

(1975) 05 CAL CK 0007
In the Calcutta High Court
Case No : F.M.A. No. 559 of 1974

Chief Security Officer, Eastern Railway	APPELLANT
Vs	
Ajoy Chandra Bagchi	RESPONDENT

Date of Decision : 29-05-1975

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16(3)
Constitution of India, 1950 — Article 309, 310, 311, 311(2)
Railway Protection Force Regulations, 1966 — Rule 11, 278

Citation : (1975) 1 CALLT 44 : 79 CWN 740 : (1976) 1 ILR (Cal) 1

Hon'ble Judges : S.K. Mukherjea, J; M.N. Roy, J

Bench : Division Bench

Advocate : Sankardas Banerjee and Mukul Gopal Mukherjee, for the Appellant; Saktinath Mukherjee and Madhusudan Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—This appeal is directed against a judgment and order dated March 7, 1974, passed in C.R. No. 7219(W) of 1972, by Anil K. Sen J. By his decision the learned Judge was pleased to make the Rule absolute and directed the order of compulsory retirement of the Petitioner dated June 23, 1972 and two adverse entries dated January 11, 1972 and April 21, 1972, respectively, as entered in the confidential Character Roll of the Petitioner, to be set aside and issued a mandate on the Respondent in the Rule to forbear from giving effect to or in any manner acting upon the said impugned order of compulsory retirement and the said adverse entries.

2. On or about May 16, 1944, by an order made by the General Manager, Bengal and Assam Railway, the Petitioner was appointed as a cipher operator on a consolidated pay of Rs. 140 per month. It was stipulated in the said order that after successful completion of training the Petitioner would be posted as a cipher operator on the usual terms for temporary Railway employees and he would be entitled to such of the allowances that are admissible under the Rules at the

stations where he would be posted and such appointment would be liable to be terminated on 24 hours notice if either during the period of training or after appointment the services of the Petitioner was not satisfactory. Thereafter, by order No. 470-E/-115/EG dated February 1, 1947, issued for and on behalf of his appointing authority, the Petitioner was transferred to Watch and Ward Department (Mechanical) as a Sub-Inspector at a pay of Rs. 120 in the scale of Rs. 100-10/2-120 and was posted at Saidpur Workshop. Thereafter, on or about November 24, 1955, he was promoted as Inspector, Grade III and was confirmed in the said post by order No. D.O. 296 dated April 24, 1962 and from a reference to the said order it would appear that such confirmation was effective from January 1, 1960.

3. By an order dated December 12, 1969, the Petitioner was directed to be transferred as Inspector, Railway Protection Force, from Gaya to Burdwan Circle. On such transfer, the Petitioner duly joined the said transferred post. Upto this time there was no trouble. According to the Petitioner, trouble started thereafter and more particularly as soon as he addressed a confidential note on May 6, 1970, to the Assistant Security Officer, Howrah, requesting him thereby to have the transfers effected in the cases of certain staff at Burdwan for better and efficient working of the administration. In the said note the Petitioner alleged that he had come to the definite conclusion that the sudden increase in crimes at Burdwan was mainly due to the staff as mentioned in his report and that those employees were in league with the local criminals. He opined that if those employees were transferred then that would certainly help in the improvement in detection and incidence of crimes. On the complaint made by him, the Petitioner has alleged that he was transferred from Burdwan to Asansol as Divisional Inspector by order No. 227/71 dated June 5, 1971. The Petitioner has challenged the said order as not being bona fide and he has alleged that the same was procured at the instance of some members of the force whose transfers as mentioned hereinbefore were recommended by him. On receipt of the said order of transfer, the Petitioner on June 8, 1971, made a representation. He has also pointed out in the said representation that the impugned order of transfer was incomplete. It appears that ultimately on December 1, 1971, the Petitioner obtained C.R. No. 4007(W) of 1971 from this Court against the said order of transfer and the order directing him to vacate his quarters at Burdwan. The said order directing the Petitioner to vacate his quarters was passed on August 19, 1971. It has been alleged by the Respondents that the Petitioner, after the order of transfer, was not competent to hold over possession of the quarters at Burdwan. The said Rule is still pending. In the said Rule an order of injunction has been issued restraining the Respondent Railway authorities from compelling the Petitioner to vacate the quarters in question. In the meantime, on the representation of the Petitioner as mentioned hereinbefore, by D.O. No. 228/71 dated June 6, 1971, the Petitioner was informed by the Assistant Security Officer (II), Howrah, that the transfer order was issued by the Security Officer with the approval of the Chief Security Officer, Calcutta and in the said order one Shri B.

N. Bose was first directed to relieve the Petitioner. Before moving this Court in C.R. No. 4007(W) of 1971, it appears that on June 9, 1971, the Petitioner made a representation to the Chief Security Officer and requested him to keep the order of transfer in abeyance for six months and he also requested for a personal hearing. Nothing was done. On the other hand, by Memo No. ASO/II/CON/G/71 dated June 14, 1971, the Petitioner was directed by the Assistant Security Officer, Howrah, to hand over charge to Shri S.N. Pandey. It further appears that the Petitioner by Memo No. 50/II/HWH dated June 15, 1971, made a further representation for withholding the said order for handing over charge to the said Shri Pandey as directed till the disposal of his appeal. The Petitioner has alleged that the said Shri Pandey informed the Respondent No. 3, the Assistant Security Officer, on June 15, 1971, that the Petitioner had reported sick and strangely enough on the said date the said Assistant Security Officer informed the Petitioner that his appeal was not received by the Chief Security Officer and he was again informed to hand over charge to the said Shri Pandey on or by June 16, 1971. Immediately on receipt of the said communication the Petitioner addressed a letter to the said Assistant Security Officer intimating that the appeal in question was sent to him and the same was only received by the receiving clerk of his office. But all the said representations of the Petitioner become fruitless and by Memo No. ASO/II/12 dated June 16, 1971, he was ultimately shown as "spared" on transfer with effect from June 16, 1971, as he reported sick, by the said Assistant Security Officer. Against the said order and the order of transfer, a further representation was made by the Petitioner to the Chief Security Officer on June 28, 1971, but by his Memo No. ASO/II/ E/12 dated July 2, 1971, the Petitioner was informed by the said Assistant Security Officer that his representation was rejected by the Chief Security Officer by Order No. SC/30/33/14-E, Pt. IV dated July 1, 1971. There having been no other alternative, the Petitioner on July 6, 1971, reported for duty at his transferred post and since he had not vacated his quarters, on July 8, 1971, he made a further representation to the Chief Security Officer and informed him that as per verbal orders of the Divisional Superintendent, Howrah, he has not vacated the quarters and he will retain the same till the end of the scholastic year. As even after the said representation he was asked by the Assistant Security Officer under the alleged orders and instructions of the Security Officer to vacate the quarters, the Petitioner, as stated hereinbefore, moved and obtained the Rule in C.R. No. 4007(W) of 1971. In this appeal we are neither concerned with the same nor are we making any determination on the same.

4. The Petitioner has alleged that even after the issue of the said Civil Rule, the Assistant Security Officer concerned by his D.O. No. ASO/11/G/34(II) dated January 14, 1972, instructed the Assistant Security Officer, Asansol, to deduct penal rent from the Petitioner for his occupation of the quarters at Burdwan. It has been, further, alleged by the Petitioner that as disputes and differences arose between him and the authorities over the said occupation of the quarters at Burdwan, two adverse entries in his confidential Character Roll for 1970 were

recorded, one by the Respondent No. 1, the Chief Security Officer and the other by the Respondent No. 2, the Security Officer, Calcutta. The said adverse entries were, in terms of the requirement of the rules, communicated to him on January 11, 1972 and April 21, 1972, respectively. The Petitioner has challenged the bona fides of the said adverse entries and he has also alleged that such entries were incorporated in his record with the ulterior motive of creating a foundation for selecting him for premature retirement. In fact, the Petitioner has contended that such apprehension of his was substantiated when by the impugned order dated June 23, 1972, the Chief Security Officer, the Respondent No. 1, directed him to go on forced retirement at the age of 55 in exercise of his powers under Rule 2046(h)(ii) of the Railway Establishment Code. Rule. 2046 is equivalent to Rule 56 of the Fundamental Rules. The relevant portion of Rule 2046(h)(ii) is in the following terms:

(2046)(FR 56):

.....

(h) Notwithstanding anything contained in this Rule, the appointing authority, shall, if it is of the opinion that it is the public interest to do so, have the absolute right to retire any Railway servant by giving him notice of not less than three months' pay and allowances in lieu of such notice,

(i) if he is in Class I or Glass II service or post and had entered Government service before attaining the age of thirty-five years, after he has attained the age of fifty years.

(ii) in any other case after he has attained the age of fifty-five years.

5. Being aggrieved by the aforementioned adverse entries and the impugned order of compulsory retirement, the Petitioner moved and obtained C.R. No. 7299(W) of 1972, which after completion of the affidavits came up for hearing before Anil Kumar Sen J. and by his judgment and order dated March 7, 1974, particulars whereof have been mentioned hereinbefore, the learned Judge made the said Rule absolute. It appears that before the learned Judge it was urged, firstly, on behalf of the Petitioner that the impugned order of compulsory retirement as issued by the Chief Security Officer was beyond jurisdiction inasmuch as the General Manager, who was the appointing authority of the Petitioner, was superior in rank and the said point has been answered in the negative as the learned Judge has held and found that there cannot be any dispute that power under Rule 2046(h) can be exercised only by the appointing authority. But the term appointing authority in the Rules does not mean the authority who had actually appointed the person who is sought to be compulsorily retired. The term has been defined by the "Note" added to the proviso, to mean the authority competent to make the first appointment to the grade which the Railway servant for the time being holds. As at the relevant time when the order was made, the Chief Security Officer was competent to make the appointment to the grade of Inspector Grade III, so even if the Petitioner was

appointed by the General Manager, yet the Chief Security Officer would be competent to direct his compulsory retirement under the Rules. The learned Judge has further held that the "Note" is an integral part of the Rule itself having been incorporated by the Rule-making authority and it would not be proper, to construe the Rule without giving effect to the "Note" itself. Secondly, it was argued on behalf of the Petitioner that the impugned order of compulsory retirement was not within the scope of or in accordance with Rule 2046(h) and the learned Judge has held that the position is not so because, in order to be valid, such order must be based on considerations relevant to public interest. The learned Judge has found that in spite of clear challenge thrown by the Petitioner, such requirement has not been established and the necessary opinion, in the instant case, was not formed duly. It has been, further, held that Rule 2046(h) does not invest any arbitrary power in the hands of the competent authority and such power can be exercised only within the limits specified, viz., when it is necessary in the public interest. Formation of opinion has also been found to be a condition precedent to the exercise of powers" under Rule 2046(h) and such opinion, it has been held, is to be formed with reference to an objective test of public interest. The learned Judge has further held that the decision may be subjective but the same is not beyond judicial review. It has, further, been held that though the Court cannot go into the question of correctness of the decision, yet where a challenge is put forward before it, the Court has to see that the order is based on considerations of relevant and not irrelevant, collateral or extraneous materials. Thus, the learned Judge has held that on the basis of the challenge by the Petitioner it was incumbent on the Respondents, viz., the authorities concerned to disclose the reasons or the grounds on which such compulsory retirement was considered to be in public interest. In support of his determination, the learned Judge has placed reliance on the case of Col. J.N. Sinha v. Union of India 1971 S.L.R. 70, J.D. Raje v. State of Maharashtra 1973 LIC 682, Daulatram S. Rane v. State of Maharashtra 1973 L.I.C. 932, P. Shankar Rao Vs. The Government of India and Another, and also on a Bench decision of this Court in the case of A.C. Bose v. Union of India (1974) 29 ILR 269; apart from the fact that it was found that the principles as enunciated is also supported by the determination in the case of Union of India (UOI) Vs. Col. J.N. Sinha and Another, , The learned Judge has also dwelt on the requirements which have to be satisfied, particularly as laid down in the case of A.C. Bose v. Union of India (1974) I.L.R. 29 269, viz., that before an order for compulsory retirement is made, the appropriate authority must form an opinion that it is in public interest to make the order and such opinion cannot also be formed arbitrarily but must depend on some grounds or materials germane to the issue of compulsory retirement and when such an order is challenged, the Court has the right to examine whether some grounds or materials germane to the issue exist, although the Court is not to go into the sufficiency of those materials.

6. Before the learned Judge, the Petitioner not only claimed the order of compulsory retirement to be not bona fide but he categorically claimed the said

order to be not in public interest. The Petitioner has further alleged that there cannot be any "public interest" involved in his case as admittedly he had an uniformly good service career and in fact, services as rendered by him have all along been duly appreciated by the relevant authorities. In fact, he alleged that there were commendations in his record and no contrary remarks and such would at least be the state of the records prior to 1972 and the purported adverse entries in his record" after 1972 were not bona fide but were maliciously entered at the machination of the Assistant Security Officer concerned, through officers like the Respondents Nos. 1 and 2. It was, further, argued that apart, from the above-mentioned infirmities the said entries were not made in accordance with law. It appears that the learned Judge was of the view that the Respondent No.. 1, in view of the specific allegations, was obliged to produce the relevant records and to disclose the primary materials on the basis of which the opinion, if any, in terms of Rule 2046(h) was formed and such obligation has not been discharged inasmuch as the documents and records, as mentioned, hereinbefore, were not produced before the Court for the purpose of necessary scrutiny and thus to find out whether they succeeded in discharging the initial onus. The learned Judge has, further, found that the affidavit-in-opposition which was also filed by the Respondents was unsatisfactory and the same also disclosed no ground or reasons which could prima facie establish that the Petitioner's premature and compulsory retirement was necessary in public interest. The Respondents in the Rule at the time of the hearing took a plea that the decision was arrived at after a review by the Review Committee formed by the General Manager but nothing was disclosed regarding the proceedings before the Review Committee or its recommendations. In their affidavit, however, the Respondents made it clear that during his entire service career the Petitioner was awarded one petty and two minor punishments and six commendations for good work. That apart, it has also been mentioned that the Petitioner had also some adverse reports in his Confidential Character Roll for which his integrity has been doubted. The learned Judge has held these statements to be very vague and he has, further, found that no adverse entry which can even suggest lack of integrity, was disclosed or particulars of them have been furnished. The learned Judge has also found that, in any event, it was not the case of the Respondents that any such ground, of suspected integrity constituted the basis of the order in question. In view of the above, the learned Judge has held and found that the impugned decision was not based on appropriate and relevant considerations and furthermore, the same was passed in excess of the jurisdiction and sanction of the Rule.

7. Regarding the two adverse entries in the Petitioner's Character Roll, which were urged by the Petitioner as the third point of attack alleging that those entries were not only not bona fide but if those entries constituted any foundation for the impugned order of compulsory retirement then the same was equally mala fide, the learned Judge, on consideration of the pleadings and records, has held that there was ample substance in those contentions and found

the said orders to be made in unfair haste and being motivated by bias and further held that the first adverse entry was baseless, incorrect and not bona fide apart from the fact that the same was not "recorded in accordance with the relevant regulations. As for the second adverse entry, the learned Judge has also held that the same was also like the first one and apart from that, the second adverse entry was also bad because the same was recorded without giving the Petitioner any opportunity to show cause in terms of the requirements of Railway Protection Force Regulations, 1966 and in particular, there was positive infringement of Reg. 2(d) of chap. 17 and the Board's circular dated December 18, 1969. Noncompliance with the said Regulations has also been dealt with and severely criticised by the learned Judge while making the Rule absolute and setting aside the order of compulsory retirement and the said two adverse entries.

8. Against such determination, the Railway authorities have preferred this F.M.A. No. 559 of 1974 on June 5, 1971.

9. Before making our" determination, we would also like to indicate the circumstances in which a supplementary affidavit, rejoinder to the same and reply thereto were filed at the hearing of this appeal. From the determination of the learned Judge it would appear that lie has recorded in no uncertain terms that the relevant records showing the formation of opinion or the materials on which opinions if any was formed, were not produced. Mr. Mukul Gopal Mukherjee, the learned Advocate for the Appellants, led by Mr. Sankardas Banerjee, submitted that he asked for time from the learned Judge to enable him to produce the required records, but that prayer was not granted. Mr. Saktinath Mukherjee appearing for the Respondent has of course strongly denied the correctness of the statements. Nothing of course appears from the records in support of the contentions of the Appellants. Since we felt that even at the appellate stage we can look into and consider the records and that too for the purpose of assessing the state of affairs to come to a definite finding, we gave the Appellant leave not only to produce the relevant records but also to file supplementary affidavit disclosing the materials and the entries in the Confidential Character Rolls and also the materials which were placed before the Review Committee for assessment of the Petitioner's conduct, on the basis of which the necessary opinion to retire him compulsorily under Rule 2046(h) was filed on or about February 5, 1975 and further affidavit to the same were completed on or by February 20, 1975." We further record that no objection was taken by the parties to the above procedure being adopted and furthermore, the confidential, report thought to be relevant by the Appellants, which were considered, have also been filed by means of a supplementary Paper Book, by consent of parties and we have taken into consideration those materials in our judgment.

10. The whole question in this appeal boils down to the consideration, whether in terms of chap. XVII of the Railway Protection Force Regulations, 1960, which

deals with the record of service of Confidential Report and particularly para. 2(d) of the same which is in the following line:

2(d).

Copies of Character Rolls should not be given to the members, but every entry which may adversely affect promotion of a member should be communicated to him and a note that this has been done must be made below the entry itself. Before such an entry is made, an opportunity must be given to the member concerned to show cause either verbally or in writing as to why it should not be made.

The employee, against whom unfavorable entries are made, is entitled to an opportunity to showing cause against such entries and information on the salient features of these entries and more particularly whether such entries, as were made in the instant case in the prescribed form in appen. XVIII to the said Regulations, were different from the Character and Service Rolls.

11. Mr. Banerjee for the Appellants contended that the unfavourable report of the Security Officer or of the Chief Security Officer for the years 1970 and 1971 in the Confidential Character Rolls of the Respondent Petitioner were confidential reports made in the prescribed form as found in appen. XVIII of the Regulations and they were different from his Character and Service Rolls and such Rolls are maintained in terms of para, 3 of chap. XVII of the Regulations. He submitted that those confidential reports are maintained only in respect of Inspectors, Sub-Inspectors and Assistant Sub-Inspectors. Mr. Banerjee submitted, further, that item 6 of the Instructions at the bottom of the form in appen. XVIII clearly stipulated that communication of the substance of an unfavourable report is at the discretion of the Security Officer or the Chief Security Officer and in the instant case the communication of the unfavourable reports was not considered necessary by the competent authority in terms of the said item 6 of the form in appen. XVIII. Mr. Banerjee, further and in the alternative, argued that the employer has an absolute and unfettered right to retire an employee and-in the facts of the instant case, when such right has been exercised, the same is not just cable.

12. The relevant provisions of para. 3 of the Regulations dealing with confidential reports of employees like the Petitioner in appen. XVIII as referred to hereinbefore are quoted hereunder for the sake of convenience.

3. Confidential Reports:

Appendix XVIII (See para. 3(i)(a) of Ch. XVII)

Railway Protection Force

* * * *

Instructions

* * * *

6. The substance of an unfavourable report will, at the discretion of S.O., C.S.O. be communicated to the person concerned and he will at the same time be informed in what respects improvement is necessary, a note to this effect being recorded herein which he should sign.

13. As stated hereinbefore, for the purpose of producing the documents necessary for the determination of the appeal and disclosing how and on what materials the relevant opinion was formed and what documents and records were placed before the Review Committee not only affidavits were filed but a supplementary Paper Book incorporating those documents was also filed pursuant to the leave granted by us. From the documents as disclosed in the supplementary Paper Book and the statements available from the subsequent affidavits it appears that the Confidential Character Rolls of some employees including those of the Respondent Petitioner were sent to the Review Committee, with the periods of review mentioned against the employees therein. In the case of the Respondent Petitioner, as appears from the list, that Confidential Reports for the years 1969, 1970 and 1971 were sent. It, further, appears from the documents disclosed in the supplementary Paper Book that by D.O. No. CPO/CC/Review Security dated May 31, 1972, addressed to the Security Officer-(S) Head Quarter, Eastern Railway, by the Assistant Personnel Officer (Ruling that 19 cases were reviewed by the Review Committee and the Respondent Petitioner amongst a few others could not be recommended for retention beyond 55 years of age or 30 years service, whichever is earlier and as such necessary action was directed to be taken in terms of Office Circular No. 8/393/0/2 Confidential dated December 30, 1969 and Railway Board's letter as circulated under serial No. 7659. It may, further, be mentioned that, in the statement showing particulars of Class III staff of Railway Protection Force Department for review by the Committee in terms of Chief Personnel Officer's Confidential Circular No. E 393/0/2 Confidential dated December 30, 1960, the name of the Respondent Petitioner appeared at serial No. 7.

14. As stated hereinbefore the provisions of Rule 2046 are in the same terms as Rule 56(j) of the Fundamental Rules and thus the determination as made under the said Rules can safely be looked into and the principles as enunciated in the determinations on the several question which arose for consideration by the Supreme Court and other High Courts can also be applied to and relied on in a case arising under Rule 2046 for the purpose of an effective and complete determination. Rule 56(j) of the Fundamental Rules and the effect of adverse entries in the Confidential Reports came up for consideration in the cases mentioned hereinafter at different stages for determination of the principles underlying them. In the case of Dalip Singh Vs. The State of Punjab, , it has been laid down that two tests are to be applied for ascertaining whether the termination of service by compulsory retirement amounted to removal or dismissal so as to attract the provisions of Article 311 of the Constitution of

India. The first test is whether the action is by way of punishment and to find out that, it is necessary that a charge or imputation against the officer is made the condition of the exercise of the power and the second is whether by compulsory retirement the officer is losing the benefits he has already earned as he does by dismissal or removal. While misconduct and inefficiency are factors that enter into consideration when 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 above case was under the provisions of Patiala State Regulations (which does not fix the age of compulsory retirement) and action was taken under Rule 278 of the said Regulations. In the impugned order it was only stated that the compulsory retirement, was for "administrative reasons" and it was only after the employee's insistence to be supplied with the grounds that led to the decision that certain charges were communicated to him, there is no basis for saying that the order of retirement contained any imputation or charge against the employee. The fact that consideration of misconduct or efficiency 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. It has also been held that a retirement under a service rule which provides for compulsory retirement at any age whatsoever, irrespective of the length of service, should be regarded as dismissal or removal within the meaning of Article 311 of the Constitution of India. Thereafter, in the case of *Prakash Chandra Sharma v. The Oil and Natural Gas Commission* and Ors. 1970 (IV) S.I.R. 116, it has been held that no interference is possible or required with an order for promotion when adverse remarks in the Confidential Report were not conveyed to an employee and no chance was given to him to represent against the adverse remarks. In that case the Oil and Natural Gas Commission Rules, established by the Central Act XLIII of 1959 and Section 12(1) empowered the Commission to appoint, such number of employees as it considered necessary. In exercise of its powers under the Act, a regulation dated May 10, 1963, was made by the Commission laying down the principles for the determination of seniority of officers of the staff of the Commission. Rule 11(ii)(b) of the said regulations relating to departmental promotion provided that if promotion was to be made on the basis of seniority cum merit, i.e. seniority subject to the rejection of the unfit, the Departmental Promotion Committee should place the candidates into a consolidated seniority list based on the total length of service rendered in that grade cadre and make recommendations for promotion on the basis of the test. A common seniority list in the Junior Transportation Inspectors Grade (renamed as Inspector Grade II) was prepared and the employee concerned was placed at serial No. 4. The employee concerned was appointed in the said post on April 5, 1971 and after him two other employees were appointed. Thereafter reg. 16(16)

62 was framed on April 29, 1963, to the effect that no employee would be considered for promotion to a higher post in the Commission, unless he had completed a minimum period of two years service in the existing post. It appears that there was a meeting of the said Committee on April 26, 1963, which had to consider the case of promotion of four Junior Transportation Inspectors to officiate as Senior Transportation Inspectors and consequently on June 22, 1963, necessary order was passed. The employee concerned challenged the said order as discriminatory. After a series of representations, a proceeding was initiated at the instance of the employer concerned. It transpired that although the said employee was admittedly senior to the others, the Departmental Promotion Committee did not recommend his name for promotion on account of certain adverse remarks in his Confidential Reports and the said decision remained unaltered even at a latter meeting of the said Committee. Although instructions regarding Confidential Reports were not properly served, it was not also suggested that the Committee in making the determination had acted in a mala fide manner and in such circumstances the determination as has been referred to above was made. The scope and purpose of Confidential Reports and adverse remarks in Confidential Reports came up for consideration again in the case of *R.L. Butail v. Union of India and Ors.* 1970 (IV) S.L.R. 926 : 1970 S.C.C. 876. In that case the Appellant was confirmed in the post of Director in 1963 in the Central Water and Power Commission (Power Wing). Adverse entries against him were made in the Confidential Reports for 1964 and 1965. On the communication of those entries, he made unsuccessful representations. He alleged that he was not considered for promotion though entitled to the same. In 1967 he was compulsorily retired under Rule 56(J) at the age of 55 years. The writ petition of Mr. Butail challenging the validity of the adverse entries and that of the order of compulsory retirement was rejected and thereunder on being moved, the Supreme Court held inter alia amongst others that under Rule 56(J), the Government has absolute right to retire a Government servant on attaining the age of 55 years in public interest. If the authority concerned bona fide forms that opinion, the correctness of the same cannot be challenged before the Courts. Thereafter, came the case of *The State of Punjab Vs. Dewan Chuni Lal*, . In that case certain charges of inefficiency and dishonesty were based on the reports against the employee concerned for the years 1941 and 1942 on the basis of adverse reports of superior officers and such officers, though available, were not examined to enable the employee concerned to cross-examine them. Furthermore, in that case the employees concerned was allowed to cross the efficiency bar and it appears that charges were framed against him on the basis of adverse confidential reports relating to a period earlier than the year, i.e. 1944, when he was allowed to cross the efficiency bar. In such circumstances it has been held that reports earlier than 1944 should not have been considered at all inasmuch as the employee was allowed to cross the efficiency bar in that year. On the facts of that case it has, further, been held that it is unthinkable that if the authority took any serious view of the charges of dishonesty and inefficiency contained in the Confidential Reports of 1941 and 1943 they could have

overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944 and it was further found on the facts that the officer concerned was given reasonable opportunities of conducting his defence before the Enquiry Officer and charges based on the reports for the years 1941 and 1942 should not have been levelled against him. It was, further, found that the denial of the right to examine a witness who had made general remarks against his character and was available for examination at the enquiry, amounted to denial of a reasonable opportunity of showing cause against the action. In the case of *Union of India v. Col. J.N. Sinha and Anr.* (Supra) the provisions of Rule 56(J) of the Fundamental Rules again came up for consideration before the Supreme Court of India. In that case it has been reiterated that under the said Rule 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 and such right is an, absolute one. It has of course been held that the said 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 the authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts and 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. In that case it has been, further, held that compulsory retirement involves no civil consequences and the said Rule is not intended to authorise penal action against Government servants and furthermore, the said Rule merely embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution of India. The said Rule 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 it more efficient by compulsorily retiring those who, in its opinion, should not be there in public interest. 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, but the appropriate authority may prefer to have a more efficient officer. After the determination in the case of *Union of India v. Col. J.N. Sinha* (Supra) the case was reheard on remand and again in the case of *Col. J.N. Sinha v. Union of India and Anr.* (Supra) a Bench decision of the Delhi High Court has held that the Fundamental Rule 56(J) provides that the right to retire a Government servant given to the appropriate authority thereunder can be exercised if the said authority is of the opinion that it is in the public interest to so retire the concerned Government servant. It has, further, been held in that case that the right conferred on the appropriate authority to retire a Government servant compulsorily is an absolute one, but that right or power can be exercised only subject to the conditions mentioned in the said Rule, one of which is that the concerned authority must be of the opinion that it was in the public interest to do so. If the authority bona fide forms the opinion, the correctness of the same cannot be challenged before Courts. But 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. It has also been held in that case that the formation of requisite opinion by the appropriate authority is one of the conditions for the exercise of the power conferred by Rule 56(J) and that the decision to retire a Government servant under the said Rule should not be arbitrary, i.e. the same must be based on some ground or material which is germane to the question whether it is in the public interest to retire him. If the decision is based on such ground or material or is based on a ground or material which is not germane to the issue, it would be an arbitrary decision. Since the Rule provides for the formation of the requisite opinion by the appropriate authority and not by a Court, the sufficiency of the ground or material is not justiciable. But some ground or materials germane to the issue must exist and it is open to a Court to examine whether such ground or material exists or not. As stated earlier it is open to the Government servant concerned to contend that the decision is arbitrary and when such a contention is raised, the Court has to examine the materials placed before it and decide whether the decision to retire the Government servant concerned was arbitrary or not. In the case of *The State of U.P. Vs. Sri Shyam Lal Sharma*, it has been held by the Supreme Court that if the order of compulsory retirement does not contain any stigma, resort cannot be had to Government files to discover any remark amounting to stigma. It has also been held that in ascertaining whether the order of compulsory retirement is one of punishment, it has to be found out whether in the order itself there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned. Secondly, the order itself should be indicative of punishment or penalty if the order will involve loss of benefits already earned. Thirdly, an order for compulsory retirement on the completion of 25 years of service or an order of compulsory retirement made in the public interest to dispense with further services will not amount to an order for dismissal or removal as there is no element of punishment. Fourthly, such an order will not be held to be an order in the nature of punishment or penalty on the ground that there is possibility of loss of future prospects, namely, that the officer will not get his pay till he attains the age of superannuation, or will not get an enhanced pension for not being allowed to remain a few years in service and being compulsorily retired. It has also been held in that case that where there are no words in the order of compulsory retirement which throws any stigma, there should not be any enquiry into the Government files to discover whether any remark amounting to stigma could be found in the files. The reason is that it is the order of compulsory retirement which alone is for examination. If the order itself does not contain any imputation or charge against the officer, the fact that

consideration of misconduct or misbehaviour weighed with the Government in coming to its conclusion to retire him compulsorily does not amount to any imputation or charge against the officer.

When the authority can make an order of compulsory retirement for any reason and no reason is mentioned in the order, it cannot be predicted that the order of

compulsory retirement has an inherent stigma in the order. Unless it is established from the order of compulsory retirement itself that a charge or imputation against the officer is made, the condition of the exercise of that power or that by the order the officer is losing benefit already earned the order of retirement cannot be said to be one for dismissal or removal in the nature of penalty or punishment. Thereafter, in the case of *Dr. N.V. Puttabhatta Vs. The State of Mysore and Another*, which was a case under the Mysore Civil Services Rules, it has been held that when the Government forms bona fide opinion from the Confidential Reports to retire a person compulsorily in public interest and there is no provision for appeal in the Rules against adverse remarks in Confidential Reports, new show-cause notice against the order or retirement is necessary. The right under the provisions of the Mysore Civil Service Rules to retire an officer compulsorily is absolute and is similar to those under Rule 56(J) of the Fundamental Rules. It appears that there is another Bench decision of the Delhi High Court in the case of *Mallinath Jain v. Municipal Corporation of Delhi and Ors.* 1973 (1) S.L.R. 413, on the question of Confidential Report and the adverse remarks therein not having been communicated to the officer concerned in disregard of administrative instructions. In that case the adverse remarks or entries in the Confidential Reports relating to the Petitioner for the years 1965 and 1968 were not communicated to him within a reasonable time after they were made but were communicated to him as late as on October 13, 1969. In the meantime, i.e. even before they were so communicated, they were taken into consideration by the Departmental Promotions Committee on August 22, 1969, in assessing the respective merits of the Petitioner and other Respondent employees and preparing panel in order of merit. As such it was held that such action was in contravention of principles of fair play and natural justice. It has been held that when the competent authority issued the administrative instructions regarding the preparation and maintenance of Confidential Reports, they were intended to be followed and applied by all the concerned departments. It was, further, held in the facts of that case the instructions relating to communication of adverse remarks within reasonable time and the submissions of representations against the adverse remarks are based upon and are intended to give effect to the principles of fairness and natural justice. Therefore, the interpretation of the said Rule 56(J) came up for consideration in this Court in the case of *S.S. Garga v. The Coal Controller* (1973) 77 C.W.N. 304 and in a Bench decision in the case of *A.C. Bose v. Union of India* (Supra). In the first case it has been held that Fundamental Rule 56(J) no doubt invests absolute power in the prescribed authority to direct an employee's retirement. But such power should not be misread to mean any arbitrary power in the hands of the prescribed authority. The Rule itself lays down a limitation that such power can be exercised when it is necessary in the public interest. Formation of the opinion in this respect is a condition precedent to the exercise of the power. The opinion again is to be formed with reference to an objective test of public interest. The decision itself may be subjective and as such, is not open to judicial review. What is beyond judicial review is the correctness of the decision, but it is always open

to the Court, when a challenge is brought before it, to see that the order is based on an appropriate opinion and that opinion again is based on consideration of relevant and not collateral or extraneous materials. It is so because an order not so based or an order based on an opinion founded on irrelevant consideration would be ultra vires the Rule itself and the person aggrieved has always the right to challenge an order which is not within the sanction of the Rule. In the other Bench decision in *A.C Bose v. Union of India* (Supra) it has been held that the legal position is that before an order for compulsory retirement is made, the appropriate authority must form an opinion that it is in public interest to make the order. The opinion cannot be based on collateral grounds. The opinion cannot also be formed arbitrarily but must depend on some grounds or materials germane to the issue of compulsory retirement and when such an order is challenged in a Court of law, the Court has the right to examine whether some ground or materials germane to the issue exist although the Court is not interested in the sufficiency of the materials. It has, further, been held that in determining whether the order for compulsory retirement is justified, the Court will have to consider not only the provisions of the said Rules but also the directions, instructions and notifications of the Government from time to time issued to supplement the Rule on matters on which the Rule is silent. The case of *S.S. Garga v. Coal Controller and Ors.* (Supra) has been affirmed in the Bench decision of this Court in *Coal Controller and Ors. v. S.S. Garga* 1971 (1) C.L.J. 285. The question of maintenance of Character Rolls adverse entries therein and the effect of non-communication of the same also came up before the Full Bench of the Orissa High Court in the case of *S.S.S. Venkalrao v. State of Orissa and Ors.* 1971 L.I.C 1192 and there, in the facts of that case, it has been held that maintenance of Character Rolls is not enjoined by any statute or rules framed under Article 309 of the Constitution of India. Principles regarding record of Confidential Reports and communication of adverse remarks have been laid down in administrative instructions issued from time to time. The circular which holds the field at a particular point of time is to be followed in its entirety. It has, further, been held that Character Rolls are maintained primarily for the benefit of the Government. Government, as the master, is to make its own estimate of the calibre of its servants and to exploit the talents of its servants for its own end. Instructions, if any, prescribe guide-lines for subordinate officers in making assessment of the worth and calibre of their subordinates. Those circulars bind the departments under the administrative control of the Government. At the time of record of Confidential Reports the employee is not entitled to any hearing. It is only after the record of the Confidential Reports and the communication thereof that he is given an opportunity to make a representation against the adverse entry. If the adverse entry is not communicated in time, it is not wiped out and such entry would become final if the employee fails to make any representation after communication. Character Rolls can be acted upon before final disposal of the representation and if the representation is ultimately rejected, the action taken on the basis of the Confidential Reports would stand and if on representation the adverse entry is set aside, or substantially modified, the case

is to be reconsidered and the earlier action taken on such adverse entry is to be quashed if a different view is taken on reconsideration and retrospective benefits are conferred. It has, further, been held that the Government, in maintaining the Character Rolls, is exercising administrative function in which it is to act justly and fairly. That is not a quasi-judicial function though certain elements in the exercise of both the functions are similar.

15. Apart from the above cases, the decisions in *J.D. Raje v. State of Maharashtra* (Supra), *Daulatram S. Rane v. State of Maharashtra* (Supra) and *P. Sankar Rao v. Government of India* (Supra) to which references have been made by the learned Judge would also be of relevant consideration. In the said Raje's case a Bench decision of the Bombay High Court has held that when public interest does not require compulsory retirement in the case of a servant then he is entitled to continue in service under Rule 161(1) of the Bombay Civil Services Rules until he completes 58 years. It has, further, been held in that case that the Court can interfere with the discretion when it is satisfied that the requisite opinion was not formed or that the order was based on collateral or arbitrary grounds. In *Daulakram S. Rane's* case (Supra), the same Bench of the Bombay High Court which made the determination in Raje's case (Supra) has held that an order of compulsory retirement, made under the said Rule 161 without any material to support the opinion of the Government that it was "in the public interest" to retire the Government servant compulsorily, would be invalid. When an order under that Rule is challenged in a writ petition, it is the duty of the State to satisfy the Court that it formed an opinion that it was not in the public interest to continue the Petitioner in service on the basis of some material which can be considered to be relevant. When the State is called upon to meet the challenge that there was no material for such a decision to "retire an employee compulsorily in public interest, it is incumbent on the State to produce whatever material is relevant. In the other case of *P. Sankar Rao* (Supra) which incidentally arose out of an action of compulsory retirement taken under the provisions of Rule 16(3) of All India Service (Death cum Retirement Benefits) Rules, 1958, it has been held by a Bench decision of the Madras High Court that compulsory retirement under the said Rules would not be a punishment so as to require the Central Government to adopt the procedure enjoyed by Article 311 of the Constitution of India. It is not necessary to give the employee concerned a reasonable opportunity of making a representation as to why the order should not have been passed. There are two reasons why an order of compulsory retirement will not be a punishment so as to attract Article 311. The first is that when the order does not itself contain any stigma on the officer, it cannot be considered as a punishment for attracting Article 311. Secondly, an order of compulsory retirement such as the order passed under Rule 16(3) does not result in forfeiture of the benefits which the officer has already earned, whereas an order of dismissal or removal would entail such forfeiture. It has also been held in that case that though it is the Central Government which is to make the decision under the said Rule to retire an officer in the public interest and its

decision is based on subjective opinion, the Court will set aside the decision on some limited grounds. If it could be shown that there were no reasons before the Central Government for taking the action or if the reasons given by them turn out to be non-existent or invalid in the eye of law, the order cannot be supported. In public regulations of this sort, there is no such thing as absolute or untrammelled "discretion", that is, that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator. The underlying reason is obvious, namely, that though it is left to the Central Government to form its opinion about retiring an officer prematurely in public interest, still there must be some reason for taking such action. Otherwise there would be room for caprice and arbitrariness which will undermine the morale of public services.

16. The determinations in the aforementioned cases and their ratio and findings would thus apply with equal efficiency against an action under Rule 2046(h) of the Railway Establishment Code. So under the said Rule, the employers, in the instant case, the Railway authorities, have the right to retire an employee on attaining the age of 55 years in public interest if it is of the opinion that it is in public interest to do so and such right is ordinarily an absolute one. Such power can be exercised subject to the conditions mentioned in the Rule itself, namely, that the concerned authority must be of the opinion that it is in public interest to do so. If the authority bona fide forms the 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 Rule holds the balance between the rights of the employee concerned and the interest of the public. While a minimum period of service is guaranteed to the employee, the authorities are also given power to energise the administrative machinery and make it more efficient by compulsorily retiring those who, in their opinion, should not be there in public interest. The authority concerned 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, but the appropriate authority may prefer to have a still more efficient officer. This right to retire an employee given to the appropriate authority under the Rules, as stated hereinbefore, can be exercised if the authority is of the bona fide opinion that it is in the public interest to so retire the concerned employee subject to the exception as mentioned above and also the exceptions as envisaged in the Rule. Such formation of opinion as stated hereinbefore can be challenged on the ground that requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The formation of requisite opinion by the appropriate authority is thus one of the conditions precedent: for the exercise of the powers conferred by Rule 2046(h) and such decision to retire the employee concerned under the said Rule should not be arbitrary, i.e. the same must be based on some ground or material which is germane to the question whether it is in public interest to retire him. If

the decision is not based on such ground or material or is based on a ground or material which is not germane to the issue, it would be an arbitrary decision. Since Rule 2046(h) provides for the formation of the requisite opinion by the appropriate authority and not by the Court, the sufficiency of the ground or material is not justiciable. But some grounds or materials germane to the issue must exist and it is open to a Court to examine the circumstances as mentioned hereinbefore and find out whether such grounds or materials exist or not. It is open to the employee concerned to contend that the decision is arbitrary and when such a contention is raised, the Court has to examine the materials placed before it and to decide whether the decision to retire the employee was arbitrary or not. The absolute power of the authorities concerned to retire an employee compulsorily should not be misread to mean any arbitrary power in the hands of the prescribed authority. The limitation for the use of the said power only in public interest is embodied in the Rule itself. The decision itself may be subjective and as such, is not open to judicial review. But what is beyond judicial review is the correctness of the decision. It is always open to Court, when a challenge is brought before it, to see that the order is based on an appropriate opinion, the bona fide formation of the same and that the opinion is based on considerations of relevant and not collateral or extraneous materials. An order not so based or an order based on an opinion founded on irrelevant considerations would be ultra vires the Rule itself and the person aggrieved will always have the right to challenge an order which is not within the sanction of the Rule. The formation of opinion by the appropriate authority, thus, cannot be based on collateral grounds. If on a charge being brought, the Court finds arbitrary action being taken or the opinion has not been duly formed on consideration of materials germane or relevant to the matter in issue, then, although the Court is not interested in the sufficiency of evidence or the materials, it can interfere. In determining whether the order for compulsory retirement is justified, the Court will have to consider not only the provisions of the Rules but also the directions, instructions and notifications issued from time to time to supplement the Rules or matters on which the same is silent. The Court on a challenge being thrown, in the light or in the manner as stated hereinbefore, would be entitled to determine and find out whether the act of compulsory retirement is a mere ruse or a pretence and a cloak under which the services of the employee is going to be determined. The Court will have jurisdiction in such a case to find out and determine whether the apparent is the real or not. The order complained may be innocuous on the face of the record but the real intention may be otherwise. In such a case when challenge is duly thrown, the Court will certainly have the jurisdiction to determine the fact and come to appropriate findings. If it appears to the Court that the order of compulsory retirement by its terms would attach a stigma against the employee it will be entitled to enter into the bona fides and validity of the order and to find out in such a case, if principles of natural justice have been violated or not or whether the employee concerned has been afforded adequate, proper and reasonable opportunities to make effective representations against the

allegations which would possibly be the basis for such stigma. In case the order for compulsory retirement is found to have been inflicted as a penal measure, the Courts would be under the obligation to see that the employee concerned is afforded opportunities to controvert and contradict the evidence forming the basis of the alleged charge.

17. Thus, in the instant case, although the Railway authorities have the power to compulsorily retire the Respondent Petitioner, the bona fides of such order, the validity of the same will have to be looked into by the Court for the purpose of coming to a conclusion whether there exist any materials for the formation of the necessary opinion or materials germane to the issue of the impugned order or whether such order was an arbitrary or a baseless and mala fide one or whether the same was based on no opinion or material or was passed on consideration of extraneous or collateral matters. It seems that the necessary opinion, in the instant case, was not formed duly. The order was void as the adverse entries, which were the alleged basis for the recommendation for the compulsory retirement of the Petitioner, were not duly communicated or made known to him.

18. Mr. Mukherjee submitted that Rule 2(d) of chap. XVII of the Railway Protection Forces Regulations, 1966, viz., the chapter dealing with the record of service and Confidential Reports has two parts and the same further requires the communication of the adverse entries when they are against an employee concerned if the basis of the action taken or the materials relevant for the formation of the opinion are such adverse entries. He submitted, further, that non-communication of the adverse entries would make them non est and as such, no action can be taken on the basis of them under Rule 2046(h). Mr. Mukherjee took us through the petition and the other record appearing from the records of this proceeding and submitted that the period under review for the Petitioner's conduct, as appears from the proceeding before the Review Committee, were 1969 and 1971 and the relevant adverse entries, if at all and as recorded respectively by the Respondents Nos. 1 and 2 for the year 1970 were communicated to him on January 11, 1972, April 21, 1972, only and not the other entries which were taken into consideration by the said committee or relied on by them in recommending the case for compulsory retirement and as such the entire action was not only irregular and illegal and void being contrary to the requirements of Rule 2(d).

19. Mr. Mukherjee, in fact, submitted that the other unfavourable reports of the Chief Security Officer for the years 1970 and 1971 and that of the Security Officer for the year 1971 made in the Confidential Character Roll of the Respondent Petitioner were not communicated to him and hence he was denied the opportunity of showing cause as to why such entry should not be made. Mr. Mukherjee, further, argued that such communication was mandatory in terms of Rule 2(d) of chap. XVII of the Regulations as the said Rule on scrutiny would show that the same relates to communication of every entry which may adversely affect promotion of the members of the Force made in their Character

and Service Roll.

20. Mr. Banerjee appearing for the Appellants contended in reply that apart from the absolute right of the authorities to retire an employee, a combined Character and Service Roll is maintained for all members of the Force from the rank of Rakshakas to that of the Inspectors in Form. RPF/E/17 in terms of para. 2(a) of the Regulations and that too in terms of the requirements of the entries in such Character Roll as are mentioned in para. 2(f). He submitted that para. 2(d) is not applicable in the instant case. It was, further, submitted by Mr. Banerjee that the unfavourable reports of the Security Officer or the Chief Security Officer for the years 1970 and 1971 in the Confidential Character Roll of the Respondent Petitioner, were confidential reports made in the prescribed form in append. XVIII of the Regulations and the same is different from the Character and Service Roll maintained in terms of para. 3 of chap. XVII of the Regulations. Mr. Banerjee submitted that these Confidential Reports are maintained only in respect of Inspectors, Sub-Inspectors and Assistant Sub-Inspectors. He, further, referred to item 6 of the instructions provided at the bottom of the Form in append. XVIII and submitted that the same clearly stipulates that communication of the substance of an unfavourable report is the discretion of the Security Officer/Chief Security Officer and in the instant case, the communication of the unfavourable reports was not considered necessary by the competent authority in terms of the said item 6 of the instructions in the Form in append. XVIII.

21. Thus, from the respective contentions of the parties as indicated above it is clear that some such entries which were unfavourable to the employee and which were considered at the time of making the recommendations were not admittedly communicated to him. The question thus is how far and if at all, the same is justified. Principles of natural justice and fair play require that when an action is to be taken against an employee on the basis of some adverse entries or reports, they must be made known to him and such principle is also supported, in the instant case, from para. 2(d) of the Regulations. Character Rolls are maintained primarily for the benefit of the Railway authorities. They, as the master, are to make their own assessment of the caliber and quality of their servants and to exploit the talents for their benefit. At the time of making the adverse entries the employee concerned may not be entitled to a hearing, but thereafter when the said entries are going to be relied on or steps are to be taken prejudicial to his interest or right on such basis, the employee concerned on application of the principles, as mentioned hereinbefore, should be given necessary opportunities. If such adverse entry is not communicated in time, it is not wiped out, but such entry would reach finality if the employee fails to make any representation after communication. Character Rolls can be acted upon before final disposal of the representation and if the representation is ultimately rejected, the action taken on the basis of Confidential Report would stand and if on representations the adverse entries are set aside, or substantially modified, the case is to be reconsidered and the action taken on such adverse entries is to be set aside. In maintaining the Character Rolls the authorities would be acting in

exercise of their administrative functions, but even then they will have to act justly and fairly by communicating the substance of adverse entries to the employee concerned.

22. The main elements of the principles of natural justice and the essence of them are (i) notice, (ii) adequate opportunity of being heard, (iii) a fair consideration of evidence of either side to admit or to certificate and (iv) a reasoned judgment. The aforesaid principles are very old and the most important on the point is the decision of the House of Lords in *General Medical Council v. Spackman* 1943 A.C. 627. There the General Medical Council was considering the removal of a doctor's name from the medical register for "infamous conduct" in his personal capacity. There was a finding by the Divorce Court about the guilt of the doctor and the General Medical Council wanted to treat it as conclusive without giving the doctor an opportunity to prove that he was innocent. The House of Lords set aside the proceedings and directed the Medical Council to determine the question afresh after permitting the doctor to produce evidence. The principle appeared to be that the previous decision of the Matrimonial Court, although providing a *prima facie* case, yet was rebuttable and the decision of the Matrimonial Court was not a decision between the same parties and there was no question of estoppel or *res judicata*. The term "natural justice" is usually regarded as coming down from the Roman concept *Jus Naturali*. Natural justice, however, does not mean the artificial and technical rules of law of evidence. Modern administrative jurisprudence has shown a decisive leaning in favour of a more liberal action on the principles of natural justice and fair hearing in recent decisions of the House of Lords in *Kanda v. Government of Malaya* 1962 A.C. 322 (P.C.) and *Ridge v. Baldwin* (1963) 2 All E.R. 66. The Rule of natural justice is not a rule of law that can override the actual laws of the land. It is the rule of fairness to ensure administrative justice. It comes into operation when there is nothing in the contract or any statute either specifically or by necessary implications overruling the application of the principles of natural justice. As stated hereinbefore those principles would include that a party should have (a) the opportunity of adducing evidence on which he relies, (b) that the evidence should be taken in his presence, (c) that in proper cases he should be given the right of cross-examining witnesses examined against him and (d) that no materials should be relied on against him without giving an opportunity of explaining them. In taking proceedings (Sic) disciplinary action against employees the principles of natural justice have to be applied. The doctrine of *audi alteram partem* means that no man should be condemned unheard. A part of this principle is that if any reliance is placed on evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. Natural justice imply that if any statement of a person before it is accepted against anybody else that somebody else should have an opportunity of meeting it whether by way of interrogation or by way of comment. So long as the party charged has a fair opportunity to see, comment and criticise the evidence, statement or record on which the charge is being

made against him, the demands of natural justice, as has been found in a Bench decision of this Court in the case of *Kishanlal Agarwalla v. Collector of Land Customs* (1965) 69 C.W.N. 864, would be satisfied.

23. Thus, even if the Railway authorities had absolute right to retire the Respondent Petitioner subject to the requirements as mentioned hereinbefore and in terms of para. 3 of chap. XVII of the Regulations read with item 6 of the instructions in the Form in append. XVIII in the admitted position of the case, viz., certain adverse entries were taken into consideration in having him compulsorily retired, the action as taken is thus certainly against all principles of natural justice and norms of fair play and as such, the action so taken cannot be supported. The said right under para. 3 of chap. XVII read with item 6 of the instructions in the Form in append. XVIII can be used and those principles can be applied or resorted to subject to the principles of natural justice which incidentally is the restraint put on the pretended misuse of power. Power being a heady thing should not be absolute. All power needs some restraint, some check, lest, as it has been observed by William O. Douglas in his Tagore Law Lectures (from Marshall to Mukherjee), it becomes an instrument of oppression. The order, in the instant case, seems to be innocuous in its nature but from the attending circumstances it is clear and definite that the same was passed on consideration of certain materials alleged to be adverse against the Petitioner without any corresponding opportunity given to him either to rectify or contradict them. Such act which affects the cause of an employee prejudicially cannot and should not be allowed to be taken in the manner as has been done. If it was not the admitted position that the impugned action was taken behind the back of the Respondent Petitioner and without any opportunity to him then the case would have been different. But when steps have admittedly been taken on consideration of adverse entries not communicated to the employee concerned, such steps cannot be sustained unless it can be shown that he was given ample opportunity to make effective representations against them and such representations have been duly considered before the final order is passed. In order words, any prejudicial steps on the basis of adverse entries cannot be taken unless the principles of natural justice, as has been put graphically by Coke and which consists in (i) vocate, (ii) interrogate and (iii) adjudicate, are complied with or fulfilled.

24. In view of the above the points as raised by Mr. Banerjee must fail. The appeal is, therefore, dismissed. The judgment and order of Anil Kumar Sen J. is affirmed subject to the modification that in the facts of the case the parties should bear their respective costs a throughout.

25. As prayed for by Mr. Mukherjee, the operation of this order will remain stayed for three weeks.

S.K. Mukherjee J.

26. I agree.