

P. R. Nayak

Vs

Union of India

Civil Appeal No. 875 of 1971

(CJI S.M. Sikri, J.M. Shelat, G.K. Mitter, A.N. Ray, I.D. Dua, D.G. Palekar JJ)

07.12.1971

JUDGMENT

RAY, J. (dissenting) for himself and Mitter, J. -

1. This appeal is by certificate from the judgment, dated May 6, 1971, of the High Court of Delhi dismissing the appellant's application under Article 226 of the Constitution.
2. The appellant asked for a writ, order, direction in the nature of mandamus quashing the order of suspension, dated March 23, 1971, and a declaration that the appellant retired from sentence on March 25, 1971, and further declaring the appellant as immune against any action by the Government and for further writs, orders, directions, directing the respondent not to act in any manner under or in furtherance of the order of suspension, dated March 23, 1971, and for a further declaration that Fundamental Rule 56(ff) is void and ultra vires.
3. The appellant joined the Indian Civil Service on November 24, 1935. In 1960 the appellant became the Managing Director of Indian Refineries Ltd. In the month of October, 1963, the appellant was the Chairman and Managing Director of the Indian Refineries Ltd. In the month of January, 1965, the appellant became Secretary in the Ministry of Petroleum and Chemicals. On February 22, 1969, the appellant became Secretary, Ministry of Works, Housing and Urban Development.
4. The appellant after joining the Indian Civil Service arrived in India on November 25, 1935, and was to complete 35 years' of service on November 24, 1970. The completion of 35 years or service was under the rules the date of retirement of members of Indian Civil Service. On November 23, 1970, the Central Government made an order extending the service of the appellant up to March 25, 1971. On March 23, 1971, there was an order of the Central Government suspending the appellant. This order was challenged in the application in the High Court.
5. The facts preceding the order of suspension are as follows : In the month of August, 1968, an enquiry into certain matters connected with the laying down of the Haldia-Barauni Pipeline though the coalfields at West Bengal was entrusted to Shri N. S. Rao, Central Vigilance Commissioner. The appellant on August 20, 1968, wrote to Shri Rao that though the latter would lay down his office on August 23, 1968, he had offered to continue and complete the report of the enquiry in an honorary capacity and that the Government accepted the offer of Shri Rao with thanks. The letter was sent by the appellant after obtaining the prior approval of the Minister of Petroleum. On August 21, 1968, Shri N. S. Rao wrote a letter to the appellant that he would complete the work in his individual capacity even after he had laid down his office as Central Vigilance Commissioner if the

Government wanted him to do so. Shri Rao, therefore, suggested that it would be better for the Government to say that he agreed to the Government request to complete the work. On August 23, 1968, the appellant wrote to Shri Rao confirming that the appellant was in agreement with the position as explained by Shri Rao. It may be stated here that with the exception of the first letter the entire correspondence between the appellant and Shri Rao did not bear any stamp of approval of the Minister. On April 16, 1970, Shri N. S. Rao made a report and he did not give any finding adverse to the appellant.

6. Meanwhile the Parliamentary Committee on Public Undertakings had examined the Pipeline Division of the Indian Oil Corporation and submitted its report to Parliament on April 30, 1970. The Committee found first that the appellant who was at the material time the Managing Director of the Indian Refineries Ltd., showed more concern for the contractor Bechtel's interest than for the Haldia-Barauni-Kanpur Pipeline project. Bechtel Corporation was an American firm of consultants who were supervising the project. The second finding was that the appellant was acting on his own in his dealing with the construction contractors as well as the American consultants supervising the project in vital matters concerning the capacity of the pipelines, thus by-passing the authority of the Board of Directors and Government. The third finding was that in several instances the appellant had exceeded his authority available to him.

7. Consequent on the report of the Parliamentary Committee on Public Undertakings the Government of India decided to set up a one-man commission under the Commission of Inquiry Act, 1952 headed by Shri J. N. Takru, a retired Judge of the Allahabad High Court. The terms of reference were set out in the resolution, dated August 22, 1970, setting up the Commission. Broadly stated, the terms of reference included whether any payment to Bechtel was made in excess of the amount sanctioned by the Government; whether the induction of Bechtel into the project was mala fide; whether Bechtel was shown undue favour, whether the appellant acted on his own by-passing the Board of Directors in his dealings with Snam and Bechtel in vital matters concerning the capacity of the Haldia-Barauni-Kanpur Pipeline; whether the General Manager and the Managing Director of the Indian Refineries Ltd. were perfunctory and casual in dealing with an important communication, dated September 26, 1963, from Bechtels to Indian Refineries Ltd. mentioning the design capacity of Haldia-Barauni Pipeline; and also to determine whether there was loss to the public interest; whether there was any carelessness and negligence in discharge of responsibilities by Government and the officials. The resolution of the Government appointing the commission stated that the commission was to submit its report within a period of six months.

8. In the month of October, 1970, the Government of India in the Ministry of Petroleum and Chemicals referred the matter to the Takru Commission for advise on (i) whether, and if so what, prima facie charges might be made against the appellant in connection with the report of the Parliamentary Committee on Public Undertakings; and (2) whether any other officer appeared to be involved in any of the charges which might be found as prima facie established. Prior to the communication by the Government of India on October 17, 1970, to Shri J. N. Takru the Government had on September 26, 1970, given a copy of the charge-sheet comprising nine charges drawn up against the appellant by the Ministry of Petroleum and Chemicals. On November 7, 1970, the Government of India intimated to Shri J. N. Takru that this task was not limited to an examination of the charges handed over to him by the Government on September 26, 1970, but he was also to suggest to Government whether as a result of the examination of the report any other charge or charges appeared to be prima facie made out for departmental action against the appellant. The original time fixed for tendering the report was the middle of the month of February, 1971, but subsequently the time was advanced to the middle of the month of January, 1971.

9. Thereafter the Takru Commission embarked upon an enquiry into the charges against the appellant. The charges were sent to the appellant on November 16, 1970, and he was given time till November 30, 1970, to submit his defence. The time was extended till December 7, 1970. The appellant submitted a written statement in defence to those charges. By a letter, dated December 7, 1970, the appellant submitted a detailed explanation and replies to the Memorandum of charges served on him by the Takru Commission. By another letter, dated December 19/21, 1970, the appellant gave his supplementary replies to some of the allegations and again on January 5, 1971, submitted to Shri Takru another representation. The appellant was heard in person on January 4, 1971.

10. On January 13, 1971, Shri Takru submitted an interim report to the Government recording his findings on the question as to whether there was any prima facie case against the appellant for a departmental enquiry into 14 charges framed against him. In the report Shri Takru came to the conclusion that barring part (d) of Charge III and Charge XIII, all the remaining charges against the appellant were prima facie established.

11. On March 23, 1971, the Government of India passed an order of suspension. The order is set out hereunder :

"Whereas disciplinary proceedings against Shri P. R. Nayak, I.C.S. are contemplated;

And whereas the President, after carefully considering the available material, and having regard to the nature of the charges against him and the circumstances of the case, is satisfied that it is necessary and desirable to place the said Shri P. R. Nayak under suspension;

Now therefore, the President in exercise of the powers conferred by clause (a) of sub-rule (1) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 and all other powers enabling him in that behalf hereby place the said Shri P. R. Nayak under suspension with immediate effect until further orders;

It is further ordered that during the period that this order shall remain in force, the said P. R. Nayak shall be paid such subsistence allowances as is admissible under the rules and his headquarters shall be New Delhi which he shall not leave without obtaining the previous permission of the Central Government.

By Order and in the name of the President.

(Sd.) B. B. Lal, Secretary to the Government of India".

12. The appellant filed an application under Article 226 of the Constitution in the Delhi High Court on March 24, 1971. The appellant filed an amended petition on March 30, 1971. The appellant prayed for a writ quashing the order of suspension and a declaration that the appellant retired from service on March 25, 1971, and a further declaration that the appellant is immune thereafter against any action taken by the Government as there is no authority therefor under the applicable rules. The further reliefs that the appellant prayed for were to give the appellant full benefits of retirement from service available under the covenants and the Rules as guaranteed by Article 314. The appellant also prayed for a declaration that Fundamental Rule 56(ff) is void and ultra vires the Constitution.

13. In the petition the appellant made these allegations. The appellant is an officer of the Indian Civil Service and is 'at present working as Secretary to the Government of India, Ministry of Works, Housing and Urban Development'. According to Fundamental Rule 56(f) the date of compulsory retirement of the appellant from the Indian Civil Service was November 24, 1970. The appellant agreed to accept an extension of service by four months from November 25, 1970. According to the order, dated November 23, 1970, the appellant is to retire from service on March 25, 1970. The appellant offered to the Government of India to continue him in service for a further period till after the receipt of the report of the Commission of Inquiry set up by the Government of India. The offer of the appellant was not accepted. On the contrary, the order of suspension, dated March 23, 1971, was served on the appellant.

14. On these allegations the appellant raised these contentions in the petition. First, the Government acted under Fundamental Rule 56(ff) and there was an order of suspension of existence on the date of compulsory retirement of the appellant. A member of the Indian Civil Service cannot be proceeded against in any disciplinary proceeding after the date of his compulsory retirement from service. Second, the order of suspension passed after the expiry of the date of compulsory retirement cannot prevent the appellant from retiring on March 25, 1971. The order of suspension is repugnant to law. Third, no disciplinary proceedings namely, inquiry had been initiated against the appellant. The order of suspension for service can be passed only in terms of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969. The provisions of Rule 3(1)(a) contemplate suspension of an officer against whom Government initiates any disciplinary proceedings. The order of suspension merely stated that proceedings are contemplated. Therefore, the order is bad. Fourth, Fundamental Rule 56(ff) is discriminatory in character and violative of Article 14 of the Constitution.

15. The High Court held that an officer of the Indian Civil Service could with the sanction of the President be allowed to continue to retain the post he was holding at the date of compulsory retirement for the maximum period of five years. As to the order of suspension the High Court relying on the decisions of this Court which will be dealt with hereafter held that an order of suspension could be passed even before definite charges were communicated. The appellant's contention that Fundamental Rule 56(ff) which permitted an officer under suspension from retiring violated Article 14 was not accepted by the High Court.

16. The appellant in this Court, repeated the submissions advanced in the High Court and raised additional contentions which were neither founded in the petition nor argued in the High Court. These additional contentions were first, that the date of compulsory retirement of the appellant was fixed under Fundamental Rule 56(f) and therefore there could not be an extension of service beyond the date of compulsory retirement. Second, assuming there was an extension there was in fact no order of extension of service for five years in accordance with the provisions of Fundamental Rule 56(f). Third, the Government, placed the appellant under suspension by an order, dated March 23, 1971. The order of suspension is bad inasmuch as there was no order under Fundamental Rule 56(ff) retaining the appellant in service while making the order of suspension.

17. These new contentions do not appear in the pleadings. Those contentions were not raised in the High Court. Ordinarily, this Court does not allow a party to canvass points which are not mentioned in the pleadings or in the judgment. The reasons behind this practice are two-fold. First, the opposite party is deprived of meeting such a case in the pleadings. Secondly, this Court is deprived of the benefit of a considered judgment of the High Court. In view of the fact that the appellant was allowed to make his submissions these will have to be considered.

18. Broadly stated, four questions fall for consideration. First, can there be an extension of service of an officer of the Indian Civil Service beyond the date of compulsory retirement ? Second, if there is an extension of service does such an extension of service under Fundamental Rule 56(f) have to be for a period of five years. Third, could there be an order of suspension in the facts and circumstances of the case under Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, when disciplinary proceedings had not been initiated and did not commence. Fourth, is any order of retention in service necessary within the meaning of Fundamental Rule 56(ff) at the time of passing of the order of suspension ?

19. The appellant's contention on the first question as to whether there could be an extension of service beyond the date of compulsory retirement were these. First the date of compulsory retirement is a fixed and irrevocable date which cannot be changed. The compulsory retirement of the appellant was fixed under Fundamental Rule 56(f) to be 35 years from the date of his arrival in the India. He arrived in India on November 25, 1935. Therefore, there could not be an extension of service beyond the date of compulsory retirement under Fundamental Rule 56(f). Secondly, assuming there could be an order of extension under the proviso to Fundamental Rule 56(f) there was in fact no order under the proviso. It was said that Fundamental Rule 56(f) consists of two separate parts. The first part speaks of the date of compulsory retirement. The proviso which is the second and independent part speaks of extension of service sanctioning retention of post for five years.

The order, dated November 23, 1970, was as follows :

"The President is pleased to order under the proviso to Fundamental Rule 56(f) that the services of Shri P. R. Nayak, a member of the Indian Civil Service who completed 35 years of service on November 25, 1970, shall be extended up to March 25, 1971."

20. In order to appreciate the appellant's contentions it is necessary to refer to Fundamental Rule 56(f). Fundamental Rule 56(f) in the present form came into force with effect from July 21, 1965. The previous corresponding rule was Fundamental Rule 56(c) which came into force on January 1, 1922. Prior to 1922, Article 565 of the Civil Service Regulations was the relevant regulation. Article 565(a) stated that 'after 35 years' service counting from the date of his arrival in India, an officer shall not, except for special reasons, and with the sanction of the Secretary of State retain his office or be appointed to any new office; provided that, if such an officer has held his office for less than five years, he may, for special reasons, with the sanction of the Government of India, be permitted to retain his office until he has held it for five years'. Article 565 of the Civil Service Regulations was repealed by Fundamental Rules on January 1, 1922. Fundamental Rule 56(c)(i) which came in place of Article 565 was this :

"A member of the Indian Civil Service, who is not a judge of a Chief Court, must retire after 35 years' service counted from the date of his arrival in India provided that if he has held his post for less than five years, he may, with the sanction of the Governor-General in Council be permitted to retain it until he has held it for that period."

The present Fundamental Rule 56(f) was introduced in 1965 in place of the previous Fundamental Rule 56(c)(i), Fundamental Rule 56(f) is as follows :

"A member of the Indian Civil Service shall retire after thirty-five years' service counted from the date of his arrival in India :

Provided that if he has at the end of thirty-five years' held his post for less than five years, he may, with the sanction of the President, be permitted to retain his post until he has held it for five years."

21. The contention on behalf of the appellant that a member of the Indian Civil Service on completion of 35 years' service from the date of his arrival in India retires compulsorily and there cannot be any extension of service is opposed to the language of Fundamental Rule 56(f) itself and is utterly inconsistent with the practice and procedure of exigencies of service on which Fundamental Rule 56(f) is based. Historically, Civil Service Regulation 565(a), Fundamental Rule 56(c)(i) and the present Fundamental Rule 56(f) all indicate that a member of the Indian Civil Service may have an extension of service beyond the date of compulsory retirement. Under Fundamental Rule 56(f) a member of the Indian Civil Service may with the sanction of the President be permitted to retain his post.

22. Sanction of retention of post at the end of thirty-five years which is mentioned in Fundamental Rule 56(f) contains intrinsic authority for extension of service. The extension of service at the end of thirty-five years' service is inherent in Fundamental Rule 56(f). The appellant could not show any rule or authority other than Fundamental Rule 56(f) for extension of service after thirty-five years' service. The order of the appellant's extension of service is not a case of new employment after retirement. Nor is it a case of fresh contract of service. Any valid contract of employment after the date of compulsory retirement is to be in compliance with Article 299 of the Constitution. That is neither the case nor the rule. It is a simple case of extension of service under Fundamental Rule 56(f). There is no authority for saying that at the end of thirty-five years' service compulsory retirement has happened and is complete and there can be no extension of service. It is incomprehensible as to how one can be permitted to retain the post one was holding at the end of thirty-five years' service if one has already retired 'compulsorily' at the end of thirty-five years' service.

23. It was said on behalf of the appellant that, Fundamental Rule 56(f) consists of two separate and independent parts with the result that under the first part a member of the Indian Civil Service retired after thirty-five years of service and the proviso according to the appellant was the second and independent part which dealt with sanction of the President permitting the officer to retain his post for five years. The proviso cannot be truncated as a separate part of Fundamental Rules 56(f). The proviso and the preceding part hang together. Fundamental Rule 56(f) is to be read in its entirety as an integrated whole. The proviso to Fundamental Rule 56(f) speaks of end of thirty-five years. Thirty-five years' service is the subject-matter of the entire Fundamental Rule 56(f).

24. Fundamental Rule 56(f) means this. The Government has the right to retire a member of the Indian Civil Service at the end of the thirty-five years' service. A member of the Indian Civil Service has also the right to retire after thirty-five years' service. The Government however has the right to retain an officer after thirty-five years' service. The date of retirement is then extended. There is in fact no retirement of the officer from service. He still remains a member of the Indian Civil Service. The appellant's contention that the date of retirement is irrevocably fixed is reading new content to Fundamental Rule 56(f). It is correct that the date of retirements is thirty-five years from the date of arrival in India of a member of the Indian Civil Service. The Government in certain cases may permit an officer to retain his post beyond that date. In those cases in spite of the stated

date of retirement it does not take place. It was said on behalf of the appellant that there is no provision for postponing the date of retirement. What is postponed is retirement and not the date. This is because after the date of retirement an officer is permitted to retain his post. The two parts of Fundamental Rule 56(f) namely the first part and the proviso draw sustenance from each other. The two are indissolubly connected. If the two are separated as independent provisions their meaning is lost and their applicability becomes impossible.

25. It was said on behalf of the appellant that the service of an officer after the date of retirement is not on a part with service before that date. This was illustrated first with reference to entitlement to leave under Fundamental Rule 86 not being the same, secondly, lapse of leave on the date of retirement, and, thirdly, that an officer after the date of retirement could not have any promotion and therefore it would not be a continuous employment because the conditions of service would not be the same. There cannot be any question of promotion of an officer who is retained in a post after thirty-five years' service. Nor can it be said that lapse of leave or entitlement to leave will rob the officer of an extension of service. The extension of service or sanction permitting an officer to retain his post at the end of thirty-five years is a special feature in the rule. It is not that an officer at that stage will have to look forward to promotion. As for leave whatever the leave rules will permit he will be entitled to. Fundamental Rule 86 speaks of leave in relation to the period before the date of retirement and the period of being retained in service after the date of retirement.

26. It cannot be said that the extension of service of the appellant was a new appointment or a special contract apart from Fundamental Rule 56(f). The appellant remained a member of the service. This is the allegation of the appellant in the petition. The appellant enjoyed the benefits of service. The appellant himself asked for extension. The Government is right in the contention that the appellant is estopped from challenging the extension. On behalf of the appellant it was said that the appellant's agreement to extension would not estop him from questioning the order because the Government did not indicate in what regard it acted to its disadvantage and further that the Government could not have suspended the appellant in the month of November, 1970, because the Government had no evidence at that time. The appellant agreed to and took advantage of the extension. The Government acted upon that. The affidavit evidence on behalf of the Government is that the appellant wrote a letter on November 3, 1970, to the then Cabinet Secretary stating that the appellant was willing to accept an extension of service for about four months from November 25, 1970. The Government decided to grant such an extension. The order of the Government, dated November 23, 1970, is alleged in the affidavit to be made pursuant to the letter, dated November 3, 1970. The appellant cannot be allowed to approbate and reprobate.

27. The extension was asked for by the appellant to facilitate the enquiry by Shri Takru. The appellant in his letter stated there were allegations against him in respect of which he had not an opportunity of having a say. The appellant wanted an opportunity to explain his point of view and wanted an extension to facilitate such cause. The appellant having invited the Government to grant an extension cannot be permitted to turn around and say that the extension is bad. The appellant has furthermore not questioned the extension in the petition. On the contrary, the appellant has proceeded on the basis of extension and asked for a declaration that the appellant retires from service on March 25, 1971. The Attorney-General made it quite clear that the estoppel which the Government wanted to raise against the appellant was only with regard to Fundamental Rules 56(f) and 56(ff). The estoppel rightly raised against the appellant in regard to Fundamental Rules 56(f) and 56(ff) is that the order of suspension was passed at the time when the appellant was in service as a result of being permitted by the President to be retained in service for a period of four months pursuant to the appellant's agreement to an extension.

28. The contention on behalf of the appellant is that under Fundamental Rule 56(ff) an officer who is under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the date of compulsory retirement and inasmuch as the date of retirement of the appellant expired on November 25, 1970, the order of suspension, dated March 23, 1971, could not be passed under Fundamental Rule 56(ff). Fundamental Rule 56(ff) is as follows :

"Notwithstanding anything contained in clauses (a), (d) and (f) where an officer who is a member of the Indian Administrative Service or the Indian Police Service and who before becoming such member was a member of the Indian Civil Service or the Indian Police, is under suspension on a charge of misconduct, he shall not be required or permitted to retire on reaching the date of compulsory retirement, but shall be retained in service until the inquiry into the charge is concluded and a final order is passed thereon by the competent authority."

29. The submission on behalf of the appellant is that Fundamental Rule 56(ff) can only be applicable before the date of compulsory retirement. The words 'date of compulsory retirement' occurring in Fundamental Rule 56(ff) are not used in any of the sub-rules in Fundamental Rule 56. The date of compulsory retirement relates to the end of thirty-five years of service from the date of arrival in India of an officer of the Indian Civil Service as mentioned in Fundamental Rule 56(f). It is only because in Fundamental Rule 56(f) it is said that a member of the Indian Civil Service shall retire after thirty-five years of service counted from the date of his arrival in India that the words 'date of compulsory retirement' are used in Fundamental Rules 56(ff).

30. The question which therefore arises is whether the case of a member of the Indian Civil Service being permitted with the sanction of the President to retain the post after thirty-five years of service can be brought within the scope of Fundamental Rule 56(ff). When there is an extension of service as a result of the sanction by the President under Fundamental Rule 56(f) there is no retirement. The service is continuous with such adjustments as to leave or promotion or posting as are permissible or possible. To accede to the contention on behalf of the appellant is to hold that a member of the Indian Civil Service cannot be placed under suspension during the period of extension of service. The fallacy of the appellant's contention lies in not appreciating that the suspension is not under Fundamental Rule 56(ff). Fundamental Rule 56(ff) is the consequence of an order of suspension. It will be illogical to hold that a member of the Indian Civil Service will not be permitted to retire because the order of suspension is before the date of compulsory retirement whereas a member of the Indian Civil Service who is on extension of service can be permitted to retire even when an order of suspension has been passed. This is on the assumption that the order of suspension is otherwise valid. The authority and power of the Government to suspend the appellant in the present case will be dealt with hereinafter. The date of compulsory retirement mentioned in Fundamental Rule 56(ff) is to receive a meaning in harmony with the various sub-rules of Fundamental Rule 56. On a reading of the entire rule it is apparent that when the date of compulsory retirement is allowed to pass by an extension of service the words 'reaching the date of compulsory retirement' in Fundamental Rule 56(ff) will apply to the postponed date of retirement because the actual date of retirement is shifted. A member of the Indian Civil Service receiving an extension has not in fact retired inasmuch as the rules indicate that a member of the Indian Civil Service has to resign and apply for annuity at retirement. A member of the Indian Civil Service does not cease to be a member of the service during the period of extension of service. Therefore, Fundamental Rule 56(ff) will apply to a member of the Indian Civil Service during the period of extension of his service. The contention of the Government is correct that the appellant is estopped from questioning the extension of service asked for by him and sanctioned by the President. It, therefore, follows that

if the order of suspension is validly passed during the period of extension in service of Fundamental Rule 56(ff) will apply. As to whether an order of retention of the appellant in service is required under Fundamental Rule 56(ff) during the period of suspension will be dealt with later on.

31. The second question is if there is an extension of service under Fundamental Rule 56(f) what will be the period for such extension. Fundamental Rule 56(f) states in the proviso that if a member of the Indian Civil Service has at the end of thirty-five years held his post for less than five years, he may, with the sanction of the President, be permitted to retain his post until he has held it for five years. The appellant became Secretary in the Ministry of Petroleum and Chemicals in the month of January, 1965. On February 22, 1969, the appellant became Secretary, Ministry of Works, Housing and Urban Development. Therefore the contention of the appellants was that this extension should have been for a period of five years up to February 21, 1974, to enable him 'to retain that post'. With regard to the order passed on November 23, 1970, whereby the services of the appellant were extended up to March 25, 1971, it was said first that the order did not state as to what post the appellant held that secondly the order did not say that he was permitted to retain the post until he had held it for five years. It was thus contended that the order was bad.

32. Fundamental Rule 56(f) which speaks of retention of post with the sanction of the President is not a matter of right. As far as member of the Indian Civil Service is concerned it is a matter of discretion with the Government as to who will be allowed to retain his post and for what period. The immanent idea in Fundamental Rule 56(f) is that in cases where a member of the Indian Civil Service at the end of thirty-five years' service has held his post for less than five years the Government may permit him to retain his post until he has held it for five years. The word 'post' means in effect office. Fundamental Rule 56(c)(i) which corresponded to Fundamental Rule 56(f) used the expression 'post' and Article 565 of the Civil Service Regulations which was in existence prior to the coming into force of Fundamental Rules in 1922 spoke of 'office'. Fundamental Rule 56(f) does not refer to a tenure post. There are no cadres in the Centre. Each State had cadre posts and for each State there are senior posts under the Central Government. The appellant did not hold a tenure post. The services of the appellant were extended for four months with the result that he was permitted to retain the post he was holding.

33. In view of the fact that the appellant was permitted by the President to retain his post the only question is as to the period for which he could be asked to retain his post. The Attorney-General gave instances where members of the Indian Civil Service who on completion of thirty-five years' service were given extension. All these instances illustrate that the period for which extension of service was granted ranged from one month and 22 days to one year and six months. These instances further indicate that the total period for which these officers held the post inclusive of the period for which extension was given ranged from one year and 11 months to four years, 10 months and 27 days. Shri G. S. Bajpai was appointed Secretary-General of Ministry of External Affairs, Government of India on January 27, 1947. He completed thirty-five years on November 24, 1950. He was given an extension for one year and six months and held that post for four years, ten months and 27 days. Shri Vishnu Sahay who was appointed Cabinet Secretary, Government of India, on August 25, 1958, completed thirty-five years' service on December 6, 1960. He was given an extension for one year, four months and 10 days with the result that he retained the post of Cabinet Secretary for three years, seven months and 22 days. Shri G. R. Kamath who was appointed Secretary, Planning Commission, Government of India on April 22, 1965, completed thirty-five years' service on November 20, 1966. He was given an extension of service for seven months and 11 days with the result that he retained the post for two years, two months and 9 days. Shri N. N. Wanchoo, who was appointed Secretary to the Government of India, Ministry of Industrial

Development on March 13, 1967, completed thirty-five years' service on November 23, 1969. He was given an extension of service for one month and 22 days with the result that he retained that post for two years, ten months and 2 days. Shri B. Sivaraman who was appointed Cabinet Secretary on January 1, 1969, completed thirty-five years' service on November 30, 1969. He was given an extension of service for one year with the result that he retained the post for one year and 11 months. Shri B. B. Paymaster who was appointed Chief Secretary to the Government of Maharashtra on September 5, 1967, completed thirty-five years' service on November 24, 1970. He was given an extension of service for six months with the result that he retained the post for three years, eight months and 20 days. The appellant who was appointed Secretary, Ministry of Works, Housing and Urban Development on February 22, 1969, completed thirty-five years' service on November 25, 1970. He was given an extension of service for four months with the result that he was permitted to retain the post for two years, one months and 4 days.

34. The various instances of extension of service of the members of the Indian Civil Service on which the Government relied indicate these features. First, the order of extension is of the same pattern. A typical example of the order of extension of service is to the effect that "the President is pleased to order under the proviso to Fundamental Rule 56(f) that the services of a member of the Indian Civil Service who completes thirty-five years' service on.....shall be extended for a period up to.....". Therefore, the order does not indicate that the person concerned is mentioned with reference to a particular post. Secondly, these instances further establish that the extension of service is in no case for five years. On the contrary, the total period of service inclusive of the period of extension in no case exceeds five years. Therefore, it follow that under Fundamental Rule 56(ff) the extension can in fact be for any period with the result that the total period inclusive of the extension does not exceed five years.

35. Article 565(a) of the Civil Service Regulations spoke of 'office' and thereafter Fundamental Rule 56(c)(i) and Fundamental Rules 56(f) spoke of 'post'. The word 'post' and its previous counterpart the word 'office' mean position in service. In the Indian Administrative Service (Cadre) Rule, 1954, cadre post means any of the posts specified under Item 1 of each cadre in the schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. In the 1955 Regulations posts are mentioned for each State. In the Centre there is no cadre. There are senior posts. The members of the Indian Civil Service come and occupy senior posts under the Government of India. Such officers of the Indian Civil Service who come and occupy posts in the Central Government move from one Ministry to another. Therefore, at the end of thirty-five years' service when the services of the member of the Indian Civil Service are extended normally he assumes or retains that post. Post here will therefore mean the place and position in service held by him. The words 'retains his post' mean first that he remains a member of the Indian Civil Service, and secondly, he is kept in that place or position and is allowed to remain there in service.

36. The contention of the appellant that the appellant was entitled to an extension for five years is against the terms of the rules. The extension can be for any time but it should not in any event allow a member of the Indian Civil Service to hold a post more than the period of five years inclusive of the period of extension. The appellant's contention will mean that every extension will be for five years. This is against the term and spirit of the rule and against the practice and precedents in the service. Therefore, the contention of the appellant fails.

37. The third contention of the appellant is that the order of suspension is bad because no disciplinary proceedings by way of inquiry were commenced prior to the order of suspension. Rule 3(1)(a) of the All India Services (Discipline and Appeal) Rules, 1969 is as follows :

"3. Suspension during disciplinary proceedings. - (1) If, having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the service against whom such proceedings are started, that Government may -

(a) if the member of the service is serving under it, pass an order placing him under suspension."

The three features of the rule are these. The first is the authority which places a member of the service under suspension. The second is the time when such order is made. The third is the person against whom the order is made the authority under Rule 3(1)(a) for placing a member under suspension is the Government which initiates any disciplinary proceedings. The word 'which initiates any disciplinary proceedings' are descriptive of the word 'Government'. The time when such an order is passed is when the Government is satisfied that it is necessary or desirable to place under suspension the member of the service. It is not that the Government can pass an order of suspension against anyone. The person against whom an order can be made is a member of the service against whom such proceedings are started. Here again, the words 'against whom such proceedings are started' are descriptive of the words 'member of the service'. There is no restriction on the power to suspend by making it dependent on the condition precedent of the commencement of inquiry into articles of charge against the Government servant.

38. Counsel on behalf of the appellant contended that if the Government would have power to place a member of the service under suspension in the absence of commencement or initiation of disciplinary proceedings by inquiry the power would be arbitrarily used by the Government against an officer who was for some reason or other not in the good books of the Government or liked by the Government. This contention cannot be a consideration to interest a provision by approaching the content of the power with the fear that power might be abused. There are remedies or abuse of powers by any authority. The person against whom power is used arbitrarily or mala fide will always have the right to come to a court of law for redress of his grievances. The courts of law will in the administration of justice protect a person against any arbitrary action of the authorities. It was also submitted on behalf of the appellant that the order of suspension was made to humiliate the appellant. It was not alleged that the order was made mala fide. The fact that the appellant happens to be a member of the Indian Civil Service will have no relevance in considering the extent of the power or exercise of the power of suspension. As a matter of fact in the present case there are serious charges and allegations against the appellant. The Takru Commission has given a report that a prima facie case is established against the appellant. The report was made early in the year 1971. It was submitted on behalf of the appellant that the order of suspension against the appellant was made by the Government without taking into consideration the affidavit filed by the Government before the Takru Commission. In the affidavit filed by the appellant in the High Court it was alleged in Paragraph 27 that in the affidavit filed before the Commission the Government upheld the decision taken by the authorities and therefore the order of suspension against the appellant did not have any basis. There was no allegation that the Government had no considered the affidavit. No opinion need be expressed on the merits and demerits of the rival cases contained in the affidavit evidence before the Takru Commission. Those allegations and defences are within the province of the inquiry. The affidavit evidence in the petition filed by the appellant is that the Government considered the matter. The order, dated March 23, 1971, indicates that in President after carefully considering the available material and having regard to the nature of the charges against the appellant and the circumstances of the case is satisfied that it is necessary and desirable to place the

appellant under suspension. Therefore, the satisfaction of the President is established by objective consideration of the materials.

39. Counsel on behalf of the appellant contended that the power of suspension was in aid of disciplinary proceedings and therefore suspension could be only after initiation and during the pendency of disciplinary proceedings. It was said that disciplinary proceedings were initiated and commenced only by giving the Government servant 'articles of charge' for submission of defence before the inquiring authority as mentioned in Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, is under the general heading of suspension during disciplinary proceedings. There are seven sub-rules in Rule 3. Under the first sub-rule which forms the subject-matter of the present appeal the Government which initiates any disciplinary proceedings may pass an order placing a member under suspension when the Government is satisfied that it is necessary to place under suspension the member against whom such proceedings are started. There are two other sub-rules in Rule 3 show that when criminal charges and investigations or trial are pending against a Government servant or when he is detained in official custody for more than 48 hours he will be deemed to be under suspension. These sub-rules establish that the power of suspension is exercisable in instances other than inquiry under Rule 8. A criminal trial comes later on. But suspension takes place earlier than the trial during the investigation. It is really the gravity of the charge which will weigh in ordering suspension. Rule 3(1)(a) does not say that the Government which has initiated disciplinary proceedings may pass an order of suspension. Rule 3(1)(a) does not say that a member against whom such proceedings have been started can be placed under suspension. On the contrary the words 'which initiates any disciplinary proceedings' in relation to the Government and the words 'against whom such proceedings are started' in relation to a member of the service indicate that the initiation of disciplinary proceedings in the form of inquiry into charges is not the prerequisite of an order of suspension.

40. Under Rule 3(1)(a) the power of the Government is to place a member under suspension when it is satisfied that it is necessary or desirable to place a member under suspension. A prima facie case has been established as a result of the report of the Takru Commission. The Government has considered that. Disciplinary proceedings are contemplated. This is the basis of the order of suspension. In Rule 3 it is said that 'having regard to the nature of the charges and the circumstances in any case' the Government may pass an order. The words 'nature of the charges and the circumstances in any case' in Rule 3 are different from the procedure laid down in Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 for imposing major penalties. Under Rule 8 when it is proposed to hold an inquiry the disciplinary authority shall draw up the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge and a statement of the imputation of misconduct or misbehaviour in support of each article of charge is also to be drawn up. A copy of the article of the charge is to be delivered to the member. It was said by counsel for the appellant that the words 'nature of the charges' in Rule 3 and 'articles of charge' in Rule 8 mean the same thing. Rule 3 is of much wider amplitude inasmuch as the words used in Rule 3 'nature of the charge and the circumstances in any case' show that the area is more ample. The two qualifying words 'nature' and 'circumstances' accentuate the difference between Rules 3 and 8 in regard to the time and the manner of their operation. The case that is contemplated in Rule 3 is the prima facie case and the nature of charges in that case. The explanation to Rule 6 of the All India Services (Death-cum-Retirement Benefit) Rules, 1958, states that a disciplinary proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him, or, if he has been placed under suspension from an earlier date, on such date. It was said that Rule 6 which speaks of recovery from pension on any pecuniary loss caused to the Central or the State

Government from a pensioner was not applicable to members of the Indian Civil Service. But Rule 6 applies to Government servants who can be placed under suspension under Rule 3. It will be illogical and incongruous to hold that in case of other Government servant disciplinary proceedings commenced when he is placed under suspension but it will be not so in the case of a member of the Indian Civil Service. Disciplinary proceedings are wider in import than inquiry by a Board for finding facts and ascertaining the truth. That is why suspension is an interim measure in aid of disciplinary proceedings and is in itself a disciplinary matter so that the officer concerned does not gain custody or control of papers or take any advantage of position or power in service.

41. In *S. Govinda Menon v. The Union of India and Another*, [(1967) 2 SCR 566 : AIR 1967 SC 1274] allegations were made against a member of the Board of Revenue. The State Government placed him under suspension under Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955. The present Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, came into existence in place of Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955. Rule 3 is in identical language. In *Govinda Menon's case* (supra), it was contended that the order of suspension was bad because there was no formal order of the Government for instituting disciplinary proceedings. The order of suspension stated that preliminary inquiries had shown prima facie that the officer is guilty of corruption, nepotism and other irregularities of grave nature. The order further indicated these features. The detailed enquiry into the charges was in progress. The evidence was to be collected. In the interest of the proper conduct of the enquiry it was necessary that the officer should not be allowed to continue in that post. "The officer is suspended till the disciplinary proceedings initiated against him are completed". This Court on reading the order of suspension held that it showed that the Government had accepted the proceedings and had decided to go forward with the disciplinary proceedings and there was no formal order necessary to initiate disciplinary proceedings. This Court also held in *Govinda Menon's case* (supra), that the word 'charges' occurring in Rules 5(2) and 7 of the 1955 Rules corresponding to Rules 8 and 3 of the All India Services (Discipline and Appeal) Rules, 1969, did not have the same meaning. The word 'charges' in Rule 5(2) of the 1955 Rules corresponding to Rule 8 of the 1969 Rules, refers to definite charge or charges which are reduced into writing whereas the words 'having regard to the nature of the charges and the circumstances in any case' occurring in the present Rule 3 and the corresponding Rule 7 of the 1955 Rules have a wider meaning denoting accusation or imputations. The ruling in *Govinda Menon's case* (supra), is that there is power of the Government to suspend a member when disciplinary proceedings in the shape of inquiry are contemplated and the order of suspension in the back-ground of charges and circumstances amounts to initiations of disciplinary proceedings.

42. In the case of *Government of India, Ministry of Home Affairs and Others v. Tarak Nath Ghosh*, [AIR 1971 SC 823 : (1971) 1 SCC 734] this Court had to consider whether suspension of a member of the Service would only be ordered after definite charges had been communicated in terms of the old Rule 5(2) which corresponds to the present Rule 8 or whether the Government was entitled to place an officer under suspension even before that stage had been reached after the preliminary investigation had been made into the conduct of the officer concerned following allegations of corrupt practice levelled against him. The earlier decisions of this Court were referred to and thereafter it was said 'Merely because the order mentioned that disciplinary proceedings were contemplated against the respondent, as compared to Rule 7 which contains phrases like 'the initiation of disciplinary proceedings' and the 'starting of such proceedings' we cannot hold that the situation in the present case had not reached a stage which called for an order of suspension. In substance disciplinary proceedings can be said to be started against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a prima facie case has been made out against

him for the framing of charges. When the order of suspension itself shows that Government was of the view that such a prima facie case for departmental proceedings had been made out the fact that the order also mentioned that such proceedings were contemplated makes no difference. Again the fact that in other rules of service an order of suspension may be made when 'disciplinary proceedings were contemplated' should not lead us to take the view that a member of an All India Service should be dealt with differently. The reputation of an officer is equally valuable no matter whether he belongs to All India Service or to one of a humbler cadre. It is the exigency of the conditions of service which requires or calls for an order of suspension and there can be difference in regard to this matter as between a member of an All India Service and a member of a State Service or a Railway Service".

43. These decisions indicate the reasons for suspension of a member of the Service against whom disciplinary proceedings are contemplated. The institution of inquiry proceedings and the imposition of penalty are dealt with in separate Rules in the All India Services (Discipline and Appeal) Rules, 1969. Rule 7 thereof speaks of authority to institute proceedings and to impose penalty. Rule 8 speaks of procedure of inquiry for imposing major penalties. Rule 9 speaks of action on the enquiry report. Then there are Rules with regard to orders in the light of the enquiry and appeals from such orders. These provisions and in particular Rule 3 indicate the different stages of disciplinary proceedings. There is no formal order necessary for initiation of disciplinary proceedings. The order of suspension in the context of preliminary investigation and a prima facie case against the Government servant is appropriately an initiation of disciplinary proceedings and is a step in aid of formal inquiry which will be held for imposition of penalty.

44. In *Champaklal Chimanlal Shah v. The Union of India*, [(1964) 5 SCR 190] this Court made certain observations on the meaning of disciplinary proceedings and said that where it is intended to take action by way of punishment what usually happens is that a preliminary enquiry is first held in connection with the alleged misconduct. In the preliminary enquiry the explanation of the Government servant is taken and documentary and even oral evidence is considered. When such a preliminary enquiry makes out a prima facie case against the servant concerned, charges are then framed against him and he is asked to show cause why disciplinary action should not be taken against him. The Enquiry Officer is appointed. This is known as the formal departmental enquiry into the conduct of a public servant. When the enquiry is over the Enquiry Officer makes a report. The Government makes up its mind on the enquiry report. The Government then communicates a copy of the Enquiry Officer's report and its own conclusion. It therefore, follows that after there is a prima facie case against the servant concerned as a result of a preliminary enquiry he is asked to show cause. In the present case the Takru Commission made the preliminary enquiry. The Takru Commission gave the report. The Government considered the report. The appellant appeared before the Takru Commission. The appellant made submissions. The Government considered the nature of the charges and the circumstances of the case and placed the appellant under suspension. Therefore there is a preliminary enquiry. Disciplinary proceedings are under Rule 6 of the All India Services (Death-cum-Retirement Benefit) Rules, 1958, also deemed to be initiated by placing a Government servant under suspension. Rule 6 apart, the order of suspension set in motion disciplinary proceedings which have different stages.

45. Again, in the case of *R. P. Kapur v. Union of India and Another*, [(1964) 5 SCR 431] this Court considered the suspension of a Government servant on the ground that a criminal case was pending against him. It was contended in that case that suspension pending a criminal proceeding could not be said to be a disciplinary matter. That argument was not accepted. It was said that suspension is of two kinds. It is either a punishment or an interim measure pending a departmental enquiry or

pending a criminal proceeding. Suspension as a punishment is a disciplinary matter. Suspension pending a departmental enquiry or pending a criminal proceeding was also held to be comprised within the words 'disciplinary matters' within the meaning of Article 314. It was then said "Take the case of suspension pending a departmental enquiry. The purpose of such suspension is generally to facilitate a departmental enquiry and to ensure that while such enquiry is going on - it may relate to serious lapses on the part of a public service -, he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. In such a case suspension pending a departmental enquiry cannot be but a matter intimately related to disciplinary matters".

46. In the case of a member of the Indian Civil Service there cannot be any departmental proceedings after retirement whereas in the case of other Government servants there can be. But that is not the reason for an order of suspension. This is only to show that when the appellant wanted an extension he wanted an opportunity to defend himself against the charge. When counsel for the appellant submitted that the appellant felt humiliated at the order of suspension it has to be said that if the appellant could have been punished during the period of extension of service there could equally have been an order of suspension to facilitate an enquiry. It cannot be brushed aside that a Commission headed by a Retired High Court Judge was set up to enquire into serious charges against the appellant. The Commission found that not only charges which had been levelled by the Government against the appellant but also other charges as a result of the preliminary enquiry were prima facie established against the appellant.

47. First, disciplinary proceedings are not defined in the Rules. The Government is the disciplinary authority. The Government is the authority which initiates disciplinary proceedings. When charges of misconduct are made against a Government servant the Government makes a preliminary inquiry. If the Government is satisfied that there is a prima facie case the Government cannot then remove the Government servant from service. There will have to be an inquiry. Before the inquiry is started the Government may find it necessary in the circumstances of cases to place a Government servant under suspension. Having regard to the charges the presence of the Government servant in the department where he worked may embarrass and impede the full investigation and collection of evidence. In these circumstances of a case the Government may suspend a Government servant. The inquiry will take place afterwards. But till then an order of suspension may become necessary. The entire gamut of disciplinary proceedings will therefore embrace the preliminary inquiry into allegations, a prima facie opinion of the Government as a result thereof and the formal enquiry giving the Government servant full opportunity to defend against the articles of charge. Secondly, disciplinary proceedings cover the entire range of proceedings from the preliminary investigation into complaints against the honesty and conduct of a Government servant to the final order of punishment after inquiry under Rule 8. Thirdly, no formal order of initiation of disciplinary proceedings is contemplated in the Rules nor is a formal order necessary when the overt act of order of suspension establishes the initiation of disciplinary proceedings in the entire context of facts. Fourthly, suspension is not an inscrutable matter. It speaks, it acts and it affects. It is a disciplinary matter. It is a part of disciplinary proceedings. Fifthly, there can be suspension of a Government servant after a preliminary investigation when disciplinary proceedings in the form of departmental inquiry are contemplated. This suspension is not a punishment but a disciplinary matter in aid of disciplinary proceedings. Suspension is ordered to facilitate free investigation and collection of evidence. It may be that the Government may not after suspension order a departmental inquiry if there is not adequate evidence. Again, where suspension takes place during investigation of a criminal case there may be departmental enquiry even after conviction or acquittal. The departmental enquiry is for inflicting punishment. Suspension is not so. That is why if there is

favourable report after a departmental inquiry the Government servant may obtain restoration of reduction of pay during the period of suspension. Departmental proceedings, disciplinary proceedings, preliminary enquiries for setting up an authority under the provision of the Public Servant Inquiry Act, 1950, are all variants of disciplinary proceedings.

48. Therefore, in the facts and the circumstances of the present case the order of suspension was properly and validly made. Disciplinary proceedings start when the Government decided to go ahead with holding an enquiry. The Government set up a Commission headed by Shri Takru. The suspension was an express act on the part of the Government in the wake of the preliminary enquiry and the report made by Shri Takru.

49. The fourth contention on behalf of the appellant was that the order of suspension was bad inasmuch as there was no order under Fundamental Rule 56(ff) requiring the appellant not to retire. At the outset it has to be borne in mind that the order of suspension is not under Fundamental Rule 56(ff). The order of suspension is under Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969. Fundamental Rule 56(ff) is a Rule laying down the consequences of an order of suspension. When a valid order of suspension has been made as in the present case during the period of extension of the services of the appellant it could not in the same breath be said that he is not permitted to retire. That is the concomitant of the order of suspension. Furthermore, the language of Fundamental Rule 56(ff) is that notwithstanding anything contained in clauses (a), (d) and (f) a member of the India Civil Service who is under suspension shall not be required or permitted to retire. Therefore, Fundamental Rule 56(ff) itself contains the words forbidding retirement of a member placed under suspension. Fundamental Rule 56(ff) means these things. First, Fundamental Rule 56(f) is deleted from coming into operation during the period of suspension inasmuch as the words used are 'notwithstanding anything contained in clause (f)'. Secondly, the language of Fundamental Rule 56(ff) is that he shall not be required or permitted to retire. The language is not that he shall be required not to retire. In other words, retirement is negated by the positive effect of suspension. Thirdly, the entire consequence of Fundamental Rule 56(ff) is that the member shall be retained in service until the enquiry into the charges is concluded and the final order is passed. This Court in *State of Punjab v. Khemi Ram*, [(1970) 2 SCR 657 : (1969) 2 SCC 28] stressed the importance of passing an order of suspension where a disciplinary enquiry could not be concluded before the date of retirement. In short the order of suspension means that he is in service but this (sic) services are temporarily suspended and no retirement can therefore take place.

50. It was said on behalf of the appellant that Fundamental Rule 56(ff) occurred in a Chapter headed 'Compulsory Retirement' and the word 'compulsory' was removed sometime in 1969. It was reference said that Fundamental Rule 56(ff) which did not permit a Government servant placed under suspension to retire was in the nature of punishment. The deletion of the word 'compulsory' was necessitated inasmuch as Fundamental Rule 56 regulated not only cases of compulsory retirement of Government servants in public interest prior to the attaining of the age of superannuation but also of Government servants after attaining the age of 50/55 years of rendering 30 years' service as the case might be. That is why the heading became 'Retirement' instead of 'Compulsory Retirement' to be a correct reflection of the provisions. Therefore, when an order of suspension was made the mandate of Fundamental Rule 56(ff) became effective and placed an embargo on retirement. If an order of suspension were made before the appellant completed 35 years of service the order of suspension could a fortiori be made while the appellant was in the enjoyment of an extension of service. The result of the order of suspension is to suspend the retirement. The prohibition against retirement is embedded in Fundamental Rule 56(ff). Therefore, no separate order is required or necessary to the effect that the appellant shall not be required or

permitted to retire could be made under Fundamental Rule 56(ff).

51. The last contention of behalf of the appellant was that Fundamental Rule 56(ff) infringed Article 14. The counterpart of Fundamental Rule 56(ff) was Rule 56(d). Fundamental Rule 56(d) came into existence in the month of November, 1946. The gist of Fundamental Rule 56(d) is that notwithstanding anything contained in clauses (a), (b) and (c) a Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the date of compulsory retirement but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon by competent authority. In 1962 Fundamental Rule 56(d) was omitted. In 1970 Fundamental Rule 56(ff) came into existence. It is in the same language as the previous Fundamental Rule 56(d) as far as members of the Indian Civil Service are concerned. It was said on behalf of the appellant that comparison of Article 351-A of the Civil Service Regulations and Fundamental Rule 56(ff) indicated that Fundamental Rule 56(ff) offended Article 14. There is fallacy in the appellant's contention. The members of the Indian Civil Service are governed by their Regulations and under Article 314 of the Constitution it is impermissible to deprive them of their special privileges. Article 351-A of the Civil Service Regulations was relied on by the appellant to show that there was discrimination against the members of the Indian Civil Service inasmuch as under Civil Service Regulations 351-A a Government servant against whom disciplinary proceedings were pending could be permitted to retire. Fundamental Rule 56(d) applied to the members of the Indian Civil Service prior to the Constitution and was a rule up to 1962 when it was deleted. Fundamental Rule 56(d) was not in existence up to 1970. All that happened in 1970 was to restore Fundamental Rule 56(d). There are no rules under which departmental proceedings can be instituted against the members of the Indian Civil Service after their compulsory retirement. The members of the Indian Civil Service have other rights and privileges which are not available to members of the Indian Administrative Service. The restoration of Fundamental Rule 56(d) by inserting Fundamental Rule 56(ff) cannot be said to be in infraction of Article 14. That Rule governed the members of the Indian Civil Service up to 1962. For some reason or other the rule was not in use. Fundamental Rule 56(ff) was a mere restoration of the rule.

52. Another contention which was advanced on behalf of the appellant was that under Rule 6 of the All India Services (Death-cum-Retirement Benefit) Rules, 1958 an officer to whom the rule applied was merely subjected to a loss of pension whereas the appellant was prevented from retiring and was not permitted to leave his headquarters and he could also be dismissed or removed from service whereas the other officers governed by the All India Services (Death-cum-Retirement Benefit) Rules, 1958, could not suffer such disability. There are some differences between the members of the Indian Civil Service and the members of the All India Services. The differences also indicate that there are special rights and privileges of the members of the Indian Civil Service. They are treated separately in many respects. The appellant's insistence on the right to retire will completely nullify any disciplinary proceedings once the retirement takes into effect. That is why the appellant was placed under suspension. There is no violation of Article 14.

53. The contentions of the appellant fail. The appeal is therefore dismissed. Parties will pay and bear their own costs.

DUA, J. (for himself, Sikri, C.J., Shelat, J. and Palekar, J.) ♦

This appeal on certificate of fitness granted by a Division Bench of the High Court of Delhi under Article 133(1)(c) of the Constitution is directed against its judgment and order, May 6, 1971, dismissing the appellant's writ petition under Article 226 of the Constitution.

55. The appellant joined the Indian Civil Service after being selected pursuant to his success at the competitive examination held in London in 1934. He underwent the necessary period of probation and was therefore duly admitted to the said Service. He signed the necessary covenant with the then Secretary of State for India. He arrived in India on November 25, 1935. It is not disputed before us that according to Fundamental Rule 56(f) the appellant as a member of the Indian Civil Service had no retire after 35 years' of service counted from the date of his arrival in India subject to the proviso that if he had at the end of 35 years' service held his post for less than five years, he might, with the sanction of the President of India be permitted to retain his post until he had held it for five years. The appellant's date of retirement in the normal course would thus be November 25, 1970 and this is not controverted in this Court.

56. The appellant was appointed as Managing Director of the Indian Refineries Ltd. - a Public Sector Undertaking - in October, 1963. He was appointed as Chairman and Managing Director of the said Undertaking and he continued to hold that office till August, 1964, when he was appointed as Chairman of the Oil and Natural Gas Commission. In January, 1965 he was appointed as Secretary to the Government of India in the Ministry of Petroleum and Chemicals and in February, 1969 he was appointed as Secretary in the Ministry of Works, Housing and Urban Development. In the meantime in June, 1967 reference was made to Shri S. N. Roa, the Central Vigilance Commissioner, to inquire into the circumstances necessitating change in the alignment of the pipeline of the Indian Oil Corporation in the coal-field areas of Bihar and West Bengal. The report submitted by Shri S. N. Rao, in April, 1970 did not contain any finding adverse to the appellant. It appears that the Parliamentary Committee on Public Undertakings had also examined the Pipeline Division of the Indian Oil Corporation and submitted its report to Parliament on April 30, 1970. As in this report there were some findings adverse to the appellant the Government frame none charges against him and referred them for advice to Shri S. Dutt, the Central Vigilance Commissioner, who, for certain personal reasons, declined to give any advice. In the meanwhile the Government had in August, 1970 appointed a one-man Commission consisting of Shri J. N. Takru, a retired Judge of the Allahabad High Court under the Commissions of Enquiries Act, 1952, for enquiring into several matters arising out of the Parliamentary Committee on Public Undertakings. When Shri S. Dutt declined to give his advice the Government in the Ministry of Petroleum and Chemicals in October, 1970 referred to the Takru Commission for advice, the question whether prima facie charges had been made out against the appellant. The charge-sheet containing nine charges against the appellant were also forwarded to that Commission. On November 7, 1970 the Government of India intimated Shri J. N. Takru that he was further required to suggest if any other charge or charges appeared to him to have been prima facie made out against the appellant. The Takru Commission examined 14 charges against the appellant and before starting the enquiry required him on November 16, 1970, to submit his written statement in defence. The appellant submitted his explanation in more communications than one. They were, dated December 7 and 19, 1970 and January 5, 1971. Shri Takru submitted to the Government an interim report on January 12, 1971, in which prima facie case against the appellant in respect of majority of the charges was stated to have been established. It was in these circumstances that it was decided to hold disciplinary proceedings against the appellant and with that end in view an order suspending him was passed on March 23, 1971.

57. In the meantime, on November 3, 1970, the appellant had written to Shri B. Sivaraman, Cabinet Secretary the following letter :

"Shri J. N. Takru is enquiring into certain matters connected with the Pipeline projects of the Indian Oil Corporation, on which the Public Undertakings Committee of Parliament had made a report in April, 1970. These matters cover certain

allegations against me, in respect of which I have not so far had an opportunity of having any say. I understand that Shri Takru has been requested to advise Government within the next few months on whether there is any prima facie basis for these allegations. In doing so, he will give me an opportunity to explain my point of view, where necessary. On the basis of Shri Takru's report, Government will take a decision on what further action, if any, is needed. To facilitate such a course, I am willing to accept an extension of service by about four months from November 25, 1970, the date of my retirement otherwise, should Government decide to grant such extension."

58. On November 23, 1970 the President of India passed the following order extending the appellants service up to March 25, 1971 :

"The President is pleased to order under the proviso to F.R. 56(f) that the services of Shri P. R. Nayak, a member of the Indian Civil Service, who completed 35 years' of service on November 25, 1970, shall be extended up to March 25, 1971."

59. The order of suspension, dated March 23, 1971, reads as under :

"Whereas disciplinary proceedings against Shri P. R. Nayak, I.C.S. are contemplated;

And whereas the President, after carefully considering the available material, and having regard to the nature of the charges against him and the circumstances of the case, is satisfied that it is necessary and desirable to place the said Shri P. R. Nayak under suspension;

Now therefore the President, in exercise of the powers conferred by clauses (a) of sub-rule (1) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 and all other powers enabling him in that behalf hereby places the said Shri P. R. Nayak under suspension with immediate effect until further orders;

It is further ordered that during the period that this order shall remain in force, the said Shri P. R. Nayak shall be paid such subsistence allowance as is admissible under the rules and his headquarters shall be New Delhi which he shall not leave without obtaining the previous permission of the Central Government".

60. It was under these circumstances that the appellant approached the High Court of Delhi with a petition under Article 226 of the Constitution praying for quashing the order of suspension and for a declaration that the appellant had retired from service on March 25, 1971 and was entitled to full benefits of retirement permissible under the covenant and the rules as guaranteed by the Constitution. It was further prayed that Fundamental Rule 56(ff) be declared as ultra vires the Constitution.

61. The High Court dismissed the writ petition. It held that when the appellant was permitted by the Precedent under the proviso to Fundamental Rule 56(f) to continue to hold the post held by him at the end of 35 years' of his service, he continued to hold that post as a member of the Indian Civil Service and not in any other capacity. He could be permitted to hold that post for a period not exceeding five years as contemplated by the said proviso. According to the High Court even the appellant had understood this to be the correct meaning and scope of clause (f) of Fundamental Rule 56 as he had himself prayed in the writ petition for a declaration that he had retired from service on

March 25, 1971. The argument that an order of suspension under Section 3(1)(a) of All India Services (Discipline and Appeal) Rules, 1969, could only be made against the appellant after the initiation of disciplinary proceedings was also not accepted by the High Court. According to that Court it was enough if there were accusations or imputations against the appellant which called for an enquiry and the Government felt satisfied that it was necessary in the circumstances to suspend him. The contention that Fundamental Rule 56(ff) was violative of the rule of equality guaranteed by Article 14 of the Constitution was also repelled and it was observed by the High Court that members of the Indian Administrative Service who were earlier members of the Indian Civil Service constituted a class distinct from the other members of the Indian Administrative Service and further that Fundamental Rule 56(ff) merely re-introduced in October, 1970 the old clause (d) of Fundamental Rule 56 which had been deleted in August, 1962. By restoring the old position, according to the High Court, no new liability was imposed on the former members of the Indian Civil Service.

62. In this Court a number of points were raised on behalf of the appellant and elaborate arguments was addressed on both sides. We, however, do not consider it necessary to deal with them at length and express our considered opinion on all of them because in our view this appeal can be disposed of on the short point that the order suspending the appellant is bad, being violative of the relevant statutory rule.

63. Fundamental Rules, to regulate the conditions of service of civil servants in India, were made by the Secretary of State in exercise of the powers conferred upon him by Section 96-B of the Government of India Act as amended in 1919. They came into force with effect from January, 1922 replacing the substantive rules in Civil Service Regulations except in respect of pensions. Article 565 of the Civil Services Regulations (replaced by the Fundamental Rules in 1922) dealing with "compulsory retirement" so far as relevant provided :

"565(a). After thirty-five years' service, counting from the date of his arrival in India, an officer shall not, except for special reasons, and with the sanction of the Secretary of State retain his office or be appointed to any new office :

Provided that, if such an officer has held his office for less than five years, he may, for special reasons, with the sanction of the Government of India, be permitted to retain his office until he has held it for five years. The term 'office' in this article includes an officiating appointment.

Note. - This rule does not apply to an officer holding the appointment of a Judge of a Chief Court. Such an officer is required to vacate his appointment on attaining the age of 60 years.

(b) The period of five years begins to run from the date on which the officer first takes up the office, whether substantively or temporarily, provided that, if temporary, he is confirmed without reverting to his substantive appointment; but the currency of the period is not interrupted by any subsequent temporary promotion to a higher appointment.

Note. - The term 'office' as used in this Article does not include any office held under direct appointment by His Majesty the King Emperor of India, but the retention of such an office should be subject to the condition prescribed in Article 563."

Fundamental Rules 56(f) and (ff) which provide for the retirement, and retention in service, when under suspension, of a member of the Indian Civil Service, occur in Chapter II of the Fundamental Rules, headed "Retirement". The heading of this chapter before June, 1970 used to be "compulsory retirement". According to the learned Attorney-General the word "compulsory" was removed from the heading because of the substitution of the new clause (k) in Fundamental Rule 56 which enables certain categories of Government servants, subject to certain conditions to voluntarily retire by giving three months' notice in writing.

64. Fundamental Rules 56(f) and (ff) read :

"56(f). A member of the Indian Civil Service shall retire after thirty-five years' service counted from the date of his arrival in India :

Provided that if he has at the end of thirty-five years' service held his post for less than five years he may, with the sanction of the President, be permitted to retain his post until he has held it for five years.

Note. - For the purpose of this clause, officiating tenure of a post shall be included in calculating the period of five years.

(ff) Notwithstanding anything contained in clauses (a), (d) and (f) where an officer who is member of the Indian Administrative Service or the Indian Police Service and who before becoming such member was a member of the Indian Civil Service or the Indian Police is under suspension on a charge of misconduct, he shall not be required or permitted to retire on reaching the date of compulsory retirement, but shall be retained in service until the inquiry into the charge is concluded and a final order is passed thereon by the competent authority."

Clause (ff) was incurred on October 6, 1970. Clause (d) of Fundamental Rule 56 as it existed between November, 1946, when it was added and August, 1962, when it was deleted reads :

"(d) Notwithstanding anything contained in clauses (a), (b) and (c), a Government servant under suspension on a charge of misconduct shall not be required or permitted, to retire on reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon by competent authority."

This clause as is obvious was not confined to members of the Indian Civil Service but was applicable to all Government servants. With the deletion of this clause in August, 1962 and up to October, 1970, when clause (ff) was introduced, there was no provision similar to clause (d) of 1946 to clause (ff) of 1970 applicable to those officers who formerly belonged to the Indian Civil Service. In August, 1962 a new Civil Service Regulation 351-A was substituted for the old one which, so far as relevant, reads :

"351-A. The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after

retirement :

Provided that -

(a) such departmental proceeding, if instituted while the officer was in service, before his retirement or during his re-employment, shall, after the final retirement of the officer, be deemed to be a proceeding under this Article and shall be contained and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

65. Rule 3 of All India Services (Discipline and Appeal) Rules, 1969, which provides for suspension during disciplinary proceedings reads :

"3. Suspension during disciplinary proceedings. - (1) If, having regard to the nature of the charge and the circumstances in any case, the Government which 'initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started, the Government may -

(a) if the member of the Service is serving under it, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government, request that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case :

Provided that, in cases where there is a difference of opinion between two State Governments, the matter shall be referred to the Central Government for its decision.

x x x x##

(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

(4) A member of the Service shall be deemed to have been placed under suspension with effect from the date of conviction if, in the event of conviction for a criminal offence, he is not forthwith dismissed or removed or compulsorily retired consequent on such conviction, provided that the conviction carries as sentence of imprisonment exceeding forty-eight hours.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(6) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the Service shall be deemed to have been placed under suspension by the Central Government from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(7) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so;

(b) Where a member of the Service is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the member of the Service shall continue to be under suspension till the termination of all or any of such proceeding;

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order."

Sub-rule (1) of this rule is a reproduction of sub-rule (1) of Rule 7 of the All India Services (Discipline and Appeal) Rules, 1965.

66. It may be recalled that the appellant was appointed as Secretary in the Ministry of Petroleum and Chemicals in January, 1965 and he was appointed a Secretary, Works, Housing and Urban Development in February, 1969. The first argument urged on behalf of the appellant was that under Fundamental Rule 56(f) the appellant had to retire after 35 years' service counted from the date of his arrival in India. This date of retirement, according to the appellant's counsel, is fixed and rigid and is in on circumstances capable of being postponed. In other words, the period of service of the appellant could on no account be extended beyond the period of 35 years counted from the date of his arrival in India. His retention in the post held by him after the date could only mean his re-employment and not extension or continuation of his original service as a member of the Indian Civil Service. It was further contended that the appellant could be permitted to retain his post under the proviso to Fundamental Rule 56(f) only if he had held the same for less than five years on the date of his compulsory retirement. As he had held the post of a Secretary to the Government of India since January, 1965 it could not be said that he had held the post of such Secretary for a period of less than five years on November 23, 1970. He could, therefore, not be retained in Indian Civil Service after the date of compulsory retirement, namely, November 25, 1970. In this connection reference was also made to the definition of the expression "permanent post" contained in Fundamental Rule 9(22). This expression is defined there to mean a post carrying a definite rate of pay sanctioned without limit to time. According to Mr. Deftry's argument the appellant held the post of a Secretary to the Government of India and the office of the Secretary, Works, Housing and Urban Development on November 23, 1970, thereby emphasising the difference between "post" and "office". In the alternative it was submitted that if the proviso to Fundamental Rule 56(f) were to be

construed as referring to the post of the Secretary, Works, Housing and Urban Development held by the appellant since February, 1969 and not that of a Secretary to the Government of India, then, his retention to that post should have been for the full period of five years beginning from February, 1969 and his service could not be extended for a period less than five years : in other words, it could not be extended only up to March 25, 1971, as were ordered by the President on November 23, 1970. According to the appellant's contention if a member of the service exercises his choice under the proviso then he must be permitted to hold that post to complete five years in that post.

67. The next argument pressed before us on behalf of the appellant was that under Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 the appellant could be placed under suspension only after disciplinary proceedings with respect to a definite charge or charges against him were actually initiated or started and not merely when they were in contemplation, as the impugned order of the President, dated March 23, 1971, expressly purports to do. Reference to Takru Commission, according to this argument, could by no means be considered to be the initiation or commencement of disciplinary proceedings. The language of Rule 3, according to the learned counsel, is clear and unambiguous and it is not permissible on plain reading of sub-rule (1) to order the appellant's suspension merely because there are some accusations or imputations against him which call for an enquiry : in the guise of interpretation Courts cannot re-write a rule to accord with their view of what it should be. The order of suspension, dated March 23, 1971, argued the counsel, must, therefore, be held to be illegal and liable to be quashed.

68. The third contention raised on behalf of the appellant emphasised a legal defect in the order of suspension and it was argued that the order of suspension must also have denied the appellant's request to retire on March 25, 1971. Without expressly prohibiting the appellant from retiring on March 25, 1971, the order of suspension could not so operate as to deprive him of his right to retire on March 25, 1971, in accordance with the rules of his service, read with the order extending his service up to March 25, 1971.

69. In our view, the second contention possesses merit and deserves to be upheld. In case we uphold this contention it would be unnecessary for us to express any considered opinion either way on the other contentions. Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, which has already been set out in extension, provides for suspension during disciplinary proceedings. Sub-rule (1) of this rule on its plain reading empowers the Government, which initiates any disciplinary proceedings, on being satisfied having regard to the nature of the charges and the circumstances, of the necessity or desirability of placing under suspension, the member of the Service against whom such proceedings are started, to pass an order placing him under suspension or if he is serving under another Government to request that Government to suspend him. It does not suggest that suspension can be ordered merely when disciplinary proceedings are contemplated. The language used in sub-rules (4) to (7) also suggests that these rules do not authorise order of suspension of the delinquent member of the Service merely because disciplinary proceedings against him are contemplated. Suspension under those sub-rules may be ordered only either after conviction [deeming provision under sub-rule (4)] or when criminal proceedings are actually in progress [sub-rule (5)] or when after the penalty imposed on him having been set aside, the disciplinary authority decides to hold further enquiry [deeming provision under sub-rule (6)]. Clause (b) of sub-rule (7) similarly provides for continuation of order of suspension, if any other disciplinary proceeding is commenced against the delinquent member of the service, during the continuance of the earlier suspension - actual or deemed. The legislative scheme underlying Rule 3 is thus clearly indicative of the intention of the rule-making authority to restrict its operation only to those cases in which the Government concerned is possessed of sufficient material whether after preliminary investigation or otherwise

and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. An order of suspension before the actual initiation or commencement of disciplinary proceedings appears to us therefore, to be clearly outside the ambit of Rule 3 and we find no cogent ground for straining the plain language of Rule 3(1) so as to extend it to cases in which disciplinary proceedings are merely contemplated and not actually initiated or commenced. It is on doubt true that this Court (G. K. Mitter and A. N. Ray, JJ.) has in *Government of India, Ministry of Home Affairs and Others v. Tarak Nath Ghosh*, [AIR 1971 SC 823 : (1971) 1 SCC 734] expressed the view that under Rule 7(1) of the All India Services (Discipline and Appeal) Rules, 1955 [replaced in 1969 by Rule 3(1) with which we are concerned] the Government is entitled to place an officer under suspension even before definite charges are communicated to him when preliminary investigation has been made into his conduct following allegations of corrupt or malpractice levelled against him. In support of this view reliance in that decision was placed on *S. Govinda Menon v. Union of India*, [(1967) 2 SCR 566 : AIR 1967 SC 1274] an earlier decision by a bench of two Judges. After referring to the facts and the decision in *S. Govinda Menon's* case (supra), it was observed in the case of *Tarak Nath Ghosh* (supra), as follows :

"It was urged before us that the order of suspension there was different from the one before us. While there is on doubt that the order against the appellant in the above case was far more detailed both with regard to the nature of the charges and to the necessity of placing him under suspension, in substance there is the little difference for the purpose of Rule 7 of the Service Rules. The order in this case, dated July 31, 1964, shows that serious allegations of the corruption and malpractices had been made against the respondent and he was also reported to have contravened the provisions of the All India Service Conduct Rules and enquiries made by the Government of Bihar into the allegations had revealed that there was a prima facie case made out against him. Merely because the order mentioned that disciplinary proceedings were contemplated against the respondent, as compared to Rule 7 which contains phrases like 'the initiation of disciplinary proceedings', and the 'starting of such proceedings' we cannot hold that the situation in the present case had not reached a stage which called for an order of suspension. In substance disciplinary proceedings can be said to be started against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a prima facie case has been made out against him for the framing of charges. When the order of suspension itself shows that Government was of the view that such a prima facie case for departmental proceedings has been made out the fact that the order also mentions that such proceedings were contemplated makes no difference. Again the fact that in other rules of service an order of suspension may be made when 'disciplinary proceedings were contemplated' should not lead us to take the view that a member of an All India Service should be dealt with differently. The reputation of an officer is equally valuable no matter whether he belongs to the All India Services or to one of the humble cadre. It is the exigency of the conditions, of Service which requires or called for an order of suspension and there can be no difference in regard to this matter as between a member of an All India Service and a member of State Service or a Railway Service."

70. The Court in *Tarak Nath Ghosh's* case (supra), considered the dictionary meaning of the word 'suspension' and what is said in Article 389, Volume 25 of Halsbury's Laws of England at Page 589, namely, that in the absence of an express or implied term to the contrary the master cannot punish a

servant for alleged misconduct by suspending him from employment and stopping his wages for the period of suspension. But this meaning was considered to be applicable only when suspension is resorted to by way of punishment. Rule 7 in that case, on the other hand, merely provided for suspension of a Government servant for the purpose of disciplinary proceedings and could, therefore, in the opinion of the Court, be invoked when serious allegations of misconduct are imputed. In the case of S. Govinda Menon (supra), the argument raised both in the High Court and in this Court was that till charges are framed under Rule 5(2) of All India Services (Discipline and Appeal) Rules, 1955, Rule 7 could not be utilised for suspension because the word 'charges' as used in Rule 7(1) must be understood to mean definite charges or charges framed under Rule 5(2). This contention was repelled by this Court with the following observations :

"It was pointed out that definite charges were framed on June 6, 1963, and the Government had no authority to suspend the appellant before the date of framing charges. Reference was made to Rule 5(2) which states :

'5(2) The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the member of the Service charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case.'

It was argued by the appellant that the word 'charges' which occurs in Rule 5(2) and Rule 7 should be given the same meaning and on order of suspension could be passed under Rule 7 before the charges are framed under Rule 5(2) against the appellant. We do not think there is any substance in this argument. Rule 5(2) prescribes that the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges. Under Rule 5(3) a member of the Service is required to submit a written statement of his defence to the charge or charges. The framing of the charge under Rule 5(2) is necessary to enable the member of Service to meet the case against him. The language of Rule 7(1) is however different and that rule provides that the Government may place a member of the Service under suspension 'having regard to the nature of the charge/charges and the circumstances in any case' if the Government is satisfied that it is necessary to place him under suspension. In view of the difference of language in Rule 5(2) and Rule 7 we are of the opinion that the word 'charges' in Rule 7(1) should be given a wider meaning as denoting the accusations or imputations against the member of the Service. We accordingly reject the argument of the appellant on this aspect of the case."

71. It is, however, noteworthy that in that case this Court had a little earlier come to a positive finding that disciplinary proceedings had been actually initiated against the appellant. This is what the Court said :

"A perusal of the order of the Government Ext.P. 1, would itself indicate that disciplinary proceedings had been initiated against the appellant. Exhibit P. 1 reads as follows :

'The Government have received several petitions containing serious allegations of official misconduct against Shri S. Govinda Menon, I.A.S., First Member, Board of Revenue, and formerly Commissioner, Hindu Religious and Charitable Endowments

(Administration). Preliminary enquiries caused to be conducted into the allegations have shown prima facie, that the officer is guilty of corruption, nepotism and other irregularities of a grave nature. The Kerala High Court had also occasion to comment on the conduct of the officer in their Judgment in O.P. 2306/62 delivered on February 12, 1963. The judgment begins with the observation that this case, if it has served little else, has served to expose a disquieting state of affairs regarding the disposal of valuable forest land belonging to a religious institution known as the Sree Pulapally Devaswom of which I trust due notice will be taken by the competent authority in the interests of the public administration and the preservation of our forest wealth no less than in the interest of this particular institution.'

The judgment in the above case and the preliminary report of the X-Branch Police have disclosed the following grave charges of serious irregularity and official misconduct on the part of the accused officer.

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'The detailed enquiry into the charges by X-Branch is in progress. The evidence in the case has to be collected from a large number of officers who are subordinate to the accused officer in his capacity as First Member of the Board of Revenue. In the interest of the proper conduct of the enquiry it is necessary that the officer should not be allowed to continue in that post. Having regard to the nature of the charges against the officer and the circumstances the proper course would be to place him under suspension. Shri S. Govinda Menon, I.A.S., First Member, Board of Revenue, is therefore placed under suspension under Rule 7 of the All India Services (Discipline and Appeal) Rules, 1955, till the disciplinary proceedings initiated against him are completed.'

A perusal of this document shows that the Government had accepted the proceedings taken in the matter upto that date and had decided to go forward with the disciplinary proceedings. In our opinion, there is no formal order necessary to initiate disciplinary proceedings under Rule 4(1) of the Rules and the order of the State Government under Ext. P-1 must be deemed to be an order under Rule 4(1) of the Rules initiating disciplinary proceedings."

72. In S. Govinda Menon's case (supra), therefore, the order of suspension was held also to be the order initiating the disciplinary proceedings. No question was raised in that case about the legality of the composite order both initiating disciplinary proceedings and suspending Govinda Menon. But be that as it may, we find ourselves with all respect unable to agree with the view taken in Tarak Nath Ghosh's case (supra).

73. There is no gainsaying that there is no inherent power of suspension postulated by the Fundamental Rules or any other rule governing the appellant's conditions of service. Except for Rule 3 of the A.I.S. (D.&A.) Rules, 1969 no other rule nor any inherent power authorising the impugned order of suspension was relied upon in this court in its support. Therefore, if Rule 3, which is the only rule on which the appellant's suspension pending disciplinary proceedings can be founded, does not postulate an order of suspension before the initiation of disciplinary proceedings and the Government initiating such proceedings can only place under suspension the member of the Service against whom such proceedings are started, then, the impugned order of suspension which

in clearest words merely states that disciplinary proceedings against the appellant are contemplated, without suggesting actual initiation or starting of disciplinary proceedings, must be held to be outside this rule. The impugned order of suspension, it may be pointed out, is not like an order of suspension which, without adversely affecting the rights and privileges of the suspended Government servant merely prohibits or restrains him from discharging his official duties or obligations. An order of that nature may perhaps be within the general inherent competence of an appointing authority when dealing with the Government servant. The impugned order made under Rule 3 of A.I.S. (D.&A.) Rules, 1969 on the other hand seriously affects some of the appellant's rights and privileges vesting in him under his conditions of service. To mention some of the disabilities resulting from his suspension, he is not entitled to get his full salary during suspension, but is only to be paid subsistence allowances and in certain circumstances some other allowances in order to be entitled to the subsistence allowance he is prohibited from engaging in any other employment, business, profession or vocation (vide Rule 4) : the appellant is not permitted to return during the period of suspension : indeed, the impugned order specifically prohibits the appellant even from leaving New Delhi during the period of suspension, without obtaining the previous permission of the Central Government. The fact that these prejudicial consequences automatically flow from the impugned order under the rules also lends support to our view that the clear and explicit language of Rule 3 must not be so strained to the appellant's prejudice as to authorise an order of suspension on the mere ground that disciplinary proceedings against him are contemplated. The precise words of Rule 3 are unambiguous and must be construed in their ordinary sense. The draftsman must be presumed to have used the clearest language to express the legislative intention. The meaning being plain, Courts cannot scan its wisdom or policy.

74. In Tarak Nath Ghosh's case (supra), this Court's attention was also drawn to Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, made by the President under the proviso to Article 309 of the Constitution which in express terms provided for suspension of the Government servant concerned when, inter alia, "a disciplinary proceeding against him is contemplated or is pending". This Court did not consider that rule to be of much assistance in construing Rule 7 of the A.I.S. (D.&A.) Rules, 1955, which rules were held to constitute a complete code. In our view the difference in the language used in the relevant rules dealing with suspension in the two sets of rules, namely, C.C.S. (C.C. & A.) Rules and A.I.S. (D.&A.) Rules may not be considered to be wholly irrelevant and unhelpful for discovering the intention of the draftsman in adopting different phraseology while dealing with the same subject of suspension of Government servants of different categories. Rule 12(1)(a) and (b) of C.C.S. (C.C. & A.) Rules, 1957, is now replaced by Rule 10(1)(a) and (b) of C.C.S. (C.C. & A.) Rules, 1965, without any change in the language. Rule 12(1)(a) and (b) reads :

"12. Suspension. - (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the President in that behalf may place a Government servant under suspension.

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation or trial.

x x x x##

75. Just as the phraseology of Rule 12 dealing with suspension in C.C.S. (C.C. & A.) Rules, 1957,

has been retained in the corresponding rule of 1965, the phraseology of Rule 7(1)(a) and (b) dealing with suspension during disciplinary proceedings in A.I.S. (D.&A.) Rules, 1955, has similarly been retained in the corresponding Rule 3(1)(a) and (b) of 1969. This retention of different phraseology in both these sets of rules does not appear to us to be wholly unintentional, on the other hand it suggests consistency of purpose and continuity of regulation, tending to reflect the different legislative intentions on the question of scope and effect of the rules dealing with suspension in the two sets of rules. Courts may legitimately presume that the draftsman framing Rule 3(1)(a) and (b) of the 1969 Rules which concern us, was aware of the existence of different phraseology used in the rules dealing with suspension in C.C.S. (C.C. & A.) Rules, 1957 and 1965. Similarly the draftsman framing the C.C.S. (C.C. & A.) Rules can legitimately be fixed with the knowledge of the different language used in the relevant rule contained in A.I.S. (D.&A.) Rules, 1955. If with this knowledge the draftsman stuck to the different phraseology in these respective rules, then, can be Court not fairly assume that the actual words used in the different sets of rules were purposely selected with the object of expressing the legislative intention in the clearest and most precise manner ? But independently of this consideration we think that the plain language of Rule 3(1)(a) and (b) which concerns us does not authorise suspension when disciplinary proceedings have not been initiated but are only contemplated. Incidentally, it may be pointed out that the Patna High Court, when dealing with Tarak Nath Ghosh's case (supra), also noticed Rule 1706(1) (a) and (b) dealing with suspension of railway servants (Guide to Discipline and Appeal Rules) which is in identical terms as Rule 12(1)(a) and (b) of the C.C.S. (C.C. & A.) Rules, 1957. Needless to add that we are also aware of another statutory rule [Rule 40(1)(a) and (b)] of Railway Protection Force Rules, 1959, made by the Central Government under Section 21 of the Railway Protection Force Act, 1957 (23 of 1957) which provides for suspension of a member of the Force "(a) where an investigation into charges against him is contemplated or pending or (b) where a case against him in respect of any criminal offence is under investigation or trial". The existence of such rules only serves to further fortify our opinion already expressed on the plain language used in Rule 3(1)(a) and (b) which is by no means obscure or ambiguous. The different phraseology, in our view, is designedly used to express different legislative intention.

76. We have already said that on the view that we take it is unnecessary to consider the other points raised on behalf the appellant. We may only add that the contention of the learned Attorney-General that the appellant should be held to be estopped from urging that the date of his retirement could not be postponed beyond November 25, 1970, as he had expressly agreed to the extension of that date up to March 25, 1971, also need not be considered by us.

77. In the final result this appeal must succeed and allowing the same we allow the writ petition and quash the sanction order. In the circumstance of this case there would be no order as to costs.

78. Order. - In accordance with the opinion of the majority, the appeal is allowed and the suspension order is quashed. There will be no order as to costs.

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