ALLAHABAD HIGH COURT

Abdul Ahad

Vs.

Inspector General of Police, U.P

Civil Misc. Writ No. 1184 of 1961
(M.C. Desai, C.J., J.H. Takru and W. Broome, JJ.)

04.08.1964

JUDGMENT

Desai, C.J.

1. This petition involving the question of constitutionality of Article 465 of the Civil Service Regulations which came up for hearing before our brother Oak has been referred by him to a larger bench on account of conflict of decisions on the question. In the petition Abdul Ahad seeks certlorari for the quashing of an order passed by the Superintendent of Police Bareilly, on 17-4-1961 compulsorily retiring him from the post of a Head constable and mandamus requiring the Deputy Inspector General of Police and the Inspector General of Police not to terminate his services.

2. The petitioner was enrolled as a constable in the police force under the Police Act, 1861, in 1933, was promoted as a head constable in 1945 and was confirmed in that post in 1947. He was forty-eight years old when the impugned order was passed against him. Section 2 of the Police Act lays down that pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government. In exercise of this power the State Government in 1944 made the following rule for compulsory retirement before the age of superannuation of subordinate police officers:

> "The Inspector General of Police may, without assigning any reason, order the compulsory retirement of any police officer of the rank of inspector or below in the United Provinces Police, who has completed 30 years' service qualifying for pension. No claim to special compensation on this account will be entertained. The Inspector General of Police shall exercise the power of compulsory

retirement only when it is in the public interest to dispense with the further services of an officer.' This rule was contained in G. O. No. 846 dated 9-9-1944 and the G. O. made it clear that it was to apply to all the subordinate members of the police force irrespective of the date on which they entered the service of Government. The rule was communicated to alt subordinate members of the police force and also published in the police Gazette. It was amended by the State Government in 1948 and the words "25 years" were substituted for "30 years". The Civil Service Regulations also contained rules regarding superannuation and compulsory retirement; Article 465 of the Regulations as amended in its application in Uttar Pradesh reads as follows :

"(1) A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for 25 years on attaining the age of 50 years;

(2) A retiring pension is also granted to a Government servant who is required by Government to retire after completing 25 years or more of qualifying service.

Note (1) : Government retains the right to retire any Government servant after he had completed 25 years qualifying service without giving any reasons and no claim to special compensation on the account shall be entertained. This right shall only be exercised by Government in the administration department where it is in the public interest to dispense with the services of a Government servant who has outlived his usefulness. Note (2) : The Inspector General of Police Uttar Pradesh may exercise the power vested in the Government in respect of compulsory retirement of constables and head constables subject to the conditions laid down in Note (1)." Note (1) of Article 465 originally contained the words "Government retains an absolute right to retire", but by a subsequent amendment the word "absolute" was deleted. The alterations in original Article 465 were made by the Governor of Uttar Pradesh in 1945 and later in exercise of the powers conferred upon him by Section 241(2)(b) of the Government of India Act and Article 309 of the Constitution of India. He seems to have made these alterations in order to bring the article in conformity with the rule made by him in exercise of the powers conferred by Section 2 of the Police Act.

3. On November 7, 1960, the Superintendent of Police, Bareilly, where the petitioner was employed, recommended his compulsory retirement saying that there were three entries of misconduct and seven entries of petty punishment in his character roll, that his integrity certificate for 1958 had been withheld, that he was found to be careless in

1959 and that the entries showed that he was gradually going off the rails and was "not considered fit for further retention in service". He had completed 27 years of qualifying service. The recommendation was on the prescribed form. The Deputy Inspector General of Police through whom the recommendation was made by the Superintendent of Police made the following endorsement on the form on 28-11-1960 :

> "I agree with the Superintendent of Police. The Head Constable has outlived his utility and is a very fit case for compulsory retirement."

The Inspector General of Police on 27-12-1960 approved of the recommendation made by the Superintendent of Police and directed that he relieved immediately and would be granted four months' leave preparatory to compulsory retirement. The Superintendent of Police on 2-1-1961 communicated the Inspector General of Police's order to the petitioner and the petitioner represented against it on 14-1-1961 and 7-2-1961. The representations were rejected by the Inspector General and he was asked on 30-3-1961 to submit an application for leave preparatory to compulsory retirement. The petitioner did not ask for leave preparatory to retirement and on 17-4-1961 the Superintendent of Police ordered him to be relieved on compulsory retirement with effect from 7-5-1961. Thereupon the petitioner filed this petition.

4. The grounds urged in support of the petition are that the order of compulsory retirement amounts to "removal" within the meaning of Article 311 of the Constitution, that he was not informed of the reason for the removal, that no charge had been framed against him and the provisions of Article 311 had not been complied with and that Articles 465 and 465-A of the Regulations are ultra vires the Constitution.

5. The petition is contested by the opposite parties. Their case is that compulsory retirement 0f the petitioner was ordered under Article 465, that it was in public interest to dispense with his services because be had "outlived his usefulness", that no penal consequences ensued to him from the compulsory retirement, it did not amount to "removal" within the meaning of Article 311 of the Constitution and its provisions did not require to be complied with and that the rules made by the State Government in exercise of the powers conferred by Section 2 of the Police Act also remained in force and authorized compulsory retirement of the petitioner.

6. There was considerable argument at the Bar as to the source of the power of the State Government to require compulsory retirement of a Government servant after completing 25 years of qualifying service Article 465 deals only with pension to be granted to a Government servant on retirement; it does not deal with a Government servant's right to retire, or the Government's right to compel retirement, after a certain time. As pointed out by the Supreme Court in *Shyamlal v. State of U.P.,* [1] the regulations. . . .are intended only to regulate salaries, leave, pension and other allowances and .do not deal otherwise than indirectly with matters relating to recruitment, promotion, official duties, discipline or the like." (p. 572). The article provides that a Government servant is entitled to a retiring pension when he is permitted to retire after completing qualifying service for 25 years on attaining the age of 50 years or is compulsorily retired by the Government after completing 25 years of qualifying service. It does not lay down that a Government servant may be permitted to retire after completing qualifying service for twenty-five years on attaining the age of 50 years or may be compulsorily retired after completing 25 years of qualifying service or on what conditions this may be done. The source of a Government servant's right to retire after completing a certain length of service and the source of the State Government's power to require compulsory retirement of a Government servant after completing a certain length of service must be looked for elsewhere. The object behind Note I was to make it clear that a Government servant compulsorily retired is not entitled to any special compensation on the ground of compulsory retirement and that the Government is not bound to give any reasons for compelling him to retire. The right to require compulsory retirement is derived from another source and the note emphasizes that the exercise of this right does not impose upon the Government any obligation to give reasons or to give special compensation. There is no rule which impose this obligation upon the Government and the intention behind the note is to state this fact expressly if the Government had a right before the article was inserted in the Regulations to require compulsory retirement of a Government servant it was without any obligation on its part and this is all that is made clear by the note. The word "retain" in the note was interpreted by the Supreme Court in AIR 1954 Supreme Court 369. Prior to the insertion of the article in the Regulations there were in force resolutions passed by the Government of India, one of which gave the Government an absolute right to retire any officer after he had completed 25 years' service without the necessity to give reasons and without his having any claim for compensation in addition to pension. These resolutions were in force when the Government of India Act 1919 was enacted. Section 96-B of the Act laid down that all rules in operation at

the time of the passing of the Act were to remain in force as if made in exercise of the powers conferred by it. Shyamlal was an officer governed by the resolutions and was compulsorily retired on completing 25 years qualifying service. The Government purported to do so by virtue of the power conferred by Article 465A of the Regulations. Article 465A was inserted in the Regulations in 1922 and was not in existence when the Government of India Act was enacted. So it was contended on Shyamlal's behalf that the article was not applicable to him but the contention was repelled by the Supreme Court. It pointed out that the resolution empowering the Government to require his compulsory retirement was in force when the Government of India Act was enacted and was confirmed by Section 96-B of it, that the Regulations simply contained the resolutions relating to pension, that Article 465-A was a mere reproduction of one of the resolutions, that the rules contained in the resolutions had come into operation on their publication before the enactment of the Government of India Act, that their subsequent publication in the form of Regulations only served to make their exact scope clear and that the real purpose of the incorporation of the resolutions in the Regulations was not to make any new rule on the date of the incorporation but to distribute and post up the rules contained in the resolutions at appropriate places in the Regulations for ready reference. At page 372 Das, J. speaking for the Court said ..... the purpose of Note I is not to conter on the Government any new right to compulsorily retire an officer on completion by him of twenty five years' service but that it is intended to serve as a reminder that the Government already has such right which it means to 'retain' One "retains" only what one already possesses and the word 'retain' is wholly inappropriate for the purpose of conferring a fresh right. The last sentence of Note I is only an administrative direction as to when the existing right of the Government is to be exercised

In short, the language of Note I....makes It abundantly clear that the Government's right to compulsorily retire an officer is not derived from Note I ..... That right is obviously derived from new R. 4 which was announced by Resolution No. on the 15th November, 1919" The word "retain" was interpreted by the Supreme Court in this manner to meet the argument of the Government servant that the rule contained in Article 465-A was a new rule not in force when the Government of India Act, 1919 was enacted. The word "retain" means according to the New English Dictionary by Murray, "to keep hold or possession of; to continue having or keeping, in various senses." Just as in Shyamlal's case, AIR 1954 Supreme Court 369 the power, existed in the resolutions, so also in the instant case the power vested in the Rules made by the State Government in exercise of the, powers conferred by Section 2 of the Police

Act in Shyamlal's case. AIR 1954 Supreme Court 369 the power conferred by the resolutions was incorporated in Article 465-A and in the instant case the power conferred by the Rules made under the Police Act was Incorporated in Article 465. The power applied against an officer of the Public Works Department was held by the Supreme Court not to be a new power conferred by the note itself because it reproduced the power existing before the incorporation of the article in the Regulations; similarly the power to be applied against a police officer and referred to in the note can be said to be a reproduction of the power contained in the Rules made under the Police Act. Therefore, the plea that the word "retain" should be understood in the sense of "to keep hold or possession of; to continue having or keeping does not help the petitioner It is immaterial that in the first counter-affidavit it was asserted that the petitioner's compulsory retirement was ordered under Article 465. In the supplementary counter-affidavit reliance was placed also upon the Rules made under the Police Act. The opposite parties' reliance upon Article 465 in the first instance did not estop them from relying upon the Rules made under the Police Act, if the reliance was justified. The principle to be applied is :

> 'When an authority passes an order which is within its competence it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule and... the validity of an order should be judged on a consideration of its substance and not its form." (Venkatarama Aiyar, J. in *P. Balakotaiah v. Union of India,).*[3]

In the order of compulsory retirement no reliance was placed upon Article 465 and the petitioner has not been prejudiced at all by the statement in the first counter-affidavit that it was ordered under Article 465. Moreover when Article 465 itself reproduced the Rules made under the Police Act reliance upon it amounted to reliance upon the Rules. In Shyamlal's case, AIR 1954 Supreme Court 369 also the reliance was upon Article 465-A and his compulsory retirement was held to be legal because prior to Article 465-A there existed the Resolutions. The Rules made under the Police Act govern only police officers whereas the note governs all Government servants of the State, but it has not been shown that rules similar to the Rules under the Police Act, but governing other servants of the State, did not exist prior to the insertion of Article 465 in the Regulations. Presumably the State Government had similar rules governing other Government servants also.

7. Even apart from the Rules made under the Police Act, a servant employed by a Province or State held office during the pleasure of the Governor under the Government of India Acts 1919 and 1935. The power to discharge at pleasure included the smaller power of discharging on the ground of completion of 25 years' qualifying service. So the State Government had the power to discharge the petitioner from service on completing 25 years of service even before the incorporation of Article 465 in the Regulations and the word "retain" as interpreted by the Supreme Court could have reference to this power.

8. Compulsory retirement contemplated by note of Article 465 of the Regulations is quite distinct from removal referred to in Article 311 of the Constitution. There is no controversy about removal contemplated by Article 311 being by way of punishment and about termination of service otherwise than by way of punishment not amounting to such removal. Compulsory retirement referred to in Article 465 and the Rules made under the Police Act is simply termination of service after a certain period. There is no loss of anything already earned by the Government servant; all that happens is that he will not in future render service to the Government and will not be paid anything. There is no loss of pension. He is not debarred from service in future. It is not described as a punishment either in the Rules made under the Police Act or in Article 465. It is not even said anywhere that a Government servant can be compulsorily retired on any ground for which he may be punished with dismissal, removal, reduction in rank. etc. The punishments that can be inflicted upon a Government servant are adequate to include all kinds of delinquencies and there was no need of inventing a new kind of punishment in the form of compulsory retirement. If a Government servant deserved to be punished the rules regarding punishments ranging from dismissal to censure were enough. The rule regarding compulsory retirement is in addition to the rules regarding punishments and, therefore, compulsory retirement cannot be said to be a punishment. Civil service under a State being during the pleasure of the Governor no servant of a State (not appointed for a fixed term) can claim that he has a right to remain in service in future. If the contract of service or the rules governing the service require a certain procedure to be followed before his services are ended, they must be followed notwithstanding the durante bene placito doctrine. There are disciplinary rules laying down the procedure to be followed before punishment is inflicted upon a Government servant even though he holds service at pleasure. When he is dismissed, removed or reduced in rank by way of punishment (after the prescribed procedure has been gone through) he is dismissed, etc. in

accordance with the rules of service When he is compulsorily retired that also is done in accordance with the rules of service. The difference between the two, however, is that the rules of service themselves treat dismissal etc., as punishment and compulsory retirement is simply exercise of the pleasure of the Governor to terminate his service Compulsory retirement is on the ground that his services are no longer required in future, dismissal, etc., is on the ground that in the past his conduct has been such as to merit punishment. Punishment is a positive order taking away something whereas compulsory retirement is a negative order refusing to do something in future. The idea that on account of some misconduct, inefficiency etc., the servant must be punished does not exist when he is compulsorily retired. The idea behind compulsory retirement is that the State will not find his services useful after the date fixed for his retirement and not to punish him for something done by him prior to that date. While punishing the State looks to the past whereas while compulsory retiring it looks to the future. Even though a servant is compulsorily retired on the ground that his services will not be found useful in future it is in future that his services will not be found useful. There cannot be punishment in advance and there cannot be punishment when the relationship of master and servant does not exist at all. Consequently the Government's saying that the servant has outlived his utility after a certain date and compulsorily retiring him with effect from it is not finding any fault with him while he is in service and, therefore, it cannot possibly be punishing him for something already done. Compulsory retirement is more or less akin to refusal to employ as a servant; a person is not punished when he is not employed and so also a servant is not punished when he is compulsorily retired on the ground that he cannot render useful service in future. There is hardly any material distinction between the rule of compulsory retirement and the rule that all Government servants will retire on completing 25 years' qualifying service with the Government's option to permit a servant to remain in service for five years more. Even now Government grant extensions to servants and no Government servant who was refused an extension has ever thought of complaining that he was thereby punished. There it consequently nothing illegal or unconstitutional in note 1 of Article 465.

9. Even if compulsory retirement were a punishment, note 1 of Article 465 would not become invalid or unconstitutional Article 13 of the Constitution would not apply. If it amounted to punishment the only consequence would be that the provisions of Article 311 would have to be complied with. Note 1 of course lays down that compulsory retirement can be ordered without any reason being given, that is, without the servant's

being called upon to show cause this might make compulsory retirement without any reason being given unconstitutional but would not make note 1 itself void.

10. Coming to the actual order passed against the petitioner in the instant case, it is a simple order compulsorily retiring him without any cause being shown. The Superintendent of Police and the Deputy Inspector General of Police did, when recommending his compulsory retirement to the Inspector General of Police, give reasons for the recommendation but the order passed by the Inspector General of Police did not give any reason. He only approved of the recommendation; he did not even say that he approved of the reason given for it. His approval of the recommendation did not necessarily involve approval of the reasons for it. The order that was communicated to the petitioner was likewise a simple order of compulsory retirement; he was not even apprised of the reasons given by the Superintendent of Police and the Deputy Inspector General of Police for recommending his compulsory retirement. The impugned order was passed neither by the Superintendent of Police nor by the Deputy Inspector General of Police, who stated about his outliving his utility and being unfit for further retention in service, but by the Inspector General of Police, who said not a word about his outliving his utility or being unfit for further retention in service. It is beyond comprehension how in these circumstances it could be said that his compulsory retirement was by way of punishment.

11. Even if the impugned order had recited the fact that the petitioner had outlived his utility it would not still have amounted to a punitive order. As I explained earlier, compulsory retirement is not a punishment and it does not become a punishment merely because an uncomplimentary reason is given for ordering it. After all a Government servant is compulsorily retired only in public interest and public interest is not served by dispensing with the useful services of a servant. It is in public interest to retain a servant who can render useful service; it is only when he ceases to render useful service that it would not be in public interest to keep him on. Therefore, compulsory retirement will always, be on the ground that he can no longer render useful service. The position certainly does not become worse because what is implied is expressed.

12. In Shyamlal's case, AIR 1954 Supreme Court 369 the Supreme Court held that compulsory retirement does not amount to dismissal or removal and does not attract the provisions of Article 311 of the Constitution. Though it considered the case of an officer of the Public Works Department governed by Article 465-A it based its

decision on the nature of Compulsory retirement and we are governed by the decision. What it said about compulsory retirement of an officer of the Public Works Department applies with equal force to compulsory retirement off a head constable. A Bench of this Court in *Raj Kishore v. State of Uttar Pradesh*[3] also laid down that Article 465 regarding compulsory retirement is not a punitive provision and that compulsory retirement is not removal within the meaning of Article 311. In *State of Uttar Pradesh v. Madan Mohan Nagar,*[4] V. Bhargava and V.D. Gupta, JJ. took a contrary view. The order compulsorily retiring Madan Mohan Nagar stated, as a reason for it, that he had outlived his utility. The learned Judges observed with reference to this reason at page 937 :

> "It would thus be noticed that this order was not an order of compulsory retirement in public interest simpliciter or an order of compulsory retirement without any reasons".

I have already explained that saying that the servant has outlived his utility does not add anything material to saying that he is compulsorily retired in public interest. Compulsory retirement in public interest was held in the case of Shyamlal not to amount to punishment. The learned Judges distinguished that decision simply because Madan Mohan Nagar's retirement was expressly on the ground that he had outlived his utility. That ha had outlived his utility was nothing but an amplification or clarification of the ground of public interest. Compulsory retirement is to be ordered on the ground of public interest and the Government by saying to Madan Mohan Nagar that he had outlived his utility merely mentioned the fact showing that it was not in public interest to retain him in service any longer. I respectfully do not agree with the statement made by the learned Judges on p. 939 that "the charge of outliving utility.... is a charge of the same nature as a charge of lacking in ability or capacity or the will to discharge the duties". Merely because a servant can be removed on the ground that he lacks in ability or capacity or will to discharge his duties it would be illogical to argue that even compulsory retirement on this ground is removal. If a servant has not completed 25 years qualifying service he cannot be compulsorily retired at all and if his services can be terminated they can be terminated only by an order of punishment. An order of removal can be passed against him on the above mentioned ground. But the case of a servant who has completed 25 years qualifying service stands on a different footing; it is no longer necessary to punish him by removal because he can be compulsorily retired. The object behind compulsory retirement is to get rid of his services and not to punish him unless, therefore, there is an intention to punish him all that the

Government has to do is to retire him compulsorily. Merely because he is compulsorily retired as he lacks ability or capacity or will to discharge his duties, the retirement does not become removal in the absence of an intention to punish him. There is termination of service in removal as well as in compulsory retirement and the only thing that distinguishes the former from the latter is that in the former the intention is to punish. It is a question of fact whether the State Government intends to terminate the service by way of punishment or not. It is open to a Court to say that the real intention was to punish even though the Government professed not to do so but without finding this intention it cannot hold mere termination of service as removal. It is not that the law itself treats termination of service in exercise of the powers conferred by the rules of service as punishment. When there are two alternative powers that can be exercised by the Government it is not open to the Court to treat the exercise of one power as exercise of the other power or to disbelieve the Government's statement of fact regarding its own mind without cogent grounds. I cannot imagine any ground on the basis of which the Court can say that the Government wrongly said that it was exercising one power and that in fact it was exercising the other power. The statement of the Government that it was exercising one power is the direct evidence on the question; there cannot be direct evidence to rebut it but it can be rebutted by circumstantial evidence provided that it is inconsistent with the direct evidence. The *State of Bombay v. Sauhhag Chand M. Doshi,* [5] also was a case of compulsory retirement of a Government servant. Under a rule in force in Saurashtra State a servant of the State could be compulsorily retired on reaching the age of 50 years in public interest, and it was in exercise of the power conferred by this rule that Saubhag Chand was compulsorily retired on reaching the age of 50 years, Venkatarama Aiyar, J. speaking for the Court held that the retirement did not amount to removal. At page 895 he observed :

> "An order of retirement differs.... from .... an order of removal, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit"

The learned Judge further pointed out that compulsory retirement does not become removal only because compulsory retirement is not to be required except in cases of misconduct or inefficiency; he said at page 895 :

> "When the Government decides to retire a servant before the age of superannuation, it does so for some good reason, and that, in general would be misconduct or inefficiency. . ... misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement.... in the case of retirement they merely furnish the background.... in the case of dismissal or removal, they form the very basis on which the order is made"

The difference between misconduct or inefficiency furnishing the background and its being the basis is that in the latter case the connection between it and the order is direct whereas in the former case the connection, if any, is indirect. When a servant can be compulsorily retired in public interest, he can be retired in public interest in exercise of this power on the ground that on account of his misconduct or inefficiency he does not deserve to be retained in further service. The misconduct or inefficiency can be a ground for the exercise of the power of compulsory retirement without converting it into removal. This decision also was noticed by the learned Judges in the case of Madan Mohan Nagar. With great respect to them I disagree that the decision supports their view that Madan Mohan Nagar's outliving his utility was the very basis of the order of his retirement. They should have really held that his outliving his utility merely supplied the data for saying that he should be compulsorily retired in public interest. The view taken by them militates against the observations of Venkatarama Aiyar, J. reproduced above as also the observation that the argument that "where the retirement involved a stigma or imputation of misconduct or incapacity,.... it must be treated as dismissal" (p. 894) proceeds on a misconception as to what was decided in Shyamla's case, AIR 1954 Supreme Court 369. I do not think that Madan Mohan Nagar's case lays down the correct law. In AIR 1958 Supreme Court 232 Venkatarma Aiyar, J. speaking for the Court said at page 238.

> ".....it is not every termination of the services of an employee that falls within the operation of Article 311, and that it is only when the order is by way of punishment that it is one of dismissal or removal under that Article.... if a person had a right to continue in office either under the service rules or under a special agreement, a premature termination of his services would be a punishment. And, likewise, if the order would result in loss of benefits already earned and accrued, that would also be punishment. In the present case, the terms of employment provide for the services being terminated on a proper

notice, and so, no question of premature termination arises. Rule 7 of the Security Rules preserves the rights of the employees to all the benefits of pension, gratuities and the like, to which they would be entitled under the rules. Thus, there is no forfeiture of benefits already acquired." These observations apply with full force in the instant case. The Regulations provided for compulsory retirement on completion of 25 years of service and preserve the petitioner's right to all the benefits of pension etc., to which he was entitled under the Rules. Under the Security Rules compulsory retirement could be ordered if the servant was engaged or reasonably suspected to be engaged in subversive activities or his association with others raised doubts about his reliability. The only reason given by the learned Judges in Madan Mohan Nagar's case, 1963 All LJ 934 for distinguishing this case was that the order of compulsory retirement did not itself record the finding that the Government servant had done any of the acts mentioned in the Security Rules. If compulsory retirement could be ordered on a particular ground only it does not matter whether that ground is stated in the order or not; even ii it is not stated the compulsory retirement must be held to have been based on it. To say that a servant has outlived his utility is certainly not less complimentary to him than to say that he was engaged in subversive activities or that there were doubts about his reliability. If compulsory retirement on the ground of the servant's outliving his utility were a punishment, his compulsory retirement on the ground of his being engaged in subversive activities or of being unreliable was all the more a punishment.

13. The argument of S.N. Kacker that the charge of outliving one's utility is capable of personal explanation and that consequently a Government servant should be called upon to explain it before being compulsorily retired cannot be supported by logic or authority. Whether he should be called upon to explain or not depends on whether he is being punished and not on whether the charge is capable of personal explanation or not Article 311 does not distinguish between a charge and a charge; it is not applicable when the charge is capable of personal explanation and inapplicable when it is not; it does not become applicable just because the ground for the passing of an order is capable of explanation. Moreover I do not know how a Government servant can explain a charge that he has outlived his utility otherwise than by simply denying it and denying a charge is not explaining it. Thus even the premise on which Sri Kacker's argument rests is wanting

14. The last argument in this connection of Sri Kacker was that even if Article 311 did not apply the principle of natural justice required an opportunity to be given to the petitioner Compulsory retirement is not a punishment and does not involve the servant's being deprived of any property. The principle of natural justice is that a person should not be punished or deprived of his property without being heard. It does not apply to retirement in accordance with the rules of service. It does not apply to compulsory retirement any more than to retirement on reaching the age of superannuation or discharge on completing the term of appointment. The broad proposition enunciated by H.N. Seth that Article 311 does not apply when the termination of service is in accordance with the contract of service or the rules governing the Service cannot be accepted. The Article applies in every case of punishment by dismissal, removal or reduction in rank; no case of such punishment is outside its purview. Even when a Government servant is punished he is punished in accordance with the rules governing the service; the rules always provide for punishments that can be inflicted, the grounds for inflicting them and the procedure to be followed for inflicting them. Still the Article will apply if any of the punishments mentioned in it is to be inflicted if the Rules themselves contain the provisions contained in the Article no question arises, but if they do not contain them of contain provisions contrary to those of the Articles the Article will prevail and not the rules. What was held in *Satish Chandra Anand v. Union A India.* [6] was no that the Article does not apply when the termination of service is in accordance with the contract but that the termination of service in the case was not removal within the meaning of the Article. The Article was held to be inapplicable because there was no removal within its meaning. Similarly in *Hartwell Prescott Singh v. U.P. Govt.* [7] the termination of temporary service it Hartwell Prescott Singh was held not to attract the Article because it was not removal within its meaning.

15. Sri Kacker then attacked Article 465 of the Regulations as infringing Article 16 of the Constitution. It is well settled that "matters relating to employment or appointment to any office" mean matters relating not only to the commencement of employment or appointment but also to its continuity and its termination. If authorities be desired, reference may be made to *Sukhnandan Thakur v. State of Bihar,* [8] *P.K. More v. Union of India,* [9] and *General Manager Southern Rly. v. Rangachari,* [10] The contrary view taken in *Moinuddin v. State of U.P*[11] must be deemed to have been overruled by the Supreme Court in Rangachari's case, !962 SCR 586 : AIR 1962 Supreme Court 36.

The rule regarding compulsory retirement docs not deny equality of opportunity for employment Compulsory retirement is to be ordered only in public interest and every servant of the State is equally liable to be compulsorily retired in public interest under the rule. The rule certainly does not distinguish between one servant who deserves to be compulsorily retired in public interest and another servant who also deserves it. In *Sheo Charan Singh v. State of Mysore.* [12] decided by the Supreme Court on 13-3-1964 : AIR 1965 Supreme Court 280) Gajendragadkar, C.J. held that R. 285, note I, of the Mysore Civil Services Rules 1958, which is exactly similar to note I of Article 465, is not hit by Article 14 or 16 of the Constitution. Sri Kacker challenged the observation in the judgment that "it is concluded by a long series of decisions of this Court" and contended that this question had not been decided previously. The judgment of Sue Supreme Court is a declaration of law binding upon this Court. In AIR 1953 Supreme Court 250 the Supreme Court had held that when Satish Chandra Anand was discharged on completion of the term for which he had been appointed he was not denied the right guaranteed by Article 16 because "he had been treated just like any other person to whom an offer of temporary employment under these conditions was made The grievance, when analyzed is not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment". The case of compulsory retirement in accordance with the rules of service does not differ from that of discharge from service on completion of the tern of the contract, as regards the freedom guaranteed by Article 16

16. In the result I find that no case has been made out for the quashing of the impugned order and I would dismiss the petition with costs.

Takru, J.: I agree.
Broome, J.: I agree.

Petition dismissed.

Cases Referred.

1. AIR 1954 SC 369
2. AIR 1958 SC 232
3. AIR 1954 All 343
4. 1983 All LJ 934

5. AIR 1957 SC 892
6. AIR 1933 SC 250
7. AIR 1957 SC 886
8. AIR 1957 Pat 617
9. AIR 1959 Bom 134
10. 1962 SCB 586; AIR 1962 SC 36
11. AIR 1960 All 484
12. Writ Petn. No. 184 of 1963