
(1971) 02 AHC CK 0053
In the Allahabad High Court

Babu Ram Verma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-02-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 226, 304

Citation : (1971) 2 LLJ 235

Hon'ble Judges : S.K. Verma, J;K.N. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.N. Singh, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution, challenging an order passed by the Governor of Uttar Pradesh on 4th December, 1970, dispensing with the petitioner's services, with immediate effect, in exercise of the powers under Note 1 to Article 465 of the Civil Service Regulations.

2. The petitioner was appointed in the Subordinate Agriculture Service, Group V, in The Agriculture Department of the State of Uttar Pradesh, on 13th October, 1937. In 1943 he was appointed as an Assistant Marketing Inspector in the Food and Civil Supplies Department of the State of Uttar Pradesh. In that very year, the petitioner was promoted as a Marketing Inspector. In 1946, the petitioner was appointed as a Senior Marketing Inspector. In December, 1958, he was promoted to the Gazetted post of Assistant Regional Food Controller. Later on, in December, 1962, he was further promoted to the post of Deputy Regional Marketing Officer, Lucknow, and since then he served the State Government on that post at various places. In December, 1970, the petitioner had gone on five days' leave, and on his return, he found that an order of compulsory retirement had been passed against him, dispensing with his services with immediate effect. The petitioner did not get a copy of the order. He could receive a copy of the order only after he had an interview with the Secretary of the Food and Civil Supplies Department of the State of "Uttar Pradesh. The impugned order passed

by the Governor on 4th December, 1970, runs as follows:--

UTTAR PRADESH SHASAN

FOOD AND CIVIL SUPPLIES (C-I) DEPARTMENT

No. M-5761/XXIX-C.T. M. 193/70

Dated: Lucknow: December 4, 1970

ORDER

In exercise of the powers under Note I to Article 465 of the C.S. Rs. the Governor, on being satisfied that it is in public interest to dispense with the services of Sri Babu Ram Verma, Deputy Regional Marketing Officer, is pleased to direct that Sri Verma be and is hereby retired from service with immediate effect.

Sd. Mahmood Butt

Commissioner and Secretary.

The petitioner has challenged the aforesaid order on three grounds. Firstly, it was contended that the order was passed mala fide. Secondly, it was urged that the order was arbitrary, there being no material, on the basis of which it could reasonably be held that it was in public interest to retire the petitioner compulsorily. The third and the last submission was that the impugned order casts a stigma on the petitioner, and since no opportunity, as required under Article 311(2) of the Constitution, was given to him, the order was void.

3. As regards mala fides, averments have been made only in paragraphs 28 and 29 of the petition, according to which the petitioner had reasons to believe that the impugned order had been passed at the instance of Sri B.N. Tewari, the Regional Food Controller, the immediate boss of the petitioner, who was interested in one Sri R.C. Misra, Assistant Regional Food Controller, Bareilly. It was further alleged that Sri Tewari wanted to provide Sri Misra the superior post of Deputy Regional Marketing Officer, and it was with that end in view that the petitioner was made a scapegoat, and further that, after the petitioner's compulsory retirement, Sri Misra was promoted as Deputy Regional Marketing Officer. In our opinion, allegations of mala fide made by the petitioner are vague and general. The order was passed by the Governor, which was issued under the signature of the Secretary, Food and Civil Supplies Department. The petitioner has not placed any material before us to show that the State Government passed the orders on extraneous considerations, and that the opinion, formed by the Governor, that it was in public interest to compulsorily retire the petitioner, was not bona fide. In the absence of any material on record, we fail to see how Mr. B.N. Tewari could have influenced the Governor's decision. The petitioner's contention that the order has been passed mala fide must, therefore, fail.

4. The learned Counsel for the petitioner then contended that the impugned order was bad, as it had been passed arbitrarily, without there being any

material on record. According to the petitioner, he was promoted in 1962, and posted as Deputy Regional Marketing Officer, Lucknow. Ever since then, he had been holding that post continuously. The petitioner further asserted that there was no material on record before the State Government, on the basis of which an opinion could be formed that it was in public interest to retire the petitioner compulsorily. We have considered the matter carefully, and we do not find any force in this contention. The petitioner has not placed his service record before us. We do not know what were the confidential reports against him throughout his service career. The service record of the petitioner and his character roll must have been considered by the State Government at the time when the impugned order was passed. The petitioner has also not stated that no adverse entries were made or communicated to him during the period when he was officiating as Deputy Regional Marketing Officer. In the absence of the relevant material on our record, we cannot hold that the decision of the Governor was arbitrary.

5. The third and the last submission made by the learned Counsel for the petitioner was that the impugned order cast a stigma on the petitioner and since no opportunity, as contemplated by Article 311(2) of the Constitution, was given to him, the order being an order of punishment, was void. The argument of the learned Counsel may be summarised thus:

The recital, in the impugned order, that the petitioner was compulsorily retired in public interest, necessarily implied that public interest would suffer, if he was not compulsorily retired. Since no efficient and useful officer is compulsorily retired, and, generally, only those officers are retired compulsorily, who are found unfit to continue in service, or against whom there are charges of inefficiency or misconduct; therefore, any person, reading the impugned order in a reasonable manner, would come to the conclusion that the petitioner was not efficient, or that there were charges of misconduct or inefficiency against him. The fact that the petitioner's services were dispensed with in public interest caused damage to his reputation and attached a stigma to him. Reliance was placed on two decisions of the Supreme Court in *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, , and *Jagdish Mitter Vs. The Union of India (UOI)*, , and a judgment of a learned single Judge of this Court dated 12th January, 1971, in Writ No. 3010 of 1970.

6. In order to appreciate the submissions made by the learned Counsel for the petitioner, it would be proper to peruse the impugned order with care. A perusal of the order would show that the Governor was satisfied that it was in public interest to dispense with the services of the petitioner, and, therefore, in exercise of the powers under Note 1 to Article 465 of the Civil Service Regulations, he was pleased to direct that the petitioner be retired from service with immediate effect. The order itself does not contain any adverse comment or aspersion, which may impute any misconduct or inefficiency to the petitioner. Article 465 of the Civil Service Regulations and Note 1 appended thereto have been framed under Article 309 of the Constitution to regulate the conditions of service of

Government servants holding civil posts under the State Government. The provisions contained in Article 465 of the Civil Service Regulations confer power on the State Government to dispense with the services of a Government servant without assigning any reasons, provided the Government servant has completed 25 years of qualifying service. It further provides that no claim to special compensation on account of the compulsory retirement shall be entertained. The right of compulsorily retiring a Government servant can be exercised only when the State Government is satisfied that it is in public interest to do so. A Government servant under the State holds his post at the pleasure of the Governor, as provided in Article 310 of the Constitution. The pleasure doctrine, as embodied in Article 310 of the Constitution, is, however, subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311 of the Constitution. An order, compulsorily retiring a Government servant after he has attained the age of 50 years or has completed 25 years of qualifying service, is not an order of dismissal, removal or reduction-in-rank, as no benefit accrued to the Government servant is taken away by the premature retirement from service. The Government servant has a right to get his pension on the basis of the period of service rendered by him. The provisions of Article 311(2) of the Constitution are, therefore, not attracted to an order passed in exercise of the powers under Article 465 of the Civil Service Regulations. The Supreme Court has consistently held that an order of compulsory retirement does not attract the provisions of Article 311(2) of the Constitution, as it is not an order of punishment: see *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, ; *The State of Bombay Vs. Saubhagchand M. Doshi*, ; *Dalip Singh Vs. The State of Punjab*, ; *T.G. Shivacharana Singh and Others Vs. The State of Mysore*, ; *I.N. Saksena Vs. State of Madhya Pradesh*, and the *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, .

7. The petitioner's contention, however, was that the impugned order, in effect, was an order of punishment, as it cast a stigma on the petitioner, and amounted to an order of removal from service. Reliance was placed on the case of *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, . That case is clearly distinguishable. In that case, the order of compulsory retirement against Sri M.M. Nagar was, no doubt, passed in the exercise of the powers conferred upon the Governor under Note 1 to Article 465-A of the Civil Service Regulations, but the order of compulsory retirement in that case was in the following terms:

I am directed to say that the Governor has been pleased to order in the public interest under Article 465-A and Note (1) thereof of the Civil Service Regulations, the compulsory retirement with effect from September 1, 1960 of Sri Madan Mohan Nagar, Director, State Museum, Lucknow, who completed 52 years of age on July 1, 1960 and 28 years and 3 months of qualifying service on 31st May, 1960, as he has outlived his utility.

Their Lordships of the Supreme Court held that, since the order itself mentioned that Sri M.M. Nagar had outlived his utility, it attached a stigma to him, as a

result of which the order of compulsory retirement amounted to punishment. In the order of compulsory retirement passed against Sri M.M. Nagar both the terms were used by the Government, i.e., the compulsory retirement of Sri Nagar was in public interest as he had outlived his utility. The Supreme Court struck down the Order merely on account of the recital of the reason that Sri Nagar had outlived his utility, and not on the ground that the order of compulsory retirement had been passed in public interest. In that case, the order ex-facie attached a stigma to the Government servant. In the present case, however, there is no such ex-facie statement made in the order itself to cast any stigma on the petitioner. The case of *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, therefore, does not help the petitioner.

8. In the case of *Jagdish Mitter Vs. The Union of India (UOI)*, , the order of termination was as follows:

Sri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government Service is hereby served with a month's notice of discharge with effect from November 1, 1949.

The Supreme Court held that the order cast an aspersion on Sri Jagdish Mitter, and, therefore, the order of termination was, in effect, an order of punishment, because it itself stated that the retention of Jagdish Mitter was undesirable. It was held that anyone, who read the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and, that must necessarily import an element of punishment, which was the basis of the order, and, therefore, the order was held to be an order of punishment. In the present case, nothing of the kind has been stated against the petitioner in the impugned order itself. The case of *Jagdish Mitter*, therefore, does not lend support to the petitioner's case.

9. Reliance was placed on a judgment of a learned single Judge of this Court in Writ No. 3010 of 1970 (decided on 12th January, 1971). In that case also, the services of a Government servant had been dispensed with by the Governor of Uttar Pradesh under Article 465 of the Civil Service Regulations. The order in that case was also similar to the order impugned in the present petition. The petitioner in that case had been compulsorily retired by the Governor of Uttar Pradesh in public interest. The question whether the order of compulsory retirement in that case cast any stigma on the Government servant was considered. The learned single Judge gave a finding to the following effect:--

The recital in the impugned order that the petitioner was compulsorily retired in public interest necessarily implies that public interest would suffer if he was not compulsorily retired. This can only mean that there is something wrong with the petitioner or in his capacity to work. To say that it is in public interest to compulsorily retire an officer is as damaging to his reputation as saying that he has outlived his utility or that it has been found undesirable to retain him. I can see no real distinction between the case of the petitioner and the cases of *The*

State of Uttar Pradesh Vs. Madan Mohan Nagar, , and Jagdish Mitter Vs. The Union of India (UOI), . I am, therefore, of the opinion that the impugned order casts a stigma on the petitioner and, therefore, amounts to an order of dismissal within the meaning of Article 311(2) of the Constitution. Since the order was passed without complying with the provisions of Article 311(2) of the Constitution, it is illegal and has to be struck down.

In taking the aforesaid view, the learned single Judge placed reliance upon the case of The State of Uttar Pradesh Vs. Madan Mohan Nagar, , and Jagdish Mitter Vs. The Union of India (UOI), . We have already discussed these two cases. We do not find any observations made by the Supreme Court in the two cases to the effect that, even if an order of compulsory retirement was passed in public interest, it attached a stigma to the Government servant. The Supreme Court in The State of Uttar Pradesh Vs. Madan Mohan Nagar, , clearly held that, in the order of compulsory retirement of Sri Nagar, the statement that he had outlived his utility cast aspersion on Sri Nagar. The order in that case, ex-facie, contained words which attached stigma to Sri Nagar, hence it was held that the order was by way of punishment. The question whether an order of compulsory retirement passed in public interest without assigning any reasons would also amount to casting a stigma on the Government servant concerned, was neither raised nor discussed. The case of The State of Uttar Pradesh Vs. Madan Mohan Nagar, , is, therefore, no authority for holding that the use of the term in "public interest" in the order of compulsory retirement would amount to casting aspersion on the Government servant. The case of Jagdish Mitter Vs. The Union of India (UOI), , was that of a temporary Government servant; in that case, the order of termination stated that the retention of Sri Jagdish Mitter was found undesirable. It was on account of that statement that the order was held to cast a stigma on the Government servant. The case of Jagdish Mitter Vs. The Union of India (UOI), , is, therefore, no authority for the proposition that an order of compulsory retirement passed in public interest casts a stigma on a Government servant. The learned single Judge, however, relied upon the case of Jagdish Mitter in applying one of the tests, laid down in that case, that, if the order cast aspersion and attached a stigma to the Government servant, it would amount to an order passed by way of punishment. We do not find any basis in the aforesaid two cases of the Supreme Court for the conclusions arrived at by the learned single Judge.

10. The learned single Judge has proceeded on the assumption that whenever an order of compulsory retirement was passed, it implied that the public servant was inefficient or dishonest, and, therefore, a mere reading of the order of compulsory retirement would give an impression that the public servant was inefficient and dishonest which would damage his reputation. We do not find any reasonable basis for raising such a presumption. Various considerations may weigh with the Government while exercising the power conferred under the regulations. 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 was holding that post, without there being any complaint of inefficiency or misconduct against that officer. It may be that the officer, who was holding that post, was hard-working and honest, and yet an exigency may arise to retire that officer. In the Government machinery, there may be a Government servant having no complaint of misconduct or dishonesty against him, and yet one may find that he was not enthusiastic enough to successfully discharge the duties and functions of that post; that officer may be doing his best to discharge his duties successfully, and yet, due to lack of inherent qualities he may not be able to meet the requirements of that post. In such a case, if the Government servant had completed period of qualifying service, that State Government could consider the question of compulsory retirement of that officer, in order to post some other person, who may be more suited for discharging functions and duties of that post. In that case, the Government servant cannot reasonably contend that the order of compulsory retirement attached any stigma to him. Compulsory retirement of a public servant may be necessary for various reasons, and those reasons, necessarily need not be the result of misconduct or inefficiency on his part. We are, therefore, of the opinion that the presumption made by the learned single Judge is unwarranted.

11. The learned single Judge has further held that no order of compulsory retirement is passed against an efficient and honest officer, and hence the mere fact that a Government servant is retired from service compulsorily would show that the Government servant was not efficient or honest; thus, an order of compulsory retirement impliedly casts stigma on the Government servant concerned and means that public interest would suffer if the officer concerned was retained in service. We have carefully considered the matter, but we find ourselves unable to agree with the learned single Judge.

12. There may be cases where the Government may, in order to energise its machinery, decide to dispense with the services of Government servants, who may have become static in their progress, or who may be inefficient, or against whom there may be complaints of misconduct. The Government may not choose to hold any departmental proceedings to punish those officers; instead, it may choose to compulsorily retire such officers in exercise of its powers under Article 465 of the Civil Service Regulations. It is correct that no Government servant is compulsorily retired without there being any reason for the same. The Government, in some cases, may be, in passing the order of compulsory retirement, motivated for weeding out inefficient officers, but that cannot be taken into account to hold that the order of compulsory retirement casts stigma on the Government servant or that the order was an order of punishment. It is well-accepted principle that, unless and until the order is founded upon charges of misconduct or inefficiency, motive operating in the mind of the authority concerned cannot change the nature of the order from that of compulsory retirement to an order of punishment. Compulsory retirement in itself has no stigma or implication of misbehaviour or incapacity. The contention that an order of compulsory retirement impliedly contains a stigma or implication of

misbehaviour or incapacity, was rejected by the Supreme Court in the case of *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, . The Supreme Court made the following observations (page 374, col. 2):

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 last sentence in Note 1 to Article 465-A make it abundantly clear that imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity.

13. In *The State of Bombay Vs. Saubhagchand M. Doshi*, , validity of an order of compulsory retirement passed under Rule 165-A of the Bombay Civil Service Rules, as adopted and amended by Saurashtra Government, was under consideration. Under Rule 165-A, the Saurashtra Government retained an absolute right to retire any Government servant after he completed 25 years of qualifying service, without giving any reasons. According to Rule 165-A, the right of compulsorily retiring a Government servant was not to be exercised except when it was considered necessary in public interest to dispense with the services of a Government servant on account of inefficiency or dishonesty. The Saurashtra Government in exercise of the powers conferred upon it by the said rule, passed an order of compulsory retirement against Sri Doshi. Before the Supreme Court it was urged on behalf of Sri Doshi that the order of compulsory retirement was by way of punishment, as the order was passed on account of inefficiency or dishonesty of Sri Doshi, which was the requirement of the rule itself for passing an order of compulsory retirement. The Supreme Court repelled this contention. Venkatarama Aiyar, J., speaking for the Court, made the following observation:--

The fact to be noted is that while misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held, and there is no duty to hold an enquiry, is only for the satisfaction of the authorities who have to take action in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Article 311(2).

The order of compulsory retirement was not held to be an order of removal or dismissal, as it was not founded on any charge of inefficiency or misconduct, and the fact that inefficiency or dishonesty of the Government servant may have furnished the background for passing the order of compulsory retirement against him was ignored.

14. In *Dalip Singh Vs. The State of Punjab*, , the order of compulsory retirement was passed in the following terms:--

His Highness the Rajpramukh is pleased to retire from service Sardar Dalip

Singh, Inspector-General of Police, Pepsu (on leave) for administrative reasons with effect from the 18th August, 1950.

The order did not assign any reason for compulsorily retiring Sardar Dalip Singh from service. He, however, made an application to the Government and obtained reasons on the basis of which the Government had decided to retire him on administrative grounds. The reasons so communicated disclosed that the State Government had decided to retire him on account of imputations of inefficiency and misconduct against him. It was, therefore, contended that, since the order of compulsory retirement had been passed on account of charges of inefficiency and misconduct against Sardar Dalip Singh, the order was by way of punishment. The Supreme Court repelled this contention and made the following observations:--

In the case before us the order of the Rajpramukh does not purport to be passed on any charge of misconduct or inefficiency. All it states is that the compulsory retirement is for administrative reasons. It was only after the appellant's own insistence to be supplied with the grounds which led to the decision that certain charges were communicated to him. There is, therefore, no basis for saying that the order of retirement contained any imputation or charge against the officer. The fact that considerations of misconduct or inefficiency weighed with the Government in coming to its conclusion whether any action should be taken under Rule 278 does not amount to any imputation or charge against the officer.

The motive operating in the mind of the State Government in passing the order was not taken into consideration.

15. In *I.N. Saksena Vs. State of Madhya Pradesh*, , a similar argument raised on behalf of Sri I.N. Saksena was repelled by the Supreme Court. Sri Saksena, who was in the service of the State of Madhya Pradesh as District and Sessions Judge, had been compulsorily retired by the Government in exercise of powers under paragraph 5 of the memorandum issued by the Government. The order of retirement passed against Saksena was in the following terms:--

In pursuance of the orders contained in General Administration Department Memorandum No. 433-258-1 (iii)/63, dated the 28th February, 1963, the State Government have decided to retire you with effect from the afternoon of the 31st December 1963.

A perusal of the order would show that it contained no reasons nor did it contain any aspersion or imputation against Sri Saksena. It was, however, urged before the Supreme Court that, since paragraph 5 of the memorandum, under which the order had been issued, conferred power on the appointing authority to retire a Government servant after attaining the age of 55 years, to weed out unsuitable employees, the order, requiring Sri Saksena to retire, cast a stigma on him, and, therefore, it amounted to an order by way of punishment: hence the compliance of Article 311(2) of the Constitution was required. In support of this argument, reliance was placed on the cases of *Jagdish Mitter Vs. The Union of India (UOI)*, , and *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, . The Supreme Court

distinguished those cases, on the ground that there the impugned orders, in express terms, cast stigma on the officers concerned, while in the case of *I.N. Saksena Vs. State of Madhya Pradesh*, , no such express words were contained in the order itself. It was then urged on behalf of Sri Saksena that, even though the order contained no words, from which any stigma could be inferred against him, any one, who read the order, would come to the conclusion that Sri Saksena had been weeded out, as he was an unsuitable employee. Reference was made to the words contained in paragraph 5 of the memorandum, under which the order had been passed, and then it was contended that the words contained in paragraph 5 of the memorandum should be read in the order retiring Sri Saksena. A further request was made to send for the file, which contained imputations against Sri Saksena. The Supreme Court repelled this contention in the following words:

We are not prepared to extend the decisions of this Court on this aspect of the matter in the manner contended for by the appellant. Where an order requiring a Government servant to retire compulsorily contains express words from which a stigma can be inferred, that order will amount to removal within the meaning of Article 311. But where there are no express words in the order itself which would throw any stigma on the Government servant, we cannot delve into secretariat file to discover whether some kind of stigma can be inferred on such research.

The contention that, since unsuitability or misconduct was inherent in the order of compulsory retirement, it was an order of punishment, was rejected. It would be worthwhile to refer to the case of *T.G. Shivacharana Singh and Others Vs. The State of Mysore*, . In that case, the order of compulsory retirement stated that the Government of Mysore considered it necessary in public interest to retire the petitioner from service under Note 1 to Rule 285 of the Rules: notice was accordingly given to him. Rule 285 of the Rules of Mysore Government and Note 1 appended to that rule are, in substance, similar to Article 465 of the Civil Service Regulations and Note 1 appended thereto. The contention that the order of compulsory retirement was an order of punishment was repelled by the Supreme Court, and their Lordships upheld the order of compulsory retirement, which had been passed in public interest. In *Chhail Behari v. State of U.P.* [1969] 2 L. I.C. 336 *Satish Chandra, J.*, held that the order of premature retirement of a Government servant in public interest was not an order of punishment. We are in agreement with the view expressed by brother Satish Chandra, J.

16. Under Note 1 to Article 465 of the Civil Service Regulations, an absolute right has been conferred upon the State Government to retire a Government servant compulsorily, provided it is satisfied that the retirement of the Government servant would be necessary in the public interest. The existence of public interest is an implied condition of the exercise of the power of compulsory retirement by the State Government. The language of Note 1 expressly makes it a condition precedent for the exercise of power of compulsory retirement. There is no power in the State Government to compulsorily retire a Government servant without there being requisite satisfaction to the effect that the premature retirement of

the Government servant was in public interest. Public interest is, therefore, the content of the power itself. The condition precedent laid down in the Note provides guidance to the State Government for the exercise of its powers. The absence of "public interest" would render the power arbitrary and discriminatory. In *Kripa Ram v. R.K. Talwar* 1969 A.L.J. 962 (F.B.), validity of proviso to Clause (a) of Fundamental Rule 56 (as it existed prior to its amendment in 1969) was challenged on the ground that it violated Articles 14 and 16 of the Constitution, as no guiding principles were laid down, for the exercise of the power of compulsorily retiring a Government servant on 3 months' notice of pay in lieu thereof, after he attained the age of 55 years. The Full Bench held that the proviso was violative of Articles 14 and 16 of the Constitution as it provided no guiding principles for the exercise of the power of compulsory retirement. Pathak, J., speaking for the majority, referred to Note 1 to Article 465 of the Civil Service Regulations, and observed that the power conferred by Note 1 to Article 465 was circumscribed by the limitation that the right of compulsorily retiring a Government servant could not be exercised except in the public interest. After the decision of the Full Bench the provisions of Fundamental Rule 55(a) were amended by the Uttar Pradesh Fundamental Rule 56 (Amendment and Validation) Ordinance, 1969, which substituted paragraph 1 to the proviso to Clause (a) of Rule 56 and provided that the appointing authority may, at any time, without assigning any reason, require a Government servant to retire on three months' notice or pay in lieu thereof, after he attained the age of 55 years, and an explanation was added which further provided that the decision of the appointing authority to require a Government servant to retire would be taken only after the authority concerned was satisfied that the retirement of the Government servant concerned was in the public interest. Validity of the amended provision was again challenged on the ground that the term "public interest" was vague and it failed to provide any guiding principles and as such the amending ordinance was also violative of Articles 14 and 16 of the Constitution. The matter was heard by a Division Bench, consisting of D.S. Mathur, J. and Satish Chandra, J. (Writ No. 1254 of 1969 concerned with Writ Nos. 3958 and 4033 of 1968 decided on 23rd February, 1970). The Bench repelled the contention holding that the term "public interest" was a well-accepted term and it was not vague, and, as such, the Ordinance was held valid. The power to compulsorily retire a Government servant was held valid, because of it being circumscribed by the considerations of public interest. We, therefore, fail to appreciate the argument that if an order of compulsory retirement complies with the requirement of the regulation itself in mentioning that it was passed in public interest, it should be held to cast stigma on the Government servant concerned.

17. What is the meaning and scope of "public interest."? Public interest in common parlance means an act beneficial to the general public. An action taken in public interest necessarily means an action taken for public purpose; public interest and public purpose are well-known terms, which have been used by the

framers of our Constitution in Articles 19, 31 and 304(b). It is impossible to precisely define the expression "public interest" or "public purpose". The requirements of public interest vary from case to case. In each case, all the facts and circumstances would require a close examination in order to determine whether the requirements of public interest or public purpose were satisfied. In *Kalyani Stores Vs. The State of Orissa and Others*, , validity of a notification issued u/s 27 of the Bihar and Orissa Excise Act (2 of 1915) imposing a new rate of Rs. 70 per L.P. Gallon as duty on liquor was challenged on the ground that it was violative of Article 304 of the Constitution. While discussing the reasonableness of the restriction and the requirements of public interest, Shah, J., speaking for the Court, made the following observations:--

Reasonableness of the restriction would have to be adjudged in the light of the purpose for which the restriction is imposed, that is, "as may be required in the public interest". Without entering into an exhaustive categorization of what may be deemed required in the public interest, it may be said that restrictions which may validly be imposed under Article 304(b) are those which seek to protect public health, safety, morals and property within the territory.

The requirement of public interest in the context of Government service may well be the efficient working of the Government machinery. It cannot be questioned that the public interest would well be served if there was efficiency in public administration and Government service, and, in order to effectuate that purpose, if the Government was bona fide satisfied that a particular Government servant should be compulsorily retired, that would be in the public interest.

18. In *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , an order of compulsory retirement passed in public interest was held valid. Their Lordships of the Supreme Court held that the right conferred on the appropriate authority to retire a Government servant compulsorily was an absolute one and that power could be exercised subject to the conditions mentioned in the rules, one of which was that the concerned authority must form an opinion that it was in public interest to do so. Upholding the validity of the order of compulsory retirement of Sri J. N. Sinha, their Lordships made the following observations:--

There is no denying the fact that in all organizations, there is a good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant the Government is given power to energise its machinery and make more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

The Supreme Court allowed the appeal, set aside the judgment and order of the High Court and dismissed the petition of Sri J.N. Sinha. Subsequently, a review petition was filed before the Supreme Court. It was contended on behalf of Sri Sinha that several questions had been raised before the High Court, which had

not been decided and the High Court had allowed the writ petition only on the ground that the compulsory retirement violated the principles of natural justice, as no opportunity to show cause had been given to the petitioner in that case, but the other points had not been decided by the High Court. The Supreme Court by its order dated 18th November, 1970, allowed the review petition, it vacated its order directing that the petition stood dismissed, and remanded the proceedings to the High Court to be dealt with and disposed of on all such points as had not been dealt with in the judgment of the Supreme Court. The judgment of the Supreme Court referred to above in Union of India (UOI) Vs. Col. J.N. Sinha and Another, , remained intact, and the law declared by it is binding on all Courts in India, notwithstanding the order passed by the Supreme Court on the review petition.

19. The aforesaid discussion would show that the rules confer an absolute power on the Government to retire a Government servant in public interest in a case where the Government servant completes qualifying service or attains the age of fifty years. The appropriate authority in passing the order of compulsory retirement may be motivated to weed out inefficient officers or to dispense with the service of those officers who may have become static. The motive operating in the mind of the appropriate authority cannot be taken into account to hold that an order of compulsory retirement, innocuous on its face, attaches stigma to the Government servant. We are, therefore, of the opinion that the petitioner's contention that the impugned order casts a stigma on him, is without any substance.

20. No other point has been pressed before us.

21. The petition, therefore, fails and is dismissed.