
(1971) 11 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 1487 of 1971

Jaggannath Dwarkanath Raje

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-11-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 226, 309
Evidence Act, 1872 — Section 114, 123
States Reorganisation Act, 1956 — Section 115

Citation : (1972) 74 BOMLR 320 : (1972) MhLj 618

Hon'ble Judges : Vaidya, J;Deshpande, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vaidya, JJ.—This petition raises a difficult question under the Bombay Civil Services Rules, as amended by the Bombay Civil Services (7th Amendment) Rules, 1971.

2. The petitioner challenges the order dated June 9, 1971 and the order dated July 21, 1971 purporting to have been passed by the Inspector General of Police, Maharashtra State, under the said Amendment Rules of 1971 compulsorily retiring the petitioner "from the date of expiry of three months" period from the date of receipt of the notice" dated July 21, 1971.

3. The petitioner was born on December 24, 1918. He was commissioned as an Officer in the Indian Army and after his service of 4? years he was relieved from the Army in the year 1946. He was then selected for training at the Police Training Centre at Nasik. After completion of the training, he was appointed as a Sub Inspector of Police at Poona in the year 1948. He was confirmed in that post with effect from July 1, 1949. On July 3, 1968 he was promoted to officiate as Inspector of Police. First he was posted at the Police Training Centre at Nasik. He worked there upto December 12, 1968. Thereafter he was posted at Parbhani. His work throughout was satisfactory and without any blemish. He secured as

many as 62 rewards for his services. He was also given a reward for doing strenuous duties during the riots of 1965. The remarks appreciating his services were placed on record by the Superintendent of Police, Satara. He had not received any adverse remarks in his work. He was keeping good health. He had never taken sick leave. Only on one occasion he made an application for leave on the ground of sickness, but the same was refused by the administration on the ground that he was fit to carry out executive work. The petitioner was never asked by the administration to subject himself to any medical examination. The petitioner, therefore, submitted in his petition that he was quite fit to discharge his duties as Police Inspector.

4. Notwithstanding these facts, however, the petitioner received on November 2, 1970 a confidential memo or order dated October 15, 1970 through the Superintendent of Police, Parbhani, informing him that the Government had decided that he should be retired from service prematurely, unless he himself would elect to retire voluntarily by giving three months' notice. The said order was challenged by the petitioner in Special Civil Application No. 2805 of 1971 contending, inter alia, that the Rule under which he was compulsorily proposed to be retired was illegal inasmuch as the prior approval of the Central Government as required by the provisions of the States Reorganisation Act was not taken by the Government of Maharashtra before enacting the said Rule or before enforcing it. After the petition was admitted, the Government withdrew the order and the petitioner dropped the application.

5. On June 9, 1971, he was, however, served with the impugned order annexed at exh. "A" to the petition which is as follows:

Confidential Immediate No. A (R)/5288-PI (JDR)/70 Bombay, 09 June, 1971.
Subject : Review of cases of Class II Officers of the Police Department for judging their suitability to continue in service upto the age of 55 years or 58 years.

Shri J.D. Raje, Police Inspector has attained the age of 52 years on 24.12.1970. It has been decided he should be retired from service prematurely unless he himself would elect to retire voluntarily by giving three months' notice. He is, therefore, advised to give the requisite notice and retire voluntarily. If no such notice is received from him within a period of one month from the date of receipt of this Memo by him, necessary notice to retire him will be issued by the I.G.

2. It will be open to him while giving the notice to apply for such leave preparatory to retirement as may be admissible to him so that he would actually retire from service on the expiry of the leave that may be granted to him as leave preparatory to retirement.

3. He should please note that no appeal representation against the above decision will be entertained.

(Sd/-) for Inspector-General of Police.

To Shri J.D. Raje, Police Inspector. Through : The Supdt. of Police, Parbhani.

The validity of the said order was challenged by the petitioner in the above petition. The petition was admitted on July 26, 1971. In view of the urgency of the matter, the rule was made returnable within a month.

6. On behalf of the Government an affidavit in reply is filed by the Under Secretary to the Government of Maharashtra, Home Department. In that affidavit the facts alleged by the petitioner are substantially admitted but after correcting some errors in dates, it was contended that the petitioner had made materially false statements in the petition with regard to two matters, viz. (1) his confidential reports and (2) the state of his health. It is stated that the petitioner was informed of an adverse remark against him in the memorandum dated September 19, 1964. The adverse remark was:

You need goading and so your work is not up to the mark.

The memorandum stated that the petitioner would not be promoted to the rank of Police Inspector, unless he showed definite improvement. It was also further stated in the affidavit in reply that, since the year 1968 the Deputy Inspector General of Police and other officers under whom the petitioner had worked had observed that the petitioner had been keeping indifferent health. It was pointed out that even prior to 1968, the petitioner's health had not remained as good as was claimed by the petitioner, because the petitioner had taken leave on medical grounds during the periods (1) November 27, 1955 to July 4, 1956 and (2) May 14, 1958 to May 29, 1958. It was also contended that the petitioner's work was not all throughout satisfactory or without any blemish, as stated by the petitioner.

7. Mr. Singhavi, the learned Counsel for the petitioner, fairly stated at the outset that in view of the averments made in the affidavit in reply it was clear that there was an error in the averments made in the petition in not mentioning the details of the petitioner's sick leave prior to 1958 and the adverse remark communicated to him in 1964, which was referred to in the affidavit in reply. He, however, submitted that this error was regretted, as the petition had to be filed in hurry and the petition was filed on the basis of his state of health and the absence of remarks against the petitioner as Police Inspector. Now, it is true that the petitioner ought to have been more careful in mentioning the facts about his health and confidential. But the mere fact that he over-stated the case ignoring what happened when he was a Sub-Inspector cannot be considered as sufficient to disbelieve the petitioner or question his probity.

8. In support of the petition, Mr. Singhavi raised the following contentions:

(1) That the Bombay Civil Services (7th Amendment) Rules, 1971 violated Articles 14 to 16 of the Constitution of India in so much as:

(a) it conferred unguided discretion on the Government to pick and choose a Government servant for compulsory retirement;

(b) there was no provision for appeal or revision against the order of compulsory retirement; and

(c) in applying the said Rules, the Authorities had discriminated against the petitioner illegally notwithstanding that he was physically fit and his services were excellent.

(2) That the said Rules were ultra vires Article 311(2) of the Constitution of India because

(a) the rule conferring the power to retire compulsorily did not even provide for a minimum of 15 years' service to the Government servants, and hence it was unreasonable; and

(b) the enforcement of the Rule resulted in punishing the Government servants and casting a stigma on them as the Rule was required by the Circulars to be applied only when the work of the Government servants was found unsatisfactory or the Government servants were not physically fit to continue in Government service, and this could be done without giving any opportunity to the Government servant in contravention of Article 311(2).

(3) The Amendment Rules were not consistent with the terms and conditions approved by the Central Government u/s 115(7) of the States Reorganisation Act, 1956.

(4) Even if the said Rules were not invalid for any of the reasons set forth above, the impugned order dated June 9, 1971 quoted above and the order compulsorily retiring the petitioner dated July 21, 1971 referred to above (challenged by amending the petition, as the order was passed subsequent to the admission of the petition) were both in contravention of Rule 161(c-1) of the Bombay Civil Services Rules, because

(a) the proper interpretation of the said Rule would show that the petitioner could be compulsorily retired under the said Rule, only after he had attained the age of 55 years and the order was, therefore, premature, and

(b) in any event, there was no material whatever to support the order of compulsory retirement passed against the petitioner.

(5) Lastly, that under the Circular dated December 16, 1970, which is annexed to the petition as exh. "C", there should have been a review of the case of the petitioner only after he attained the age of 55 years and without such review he could not be compulsorily retired.

9. It may be noted here that the petitioner was allowed to amend the petition with a view to enable him to challenge the order dated July 21, 1971 at the hearing of the petition, as the said order was merely an order consequential to the earlier order, which was impugned in the petition. The order dated July 21, 1971 is as follows:

No. A (R) 5288-P.I. (JDR) 70 Office of the I.G. of Police, M.S., Bombay, 21 July, 1971.

To Shri J.D. Raje, Police Inspector. Through: The Supdt. of Police, Parbhani.

Whereas you have already attained the age of 50 years.

And whereas it has been decided to retire you from service in the public interest as provided for by the Bombay Civil Services (7th Amendment) Rules 1971.

Now, therefore, take notice that you stand retired from service from the date of expiry of three month's period from the date of receipt of this notice by you. In case you desire to avail yourself of whatever leave is due and admissible to you upto the age of 58 years, you should apply for such leave, within a fortnight from the date of receipt of this notice by you. On the grant of such leave you will retire from service on the date following the date on which the leave expires.

Sd/- (E.S. Modak) Special Inspector General of Police.

It is clear that if the petitioner succeeded on any of the points (4) and (5) referred to above, as contended by Mr. Singhavi, it is not necessary for us to consider the validity of the other contentions raised, by Mr. Singhavi in this petition. We, therefore, proceed to deal first with the fourth and fifth contentions.

10. To appreciate these contentions, it is necessary to notice the history of the amendment of Rule 161 and the relevant Rule as amended. It is stated in the affidavit in reply filed by the Under Secretary that in Chapter IX of the Bombay Civil Services Rules, in Rule 161, which deals with compulsory retirement, an amendment was made with effect from September 21, 1970; and it was under that amendment that the earlier order communicated to the petitioner, which was in due course withdrawn, as stated above, was passed because the amendment itself was repealed by the Government. It appears that the amendment was made having regard to the necessity of eliminating from the public service, persons, who "by reason of their age, or physical health or otherwise, have become less useful or whose continued existence in the public service is not in the public interest". The decision was taken by a Circular dated September 30, 1969. The said Circular was supplemented by two other Circulars dated October 17, 1969 and November 21, 1969. The Circulars are annexed to the affidavit in reply as exh. 3 collectively.

11. In the Circular dated September 30, 1969 it was stated that after a recent review of the age of compulsory retirement of Government servants, Government has decided that the general age of superannuation of Government servants would continue to be 58 years, but Government would assume powers and frame necessary rules to retire compulsorily, before their attaining the age of 58, "Government servants whose record of work and health are considered unsatisfactory or below average plus". In respect of Class I and Class II Government servants, whose recruitment age-limit was below 35 years, the power may be exercised upon the completion of the age of 55 years, if their

record was "unsatisfactory", and upon completion of the age of 55 years, if their record was "below average plus". In the case of Class I or Class II Government servants, whose recruitment age limit was above 35 years, the power was to be exercised upon completion of the age of 55, if their record "is below average plus". The Circular also dealt with Class III Government servants holding pensionable posts and stated that in their case the power would be exercised upon completion of the age of 55 years, "if their record is unsatisfactory". We are not concerned with the rest of the contents of the Circular with regard to the age of Class III and Class IV Government servants in this case, because there is no dispute that as a Sub Inspector the petitioner was a Class III Government servant and as Police Inspector he was a Class II Government servant. The Circular also provided an option to Class I and Class II Government servants to retire from service on completion of age of 50 years or at any time thereafter by giving Government three months' written notice in advance. The same option was available to Class III and Class IV Government servants holding pensionable posts. The Circular stated that the necessary amendments were being made in the Bombay Civil Services Rules to implement the above decision of the Government and that the Government had also decided that Special Review Committees would be constituted to examine the record of work and health of the above categories of Government servants for the previous five years and to make recommendations on the officers proposed to be compulsorily retired because of unsatisfactory or below the average plus records for approval of Government. Three separate Committees were proposed regarding (1) Class I Government servants, (2) Class II Government servants and (3) Class III and Class IV Government servants. The circular stated that these committees would hold meetings in the second half of January and July of each year and review the cases of officers who are expected to attain the age of 50 or the age of 55 in January-June and July-December period of the following year. In view of this Circular the Heads of Departments were asked to treat the confidential records of Government servants on their attaining the age of 40 and after words with "utmost care and objectivity".

12. The second Circular dated October 17, 1969 stated how the Review Committees were constituted for the different classes of Government servants. Thus, so far as Class II Government servants were concerned, the Review Committee consisted of (1) Chairman-the Secretary, Revenue and Forests Department (2) Member-Secretary, General Administration Department and (3) Member-Secretary, Agriculture and Co-operation Department, and the Circular, inter alia, stated that the Secretary of the concerned Department and Head of the Department concerned would be invited to attend the meetings. Similarly, the Review Committee for Class III Government servants consisted of-(1) Chairman, Secretary, General Administration Department, (2) Member-Secretary, Buildings and Communications Department and (3) Member-Secretary, Industries and Labour Department and the Committee had to co-opt the Secretary of the Department concerned. The Circular also provided that three

Deputy Secretaries in the General Administration Department would work as Secretaries of the Review Committees. The Circular went on to provide as to what type of Government servants should be considered by the Review Committees for compulsory retirement, according to their age and stated:

...the cases of these Government Servants together with their up-to-date confidential records should be sent to the Secretaries of the special Review Committees by November 15 and May 15 each year for the following January and July Review Committees sessions respectively.

The Circular contained further details as to the working out of these directions, which are not relevant for the purposes of this petition.

13. The third Circular dated November 21, 1969 made some changes in the constitution of the number of Special Committees in view of the information which the Government received about the number of cases of the three classes of Government servants, who are likely to come up for review at the 1970 January session of the Review Committees. A Special Review Committee was set up for Class II Government servants consisting of (1) Chairman-Secretary, Agriculture, (2) Member-Secretary, General Administration Department (Shri Sharma), and (8) Member-Secretary, Urban Development, Public Health and Housing Department. The Circular directed that the Head of the Department concerned would be invited to attend the meetings of the Committee. There were two Special Committees for Class III Government servants, the details of which again are not relevant for the purposes of this petition. It is clear from these Circulars that these Review Committees had to consider the confidential records of the Government servants concerned and tender advice to the Government with regard to the necessity or otherwise of compulsorily retiring them, in the light of the decision of the Government to retire compulsorily the Government servants whose work and health did not permit them to continue in Government service in the interest of the public.

14. The manner in which the recommendations of the Special Review Committees set up by the Government by the said Circulars should be treated was prescribed in the Circular dated February 9, 1970, which is annexed to the affidavit in reply as exh. 4. Under that Circular it is pointed out that the role of the Special Review Committees in making recommendations regarding suitability of Government servants for continuance upto the age of superannuation was of advisory nature and, therefore, it was necessary to obtain orders of Government on these recommendations. It further stated:

The Special Review Committees consist of high ranking personnel. It is, therefore, desirable that the recommendations of these committees are treated with utmost respect. Government is, therefore, pleased to lay down the following procedure for obtaining Orders of Government on the recommendations of the Special Review Committees.

(a) In cases of Class I officers, the recommendations should be submitted by the

Chairman of the Special Review Committees concerned to the Chief Minister, through the Minister in charge of the Department concerned.

(b) In cases of Class II Officers, the recommendations should be submitted by the Chairman of the Special Review Committees concerned to the Minister in charge of the Department concerned.

(c) As regards Class III Government servants in Sachivalaya the Chairman of the Committee should submit his recommendations to the Chief Secretary through the Departmental Secretary concerned and in cases of Class III Government servants (other than Sachivalaya staff) working in Greater Bombay and in the mofussil, the recommendations should be submitted by the Chairman of the Committees to the Secretaries of the Administrative Departments con-concerned.

2. In view of the status of the committees and the importance of the work assigned to them Government is of the opinion that the recommendations of the Committees should not be noted upon any officer lower than the one to whom they are submitted.

It is not necessary to quote the rest of the Circular for the purposes of this petition, except to state that the recommendations had to be submitted in the accompanying form:

_____	Category	Name of	Total	List	Names of	List
Names of	Total	Re-	Class I	the	Depart-	List
No.	Officers	No.	II	Officers	(Y + Z	marks
Class II	ment.	No.	of	recommend	recommend	should
to	be	equal	Class III	reviewed	retention	retired
No.	X)	(X)	(Y	names)	prematurely	(Z
names)	_____	_____	_____	_____	_____	_____

1 2 3 4 5 6 7 8 9 _

15. The Under Secretary in his affidavit in reply has referred to the above Circulars and stated that in pursuance of the policy of the Government, as revealed in the said Circulars, Rule 161 was amended in 1970, and the case of the petitioner was reviewed by a Special Review Committee set up for the purpose and on the recommendation of the said Committee, the Government decided in the public interest not to continue the petitioner in public service, the petitioner having already, at that time, passed the age of 50. This decision was communicated by the aforesaid confidential memo dated October 15, 1970; but the order was later withdrawn, as stated in the petition, because the prior approval of the Government of India was not obtained u/s 81(6) of the Bombay Reorganisation Act, 1960, though the prior approval of the Government of India was obtained u/s 115(7) of the States Reorganisation Act, 1956. It was in these circumstances that the amendment made in 1970 was repealed and the Rule was again amended, after obtaining the approval of the Government of India, u/s 81(6) of the Bombay Reorganisation Act, 1960.

16. The Rule was amended in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India on the Governor of Maharashtra, and the Rules were called "The Bombay Civil Services (7th Amendment) Rules, 1971". The material portion of the said Rules is contained in Rule 3 Clause (c) and runs as follows:

"(c-1) Notwithstanding anything contained in Clauses (a) and (b) of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so to do, by giving notice of not less than three months in writing or three months pay and allowances in lieu of such notice, have the absolute right to retire-

(i) any Gazetted Government servant under the rule making control of the State Government,-

(a) if he was initially recruited to a post for which the upper age limit for recruitment was less than thirty five years, after he has attained the age of fifty years, and

(b) in any other case, after he has attained the age of fifty-five years;

(ii) any Government servant who holds a post in class III service of the State,-

(a) if he is in a pensionable service, after he has attained the age of fifty-five years;

(b) if he is in a non-pensionable service, after he has completed thirty years of service;

It is not necessary to quote the rest of the Rule, but it is enough to state that the Rule referred to in the above portion of (c-1) is Rule 161 of the Bombay Civil Services Rules. Clause (a) of that Rule provided:

Except as otherwise provided in the other clauses of this rule, the date of compulsory retirement of a Government servant, other than a Class IV servant, is the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement only with the previous sanction of Government, on public grounds which must be recorded in writing.

Clause (b) is not material to this petition, as it relates only to Class IV Government servants. It is clear from this rule that by the 7th Amendment made to the Bombay Civil Service Rules, 1971, the Government was empowered to retire compulsorily Class I and Class II Government servants and others mentioned in the said Rule subject to the conditions mentioned therein.

17. It is in exercise of these powers that the impugned orders were passed against the petitioner. It is contended on behalf of the Government that the 4th and 5th grounds urged by Mr. Singhavi in support of the petition are not tenable. It is submitted that the petitioner, who was a Police Inspector being a Gazetted Government servant and having been initially recruited as Sub Inspector, a post for which upper age limit for recruitment was less than 35 years, could be

compulsorily retired, after he had attained the age of 55 years under Rule 161(c-1)(i)(a) and he was properly retired compulsorily under the impugned order, after reviewing his confidential records and taking into consideration his work and performance and the orders having been passed in exercise of the discretion by the Government could not be questioned by him on the ground that there was no material to support the order or on the ground that he was efficient and fit to continue in service. It was also submitted that even the Circular dated December 16, 1970 did not take away the discretion conferred on the Government with regard to the compulsory retirement or require the Government to wait till the petitioner reached 55 years.

18. We do not find any difficulty in rejecting the fifth contention raised on behalf of the petitioner. The Circular relied on is the Circular dated December 16, 1970 issued by the Deputy Secretary to the Government of Maharashtra, General Administration Department. The Circular runs as follows:

Government has assumed powers and framed the necessary rules to retire compulsorily before their attaining the age of superannuation, Government servants whose record of work and health are considered unsatisfactory or below average plus as laid down in Government Circular, General Administration Department, No. SRV-1069-D dated the 30th September 1969. It has been decided that the enforcement of these powers should be as follows:

(a) There will be two reviews by the Special Review Committee of the case of all class I and class II Govt. servants, the first being before or about the time they attain the age of 50 and the second before or about the time they attain the age of 55. There will be only one review of class III Govt. servants before or about the time they attain the age of 55.

(b) A Govt. servant who is cleared for continuance in service beyond the age of 50 by Govt. after considering the recommendations of the Special Review Committee will normally continue in service till he attains the age of 55. Similarly, a Govt. servant who is cleared for continuance in service beyond the age of 55 by Govt. after considering the recommendation of the Special Review Committee, will normally continue in service till he superannuates at the age of 58 years.

However, notwithstanding the clearance at the age of 50 or 55 cases of class I and class II and class III Govt. servants whose subsequent confidential reports are unsatisfactory or whose work shows marked deterioration or who are involved in a departmental enquiry of a serious nature should be referred by the departments concerned for review to the Spl. Review Committees which will take necessary action in accordance with the approved criteria and procedure. By Order and in the name of the Governor of Maharashtra.

Sd/-

Under Secretary to the Govt. of Maharashtra, General Administration Department.

19. Mr. Singhavi submits that when the decision to retire the petitioner compulsorily was communicated to the petitioner on June 9, 1971 the petitioner was in his 53rd year and hence there could not be the first review, which is permitted under the Circular, when the Government servant reaches the age of 50, according to the Circular. But it should be noted that this Circular was issued on December 16, 1970 and the Rules under which the petitioner is compulsorily retired were made and published in the Maharashtra Government Gazette on April 26, 1971. Hence the mere statement in the said Circular that a Government servant who is cleared for continuance in service beyond the age of 50 by Government after considering the recommendations of the Special Review Committee would normally continue in service till he attains the age of 55 cannot be availed of by the petitioner, as there was no occasion whatsoever for clearing him for continuance after he attained the age of 50. Moreover, the Circular itself, in the last paragraph, clearly provides for review, even of those cases where the Government servants are cleared after the age of 50. This; question, however, cannot be of any relevance in considering the validity of the impugned orders, as the said orders have been passed in pursuance of the subsequent amendment in 1971. The fifth ground urged by Mr. Singhavi in support of the petition is, therefore, Without any substance.

20. The fourth ground urged by Mr. Singhavi in so far as it is based on the absence of material to support the impugned order is, however, very important in deciding this petition. Mr. Setalved, the learned Counsel for the respondents, contended that the impugned orders were passed by the Government accepting the advice tendered by the Special Review Committee consisting of high ranking officers, who had carefully considered the confidential records, work and health of the petitioner, and found him unfit to continue in Government service in the public interest. He submitted that this decision of the Government could not be challenged by the petitioner in this Court by filing a petition under Article 226 in view of the settled law regarding compulsory retirement. He argued that compulsory retirement was held to be valid, as it was in the public interest and even though petitioner may be fit and efficient, the opinion of the Government based on the recommendation and advice of the Special Review Committee could not be challenged by the petitioner before this Court. In other words, he contended that the opinion formed by the Government was a subjective opinion, which was not justiciable in these proceedings.

21. On the other hand, it was strenuously urged by Mr. Singhavi that it was clear from the affidavit in reply filed by the Under Secretary in the present case that the petitioner had received 62 rewards and was recommended for good work during riots and there was nothing to show that he had suffered in health, while he was Police Inspector, or that any adverse remarks were communicated to him, after he was promoted as Police Inspector. He contended, relying on the decision of the Supreme Court in Union of India (UOI) Vs. Col. J.N. Sinha and Another, , that an order of compulsory retirement could be challenged on the ground that either the requisite opinion was not formed or that the order was passed

arbitrarily or on collateral grounds or mala fide. He contended that the impugned orders were passed arbitrarily and capriciously inasmuch as the Government was unable to place any record before this Court to support their orders or any material to show that the nature of the work done by the petitioner as Police Inspector or the condition of his health required the Government to retire him compulsorily in public interest.

22. It is, no doubt, true that the law in relation to the validity of the Rules permitting the compulsory premature retirement of Government servants is stated to have been well settled by the prior decisions of the Supreme Court in T.G. Shivacharana Singh and Others Vs. The State of Mysore, . It Was also laid down in that case (p 282):

It is true that in his petition, the petitioner has made certain allegations against the Home Minister Mr. Channabasappa and has suggested that the order terminating his services prematurely is due to his whims and fancies, and he has characterised the said order as both arbitrary and illegal. According to the petitioner, his past record is free from blemish and the Government was not, therefore, justified in coming to the conclusion that it was in the public interest to retire him compulsorily. The allegations made by the petitioner in that behalf are very vague and unsatisfactory, and so, it would be idle to contend that if the impugned note is valid, the order terminating the services of the petitioner can still be challenged on the ground that it is not justified on the merits or is illegal or arbitrary. Whether or not the petitioner's retirement was in the public interest, is a matter for the State Government to consider, and as to the plea that the order is arbitrary and illegal, it is impossible to hold on the material placed by the petitioner before us that the said order suffers from the vice of mala fides.

(Italics are ours).

Mr. Setalved submitted that the underlined proposition above would show that the decision of the Government to retire compulsorily a Government servant is not justiciable before the Court, when it was based on a consideration of the advice tendered by a Committee consisting of Secretaries of Departments and the Head of the Department. He argued that it may be that somebody else may take a different view, but it cannot be said that the Government acted improperly or unreasonably in acting upon the advice of the Review Committee, who had seen the confidential records of the petitioner and the reports received from his superiors. He referred to the decision in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), , and contended that the compulsory retirement did not amount to dismissal or removal within the meaning of Article 311 of the Constitution and did not involve any stigma or implication of misbehaviour or incapacity. He also referred to the decision of the Supreme Court in The State of Bombay Vs. Saubhagchand M. Doshi, , in this connection, and the decision in Kailash Chandra Vs. Union of India (UOI), , and contended that the petitioner has no right to continue in service merely because he thinks that he is physically fit and his work was satisfactory.

23. Having regard to the facts and circumstances of the present case, and particularly the averments made in the petition and affidavit in reply in this Court, we find that notwithstanding that the Government appears to have followed the advice given by the Review Committee the Government was unable to place before us any material to show that there was any defect in the working or in the health of the petitioner, after he was promoted as a Police Inspector, or anything before that which would justify the Government to pass an order of compulsory retirement under Rule 161(c-1).

24. As stated already, in the course of his service in the Police Department from 1948, the petitioner secured 62 rewards. In spite of the confidential remark, referred to above, communicated to the petitioner on September 19, 1964 he was promoted as Police Inspector on December 12, 1968. There is nothing to show that any adverse remark was passed against the petitioner thereafter by any one. There is also nothing to show that he applied for sick leave or any leave on the basis of his indifferent health.

25. In para. 2 of the petition, the petitioner has specifically alleged that, as a matter of fact, the petitioner in the past on one occasion did make an application on the ground of sickness, but the same was refused by the Administration on the ground that he was fit to carry on executive work. It is also specifically alleged by him that the petitioner had never been asked by the Administration to subject himself to any medical examination. He has also averred, that he is quite fit to discharge his duties. These averments are not even denied in the affidavit in reply. As explained already, it is not possible to question the probity of the petitioner merely because in the petition an over-statement was made with regard to his fitness and state of health.

26. The only reply which is given to these averments in the petition by the Under Secretary, who has filed the affidavit in reply, is that the fact that the petitioner received rewards or was appreciated for his good work in the communal riots "does not establish that the petitioner's work as a whole is very satisfactory or without blemish because the question as to whether the work of a Government servant is or is not satisfactory depends upon the overall assessment of his confidential record of service and such assessment cannot be made by merely considering instances of good work done by a Government servant". This vague denial is not supported by any material on the basis of which the "overall assessment" of the petitioner was made by the concerned authorities. We are surprised to find in the affidavit in reply a contention that the petitioner's reference to the rewards or appreciation of his service is irrelevant to the real issues mentioned in the petition. We are not told that a Sub Inspector usually secures 62 rewards in the course of his 23 years of service and these rewards can be easily ignored by the Under Secretary, Home Department, who files the affidavit in reply. In any event, we are shocked to see that the Under Secretary says that they are irrelevant to the issues involved in the petition, although the only material issue with regard to the continuance of the petitioner in service is

as to his ability to work and as to his physical fitness to continue as a Police Inspector. The only other thing which is stated in the: affidavit in reply is with regard to the fact that the petitioner had taken leave on medical grounds during the periods from November 27, 1955 to July 4, 1936 and May 14, 1958 to May 29, 1958, which, as stated above, in our opinion, is entirely irrelevant, as the petitioner was promoted 10 years thereafter as Police Inspector. It is not disputed that a Sub Inspector is not promoted as a Police Inspector, unless he was well qualified for the promotion and was physically fit to discharge the functions and duties of the Police Inspector. Thus, the relevant circumstance with regard to the ability, as evidenced by securing of the awards, is submitted to be irrelevant and the only thing, which is stated as relevant, is the sick leave the petitioner had obtained 10 years before he was promoted as Police Inspector.

27. In para. 7(c) of the petition, the petitioner has submitted as follows:

That the Government had no material whatsoever to come to the conclusion that it was in the public interest to prematurely retire the petitioner. The petitioner has rendered more than 25 years of meritorious service. All throughout his service he has earned all regular increments and has crossed the efficiency bar. He has earned about 62 rewards for successfully conducting intricate and complicated cases and has secured many good entries and recommendatory notes from his superior officers. He has not received either an adverse remark or warning during all these years. The petitioner states that officers juniors to him in his cadre are allowed to continue while he has been asked to retire prematurely without any rhyme or reason. The impugned order has been therefore passed in violation of Articles 14 and 16 of the Constitution of India and malafide without any material whatsoever, solely on the whims and caprice of some officers and that the said order is not at all in the public interest.

In reply to this, all that is stated in the affidavit in reply is as follows:

With reference to ground (c) contained in the said paragraph 7, I deny the allegation that the Government had no material whatsoever to come to the conclusion that it was in the public interest to prematurely retire the petitioner or that the petitioner's record of service has been satisfactory all throughout or that he has been enjoying good health or that the decision to make him retire by the impugned notice is without rhyme or reason or that the same has been passed malafide or on the whims or caprice of some officers or that the same is not at all in the public interest, for the reasons alleged or otherwise. I say that as above stated the petitioner's confidential record of service is not good and there were adverse remarks against the petitioner which were communicated to him. In any event, I say that the impugned decision is taken by Government on the recommendation of the said Review Committee, which fully examined the record of the petitioner as a whole and recommended for his retirement. I further submit that there was enough material before the Government to consider the matter and make the impugned decision. I deny the submission that impugned order is violative of Articles 14 or 16 of the Constitution of India, for the reasons

alleged or otherwise. I submit that the fact that any officer junior to the petitioner has been allowed to continue in service, does not violate either of the aforesaid Articles, having regard to the object for which the impugned rule has been enacted. I deny all other allegations and submissions contained in the said ground (c) which are contrary to or inconsistent with what is stated in this affidavit.

It is clear that what is stated by the Under Secretary is a bare formal denial of what is alleged by the petitioner. Moreover, it should be noted here that while subscribing the affidavit, he has stated that he is making these statement in the affidavit partly on the information gathered from the relevant records and partly on legal advice. He has no personal knowledge. He has not referred to any particular adverse remark communicated to the petitioner other than the old remark of 1964 discussed above. He has not referred to any particular recommendation made by the Review Committee with regard to the petitioner, which the Government took into consideration. In fact, he does not know how the Government decided the matter, except that the Government has taken the decision.

28. But at the hearing Mr. Setalvad showed us a report of the Committee which merely contains the names of those persons who were to be continued, and the names of others who were to be discontinued and says nothing more by way of remark or comments with regard to any of the candidates. It is difficult, therefore, to understand how the Government could make a decision on such recommendation "in public interest", after taking into consideration "overall assessment" of the work and health of the petitioner.

29. We are, therefore, confronted in this case with a position where the Government has not placed before us any material on the basis of which it could reasonably or possibly be held that the work and the health of the petitioner was so unsatisfactory that it was in the public interest to retire him compulsorily. Under Rule 161 (c-1), it is only when the Government is of the opinion that it is in the public interest so to do, that a Government servant could be retired compulsorily. When the order is challenged in this Court under Article 226 of the Constitution, it is the duty of the Government to place before us, if not all, at least some relevant material to show that the public interest requires the discontinuance of the petitioner, who was only recently promoted as a Police Inspector and who appears to have a distinguished service record in the police service.

30. It was, however, strenuously urged by Mr. Setalvad that this conclusion of ours is based on an inference from the non-production of the confidential records and contents thereof before this Court, which would be a violation of the principle of privilege, which protects the confidential records of the Government. With reference to the scope and effect of Section 123 of the Evidence Act, in this connection, he referred to the decision of the Supreme Court in *The State of Punjab Vs. Sodhi Sukhdev Singh*, , and relied on a passage at p. 501 para. 12:

...It is well known that in the administration of justice it is a principle of general application that both parties to the dispute must produce all the relevant and material evidence in their possession or their power which is necessary to prove their respective contentions; that is why the Act has prescribed elaborate rules to determine relevance and has evolved the doctrine of onus of proof. If the onus of proof of any issue is on a party and it fails to produce such, evidence, Section 114 of the Act justifies the inference that the said evidence if produced would be against the interest of the person who withholds it. As a result of Section 123 no such inference can be drawn against the State if its privilege is upheld. That shows the nature and the extent of the departure from the ordinary rule which is authorised by Section 123.

He also relied on a decision of the Queen's Bench Division in *Reg. v. Governor of Brixton Prison Ex parte Soblen* [1963] 2 Q.B. 243, where Lord Denning M.R. said (p. 302):

...The court cannot compel the Home Secretary to disclose the materials on which he acted, but if there is evidence on which it could reasonably be supposed that the Home Secretary was using the power of deportation for an ulterior purpose, then the court can call on the Home Secretary for an answer; and if he fails to give it, it can upset his order. But on the facts of this case I can find no such evidence. It seems to me that there was reasonable ground on which the Home Secretary could consider that the applicant's presence here was not conducive to the public good.

Mr. Setalvad also relied on a passage in the judgment of Lord Donovan L.J. at page 308. Mr. Setalvad submitted that if the Court now compels the Secretary, Home Department, Govt. of Maharashtra to produce all the evidence he would be in a position to file an affidavit, if necessary, and claim privilege, and in the absence of such an opportunity, no adverse inference should be drawn against the Government in respect of matters which raised the question of privilege.

31. This argument is untenable, because it is a normal practice in hearing and disposing of writ petitions to rely on the affidavits filed by the parties. As this was an urgent matter, the matter was fixed peremptorily. The Under Secretary has filed an affidavit with annexures which run into about 45 pages of the paper book. Nothing prevented the Under Secretary to state in the said affidavit that the Secretary of the Home Department claims a privilege with regard to certain remarks or certain confidential documents relating to the service and work of the petitioner. In the absence of any such plea, we do not think it is necessary for us to compel the Government to disclose anything. The question of privilege arises only when it is claimed and not when it is not claimed. Moreover, it is necessary to bear in mind the following remarks of Chagla, C.J., in the judgment in *Rasulkhan Hamadkhan and Gulab Chhitu Vs. The Secretary of State*, :

It is unnecessary to state that a privilege of this nature should be rarely claimed & should only be claimed after the responsible Minister or the head of the

department has fully satisfied himself that the document whose disclosure is being resisted is really a document relating to the affairs of State & whose disclosure will result in injury to public interests,. The scales are always weighed against the subject who fights against Govt., & Govt. should be loath to throw against him more weight in the scales by refusing disclosure of documents which are relevant to the issues in the suit.

32. We do not find anything in the decision of the Supreme Court in *State of Punjab v. S.S. Singh*, to compel us to order the Government to disclose all the confidential sources, which it has not chosen to disclose in the affidavit in reply. It is also well established that it is not a sufficient ground that documents are "State documents" or "official" or are marked "confidential" for a privilege to be claimed by the Government. It would not be a good ground that, if they are produced, the consequences might involve the department or the Government in Parliamentary discussion or in public criticism, or might necessitate the attendance as witnesses or otherwise of officials who have pressing duties elsewhere. Neither would it be a good ground that production might tend to expose a want of efficiency in the administration or tend to lay the department open to claims for compensation. In a word, it is not enough that the minister or the department does not want to have the documents produced. The minister, in deciding whether it is his duty to object, should bear these considerations in mind, for he ought not to take the responsibility of withholding production except in a case where the public interest would otherwise be damnified, where disclosure would be injurious to national defence, or to good diplomatic relations, or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. See Viscount Simon L.C. in *Duncan v. Cammell Laird & Co. Ltd.* [1942] 1 All E.R. 587 approved in *Convey v. Rimmer* [1968] 1 All E.R. 874. As stated above, there is no plea of privilege before us in this case in the affidavit in reply and none can be entertained at this stage. Mr. Setalvad's request for giving further opportunity to the Government to file an affidavit claiming privilege must, therefore, be rejected and it must be held that having regard to the facts and pleadings in this case, there is no material at all from which it could be inferred that it was in the public interest to discontinue the petitioner as Police Inspector in the service of the Government of Maharashtra.

33. It was, however, submitted very strenuously by Mr. Setalvad that under Rule 161(c-1) the Government had discretionary power in the public interest to retire the petitioner compulsorily and the scope of judicial review or judicial control of the exercise of this discretion, as recognised in the principles laid down by the Supreme Court do not justify an interference with the order passed by the Government against the petitioner. In support of his argument, Mr. Setalvad referred to the entire range of authorities dealing with the question of judicial review of orders of compulsory retirement beginning from *Shyam Lal v. The State of Uttar Pradesh*, and relying on (1) *The State of Bombay v. Saubhagchand M. Doshi*, (2) *Kailash Chandra v. Union of India*, (3) *Shivcharana v. State of*

Mysore, (4) State of Madras Vs. A.R. Srinivasan, , and (5) Batahari Jena Vs. The State of Orissa, . Mr. Setalvad submitted that it is now well established that the Government had a right to retire compulsorily a Government servant subject to the Rule relating to the services and no Government servant had a right to continue in services merely on the ground that he was able or physically fit. He also submitted that the various provisions in the different Rules which were the subject matter of the above decisions were upheld by the Supreme Court, because when a Government servant was compulsorily retired, there was no implication of any punishment so as to attract the operation of Article 311 or denial of an opportunity of service in the State under arts. 14 to 16.

34. Mr. Singhavi, on the other hand, equally strenuously urged that the trend of judicial decisions show that the Courts must exercise the powers to protect citizens from the exercise of arbitrary power by a public authority irrespective of whether the citizens were Government servants or not. He relied on the decisions of the Supreme Court in (1) The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, (2) Rohtas Industries Vs. S.D. Agarwal and Others, , and submitted that, although the said cases were under the Companies Act, the principles defining the scope of judicial review laid down in the said cases would apply to all cases where statutory power was conferred on public authorities. Perhaps, Mr. Setalvad is right in his submission that the principles, which are laid down in those two cases with regard to the scope of judicial review cannot be extended to all cases of discretion, as discretion necessarily depends on the aims and objects of the statute under which the discretion is vested, the nature and character of the public authority in whom it is vested, and facts and circumstances in which the power is expected to be exercised, and several other circumstances which may be relevant to the statute.

35. Mr. Singhavi, however, pointed out that even assuming that those principles are not applicable, the Supreme Court itself laid down in Union of India v. J.N. Sinha, referred to above, that even in respect of the discretion, which can be exercised by the Government of compulsorily retiring its servants, the order of compulsory retirement can be challenged on the ground either "the requisite opinion was not formed or that the order was passed arbitrarily or on collateral grounds". He sought support from a decision of a Single Judge of the Rajasthan High Court in S. Joshi v. State [1971] L.I.C. 247, in which a rule similar to the rule with which we are concerned in the instant case came up for consideration. The rule was Rule 244(2) of the Rajasthan Service Rules, 1951. Under that rule the Government was vested with a power to retire compulsorily a Government servant by giving three months' previous notice on the date on which he completed 25 years' qualifying service or attained, the age of 55 years. In that case also the order of compulsory retirement was passed under that Rule by the authority, who was the appointing authority, in respect of the petitioner in that case, as directed by the Scrutinising Committee, without applying its mind. The Committee there also consisted of the Secretary to Government and two Deputy Secretaries to Government. The Committee was required to consider the

personal files and confidential rolls and inquiry cases, if any, of persons whose compulsory retirement was to be considered. The Rules further provided that on receipt of the recommendations of the Committee, retirement orders shall be issued immediately by the concerned appointing authority, as per specimen enclosed. In this respect, it must be noted that the Rule differs from the Rules of the Government of Maharashtra with regard to compulsory retirement. In respect of the recommendations made by the Committee under the sources referred to above, the Government of Maharashtra, has a power to accept or reject the advice given by the Committee. That, however, does not make any difference with regard to the principles, which were applied by the learned Judge of the Rajasthan High Court in deciding the matter. He held by relying on the observations of Lord Greene, M.R., in *Picture Houses v. Wednesbury Corporation* [1947] 2 All E.R. 680.:

Where a statute confers a discretionary power on a certain functionary then there is no manner of doubt that the discretion has to be exercised reasonably and within the purview of the statute investing the discretion in such authority.

The order of compulsory retirement was set aside by the learned Judge on the ground that the appointing authority had merely followed the direction of the Scrutinising Committee without applying his mind, observing as follows (p. 255):

Thus, to my mind, the outward form of document No. 9 was misleading in that the Government were shown to be the author thereof and the decision in the present case was really of the scrutinising body so-called screening committee as mentioned in the first reply of the Government and from the notes placed before me the appointing authority is not shown to have come to an independent conclusion after the recommendations of the scrutinising body were received and it just issued the order when the Special Secretary under whom the Deputy Secretary was working had asked him to issue such an order.

It must be noticed here that in that case the Government of Rajasthan had placed before the Court the relevant extracts from the notes recorded, in the Secretarial file, following the directions of the Court to keep the relevant record with the learned Government Advocate in the facts and circumstances of the case.

36. Now, the question of judicial review of the exercise of discretionary powers by a public authority has been the subject matter of discussion falling within the scope of Administrative law or Public law or Constitutional law in all democratic countries. In his illuminating book, "Judicial Review of Administrative Action", Second Edition (1968) Prof. S.A. de Smith, after discussing all the relevant case law up to the time he wrote the Second Edition of the book, summed up the position as follows (p. 271):

The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In

general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it : it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must disregard all irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations are taken into account; and where an authority hands over its discretion to another body it acts *ultra vires*. Nor, as will be shown, is it possible to differentiate with precision the grounds of invalidity contained within each category.

At page 275, he dealt with a question similar to the question in the instant case as follows:

(1) Where the competent authority is empowered to take a prescribed course of action if satisfied that it is necessary in the public interest

Hitherto the courts have held that they cannot go behind a statement by the competent authority (in the absence of proof of bad faith) that it was satisfied that the statutory condition for the exercise of the power existed. But it is conceived that if *prima facie* grounds can be established for the proposition that the authority could not have been so satisfied, a court will be entitled to hold the act or decision to be invalid unless the authority itself persuades the court that it did in fact genuinely form the opinion which it claims to have held. In any event, the burden cast upon a person seeking to impugn such an act or decision is likely to be very difficult to discharge if the competent authority is a Minister armed with the protection of Crown privilege.

37. After the publication of the book, there have been very important decisions in the English Courts about the scope of judicial review of administrative action. In *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] A.C. 997, the House of Lords considered the entire range of authorities beginning from *Julius v. Lord Bishop of Oxford* [1880] 5 A.C. 214, in the context of the scheme of the English Agricultural Marketing Act, 1958. The majority of the House of Lords set aside the order passed by the Minister and directed the Minister to consider the complaint of the appellants according to law. Under the scheme of the Act, the producers of milk were to sell their milk to the Milk Marketing Board, which fixed the different prices paid for it in each of the eleven regions into which England and Wales were divided. The differentials reflected the varying costs of transporting the milk from the producers to the consumers, but they had been fixed several years ago, since when transport costs had altered. The South-

Eastern Region producers contended that the differential between it and the Far-Western Region should be altered in a way which would incidentally have affected other regions. Since the constitution of the board, which consisted largely of members elected by the individual regions, made it impossible for the South-Eastern producers to obtain a majority for their proposals, they asked the Minister of Agriculture, Fisheries and Food to appoint a committee of investigation and when he refused they applied to the Court for an order of mandamus. South-Eastern Region producers filed the writ petition before a Divisional Court consisting of Lord Parker C.J., and Sachs and Nield JJ. who made an order against the Minister. That order was set aside by the Court of Appeal by Diplock and Russell L. JJ. being majority and Lord Denning M.R. dissenting Judge. Against the decision of the Court of Appeal the South-Eastern producers appealed to the House of Lords. In the course of his speech Lord Reid observed (p. 1030):

It is implicit in the argument for the Minister that there are only two possible interpretations of this provision-either he must refer every complaint or he has an unfettered discretion to refuse to refer in any case. I do not think that is right. Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.

Similar questions arose in other cases before the English Courts. See, for instance, (1) *Breen v. AEU* [1971] 1 All E.R. 1148 and (2) *Malloch v. Aberdeen Corporation* [1971] 2 All E.R. 1278. These cases illustrate how the tendency of the Courts is to interfere with the exercise of the discretion, whenever the Court is satisfied that there is breach of natural justice or bad faith or failure to deal with right question or the decision is based on taking wrong matters into account.

38. Even the Supreme Court, with respect, has now veered to this position, as can be seen from the following observations in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, where Hegde J. observed (p. 154):

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare

State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

With respect, it is in conformity with the said view that we find it laid down in *Union of India v. J.N. Sinful*, that even with regard to the discretion vested in the matter of compulsory retirement, the Court can interfere with it, when it is satisfied that the requisite opinion was not formed or that the order was based on collateral or arbitrary grounds, though it was held in that case having regard to Rule 56(j) of the Fundamental Rules that it was not necessary to give an opportunity to show cause against compulsory retirement.

39. Applying these principles to the facts of the present case, therefore, we feel no hesitation in holding that this is one of those cases where the Court must interfere having regard to the fact that the Government is not in a position to place any material or to point out any material on the basis of which the order of compulsory retirement was made against the petitioner. It is not disputed that such an order could be only made if his work was unsatisfactory and his health was indifferent or defective for discharging his duties. Health appears to us to be an objective fact. What is stated merely in the affidavit is that his superior officers had made remarks that he was keeping indifferent health. Remarks are not produced before us and we do not see how such remarks could be passed against a person who was found fit for promotion in 1968 and who never went on sick leave thereafter.

40. In support of his argument that the Government was entitled to rely on its confidential records and compulsorily retire the petitioner, our attention was further drawn by Mr. Setalvad to what is stated in para 465 of page 420 of the *Bombay Police Manual, 1959 (Volume I)*. That part deals with general instructions regarding confidential reports. It says that the "Confidential" reports are termed "Confidential" not only because they are meant to be entirely secret, but also in order that the reporting officer can put down exactly what he thinks and knows about his officer without risk of his remarks becoming known to his office and subordinates and thereby perhaps prejudicing individual officers in maintaining discipline. It also says that the reports are very largely used by Government or the Inspector General in arranging transfers, promotions and selections for special posts. Para 466 deals with instructions for writing up of confidential reports. Subsequent paras deal with other rules with regard to the confidential reports and the circumstances in which they are communicated to

the officers. Relying on these instructions in the Manual, Mr. Setalvad submitted that if the Government treated the reports as secret, not merely as confidential and relied on those materials, it cannot be said that there was no material for the orders passed against the petitioner.

41. As stated above, the practice of this Court in dealing with the writ petitions is to give an opportunity to the Government to say whatever it has to say in the affidavit in reply to the show cause notice. It was open to the Government to give particulars of the remarks with regard to the work of the petitioner as a Police Inspector without disclosing the names of the officers, if it thought it necessary to do so in the interest of the discipline in the Police force. No such plea has been made in the affidavit in reply. In the absence of such a plea and in the absence of any material being placed before us we are, therefore, compelled to hold that there was no material whatsoever to enable the Government to come to the conclusion that the work of the petitioner was unsatisfactory or that his health was indifferent and hence the public interest required that he should be compulsorily retired. It is not disputed that the only ground on which the Government can compulsorily retire or can retire a Government servant under Rule 161(c-1) of the Bombay Civil Services Rules, is the public interest. If the public interest does not require compulsory retirement, it is also clear that the petitioner is entitled to continue in service under Rule 161(a) until he completes 58 years. The orders passed against the petitioner must, therefore, be struck down as illegal.

42. In view of this conclusion, we do not think it necessary or desirable to deal with the other points raised by Mr. Singhavi some of which are of far reaching importance, which could be dealt with only when the facts and circumstances of the case require the Court to consider them.

43. In the result the petition succeeds. Rule is made absolute in terms of prayer (a) of para. 13 of the petition. Writ of mandamus is issued to the Government as prayed for quashing the confidential order dated June 9, 1971 exh. "A" and the order dated July 21, 1971 exh. "D", and it is further directed that the respondents, their officers, servants and agents shall forbear from taking any action in furtherance of the said order dated July 21, 1971 and shall further pay to the petitioner his salary and all other emoluments, including the increments due, on the basis that he continued in service notwithstanding the impugned orders, as Inspector of Police.

44. In the circumstances of the case, there will be no order as to costs.