

No.33/11/69-Ests(A)
Government of India
Cabinet Secretariat
(Department of Personnel & A.R.)
.....

New Delhi-1, the 23rd October, 1970.
31 Asvina, 1892.

OFFICE MEMORANDUM

Sub:- F.R. 56(j) - Judgement of the Supreme Court
in regard to -

The undersigned is directed to enclose for information a certified copy of the judgement of the Supreme Court in the case Union of India versus Col. J.N. Sinha, Ex-Director, (Selection Grade), Survey of India and another, delivered on the 12th August, 1970. It will be seen from the judgement that the Supreme Court had not only upheld the validity of F.R. 56(j) in view of the decision of that Court in Shivcharan Singh versus State of Mysore (A.I.R. 1965 - S.C.280) but have also held that no show-cause notice need be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions. In this connection, attention is invited particularly to the observations of the Court in Para 8 of their judgement.

2. In this judgement, the Supreme Court have also spelt out the circumstances where an aggrieved Government servant could challenge the notice of retirement issued under F.R. 56(j) in the following words:-

"Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. 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".

3. It will be seen from the above observation of the court that the appropriate authority defined in Note I below F.R.56(j) should bona fide form an opinion that it is in the public interest to retire the officer in exercised of

the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collatorial grounds. Accordingly, in every case where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the appropriate authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest. The order to be served on the Government servant would of course be on the form prescribed for the purpose.

4. The Ministry of Finance etc. are requested to bring the contents of this O.M. to the notice of all concerned for information and guidance.

sd/-

(P.S. Venkateswaran)

Under Secretary to the Govt. of India.

To

All Ministries/Departments of the Govt. of India,, including President's Secretariat, Prime Minister's Secretariat, Cabinet Secretariat (Department of Cabinet Affairs and Department of Statistics), Lok Sabha Secretariat, Rajya Sabha Secretariat and Planning Commission.

No. 33/11/69-Ests(A), New Delhi-1, the 23rd October, 1970
31 Asvina, 1892.

Copy to:

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 2. Election Commission.
 3. Central Vigilance Commission.
 4. Comptroller & Auditor General of India.
- ...

Copy also to:

All Officers and Sections in the Department of Personnel.

...

JUDGMENT DELIVERED BY THE SUPREME COURT IN
C.A.381/70-UNION OF INDIA VS. COL. J.N. SINHA AND
ANOTHER REGARDING THEIR RETIREMENT FROM GOVERNMENT
SERVICE UNDER F.R.56(j).

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.381 of 1970
..

Union of India .. Appellant
V.
Col. J.N. Sinha and anr. .. Respondents.

J U D G M E N T

HEGDE J.

In this appeal by certificate the only question that was canvassed before us was as regards the validity of the order contained in memorandum No.16-42/68-S.I, dated August 13, 1969 issued by the Government of India, Ministry of Education and Youth Services, retiring the 1st respondent compulsorily from government service in exercise of the powers conferred under cl.(j) of Fundamental Rule 56 with effect from August 14, 1969. That order was attacked before the High Court on various grounds. The High Court rejected some of those grounds. It did not find it necessary to decide a few others but accepting the contention of the respondent that in making the order, the appellant had violated the principles of natural justice, it held that the impugned order is invalid. The High Court accordingly issued a writ of certiorari quashing that order.

2. Before us the only contention presented for our decision was whether the High Court was right in holding that in making the impugned order the appellant had violated the principles of natural justice. No other contention was taken before us. Hence we shall address ourselves only to that question.

3. Before proceeding to examine the contention above formulated, it is necessary to set out the material facts. The 1st respondent herein Col.J.N. Sinha successfully competed in the examination held by the Federal Service Commission in 1938 for the post of Extra-Assistant Superintendent in the Survey of India Service. After selection, he was appointed as an Extra-Assistant Superintendent. He worked as probationer for a period of three

years and thereafter he was confirmed in that post in 1941. During the second world war, he volunteered for active service in the army and was granted an emergency Commission in the army. He was granted a regular Commission in the Army with effect from October 23, 1942.

4. In exercise of the powers conferred by the proviso to Art.309 of the Constitution, the President of India made on August 17, 1950 rules called the Survey of India (Recruitment from Corps of Engineering Officers)) Rules, 1950 for regulating the recruitment and conditions of service of persons appointed from the Corps of Engineering Officers of the Defence Ministry to the Survey of India Class I Service. Rule 2 of the said Rules provides for the recruitment of Military Officers to the Survey of India Class I Service and Rule 3 provides that the recruited officers will be on probation for two years which may be extended by the Government on the advice of the Surveyor General. The 1st respondent was taken into the Survey of India Class I Service under Rule 2 of the aforesaid 1950 Rules as Deputy Superintendent Surveyor with effect from June 1951. Thereafter the President of India in exercise of the powers under the proviso to Art.309, made on July 1, 1960 the Survey of India Class I (Recruitment) Rules 1960 for regulating the recruitment of Survey of India Class I Service. The 1st respondent was subsequently promoted firstly as Superintending Surveyor and then as Deputy Director. After sometime he was promoted as Director and lastly as Director (Selection Grade). The last mentioned promotion was made with effect from October 27, 1966. On may 17, 1969, Fundamental Rule 56(j) was amended. Thereafter on August 13, 1969, the Ministry of Education and Youth Services issued the impugned order. The 1st respondent was given three months pay and allowances in lieu of three months notice prescribed in Fundamental Rule 56(j). The 1st respondent being aggrieved by that order, challenged the validity of the same. As mentioned earlier, the High Court accepted his plea. The Union of India has appealed against that order.

Fundamental Rule 56(j) reads:

"Notwithstanding anything contained in this Rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

- (i) if he is in Class I or Class II Service or post the age limit for the purpose of direct recruitment to which is below 35 years, after he attained the

(if) In any other case after he has attained the age of 55 years.

Provided that nothing in this clause shall apply to a Government servant referred to in clause (e) who entered Government service on or before 23rd July, 1966 and to a Government servant referred to in clause (f)."

5. The order impugned merely says that in pursuance of Cl.56(j), the President was pleased to decide that in public interest the 1st respondent should retire from government service with effect from August 13, 1969 and that he would be given three months pay and allowances in lieu of three months notice provided in the said rule. No reasons are given for compulsory retiring the 1st respondent. Admittedly no opportunity was given to him to show cause against his compulsory retirement. The failure on the part of the concerned authority to give an opportunity to the 1st respondent to show cause against his compulsory retirement was held by the High Court to have amounted to a contravention of the principles of natural justice.

6. The validity of Fundamental Rule 56(j) was not questioned before the High Court nor before us. Its validity is not open to question in view of the decision of this Court in (i) T.G. Shivacharana Singh and ors.v.State of Mysore.

7. Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Art.310 of the Constitution.

But this "pleasure" doctrine is subject to the rules or law made under Art.309 as well as to the conditions prescribed under Art.311. Rules of natural justice are not embodied rules nor can they be elevated by this Court in (2) Kraipak and ors. v. Union of India the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary

I. A.L.R.1965 S.C.280.

implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

8. Now coming to the express words of Fundamental Rule 56(j) it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. 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. The 1st respondent challenged the opinion formed by the Government on the ground of mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies in Art. 310 of the Constitution. Various considerations may weight with the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient/officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the

but the appropriate authority may prefer to have a more efficient

balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

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

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

11. The High Court was not justified in seeking support for its conclusion from the decision of this Court in (3) State of Orissa v. Dr. (Miss) Binapani Dei and ors. and A.K. Kraipak v. Union of India (supra).

12. In Binapani Dei's case (supra), Dr. Binapani Dei's date of birth was re-fixed by the government without giving her proper opportunity to show that the enquiry officer's report was not correct. It is under those circumstances this Court held that the order re-fixing the date of birth was vitiated for failure to comply with the principles of natural justice. Therein the impugned order took away some of the existing rights of the petitioner.

13. In Kraipak's (supra), a committee consisting of Chief Conservator of Forest, Kashmir and other was appointed to recommend names of the officers from Kashmir Forest Service for being selected for the Indian Forest Service. The Chief Conservator of Forests, Kashmir was

(3). (1967) 2, S.C.R. 625;

....6/-

one of the candidates for selection. Further it was established therein that some of the officers who competed with him had earlier challenged his seniority and consequently his right to be the Chief Conservator and that dispute was pending. Under those circumstances this Court held that there was contravention of the principles of natural justice.

14. For the reasons mentioned above, we are unable to agree with the conclusion reached by the High Court that the impugned order is invalid. We accordingly allow this appeal, set aside the judgment and decree of the High Court and dismiss the writ petition. In the circumstances of the case we make no order as to costs.

(sd/-)
(J.C. Shah)J.

Dated, New Delhi, the
12, August, 1970. }

(sd/-)
(K.S. Hegde)J.

No.F.21/2/70-Ests(A)
Government of India
Cabinet Secretariat
Department of Personnel.

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New Delhi-1, the 25th August 1971.

OFFICE MEMORANDUM

SUBJECT:- F.R. 56(j), F.R. 56(1) and Rule 2(2) of the
Liberalised Pension Rules.

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The undersigned is directed to say that in the meeting of the National Council, set up under the Joint Consultative Machinery Scheme, held on the 27th and 28th January, 1971 the Staff Side represented that the rules mentioned above had been used either vindictively or for retrenching surplus staff. The matter has been considered further in the light of the discussions and the position as set out in the following paragraphs in brought to the notice of all the Ministries, Departments of the Government of India for guidance.

2. In the Department of Personnel O.M.No.33/11/69-Ests(A) dated 23rd October 1970 it was clarified, in the light of the judgment of the Supreme Court in the case of Union of India Vs. Col. J.N. Sinha and another, that the "appropriate authority" defined in Note 1 below F.R.56 should bona fide form an opinion that it is in the public interest to retire a Government servant in exercise of the powers conferred by F.R.56(j) and that this decision should not be an arbitrary decision and should not be based on collateral grounds. It was also indicated in the O.M. that in every case where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the appropriate authority should record on the file its opinion that it is necessary in the public interest to retire the Government servant in pursuance of the aforesaid rule. What is stated above would apply equally in cases where para 2(2) of the Ministry of Finance O.M.No.F.3(1)-E (Spl)/47 dated 17th January 1950 (commonly known as the Liberalised Pension Rules) are proposed to be invoked for the retirement of a Government servant after completion of 30 years' service qualifying for pension or in cases where F.R.56(1) is invoked to retire a Government servant in a Class III service/post who is not governed any pension rules, after he has completed 30 years' service.

....2....

3. In amplification of the instructions referred to above, it is hereby clarified that the aforesaid rules should not be used.

(i) to retire a Government servant on grounds of specific acts of misconduct, as a short-cut to initiating formal disciplinary proceedings; or

(ii) For reduction of surplus staff or as a measure of effecting general economy, without following the rules and instructions relating to retrenchment; or

(iii) on the ground that the Government servant may not be suitable to continue in his officiating post or for promotion to a higher post for which he might be eligible after his attaining the age of 50/55 years, or completing 30 years' service, as the cases may be.

Any specific representations received from employees, who might have been retired under the amended F.R.56(j)&(1) or para 2(2) of the Liberalised Pension Rules on or after 17th May, 1969 (the date of amendment of F.R.56), may be reviewed in the light of these instructions.

4. In regard to review of cases under F.R.56(j)(i), F.R.56(j)(ii), F.R.56(1) and Rules 2(2) of the Liberalised Pension Rules and in retiring Government servants in pursuance of the aforesaid provisions, the following factors should also be borne in mind by the appropriate authorities:-

(1) The review should be made on an assessment of the entire service record

(2) Under note 2 below F.R.56 the three months' notice referred to in F.R.56(j) and F.R.56(1) may be given before the Government servant attains the specified age or has completed 30 years of service but the retirement should take place after the Government servant has attained the relevant age or has completed 30 years of service, as the case may be. Accordingly, a notice even longer than three months, or before the Government servant attains the age of 50/55 years, or completes 30 years' service could be given; but the date from which he is required to retire as specified in the notice should not be before he attains 50/55 years, or completes 30 years' service as the case may be. Similarly in cases of retirement under Rule 2(2) of the Liberalised Pension Rules while the notice of such retirement could be given before the Government servant actually complete 30 years of service qualifying for pension

The date of expiry of the notice on which the Government servant's retirement would be effective should be one falling on or after the date of his completing 30 years service qualifying for pension. In this connection attention is also invited to the Ministry of Finance O.M. No.F.12(8)/E.V.(A)/60 dated 6th July, 1960, in which it has been stated inter alia that orders requiring a Government servant to retire after completing 30 years qualifying service should as a rule not be issued until after the fact that the Government servant has indeed completed, or would be completing, on the date of retirement qualifying service for 30 years has been verified in consultation with the audit officer concerned.

- (3) Rules 2(2) of the Liberalised Pension Rules in not applicable to pensionable employees who have not opted for the Liberalised Pension Rules. Such employees, would, therefore, be covered only by F.R.56(J)(i) of F.R.56(j)(ii), as the case may be. Government servants in Class III services/post who are not governed by any pension rules would be covered by F.R.56(1) or F.R.56(j)(ii)-

5. Ministry of Finance, etc. are requested to bring this O.M. to the notice of all administrative authorities concerned for information and guidance.

Sd/-P.S.VENKATESWARAN
Under Secretary to the Government of India.

To
All Ministries/Departments of the Government of India, etc.
(with usual number of spare copies)

No.F.21/2/70-Ests(A) dated the 25th August, 1971.

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4. Central Vigilance Commission, New Delhi.
5. All Attached and Subordinate Offices of the Department of Personnel, New Delhi.
6. Department of Personnel (JCA Section-with 150 spare copies).

Sd/-

(P.S. VENKATESWARAN)
UNDER SECRETARY TO THE GOVERNMENT OF INDIA