly relied on the rulings of the Supreme Court in SMT. MANEKA GANDHI v. UNION OF INDIA AND ANOTHER (AIR 1978 SC 597) and OLGA TELLIS v. BOMBAY MUNICIPAL CORPORATION AND OTHERS(AIR 1986 SC 180).

9. Sri Padmarajaiah has urged that in the absence of a declaration sought, the validity of Rule 56(j) FR cannot be adjudicated and that even otherwise its validity was concluded by the Supreme Court in T.G.SHIVACHARANA SINGH AND OTHERS v. THE STATE OF MYSORE(AIR 1965 Supreme Court 280);UNION OF INDIA v./ COL.J.N.SINHA (1970(2)SCC 458); and UNION OF INDIA v. M.E.REDDY AND ANOTHER (1980 SC (L&S) 179).

10.In their applications, the applicants while setting out grounds touching on the validity of Rule 56(j)FR, have not specifically sought for a declaration to strike down that Rule. But, the absence of such a formal prayer, on the desirability of which there cannot be

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two opinions at all, by itself cannot be a ground for this Tribunal to decline to examine its validity on which elaborate arguments have been addressed by Dr. Nagaraja . We, therefore, propose to examine its validity.

11. In Shivacharana Singh's case a Constitution Bench of the Supreme Court speaking through Gajendragadkar,CJ,had upheld the validity of Note-I to Rule 285 of the Karnataka Civil Services Rules ('KCSR') which corresponds to Rule 56(j)FR. In Sinha's case, the Supreme Court had upheld the validity of Rule 56(j) FR itself. In Reddy's case the Supreme Court reviewing all the earlier cases, had upheld Rule 16(3) of the All India (Death-cum-Retirement)Rules, 1948 ('1948 Rules') which corresponds to Rule 56(j) FR. Dr. Nagaraja without rightly disputing the binding effect of these rulings, however, urged, that all of them were rendered before the new dimension of Article 14 of the Constitution, namely, arbitrariness was the very antithesis of rule of law enshrined in that Article was evolved and elaborated and that the right to life guaranteed in Article 21 of the Constitution comprehended the right for a decent and assured life as expounded in Olga Tellis' case which are now binding and tested on those touch-stones,Rule 56(j)FR was violative of both those Articles.

12. We must at the very outset notice, that Reddy's case was rendered after the Supreme Court had evolved and elaborated the new dimension of Article 14 of the Constitution. In that case the Court exhaustively reviewed all the earlier cases and referring to Shivacharana Singh's and Sinha's cases with approval,had ruled, that Rule 16(3) of the 1948 Rules and Rule 56(j)FR were valid. We are of the view that the principles enunciated in Reddy's case cannot be distinguished on the ground that the Court had not referred to the new dimension of Article 14 of the Constitution evolved in E.P. ROYAPPA v.STATE OF TAMILNADU (AIR 1974 SC 555) and elaborated in Maneka Gandhi's case.

13. What is true of Article 14 of the Constitution, is equally true of the contention of the applicants that the rule was violative of Article 21 of the Constitution as expounded in Olga Tellis' case. We are of the view that on the principles enunciated in Reddy's case, this contention of Dr.Nagaraja is equally devoid of merit.

14. In SMT.SOMAWANTI AND OTHERS V. STATE OF PUNJAB AND OTHERS (AIR 1963 SC 151) on the binding effect of an earlier precedent on the ground that a new argument had not been considered in deciding a point, a Constitution Bench of the Supreme Court had expressed thus:

> "The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. That point has been specifically decided in the three decisions referred to above".

We are of the view that on these principles, it is even presumptuous for any Court or Tribunal, to embark on an examination of the validity of Rule 56(j)FR. But, out of deference to intelligent,elaborate, painstaking and respectful submissions made by Dr.Nagaraja, we deem it proper to examine their correctness also.

15. Rule 56(j) FR can be invoked only when a civil servant had completed the 'qualifying service' and not before that. The principal object of retirement is 'public interest', for which only, civil services are constituted and maintained by the State. The two categories who are considered and retired are those that are 'ineffective' or of 'doubtful' integrity and not all. But, more than all these, those retired are assured of pension and other terminal benefits. With all these safeguards, we find it difficult to hold that the Rule confers arbitrary powers and is violative of the new dimension of Article 14 of the Constitution.

16. On

16. On retirement, the civil servant is assured of his pension and other terminal benefits in accordance with the Rules. If that is so, the right of Government servant to life and a decent life also is not affected. We are, therefore, of the view that the Rule is not violative of Article 21 ofthe Constitution as expounded in Olga Tellis' case.

17. In BALDEV RAJ CHADHA v. UNION OF INDIA AND OTHERS (AIR 1981 Supreme Court 70) on which considerable reliance was placed by Dr.Nagaraja to sustain his contention, the Supreme Court had not laid down a different principle.

18. On the foregoing discussion, we hold that Rule 56(j) FR was not violative of Articles 14 and 21 of the Constitution. We, therefore, reject this challenge of the applicants.

RE:POINT NO.2.

19. Dr. Nagaraja urged, that before making an order for compulsory retirement under Rule 56(j)FR which results in serious civil consequences to the civil servant, the appropriate authority was bound to issue a show cause notice, consider his written representations thereto and provide him an opportunity of oral hearing in conformity with one of the basic components of natural justice viz., audi alteram partem and on such failure, as in the present cases, the retirement orders were illegal as held by the Sikkim High Court in SONAM LAMA AND ETC. v. STATE OF SIKKIM AND OTHERS (1986 LAB I.C.815).

20. Sri Padmarajaiah urged that audi alteram partem had no application to the exercise of power under Rule 56(j) FR and that the enunciation made in Sonam Lama's case directly opposed to the enunciation made by the Supreme Court, was also unsound.

21. We must, at the very outset, notice that the contention urged by Dr. Nagaraja is directly concluded by the rulings of the

Supreme

Supreme Court in Sinha's and Reddy's cases. We should, therefore, ordinarily reject the same without any further examination. But as the Sikkim High Court in Sonam Lama's case referring to these rulings also, had upheld the contention of Dr.Nagaraja,we consider it proper and necessary to examine the same in detail.

22. In Sinha's case, the very question directly came up for consideration and the Supreme Court rejected the same in these words:

> 2. Before us the only contention presented for our decision was whether the High Court was right in holding that in making the impugned order the appellant had violated the principles of natural justice.
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> Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak v. Union of India, AIR 1970 SC 150, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. Inother words they donot supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutoryauthorities intend to act in accordance with the principles of natural justice. But,if on the other hand, a statutory provision either specificallyor by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of power conferred should be made in accordance with

"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.

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If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before 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..... ..... Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. 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 Art.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 organizations and more so in Government organizations, there is 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 interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise

gise 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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10. In our opinion the High Court erred in thinking that the compulsory retirement involves civil consequences. Such a retirement does not take away any of the rights that have accrued to the Government servant because of his past service. It cannot be said that if the retiring age of all or a section of the Government servants is fixed at 50 years, the same would involve civil consequences. Under the existing system there is no uniform retirement age for all Government servants. The retirement age is fixed not merely on the basis of the interest of the Government servant but also depending on the requirements of the society.

In Reddy's case, the Court dealing with Rule 16(3) of the 1948 Rules corresponding to Rule 56(j)FR and its requirements, reviewing all the earlier cases rejected this very contention in these words:

" 8. An analysis of this rule clearly shows that the following essential ingredients of the rule must be satisfied before an order compulsorily retiring a government servant is passed.

(1) That the member of the Service must have completed 30 years of qualifying service or the age of 50 years (as modified by notitification dated July 16,1969);

(2) That the government has an absolute right to retire the government servant concerned because the word 'require' clearly confers an unqualified right on the Central Government;

(3) That the order must be passed in public interest;

(4) That three months' previous notice in writing shall be given to the government servant concerned before the order is passed.

It may be noted here that the provision gives an absolute right to the government and not merely a discretion, and, therefore, impliedly

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it excludes the rules of natural justice. It is also not disputed in the present case that all the conditions mentioned in rule referred to above have been complied with. It is a different matter that the argument of Reddy is based on the ground that the order is arbitrary and mala fide with which we shall deal later.

9. On a perusal of the impugend order passed by the Government of India, it would appear that the order fully conforms to all the conditions mentioned in Rule 16(3). It is now well settled by a long catena of authorities of this Court that compulsory retirement after theemployee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311(2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good oficer may continue to be efficient for all times to come. It may be that there maybe some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly inpublic interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest,since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course

course,it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But, this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, the general impression which is carried by most of the employees that compulsory retirement under the conditions involves some sort of stigma must be completely removed because Rule 16(3) does nothing of the sort.

10. Apart from the aforesaid considerations we would like to illustrate the jurisprudential philosophy of Rule 16(3) and other similarly worded provisions like Rule 56(j) and other rules relating to the government servants. It cannot be doubted that Rule 16(3) as it stands is but one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution and is controlled only by those contingencies which are expressly mentioned in Article 311. If the order of retirement under Rule 16(3) does not attract Article 311(2) it is manifest that no stigma or punishment is involved. The order is passed by the highest authority, namely, the Central Government in the name of the President and expressly excludes the application of rules of natural justice as indicated above. The safety valve of public interest is the most powerful and the strongest safeguard against any abuse or colourable exercise of power under this rule. Moreover, when the Court is satisfied that the exercise of power under the rule amounts to a colourable exercise of jurisdiction or is arbitrary or malafide it can always be struck down. While examining this aspect of the matter the Court would have to act only on the affidavits, documents, annexures, notifications and other papers produced before it by the parties. It cannot delve deep into the confidential or secret records of the government to fish out materials to prove that the order is arbitrary or mala fide. The Court, has however,

however, the undoubted power subject to any privilege or claim that may be made by the State, to send for the relevant confidential personal file of the government servant and peruse it for its own satisfaction without using it as evidence.

11. It seems to us that the main object of this rule is to instil a spirit of dedication and dynamism in the working of the State Services so as to ensure purity and cleanliness in the administration which is the paramount need of the hour as the Services are one of the pillars of our great democracy. Any element or constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has out lived his utility has to be weeded out. Rule 16(3) provides the methodology for achieving this object. We must, however, hasten to add that before the Central Government invokes the power under Rule 16(3), it must take particular care that the rule is not used as a ruse for victimisation by getting rid of honest and unobliging officers in order to make way for incompetent favourites of the government which is bound to lead to serious demoralisation in the Service and defeat the laudable object which the rule seeks to subserve. If any such case comes to the notice of the government the officer responsible for advising the government must be strictly dealt with. Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative and activism so that it is made poignant and piquant, specious and subtle so as to meet the expanding needs of the nation which require exploration of "fields and pastures new". Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. If fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of the administration.

12. An order of compulsory retirement on one hand causes no prejudice to the government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the Services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the Service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country, for every good cause claims its martyr.

13. These principles are clearly enunciated by a series of decisions of this Court starting from Shyam lal (AIR 1954 SC 369) case to Nigam ((1978)1 SCR 521) case which will be referred to hereafter."

Dr. Nagaraja did not rightly urge that the principles enunciated in these cases have been doubted or diluted in any of the later rulings of the Supreme Court itself. But, he urged that what had been expressed in Sonam Lama's case was correct and sound for the very reasons stated therein as also the new dimension of Article 14 of the Constitution evolved in Royappa's case and elaborated in Maneka Gandhi's case and the extendedmeaning given to Article 21 of the Constitution in Olga Tellis' case. In other words, Dr.Nagaraj, maintained that the principles enunciated in Sinha's and Reddy's cases were no longer good law and the law had been correctly expounded by the Sikkim High Court in Sonam Lama's case.

23. In Sonam Lama's case, the Sikkim High Court was dealing with the compulsory retirement of Sonam Lama and two others under Rule 99 of the Sikkim Government Service Rules,1974 (Rule 99) which reads thus:-

"99(1) notwithstanding

" 99(1) Notwithstanding the provision of Rule 98, the Government, except where Rule 101 may apply shall have the exclusive right to retire any Government servant who has attained the age of 50 years or has rendered not less than 25 years of service, if it is of the opinion that it is in the public interest so to do, by giving himnot not less than three months' notice or three months' salary inlieu of such notices".

This rule corresponds to Rule 56(j) FR, Rule 48 of the Pension Rules, Rule 16(3) of the 1948 Rules and Note-I to Rule 285 of the KCSR. The power conferred by this rule on Government of Sikkim is the very power conferred on the appropriate authority under one or the other Rule noticed by us. On this very contention,Bhattacharjee, Acting CJ. expressed thus:

" 15. But, there is yet another way to look into the matter. It is true that in Union of India v. J.N.Sinha, AIR 1971 SC 40:(1971 Lab IC 8) (supra) it has been held by a two Judge Bench of the Supreme Court (at p.42) that before an order of compulsory retirement is passed interms of the relevant rules, it is not necessary to comply with the rules of natural justice by giving the Government servant concerned any opportunity to show cause against his compulsory retirement. As already noted, R.56(j) of the Fundamental Rules, which was being considered in that decision, conferred "absolute right" to the Government to compulsorily retire its servant. And it has accordingly been pointed out by another two Judge Bench in Union of India vs.M.E.Reddy, AIR 1980 SC 563 ~~at p.566~~ at p.566:(1980 Lab IC 221 at p.223) that "the provision gives an absolute right, and not merely a discretion, and, therefore, impliedly excludes the rules of natural justice". But, whether or not "absolute power is anathema under our constitutional order"

Central Administrative

order"Baldev Raj Chadha AIR 1981 SC 70 at p.71: (1980 Lab IC 1184 at p.1185) (supra) and is, therefore to be read down, itmust be noted that R.99(1) of the Sikkim Rules does not confer any absolute right or power. As already noted, an order of compulsory retirement obviously deprives a person of its livelihood Baldev Raj v. State of Punjab, AIR 1984 SC 986 at page 988: (1984 Lab IC 621 at p.623) and as already noted hereinbefore,it has been recently settled by a unanimous five Judge Bench of the Supreme Court in Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545 at Pp.571/572:(AIR 1986 SC 180 at Pp.193-194)(supra), that the right to life conferred by Art.21 of the Constitution includes the right to livelihood and that "any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Art.21". It has been observed (at p.565), that "if a person is deprived of his job,.....his very right to life is put in jeopardy". It has been observed further (at p.577), with reference to E.P.Royappa AIR 1974 SC 555; (1974 Lab IC 427), Maneka Gandhi AIR 1978 SC 597 and the wave of decisions following Maneka Gandhi that "it is far too well settled to admit any argument that the procedure prescribed by law for the deprivation of the right conferred by Art.21 must be fair, just and reasonable". As observed by Bhagwati,J.(as his Lordship then was) in Francis Coralie Mullin (AIR 1981 SC 746), following the Maneka wave that,"it is for the Court to decide in the exercise of its constitutional power of judicial review whether deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise". These observations have been quoted with approval in Olga Tellis (supra,at p.578).

16. So the procedure resorted to in a given case, whereby the right to livelihood or any other right conferred by Art.21 is impaired, must be reasonable,

reasonable, fair and just. As observed by Bhagwati, J., in Maneka Gandhi (AIR 1978 SC 597 at p.624 (supra) "any procedure which permits impairment of the constitutional right.....without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust". It may be recalled that as to procedure in general, somewhat similar observations were made almost three decades ago, though in a different context,by Bose,J., speaking for a three Judge Bench of the Supreme Court in Sangram Singh AIR 1955 SC 425 at p.429 to the effect that "there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceeding that affects their lives and property should not continue in their absence and they should not be precluded from participating in them". It was observed further that though "there must be exceptions and where they are clearly defined, they must be given effect to", "but taken by and large, and subject to that proviso our laws of procedure should be considered, wherever that is reasonably possible, in the light of that principle". It true that these observations were made in respect of judicial proceedings and as pointed out in A.K.Kraipak AIR 1970 SC 150 at p.157, "till very recently it was the opinion of the Court that unless the authority concerned was required by the law under which it functions to act judicially there was no room for the application of the rules of natural justice". But, as pointed out further inA.K.Kraipak (supra). "the validity of that limitation is now questioned" and "if the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see who those rules should be made inapplicable to administrative enquires". The five-Judge Bench in A.K.Kraipak (supra) infact referred to with approval, the observations made by a two-Judge Bench in Binapani Dei AIR 1967 SC 1269 at p.1272 to the effect that "even

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"even an administrative order which involves civil consequences.....must be made consistently with the rules of natural justice". Binapani Dei (supra) was, however, distinguished in J.N.Sinha AIR 1971 SC 40 at p.43:(1971 Lab.IC 8)at p.10)(supra) and it was pointed out that as an order of compulsory retirement does not involve civil consequences in the sense of loss of any benefit already earned, rules of natural justice are not required to be complied with. And as already noticed, another reason for which rules of natural justice were held to be inapplicable to a case of compulsory retirement was, as explained in the later decision in M.E.Reddy, AIR 1980 SC 563:(1980 Lab IC 221 at p.223)(supra) the relevant "provision gives an absolute right to the Government and not merely a discretion, and therefore, it impliedly excludes the rules of natural justice" It must be noted that innone of these decisions, the questions as to whether an order of compulsory retirement impairs the constitutional right, like the right to livelihood conferred by Art.21 and whether the procedure therefor is accordingly required to be fair, just and reasonable and consistent with the rule of natural justice, were all considered. But, as already noted in Baldev Raj v. State of Punjab,AIR 1984 SC 986 at p.988:(1984 Lab IC 621 at p.623)(supra) it has now been clearly pointed out that an order of compulsory retirement "affects the livelihood of the person in whose respect the order is made" and the unanimous five-Judge Bench in Olga Tellis (1985) 3 SCC 545 at Pp.571-572:(AIR 1980 SC 180 at Pp.193-194)(supra),has ruled that the right to life conferred by Art.21 includes the right to livelihood and that "any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Art.21". And in Maneka Gandhi AIR 1978 SC 597 at p.624(supra), it has been ruled that "any procedure which permits impairment of the constitutional right.....without giving reasonable

opportunity

opportunity to show cause cannot but be condemned as unfair and unjust". And following the Maneka wave, it has now been ruled by the unanimous five-Judge Bench in Olga Tellis (supra,at p.581);(at p.198 of AIR),that "except in cases of urgency which brook no delay", "no departure from the audi alteram partem rule 'Hear the other side' could be presumed to have been intended". It has been fuled further (supra,at p.581):(at p.198 of AIR) that "the ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken" and that "a departure from the fundamental rule of natural justice may be presumed to have been intended.....only in circumstances which warrant it" and that "such circumstances must be shown to exist, when so required, the burden being on those, who affirm their existence."

17. It must be stated at once that in these cases no attempt has been in the affidavits or by the learned Advocate-General during arguments to show that such circumstances existed in the case of the petitioners which brooked no delay and which warranted that no opportunity of being heard could be given to the petitioners. As the age when one has crossed fifty or more and one's family responsibilities and sombre of life's evening are likely to weigh on him most heavily,it is neither just nor fair nor reasonable to suddenly deprive such a one of his source of livelihood on the strength of a decision arrived at behind his back and without giving him any opportunity of being heard in the matter. Without such a hearing, a decision, which may otherwise be right or just, would not appear to be right or just, and as pointed out in Olga Tellis (at p.582 of SCC):(at p.199 of AIR 1986 SC 180)(supra),"the appearance of injustice is denial of justice". Such a hearing has been regarded to be so essential that failure to provide for

for the same would affect the decision even if it appears that the hearing would have made no difference. As has been pointed out by a three-Judge Bench of the Supreme Court in S.L.Kapoor v. Jagmohan,(AIR 1981 SC 136 at Pp.145, 147), "the requirements of natural justice are met only if opportunity to represent is given in view of proposed action and "the principles of natural justice know of no exclusionary rule dependant on whether it would have made any difference if natural justice had been observed" because "the non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice, is unnecessary" as "if ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced". These observations have been quoted with approval in Olga Tellis (at p.584 of SCC):(at p.201 of AIR)(supra), and it has been ruled (at p.582):(at p.199 of AIR)the contention that hearing "need not be given of a proposed action because there can possibly be no answer to it, is contrary to well recognised understanding of the real import of the rule of hearing". In this view, therefore, the impugned orders of the compulsory retirement, affecting the right of livelihood of the petitioners, appear to be bad for non-observance of the rules of natural justice."

In reaching these conclusions his Lordship nowhere holds that the law laid down in Sinha's and Reddy's cases was no longer good law. Without so holding, with respect, it was not open to His Lordship to uphold the contention urged for the petitioners before the Court. On this short ground, we find it difficult to subscribe to the views expressed by His Lordship on this point.

24. In upholding the very contention of the applicants urged before us, the learned Acting Chief Justice had relied on the rulings in Maneka Gandhi's and Olga Tellis' cases.

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25. The decision in Reddy's case was rendered by the Supreme Court on 19-9-1979 long after the Supreme Court had evolved thenew dimension of Article 14 in Royappa's case decided on 23-11-1973 and elaborated in Maneka Gandhi's case decided on 25-1-1978. . If that is so, no Court can assume that the decision in Reddy's case had been rendered per incuriam as that would be the inevitable result inholding to the contrary. The law of binding precedents recognised in Article 141 of the Constitution does not permit any Court or Tribunal to indulge in such an exercise. WE must on this score itself with respect, dissent from the view expressed by His Lordship in Sonam Lama's case.

26. What we have expressed in Maneka Gandhi's case equally applies to the view expressed by the learned Acting Chief Justice in Olga Tellis' case also. Even otherwise on the nature of power conferred by Rule 56(j)FR and the consequences that ensue which do not result in civil consequences on a retired civil servant, we do not see as to how Article 21 of the Constitution can be relied on to sustain the contention of the applicants. We are,therefore of the view that Olga Tellis' case does not really bear on the question.

27. One other reason given by the learned Acting Chief Justice to sustain the contention of the petitioners before him,which was also reiterated before us by Dr.Nagaraja is, Rule 56(j) FR,conferred an absolute right on Government to retire a Government servant while Rule 99 did not provide for such a right.

28.Rule 99 of the Sikkim Rules corresponds to Rule 56(j) FR. While Rule 56(j)FR employs the term 'absolute', Rule 99 employs the term 'exclusive'. We are of the view that in the context both these terms really mean one and the same. If that is the true import of the Rules, as also ruled by the Supreme Court in Reddy's case, then there is hardly any ground to distinguish Sinha's and Reddy's

cases

cases to hold that a civil servant was entitled for an opportunity of hearing before his retirement. But, more important than all these is, there isnothing like an 'absolute' power in our country governed by Constitution and rule of law. On this aspect Wade in his treatise 'Administrative Law' (Fifth Edition) had expressed thus:

> " It is a cardinal axiom, accordingly, that every power has legal limits, however, wide the language of the empowering Act. If the court finds that the power has been exercised oppressively or unreasonably, or if there has been some procedural failing, such as not allowing a person affected to put forward his case,the act may be condemned as unlawful. Although lawyers appearing for government departments often argue that some Act confers unfettered discretion, they are guilty of constitutional blasphemy. Unfettered discretioncannot exist where the rule of law reigns. The notion of unlimited power can have no place in the system. The same truth can be expressed by saying that all power is capable of abuse, and that the power to prevent abuse is the acid test of effective judicial control".

We are,therefore, of the view,that this ground to sustain the contention,with respect to the learned Judge, is unsound.

29. Even otherwise the Supreme Court had not negatived the application of audi alteram partem on the ground that Rule 56(j) FR had conferred 'absolute' right, but had negatived the same on the nature of power conferred by that Rule and its consequences on the civil servant. For all these reasons, with respect, we regret our inability to subscribe to the views expressed in Sonam Lama's case bythe learned Acting Chief Justice.

30. On the foregoing discussion, we hold that the applicants were not entitled for a show cause notice, consideration of their representation much less an opportunity of oral hearing before the appropriate authority made its orders against the applicants.

RE:POINT NO.3.

31. Dr. Nagaraja urged that compulsory retirement orders made against the applicants were nothing but 'concealed punishments' and were, therefore, violative of Article 311(2) of the Constitution.

32. We are of the view that this contention of Dr. Nagaraja is also concluded by the Supreme Court in the cases noticed by us earlier.

33. In Sinha's and Reddy's cases the Supreme Court had ruled that compulsory retirement does not result in civil consequences, was not a punishment and casts no stigma on the person retired. A civil servant retired under Rule 56(j) is entitled for pension and other terminal benefits in accordance with the Rules regulating them. If that is so, it is inconceivable to hold that the orders of retirements are 'concealed punishments' and are violative of Article 311(2) of the Constitution. We see no merit in this contention of Dr.Nagaraja and we reject the same.

RE:POINT NO.4.

32. Dr. Nagaraja has urged that decisions to retire each of the applicants, having regard to their unblemished and excellent record of service incontravention of the circular instructions issued thereto by Government, was based on no material or irrelevant material and was whimsical, arbitrary, totally unjustified and illegal.

33. Sri Padmarajaiah has urged that the retirement of each of applicants was in the public interest and was based on relevant material and they cannot be examined by this Tribunal as a Court of appeal.

34. Before dealing with this point, it is first necessary to notice the modality adopted by us in dealing with the same.

35. After hearing Dr.Nagaraja generally on this point, we directed Sri Padmarajaiah to make available the original records to decide whether there was material and whether such material was relevant to the decision reached, with which he readily complied, however, claiming that those records should not be shown to the applicants or their counsel which was seriously countered by the latter.

36. We

36. We then heard counsel on this controversy, orally overruled the objections of Sri Padmarajaiah. We then made available relevant records of each applicant to Dr.Nagaraja to be shown to the concerned applicant only to take instructions from that applicant only and then heard both sides on this point fully. We now proceed to give our reasons for rejecting the objections of Sri Padmarajaiah.

37. Sri Padmarajaiah strongly relying on an unreported ruling of the Bombay Bench of theTribunal in NARAYANARAO BALVANT-RAO SONAVANE v. UNION OF INDIA AND ANOTHER (Misc.Application No.1/88) claimed privilege against the applicants only. But, Dr. Nagaraja countered the same relying on the ruling of the Delhi Bench in P.BANERJEE v.UNION OF INDIA AND OTHERS (A.T.R. 1986 C.A.T (P.B.)16).

38. An order of retirement made under Rule 56(j) FR, does not disclose - reasons or material on which the same is made and issued by the authority. The order made and issued only declares that the retirement was in public interest and nothing more than that. Before a decision is taken by the authority and communicated, there should be absolute secrecy or confidentiality over the same can hardly be doubted. But, after that and at any rate when that order/decision is seriously challenged by the aggrieved civil servant,it will be somewhat strange and odd to hold that only the Tribunal should peruse them and the concerned applicant should not peruse them even before the Tribunal and make his submissions on them. We are of the view that the course suggested by Sri Padmarajaiah was totally unfair to the applicants and will place the Tribunal itself in an embarrasing position. On the other hand, the course adopted by us would be in consonance with the principles of natural justice and fair play and will do justice to all the contestants.

39. In

39. In Sonavane's case before a Division Bench of the Bombay Bench consisting of Sri B.C.Gadgil, Hon'ble Vice-Chairman and Sri P.Srinivasan,Hon'ble Member, the applicant had sought for a direction to the Central Government to produce the records and files relating to his retirement under Rule 56(j)FR and also permit him to inspect those records which was opposed by the Government claiming privilege for their production and inspection. On 16-6-1986 the Bench allowed the application in part, overruled the privilege claimed by Government and directed the production of records. We are not really concerned with that aspect of the matter as Government had not now rightly claimed such privilege before us.

40. But, on the question of permitting an applicant to peruse the records, the Bench speaking through Sri P.Srinivasan, Hon'ble Member who was then a member of that Bench but is now a member of the Bangalore Bench, expressed thus:

> " 13. That is not the end of the matter. We must now advert to a rather peculiar situation created by Rule 56(j). Normally,when production of documents by one party to a litigation is ordered by the Court,these documents have to be shown to the other party. As pointed out earlier,the doctrine of natural justice is excluded from the purview of Rule 56(j) and we cannot import it into that rule: if we did so we would be "ignoring the mandate of the legislature"(AIR 1971 SC 40). If we permit the documents called for above tobe shown to the applicant and hearing objections to compulsory retirement based on material contained therein we would be importing the doctrine of natural justice, albeit and stage after the competent authority has ordered compulsory retirement. When we are called upon to decide whether compulsory retirement has been rightly ordered, we are really asked to stand in the shoes of the appropriate authority which took the decision under Rule 56(j) but with one restriction viz., if there is some relevant material for arriving at the decision

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> we would not be right to go into its adequacy and to substitute our opinion for the opinion of the appropriate authority. If there is no material to come to the requisite opinion, or if the material considered by the appropriate authority is irrelevant we would be justified in setting aside the order of compulsory retirement, but for arriving at a conclusion we cannot make the material considered by the appropriate authority available to the applicant and give him an opportunity to stage his objections based thereon. What the appropriate authority is precluded from doing under therule we cannot do. Therefore, we would direct that the documents and records as aforesaid be shown only to us to enable us to determine the validity of the action challenged in the main application and not to the applicant. We are aware that in AIR 1976 SC 1207 it was observed that there was no point in the Court seeing the records without showing them to the other side, but that was not in the context of Rule 5(j) which compels usto depart from the normal practice in this regard.

Sri Padmarajaiah had urged for acepting this statement of law.

41. While dealing with Point-2 we have held that the principle of audi alteram partem had no application before the appropriate authority takes a decision. But, that statement, with respect to the Bombay Bench in Sonavane's case, cannot be projected after the decision had been taken and the same is challenged by the aggrieved civil servant before the Tribunal under the Act. We are of the view that the statement made in Sonavane's case that the party at no stage can peruse and make his submissions even when the Tribunal was seized of the matter does not necessarily flow from the ruling of the Supreme Court in Sinha's case. The later proposition does not necessarily flow from the former. We are of the view that to facilitate a proper hearing and consideration of the questions the course we have adopted, far from doing violence to the principles enunciated in Sinha's case was only in conformity with the principles of natural justice, which is even described as fair play in action and sound principles of administration of justice. Another reason given by

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the learned Member is that the Tribunal in deciding an application under Section 19 of the Act is really asked to stand in the shoes of the appropriate authority. We are afraid that this is too broad a statement which does not flow from the true nature of power conferred on the Tribunals under the Act. For these reasons and others set out earlier, with respect to the Bombay Bench, we regret our inability to subscribe to the views expressed at para 13 in Sonavane's case.

42. On this very question, the Delhi Bench of the Tribunal speaking through Justice K.Madhava Reddy, Hon'ble Chairman in Banerjee's case had expressed thus:

> ".....When the validity of such a recommendation cannot be judged without pursuing the record, such record cannot be treated as one the confidentialities of which should be preserved. The Tribunal cannot withhold such record from the parties likely to be affected by its decision. In disclosing this material to the parties to the litigation, no prejudice would be caused to the State or any of the officers concerned. The members of the D.P.C. and the U.P.S.C.are highly placed authorities who will not be in any way embarassed by such disclosures; nor is their freedom and candour of expression of opinion affected by such disclosure. In discharge of their official duties day in day out they assess the performance of several officers objectively. When their assessment or recommendations are challenged in appropriate judicial forums any disclosure of that record, in our opinion, will not cause any injury to public interest. In our view,far from causing injury, it would advance public interest and lend assurance to the public in general and the public servants in particular that they are being treated justly and fairly. No question of security of State is involved in these records now placed before us. The production of this file and the disclosure of its contents is necessary for a just decision of this case".

We

We are in respectful agreement with these views. These then were the reasons on which we permitted the applicants to peruse the proceedings of the screening and review committees concerning each of them only.

43. In dealing and deciding cases of compulsory retirements Government on 5-1-1978 had issued detailed instructions and they are printed on pages 280 to 288 of Appendix 10 of Muthuswamy's Pension Rules, 1985 Edition and they have been supplemented by Government in its letter No.F.16(122)/Vig/85 dated 8-11-1985.

44. The instructions issued by Government on 5-1-1978 and/or 8-11-1985 are not statutory and are issued by Government in exercise of its executive powers to carry out the objects of Rule 56(j)FR and other corresponding Rules. These circulars are not laws. The circulars are issued for the guidance of officers. We cannot treat them as edicts or laws that require an absolute and minutest compliance by everyone at every stage.

45. We find that in conformity with the circulars a screening committee consisting of four senior officers had examined the cases of applicants and others and the same made its detailed recommendations which were then examined by a review committee consisting of two senior Secretaries of Government, which were approved by the Finance Minister on 31-12-1985. From this it follows that there was substantial compliance with the circular instructions issued by Government.

46. We find that the applicants in Applications Nos.132, 500, 735, 761 and 879 of 1986 have been retired on the ground that they were 'ineffective' and their 'integrity was doubtful' and that applicants in Applications Nos.435 and 877 of 1986 have been retired on the ground that their 'integrity was doubtful'.

47. In reaching its conclusions, the screening committee had adverted

to various circumstances and details collected and placed before it. In the case of applicants in Applications Nos. 132, 435, 735, 761, 877 of 1986,two members of the committee who were Commissioners of Income-tax of the Karnataka Circle under whom they were working have also opined that their 'integrity was doubtful'. In the case of applicants in Application No.879 of 1986, the same two members, had also opined that that applicant had not shown improvement in his work and punctuality.

48. We have carefully read the proceedings of the screening committee and the review committee. We have perused the C.Rs of all the applicants and considered the submissions made on all of them.

49. An examination of the proceedings of the screening committee concurred with by the review committee and the Minister,establish that there was material for the appropriate authority to retire the applicants under Rule 56(j) FR and that material was relevant material for the decision. When once this Tribunal finds that there was material and that material was relevant to the decision, this Tribunal however,extensive and wide its powers are under the Act, should not embark on an inquiry into the matter as if it is a Court of appeal and reach a different conclusion. On this short ground this Tribunal should reject the challenge of the applicants to the orders made against them and the various grounds urged against them.

56. We now proceed to consider all other grounds urged by Dr.Nagaraja.

57. Dr.Nagaraja had urged that the CRs of the applicants were the most reliable and scientific material and other material, if any was undependable for a decision by the appropriate authority.

58. Whatever be the value of CRs and their dependability for considering promotions or retirements, it is not possible to hold that they alone can and would constitute material for considering retirements

ments under Rule 56(j) FR. There is no prohibition for collecting other material and depending on the same in taking a decision under that Rule. Both on principle and authority, we find it difficult to accept this contention of Dr. Nagaraja. We, therefore, reject the same.

59. Dr. Nagaraja has next contended that on the acquisition of movable and immovable properties dealt by the screening committee the applicants had obtained prior sanction and had imparted the requisite information from time to time and that being so, the screening committee could not hold the integrity of the applicants as doubtful.

60. We will assume that the acquisition of the properties had been properly reported or sanctioned by the authorities from time to time. But, that makes no difference to ascertain whether there has been disproportionate acquisition of properties or to hold that the integrity of the civil servant was doubtful. We see no merit in this contention of Dr.Nagaraja and reject the same.

61. Dr. Nagaraja has contended that it was not open to the screening committee to rely on subjective and unverified opinion of its two members to doubt on the integrity of the applicants.

62. On certain applicants noticed by us earlier, two members of the screening committee who were functioning or had functioned as Commissioners or Heads of Offices under whom they had served or were serving had expressed that their integrity was doubtful. WE must not forget that those officers had closely watched the performance of those applicants and were competent to express on their integrity. If that was so, then their considered opinion on them was relevant and could be acted upon. We find no reason to discard their opinion at all.

63. On the performance of the applicants in their official career

career and their integrity,the members of the screening committee who were not biased were the best judges. This Tribunal cannot re-appreciate their views and reach a different conclusion on the ipsi dixit of the applicants. We cannot examine their conclusions as if we are a Court of appeal and reach different conclusions.

64. On the foregoing discussion, we hold that there is no merit in the challenge of the applicants to the decisions reached and the orders made thereon by the appropriate authorities.

65.As all the contentions urged for the applicants fail,their applications are liable to be dismissed. We, therefore, dismiss these applications. But,in the circumstances of the cases, we direct the paries to bear their own costs.

VICE-CHAIRMAN. 28/11/1990

MEMBER(A).

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