Baikuntha Nath Das and another

Vs

Chief District Medical Officer, Baripada

Civil Appeals Nos. 869 with 870 of 1987

(L. M. Sharma, V. Ramaswami II, B. P. Jeevan Reddy JJ)

19.02.1992

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1. These appears raise the question-whether it is permissible to the government to order compulsory retirement of a government servant on the basis of material which includes uncommunicated adverse remarks. While the appellants (government servants compulsorily retired) rely upon the decisions of this court in Brij Mohan Singh Chopra, (1987) 2 SCC 188 : (AIR 1987 SC 948) and Baidyanath Mahapatra (1989) 4 SCC 664 : (AIR 1989 SC 2218 in support of their contention that it is not permissible, the respondent-government relies upon the decision in M. E. Reddy, (1980) 1 SCR 736: (AIR 1980 SC 563) to contend that it is permissible to the government to take into consideration uncommunicated adverse remarks also while taking a decision to retire a government servant compulsorily.

2. The appellants in both the appeals have been compulsorily retired by the government of Orissa in exercise of the power conferred upon it by the first proviso to Rule 71(a) of the Orissa Service Code. Since the relevant facts in both the appeals are similar, it would be sufficient if we set out the facts in Civil Appeal No. 869 of 1987.

3. The appellant, Sri Baikuntha Nath Das was appointed as a Pharmacist (then designated as Compounder) by the Civil Surgeon, Mayurbhanj on 15-3-1951. By an order dated 13-2-1976 the government of Orissa retired him compulsorily under the first proviso to sub-rule of Rule 71 of the Orissa Service Code. The order reads as follows:

> "In exercise of the powers conferred under the first proviso to sub-rule (a) of Rule 71 of Orissa Service Code, the Government of Orissa is pleased to order the retirement of Sri Baikunthanath Das, Pharmacist now working under the Chief District Medical Officer, Mayurbhanj on the expiry of three months from the date of service of this order on him. By order of the Governor."

4. The petitioner challenged the same in the High Court of Orissa by way of a writ petition, being 0.J.C. No. 412 of 1976. His case was that the order was based on no material and that it was the result of ill-will and malice the Chief District Medical Officer bore towards him. The petitioner was transferred by the said officer from place to place and was also placed under suspension at one stage. He submitted that his entire service has been spotless and that at no time were any adverse

entries in his confidential character rolls communicated to him. In the counter-affidavit filed on behalf of the government, it was submitted that the decision to retire the petitioner compulsorily was taken by the Review Committee and not by the Chief Medical Officer. It was submitted that besides the remarks made in the confidential character rolls, other material was also taken into consideration by the Review Committee and that it arrived at its decision bona fide and in public interest which decision was accepted and approved by the government. The allegation of mala fides was denied.

5. The High Court looked into the proceedings of the Review Committee and the confidential character rolls of the petitioner and dismissed the writ petition on the following reasoning: An order of compulsory retirement after putting in the lirescribed qualifying period of service does not amount to punishment as has been repeatedly held by this court. The order in question was passed by the State Government and not by the Chief Medical Officer. It is true that the confidential character roll of the petitioner contained several remarks adverse to him which were, no doubt, not communicated to him, but the decision of this court in Union of India v. M.E. Reddy,(1980) 1 SCR 736: (AIR 1980 SC 563) holds that uncommunicated adverse remarks can also be relied upon while passing an order of compulsory retirement. The said adverse remarks have been made by successive Civil Surgeons and not by the particular Chief District Medical Officer against whom the petitioner has alleged mala fides. It is unlikely that all the Chief District Medical Officers were prejudiced against the petitioner. In particular, the court observed, "the materials placed before us do not justify a conclusion that,the remarks in the confidential character rolls had not duly and properly been recorded." The decision to retire has been taken by the Review Committee on proper material and there are no grounds to interfere with its decision, it opined.

6. The adverse remarks made against the etitioner in the Swords of the High Court are to the following effect:

> ".......... most insincere, irregular in habits and negligent and besides being a person of doubtful integrity, he had been quarrelsome with his colleagues and superior officers and has been creating problems for the administration."

7. Rule 71(a) along with the first proviso appended thereto which alone is relevant for our purpose reads thus:

> "71. (a) Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government servant, except a ministerial servant who was in Government service on the 31 st March, 1939 and Class IV Government servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in respect of the Government servant in the 55th year of age in order to determine whether he/ she should be allowed to remain in service up to the date of the completion of the age of 58 years or retired on completing the age of 55 years in public interest:
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> Provided that a Government servant may retire from service any time after completing thirty years qualifying service or on attaining the age of fifty years, by giving a notice in writing to the appropriate-authority at least three months before the date on which he wishes to retire or by giving the said notice to the said authority before such shorter period as Government may allow in any case. It shall be open to the appropriate authority to withhold permission to a Government servant who seeks to retire under this rule, if he is under suspension or if enquiries against him are in

progress. The appropriate authority may also require any officer to retire in public interest any time after he has completed thirty years qualifying service or attained the age of fifty years, by giving a notice in writing to the Government servant at least three months before the date on which he is required to retire or by giving three months pay and allowances in lieu of such notice. xx xx xx"

8. It is evident that the latter half of the proviso which empowers the government to retire a government servant in public interest after he completes 30 years of qualifying service, or after attaining the age of 50 years is lespari materia with the Fundamental Rule 56(j).

9. The Government of Orissa had issued certain instructions in this behalf. According to these instructions, the Review Committee, if it is of the opinion that a particular government servant should be retired compulsorily, must make a proposal recording its full reasons therefor. The administrative department controlling the services to which the particular government servant belongs, will then process the proposal and put it up to the government for final orders.

10. In Shyam Lal v. State of Uttar Pradesh, (1955) 1 SCR 26 : (AIR 1954 SC 369) a Constitution Bench of this court held that an order of compulsory retirement is not a punishment nor is there any stigma attached to it. It said (at pp. 374-75 of AIR):

> "There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twenty five years' service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the ast sentence of Note 1 to Article 465-A make it abundantly clear that an imputation or etiarge is not in terms made a condition for the exercise of the power. In other words, a compuslory retirement has no stigma or implication of misbehaviour or incapacity."

11. In Shivacharana v. State of Mysore, AIR,1 965 SC 280 another Constitution Bench reaffirmed the said principle and held that "whether or not the petitioner's retirement was in the public interest, is a matter for the State Government to consider and as to the plea that the order is arbitrary and illegal, it is impossible to hold on the material placed by the petitioner before us that the said order suffers from the vice of mala fides."

12. As far back as 1970, a Division Bench of this court comprising J.C. Shah and K.S Hegde, JJ. held in Union of India v. J.N Singha,(1971)l SCR791:(AIR 1971 SC40) that an order of compulsory retirement made under F.R. 56(j) does not involve any civil consequences, that the employee retired thereunder does iiof lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant. It was pointed out that the said rule embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution and that the rule holds the balance between the rights of the individual Government servant and the interest of the public. The rule is intended, it was explained, to enable the Government to energise its machinery and to make it efficient by compulsorily retiring those who in its opinion should not be there in public interest. It was also held that rules of natural justice are not attracted in such a case. If the appropriate authority forms the requisite opinion bona fide, it was held, its opinion cannot be challenged before the courts though it is open to an aggrieved party to

contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision. It is significant to notice that this decision was rendered after the decisions of this court in State of Orissa v. Dr. Binapani Dei, (1967) 2 SCR 625 : (AIR 1967 SC 1269) and A. K. Kraipak v. Union of India, AIR 1970 SC 150. Indeed, the said decisions were relied upon to contend that even in such a case the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action. The contention, was not accepted as stated above. The principles enunciated in the decision have been accepted and followed in many a later decisions. There has never been a dissent not until 1987.

13. In R. L. Butail v. Union of India, 1971 (2) SCR 55: 1971 Lab IC (N) 2, relied upon by the appellant's counsel, the Constitution Bench considered a case where the government servant was denied the promotion and later retired compulsorily under F.R. 56(j) on the basis of adverse entries in his confidential records. The appellant, an electrical engineer, entered the service of Simla Electricity Board in 1934. In 1940, he was transferred to Central Electricity Commission - later designated as Central Water and Power Commission (Power Wing). In 1955 he was promoted to the post of Director wherein he was confirmed in the year 1960. In his confidential reports relating to the years 1964 and 1965, certain adverse remarks were made. They were communicated to him. He made a representation asking for specific instances on the basis of which the said adverse remarks were made. These representations were rejected. Meanwhile, a vacancy arose in the higher post. The appellant was overlooked both in the year 1964 as well as in 1965 by the Departmental Promotion Committee and the U. P. S. C. On August 15, 1967, on his completing 55 years of age, he was compulsorily retired under F.R. 56(j). Thereupon he filed three writ petitions in the High Court challenging the said adverse entries as also the order of compulsory retirement. The writ petitions were dismissed whereupon the matters were brought to this court on the basis of a certificate. The Constitution Bench enunciated the following propositions:

> 1. The rules framed by the Central Water and Power Commission on the subject of maintenance of confidential reports show that a confidential report is intended to be a general assessment of work performed by the government servant and that the said reports are maintained to serve as a data of operative merit when question of promotion, confirmation etc. arose. Ordinarily, they are not to contain specific instances except where a specific instance has led to a censure or a warning. In such situation alone, a reasonable opportunity has to be afforded to the government servant to present his case. No opportunity need be given before the entries are made. Making of an adverse entry does not amount to inflicting a penalty.
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> 2. When the petitioner was overlooked for promotion his representations against the adverse remarks were still pending. But inasmuch as the said representations were rejected later there was no occasion for reviewing the decision not to promote the appellant. Withholding a promotion is not a penalty under the Central Service Rules. Hence, no enquiry was required to be held before deciding not to promote the appellant more so, when the promotion was on the basis of selection and not on the basis of seniority alone.
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> 3. So far as the order of compulsory retirement was concerned, it was based upon a consideration of his entire service record including his confidential reports. The adverse remarks in such reports, were communicated from time to time and the representations made by the appellant were rejected. It is only thereafter that the decision to retire him compulsorily was taken and, therefore, there was no ground to

interfere with the said order.

14. It is evident that in this case, the question arising for our consideration viz., whether uncommunicated adverse remarks can be taken into consideration along with other material for compulsorily retiring a government servant did not arise for consideration. That question arose directly in Union of India v. M.E. Reddy, (AIR 1980 SC 563).

15. The respondent, M.E. Reddy belonged to Indian Police Services. He was retired compulsorily under Rule 16(3) of All India Service (Death-cum-Retirement) Rules, 1958 corresponding to F.R. 56(j). The contention of the respondent was that the order was passed on non-existing material inasmuch as at no time were any adverse remarks cornmuineated to him. His contention was that had there been any adverse entries they ought to have been communicated to him under the rules. The said contention was dealt with in the following words (AIR 1980 SC 563, Para 17):

> ".......... This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the various rules on the subject it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys."

16. The Learned Judges referred to the decisions in R. L. Butail (1971 Lab IC (N) 2), J. N. Sinha (AIR 1971 SC 40) and several other decisions of this court and held that the confidential reports, even though not communicated to the officer concerned, can certainly be considered by the appointing authority while passing the order of compulsory retirement. In this connection, they relied upon the principle in J. N. Sinha that principles of natural justices are not attracted in the case of compulsory retirement since it is neither a punishment nor does it involve any civil consequences.

17. The principle of the above decision was followed in Dr. N.V. Puttabhatta v. State of Mysore, AIR 1972 SC 2185 a decision rendered by A. N. Grover and G.K. Mitter, JJ. Indeed, the contention of the appellant in this case was that since an order of compulsory retirement has adverse effects upon the career and prospects of the government servant, the order must be passed in accordance with principles of natural justice. It was contended that before passing the order, a notice to show cause against the order proposed must be given to the government servant. Reliance was placed upon the decision in Binapani Dei (AIR 1967 SC 1269) and Kraipak (AIR 1970 SC 150). This contention was negatived following the decision in J.N. Sinha (AIR 1971 SC 40). It was also pointed out, applying the principles of Shivacharana (AIR 1965 SC 280) that an order of compulsory retirement is not a punishment nor does it involve any stigma or implication of misbehaviour. Another contention urged in this case was that the order of compulsory retirement was based upon uncommunicated adverse remarks and that the appellant was also not afforded an opportunity to make a representation against the same. At the relevant time, no appeal lay against the orders Passed upon the representation. Dealing with the said contention, the court observed (para 10 of AIR):

> "as the confidential reports rules stood at the relevant time, the appellant could not have appealed against the adverse remarks and if the opinion of the Government to retire him compulsorily was based primarily on the said report, he could only challenge the order, if he was in a position to show that the remarks were arbitrary and mala fide."

18. Yet another contention which is relevant to the present case is this: the retirement of the appellant therein was ordered under Rule 235 of Mysore Civil Service Rules. The language of the said rule corresponded to F.R. 56(j) but it did not contain the word "absolute" as is found in F.R. 56(j). An argument was sought to be built up on the said difference in language but the same was rejected holding that even in the absence of the word "absolute", the position remains the same. We are referring to the said aspect inasmuch as the proviso to Rule 7 1 (a) of the Orissa Service Code, concerned in the appeals before us, also does not contain the word "absolute".

19. In AIR 1980 SC 1894, Gian Singh Mann v. Punjab and Haryana High Court. a Bench consisting of Krishna Iyer and Pathak, JJ. reiterated the principle that an order of compulsory retirement does not amount to punishment and that no stigma or implication of misbehaviour is intended or attached to such an order.

20. In O.N.G.C. v. Iskandar Ali, (AIR 1980 SC 1242) a probationer was terminated on the basis of adverse remarks made in his assessment roll. A Bench comprising three learned Judges (Fazal Ali, A.C. Gupta and Kailasam, JJ.) held that the order of termination in that case was an order of termination simpliciter without involving any stigma or any civil consequences. Since the respondent was a probationer, he had no right to the post. The remarks in his assessment roll disclosed that the respondent was not found suitable for being retained in service and even though some sort of enquiry was commenced, it was not proceeded with. The appointing authority considered it expedient to terminate the service of the respondent in the circumstances and such an order was beyond challenge on the ground of violation of Article 311.

21. This court has taken the view in certain cases that while taking a decision to retire a government servant under Rule 56(j), more importance should be attached to the. confidential records of the later years and that much importance should not be attached to the record relating to earlier years or to the early years of service. In Brij Bihari Lal Agarwal v. High Court of Madhya Pradesh, (1981) 2 SCR 297: (AIR 1981 SC 594) upon which strong reliance is placed by the appellant's counsel - a Bench comprising Pathak and Chinnappa Reddy, JJ. observed thus (para 6 of AIR):

> "....... What we would like to add is that when considering the question of compulsory retirement, while it is no doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service up to the statutory age of superannuation. Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance."

22. We may mention that the order of compulsory retirement in the above case is dated 28th September, 1979. The High Court took into account the confidential reports relating to the period

prior to 1966 which were also not communicated to the concerned officer. However, the decision is based not upon the non-communication of adverse remarks but on the ground that they were too far in the past. It was observed that reliance on such record has the effect of denying an opportunity of improvement to the officer concerned. The decision in Baldev Raj Chaddha v. Union of India, (1981) 1 SCR 430: (AIR 1981 SC 70) is to the same effect. In J. D. Srivastava v. State of Madhya Pradesh, (1984) 2 SCR 466: (AIR 1984 SC 630), it was held by a Bench of three learned Judges that adverse reports prior to the promotion of the officer cannot reasonably form a basis for forming an opinion,to retire him. The reports relied upon for retiring the appellant were more than 20 years old and there was no other material upon which the said decision could be based. It was held that reliance on such stale entries cannot be placed for retiring a person compulsorily, particularly when the officer concerned was promoted subsequent to such entries.

23. We now come to the decision in Brij Mohan Singh Chopra v. State of Punjab (AIR 1987 S C 948) relied upon by the learned counsel for the petitioner. In this case, there were no adverse entries in the confidential records of the appellant for a period of five years prior to the impugned order. Within five years, there were two adverse entries. In neither of them, however, was his integrity doubted. These adverse remarks were not communicated to him. The Bench consisting of E.S. Venkataramiah and K.N. Singh, JJ. quashed it on two grounds viz.,

> 1. It would not be reasonable and just to consider adverse entries of remote past and to ignore good entries of recent past. If entries for a period of more than 10 years past are taken iiato account it would be an act of digging out past to get some material to make an order against the employee.
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> 2. In Gurdyal Singh Fiji v.State of Punjab, (1979) 3 SCR 518: (AIR 1979 SC 1622) and Amarkant Chaudhary v. State of Bihar, (1984) 2 SCR 299: (AIR 1984 SC 531), it was held that unless an adverse report is communicated and representation, if any, made by the employee is considered, it may not be acted upon to deny the promotion. The same consideration applies where the adverse entries are taken into account in retiring an employee prematurely from service. K.N. Singh, J. speaking for the Bench observed: "it would be unjust and unfair and contrary to principles of natural justice to retire prematurely a government employee on the basis of adverse entries which are either not communicated to him or if communicated, representations made against those entries are not considered and disposed of."

This is the first case in which the principles of natural justice were imported in the case of compulsory retirement even though it was held expressly in J. N. Sinha (AIR 1971 SC 40) that the said principles are not attracted. This view was reiterated by K. N. Singh, J. again in (1989) 4 SCC 664: (AIR 1989 SC 2218), Baidyanath Mahapatra v. State of Orissa (Bench comprising of K. N. Singh and M. H. Kania, JJ.) In this case, the Review Committee took into account the entire service record of the employee including the adverse remarks relating to the years 1969 to 1982 (barring certain intervening years for which no adverse remarks were made). The employee had joined the Orissa Government service as an Assistant Engineer in 1955. In 1961 he was promoted to the post of Executive Engineer and in 1976 to the post of Superintending Engineer. In 1979 he was allowed to cross the efficiency bar with effect from 1-1-1979. He was compulsorily retired by an orderdated 10-11-1983. The Bench held in the first instance that the adverse entries for the period prior to his promotion as Superintending Engineer cannot be taken into account. It was held that if the officer was promoted to a higher post, and that too a selection post, notwithstanding such adverse entries, it must be presumed that the said entries have lost their significance and cannot be revived to retire the

officer compulsorily. Regarding the adverse entries for the subsequent years and in particular relating to the years 1981-82 and 1982-83 it was found that though the said adverse remarks were cornmunicated, the period prescribed for making a representation had not expired. The Bench observed (at p. 2221 of AIR):

> "............. These facts make it amply clear that the appellant's representation against the aforesaid adverse remarks for the years 1981- 82 and 1982 - 83 was pending and the same had not been considered or disposed of on the date the impugned order was issued. It is settled view that it is not permissible toaprematurely retire a government servant on the basis of adverse entries, representations against which are not considered and disposed of. See Brij Mohan Singh Chopra v. State of Punjab, (AIR 1987 SC 948)."

24. On the above basis, it was held that the Review Committee ought to have waited till the expiry of the period prescribed for making representation against the said remarks and if any representation was made it should have been considered and disposed of before they could be taken into consideration for forming the requisite opinion. In other words, it was held that it was not open to the Review Committee and the Government to rely upon the said adverse entries relating to the years 1981-82 and 1982-83, in the circumstances, unfortunately, the decision in J. N. Sinha (AIR 1971 SC 40) was not brought to the notice of the learned Judges when deciding the above two cases.

25. The basis of the decisions in Brij Mohan Singh Chopra (AIR 1987 SC 948) and Baidyanath Mahapatra (AIR 1989 SC 2218) it appears, is that while passing an order of compulsory retirement, the authority must act consistent with the principles of natural justice. It is said so expressly in Brij Mohan Singh Chopra. This premise, if carried to its logical end, would also mean affording an opportunity to the concerned government servant to show cause against the action proposed and all that it involves. It is true that these decisions do not go to that extent but limit their holding to only one facet of the rule viz., acting upon undisclosed material to the prejudice of a man is a violation of the principle of natural justice.This holding is in direct conflict with the decision in J.N. Sinh,a (AIR 1971 SC 40) which excludes application of principles of natural justice. As pointed out above, J. N. Sinha was decided after, and expressly refers to the decisions in, Binapani Dei (AIR 1967 SC 1269) and Kraipak (AIR 19,70 SC 150) and yet holds that principles of natural justice are not attracted in a case of compulsory retirement. The question is which of the two views is the correct one. While answering this question, it is necessary to keep the following factors in mind:

> a) Compulsory retirement provided by F. R. 56(j) or other corresponding rules is not a punishment. It does not involve any stigma nor any implication of misbehaviour or incapacity. Three Constitution Benches have said so vide Shyam Lal (AIR 1954 SC 369), Shivacharana (AIR 1965 SC 280) and R. L. Butail (1971 Lab IC (N) 2).
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> b) F. R. 56(j), as also the first proviso to Rule 71(a) of the Orissa Service Code, empowers the Government to order compulsory retirement of a Government servant if in their "opinion", it is in the public interest so to do. This means that the action has to be taken on the subjective satisfaction of the Government. In R. L. Butail, (1971 (2) SCR 55 at p. 70 : 1971 Lab IC (N) 2). the Constiution Bench observed:
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> "........... In Union of India v. Col. J. N. Sinha, (AIR 1971 SC 40) this Court stated that F. R. 56(j) in express terms confers on the appropriate authority an abolute right to retire a Government servant on his attaining the age of 55 years if such authority is

of the opinion that it is in public interest so to do. The decision further states:

> "If that authority, bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

26. The law on the subjective satisfaction has been dealt with elaborately in Barium Chemicals v. Company Law Board, AIR 1967 SC 295. At page 323, Shelat, J., after referring to several decisions dealing with action taken on subjective satisfaction, observed thus (para 61):

> "Bearing in mind these principles the provisions of S. 237 (b) may now be examined. The clause empowers the Central Government and by reason of delegation of its powers the Board to appoint inspectors to investigate the affairs of the company, if "in the opinion of the Central Government" (now the Board) there are circumstances "suggesting" what is stated in the three sub-clauses. The power is executive and the opinion requisite before an order can be made is of the Central Government or the Board as the case may be and not of a Court. Therefore, the Court cannot substitute its own opinion for the opinion of the authority. But the question is, whether the entire action under the section is subjective?"

27. The learned Judges then referred to certain other decisions including the decision in Vellukummel v. Reserve Bank of India, AIR 1962 SC 1371 and concluded as follows (at p. 324, para 63 of AIR 1967 SC 295):

> Therefore, the words, "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rule of natural justice where the function is administrative."

28. The blurring of the dividing line between a quasi-judicial order and an administrative order, pointed out in Kraipak has no effect upon the above position, more so when compulsory retirement is not a punishment nor does it imply any stigma, Kraipak (AIR 1970 SC 150) or for that matter, Maneka Gandhi (AIR 1978 SC 597) cannot be understood as doing away with the concept of subjective satisfaction.

29. On the above premises, it follows, in our respectful opinion that the view taken in J. N. Sinha (AIR 1971 SC 40) is the correct one viz., principles of natural justice are not attracted in a case of compulsory retirement under F.R. 56(j) or a rule corresponding to it. In this context, we may point out a practical difficulty arising from the simultaneous operation of two rules enunciated in Brij Mohan Singh Chopra (AIR 1987 SC 948). On one hand, it is stated that only the entries of last ten years should be seen, and (2) on the other hand, it is stated that if there are any adverse remarks therein, they must not only be communicated but the representations made against them should be considered and disposed of before they can be taken into consideration. Where do we draw the line in the matter of disposal of representation. Does it mean, disposal by the appropriate authority alone or does it the include appeal as well. Even if the appeal is dismissed, the government servant may

file a revision or make a representation to a still higher authority. He may also approach a court or Tribunal for expunging those remarks. Should the Government wait until all these stages are over. All that would naturally take a long time by which time, these reports would also have become stale. A government servant so minded can adopt one or the other proceeding to keep the matter alive. This is an additional reason for holding that the principle of M.E. Reddy (AIR 1980 SC 563) should be preferred over Brij Mohan Singh Chopra (AIR 1987 SC 948) and Baidyanath Mahapatra (AIR 1989 SC 2218), on the question of taking into consideration uncommunicated adverse remarks.

30. Another factor to be borne in mind is this: most often, the authority which made the adverse remarks and the authority competent to retire him compulsorily are not the same. There is no reason to presume that the authority competent to retire him will not act bona fide or will not consider the entire record dispassionately. As the decided cases show, very often, a Review Committee consisting of more than one responsible official is constituted to examine the cases and make their recommendation to the Government. The Review Committee, or the Government, would not naturally be swayed by one or two remarks, favourable or adverse. They would form an opinion on a totality of consideration of the entire record - including representa tions, if any, made by the government servant against the above remarks - of course attaching more importance to later period of his service. Another circumstance to be borne in mind is the unlikelihood of succession of officers making unfounded remarks against a government servant.

31. We may not be understood as saying either that adverse remarks need not be communicated or that the representations, if any, submitted by the government servant (against such remarks) need not be considered or disposed of. The adverse remarks ought to be communicated in the normal course, as required by the Rules/ orders in that behalf. Any representations made against them would and should also be dealt with in the normal course, with reasonable promptitude. All that we are saying is that the action under F.R. 56(j) (or the Rule corresponding to it) need not await the disposal or final disposal of such representation as the case may be. In some cases, it may happen that some adverse remarks of the recent years are not communicated or if communicated, the representation received in that behalf are pending consideration. On this account alone, the action under F.R. 56 (j) need not be held back. There is no reason to presume that the Review Committee or the Government, if it chooses to take into consideration such uncommunicated remarks, would not be conscious or cognizant of the fact that they are not communicated to the government servant and that he was not given an opportunity to explain or rebut the same. Similarly, if any representation made by the government servant is there, it shall also be taken into consideration. We may reiterate that not only the Review Committee is generally composed of high and responsible officers, the power is vested in Government alone and not in a minor official. It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided by Article 226 of the Constitution is no less an important safeguard. Even with its wellknown constraints, the remedy is an effective check against mala fide, perverse or arbitrary action.

At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is adverse remarks, not every remark comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56 (j) or a Rule corresponding to it. The object and purposes for which this power is to be exercised are well settled in J. N. Sinha, (AIR 1971 SC 40) and other decisions referred supra.

32. The following principles emerge from the above discussion:

> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
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> (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
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> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is Passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasoanble person would form the requisite opinion on the given material in short; if it is found to be a perverse order.
>
> (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
>
> (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed in paras 29 to 31 above.

33. Before parting with the case, we must refer to an argument urged by Sri R. K. Garg. He stressed what is called, the new concept of Article 14 as adumbrated in Maneka Gandhi, AIR 1978 SC 597 and submitted on that basis that any and every arbitrary, action is open to judicial scrutiny. The general principle evolved in the said decision is not in issue here. We are concerned mainly with the question whether a facet of principle of natural justice - audi alteram partem - is attracted in the case of compulsory retirement. In other words, the question is whether acting upon undisclosed material is a ground for quashing the order of compulsory retiremerit. Since we have held that the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the Government, there is no room for importing the said facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma.

34. So far as the appeals before us are concerned, the High Court which has looked into the relevant record and confidential records has opined that the order of compulsory retirement was based not merely upon the said adverse remarks but other material as well. Secondly, it has also found that the

material placed before them does not justify the conclusion that the said remarks were not recorded duly or properly. In the circumstances, it cannot be said that the order of compulsory retirement suffers from mala fides or that it is based on no evidence or that it is arbitrary.

35. For the above reason, both the appeals are dismissed but in circumstances of the case, we make no order as to costs. Appeals dismissed.

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