
(1970) 10 MAD CK 0022
In the Madras High Court

P. Shankar Rao

APPELLANT

Vs

The Government of India and Another

RESPONDENT

Date of Decision : 30-10-1970

Acts Referred:

Citation : (1971) 1 MLJ 302

Hon'ble Judges : K.S. Venkataraman, J

Bench : Division Bench

Judgement

K.S. Venkataraman, J.—This petition has been filed by one Thiru Shankar Rao under Article 226 of the Constitution to issue a writ of certiorari quashing the order dated 11th August, 1969 of the Government of India compulsorily retiring him from the Indian Administrative Service. The impugned order reads as follows:

In pursuance of the powers conferred by Sub-rule (3) of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, the President in consultation with the Government of Tamil Nadu, is pleased to order the retirement of Thiru P. Shankar Rao, who has already attained the age of 55 years from Indian Administrative Service Cadre of Tamil Nadu, in public interest, on the expiry of three months from the date of service of this order

The first respondent in the petition is the Government of India and the second respondent is the Government of Tamil Nadu. The petitioner who was born on 12th May, 1914 was appointed as Probationary Deputy Collector of the Madras Civil Service in 1942 and was promoted to the Indian Administrative Service in 1955. He served as Collector of the Nilgiris district. Thereafter he was transferred and was, working as Accommodation Controller. He was then served with ten charges arising mainly out of his conduct when he was working as Collector of the Nilgiris. He was suspended pending enquiry. A Board of Enquiry consisting of Thiru M. Anantanarayanan, I.C.S., District Judge (as he then was) and Thiru T.A. Verghese, I.C.S., was constituted to enquire into the charges. They found eight of the charges proved. After consulting the Union Public Service Commission, the Government of India removed him from service by an order dated 21st April,

1960. The petitioner filed W.P. No. 1329 of 1964 against that order. Venkatadri, J., allowed the petition and quashed the order by his judgment dated 20th June, 1967. He found that the findings of the Board of enquiry on the grave charges, namely, charges 1, 2 and 5, were based only on suspicion and on no real evidence. The first respondent filed Writ Appeal No. 376 of 1967. Ramakrishnan and Natesan, JJ., by their judgment dated 6th March, 1969 upheld the findings of Venkatadri, J., and dismissed the appeal. There was no further appeal and by an order dated 23rd July, 1969 the petitioner was reinstated in the I.A.S. When he was working as Accommodation Controller, the impugned order was served on him on 12th August, 1969.

Rule 16, so far as it is relevant, may now be quoted:

Rule 16(1) : A member of the Service shall be required compulsorily to retire from the service with effect from the date on which he attains the age of 58 years.

(3) The Central Government, in consultation with the State Government, may require a member of the service, who has completed 30 years of qualifying service or who has attained the age of 55 years, to retire in public interest provided that at least three months previous notice in writing will be given to the member concerned.

It will be seen that under Sub-rule (1) the petitioner would normally have continued in service till 12th May, 1972, but because of the impugned order he was compelled to retire much earlier.

2. The petitioner attacked the order on several grounds in his original affidavit his main contention being that the order was arbitrary and capricious. The first respondent filed a counter-affidavit of Thiru Section Narasimhan, Under Secretary to the Government of India, Ministry of Home Affairs, and took the stand that the Government of India was not required to give any reasons for reaching their decision. This stand was persisted in by them before Ismail, J., before whom the petition came up for hearing first. But eventually the Government did not persist in their stand and offered to give reasons which weighed with them and also to produce the concerned files. Opportunity was given for that purpose. By that time the petitioner had filed a reply affidavit. The first respondent filed a further counter-affidavit mentioning the reasons and the petitioner filed a further reply affidavit. It was stated before Ismail, J., that, among other things, the first respondent wanted to rely on certain observations of Ramakrishnan and Natesan, JJ., In view of that circumstance Ismail, J., felt it desirable that the petition should be heard by a Bench and that is how the matter has come before us.

3. The main question in the writ petition is whether the impugned order was arbitrary. But before deciding that question it will be convenient to clear the ground of some preliminary matters. Though in his affidavits the petitioner contended that Rule 16(3) did not prescribe guidelines to the Central

Government and would give scope for discrimination against officers whom they did not like and was, therefore, void under Article 14 of the Constitution, Thiru Chellaswamy, the learned Counsel for the petitioner, stated at the time of the hearing that he was not questioning the vires of the rule. He recognised that the criterion of public interest for compulsorily retiring an officer under Rule 16(3) would itself be a sufficient guideline, and he himself cited *R.L. Butail Vs. The Union of India and Others*, (confirmed by the Supreme Court in C.A. Nos. 1614 to 1616 of 1968 dated 8th September, 1970). He also stated that, having regard to the several decisions of the Supreme Court, he could not urge that compulsory retirement under Rule 16(3) would be a punishment so as to require the Central Government to adopt the procedure enjoined by Article 311 of the Constitution. In other words, he conceded that it was not necessary to give the petitioner a reasonable opportunity of making a representation as to why the order should not have been passed. In view of this concession, it is unnecessary to discuss the several cases cited at the bar, and it would be enough to mention the more important of them: *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, *The State of Bombay Vs. Saubhagchand M. Doshi, Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, *T.G. Shivacharana Singh and Others Vs. The State of Mysore*, *I.N. Saksena Vs. State of Madhya Pradesh*, *The State of Uttar Pradesh Vs. Madan Mohan Nagar*, and *Union of India (UOI) Vs. Col. J.N. Sinha and Another*.

4. According to these decisions 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, where the order does not itself contain any stigma on the officer, it cannot be considered as a punishment for attracting Article 311 of the Constitution. Secondly, an order of compulsory retirement such as the one 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. With, perhaps the solitary exception of *Subba Rao, J.*, (as he then was) in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, who considered that even an order of compulsory retirement, as here, would amount to punishment, all the other Judges have uniformly taken the view that it is not a punishment.

5. A point has been made in the affidavits of the petitioner that under the instructions issued by the Government of India under Rule 16(3) in their letter, Ministry of Home Affairs No. 29 1064 A.I.S. (II) dated 1st September, 1965 (these are printed at pages 596 to 599 of the All India Services Manual,) the Government should have considered six months before the petitioner attained the age of 55 years whether he should be compulsorily retired under Rule 16(3), the submission being that the notice of three months should have been issued before he attained the age of 55 years. It has been further contended that the order of reinstatement passed on 23rd July, 1959, meant that the Government had examined the petitioner's case and found that he was fit to be continued in service and that was why they reinstated him. But within three weeks the order

of retirement was passed and the conduct of the petitioner during that short period could not possibly have justified the Government reviewing their earlier decision to continue him in service. The first respondent has contended that the said instructions are not binding on them and are meant only for the guidance of the State Governments. Assuming that those instructions bind the Government of India, we are of opinion that there is no substance in the contention of the petitioner on this aspect. It must be remembered, as stated in the counter-affidavit, that the matter was pending in writ appeal in this Court till 6th March, 1969, and it could not, therefore, have been possible to take a decision in the matter. Further, the order of reinstatement was passed in compliance with the judgment of this Court dated 6th March, 1969, confirming the order of Venkatadri, J., quashing the order of removal dated 21st April, 1960. The order of reinstatement could not be taken to be a decision of the Central Government even on the question of the applicability of Rule 16(3).

6. Another minor point raised by the learned Counsel for the petitioner is that the Central Government did not consult the State Government as required by Rule 16(3), because the proposal to retire the officer under Rule 16(3) was initiated by the State Government and the Central Government merely, on examining it, accepted the proposal. Under the circumstances of this case we are satisfied that there was consultation for the purpose of Rule 16(3). The decision in Chandramouleshwar Prasad Vs. The Patna High Court and Others, , is distinguishable. This brings us to the real question in controversy whether the order is arbitrary. But before coming to grips with that question, it will be convenient to point out, that, though it is the Central Government which is to make the decision under Rule 16(3) 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.

7. In The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , the appellant-company filed a writ petition in the Punjab--High Court to quash the order issued by the Company Law Board u/s 237 (b) of the Companies Act, 1956 appointing four persons as Inspectors for investigating the affairs of the company. The High Court dismissed the petition. The company preferred the appeal. Their Lordships Hidayatullah J., (as he then was Shelat, J., and Bachawat, J.) were for allowing the appeal. Their Lordships Sarkar, C.J., and Mudholkar, J., were for dismissing the appeal. In view of the majority opinion, the appeal was allowed. We are now concerned with the majority opinion. Section 237(b) in so far as it is material says that the Central Government or the Company Law Board may appoint one or more competent persons as inspectors to investigate the affairs of the company, if, in the opinion of the Central Government there are circumstances suggesting (i) that the business of the company is being conducted with intent of defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose, or (ii) that persons concerned in the formation of

the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members. The reason of the majority of judges for setting aside the order was that the reasons given by the Company Law Board Chairman in his affidavit for taking the action did not suggest the inferences in Clauses (1) and (2) of Section 237 (b). Hidayatullah, J., (as he then was) and Shelat, J., pointed out that though the formation of the opinion was subjective, the existence of circumstances relevant to the inference must be proved because that was the condition precedent for taking the action. Hidayatullah, J., (as he then was) observed thus:

An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on fishing expedition to find evidence. No doubt, the formation of opinion is subjective, but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly:

It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist.

Since existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind. We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative conclusions. If he has, his action cannot be questioned because the inference is to be drawn subjectively and even if this Court would not have drawn a similar inference that fact would be irrelevant. But if the circumstances pointed out are such that no inference of the kind stated in Section 237(b) can at all be drawn the action would be ultra vires the Act and void.... The affidavits which were filed in answer to the petition do not disclose even the prima facie existence of these circumstances. On the other hand, they emphasise only that there was mismanagement and losses which necessitated a deeper probe.

8. Shelat, J., in discussing the case law refers to AIR 1943 75 (Federal Court) where one of the questions which arose was with regard to the interpretation of the words "the Central Government or the Provincial Government, if it is satisfied with respect to a particular person", in Rule 26 of the Defence of India Rules, 1939. It was held in that case that though the Court could not be invited to

investigate the sufficiency of the material or the reasonableness of the grounds on which the Governor was satisfied, if the contention was that the Governor never applied his mind and, therefore, he could not have been satisfied, the Court could enter into that question, the ingredient of satisfaction being a condition precedent to the exercise of power notwithstanding the satisfaction being subjective and there being a recital as to the satisfaction in the order.

Shelat, J., further said In *Machindar Shivaji v. The King* (1949) F.C.R. 827 : AIR 1950 F.C. 129, the Federal Court dealing with similar words in Section 2 of the Central Provinces and Berar Public Safety Act, 1948, again held that the Court can examine the grounds disclosed by the Government to see if they are relevant to the object which the Legislature had in view, viz., the prevention of acts prejudicial to public safety and tranquillity, for satisfaction in this connection must be grounded on materials which are of rationally probative value". Shelat, J., also refers to *Ross Olunis v. Papadopoulos* (1958) 1 W.L.R. 546, where the challenge was to an order of collective fine passed under Regulation 3 of the Cyprus Emergency Powers (Collective Punishment) Regulations, 1955 which provided that if an offence was committed within any area of the colony and the Commissioner if "has reason to believe" that all or any of the inhabitants of that area failed to take reasonable steps to prevent it or to render assistance to discover the offender or offenders, it would be lawful for the Commissioner with the approval of the Governor to levy a collective fine after holding an inquiry in such manner as he thinks proper subject to satisfying himself that the inhabitants of the area had been given an adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon. It was urged that the test of satisfaction was a subjective one and that the statement as to that satisfaction in his affidavit was a complete answer to the contention of the respondents. Rejecting the contention the Privy Council observed thus:

Their Lordships feel the force of the argument, but they think if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a Court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts.

Shelat, J., then observes thus:

Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming, it, it did not apply its mind to the relevant

facts.

With particular reference to the provisions of the Companies Act, 1956, his Lordship observed thus:

There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the Legislature has provided for the opinion of the Government and not of the Court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the authority is required to arrive at such an opinion from circumstances suggesting what is set out in Sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the Government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist? The Legislature no doubt has used the expression "circumstances suggesting." But that expression means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation. But the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the authority forms an opinion that they are suggestive of the crucial matters set out in the three sub-clauses. It is hard to contemplate that the Legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose.... If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.

His Lordship then goes on to observe thus:

Even assuming that the entire Clause (b) is subjective and that the clause does not necessitate disclosure of circumstances, the circumstances have in the present case been disclosed in the affidavits of the Chairman and the other officials. Once they are disclosed, the Court can consider whether they are relevant circumstances from which the Board could have formed the opinion that they were suggestive of the things set out in Clause (b).

Bachawat, J., rested his judgment on a very narrow ground, namely, that the circumstances disclosed in the affidavit of the Chairman could not reasonably suggest that the business of the company was being conducted to defraud the creditors, members and other persons or that the management was guilty of fraud towards the company and its members. His Lordship observes thus:

No reasonable person who had given proper consideration to these circumstances could have formed the opinion that they suggested any fraud as mentioned in the order dated 19th May, 1965. Had the Chairman applied his mind to the relevant facts, he could not have formed this opinion. I am, therefore, inclined to think that he formed the opinion without applying his mind to the facts. An opinion so formed by him is in excess of his powers and cannot support an order u/s 237(b).

8. The reasons given by Hidayatullah, J., (as he then was) and Shelat, J., were affirmed and followed in *Rohtas Industries Vs. S.D. Agarwal and Others*, , by Sikri and Hegde, JJ., That was also a case u/s 237 (b) of the Companies Act. In the course of the discussion of the case law, Hegde, J., observed thus:

In *Roncaralli v. Duplessis* (1959) S.C.R. 121, while dealing with the discretionary power of the Quebec Liquor Commission to cancel a Liquor Licence this is what Rand, J., observed:

A decision to deny or cancel such a privilege lies within the "discretion" of the Commission; but that means that decision is to be based upon a weighing of considerations pertinent to the object or the administration.

In public regulation of this sort there is no such thing as absolute and untrammelled "discretion" that is that action can be taken on any ground or for any reason that can be suggested to mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose,, however, capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes, but they are always implied as exceptions. Discretion necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been borne in another province, or because of the colour of his hair? The ordinary language of the Legislature cannot be so distorted.

In particular, we would like to emphasize the observation that "there is always a perspective within which statute is intended to operate".

His Lordship concluded thus:

For the reasons stated earlier, we agree with the conclusion reached by Hidayatullah and Shelat, JJ., in *Barium Chemicals case* (1966) 2 S.C.J. 623 : (1966)S.C.R. , that the existence of circumstances suggesting that the company's business was being conducted as laid down in Sub-clause (1) or the persons mentioned in Sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the Courts are entitled to examine whether

those circumstances were existing when the order was made. In other words, the existence of the circumstances in question is open to judicial review though the opinion formed by the Government is not amenable to review by the Courts.

On the facts of that case, they held that the required circumstances did not exist. Bachawat, J., observed thus:

The law recognises certain well recognised principles within which the discretionary power u/s 237(b) must be exercised. There must be a real exercise of the discretion. The authority must be exercised honestly and not for corrupt or ulterior purposes. The authority must form the requisite opinion honestly and after applying its mind to the relevant materials before it. In exercising the discretion, the authority must have regard only to the circumstances suggesting one or more of the matters specified in Sub-clauses (i), (ii) and (iii). It must act reasonably and not capriciously or arbitrarily.... Within these narrow limits the opinion is not conclusive and can be challenged in a Court of law.... If it is established that there were no materials upon which the authority could form the requisite opinion, the Court may infer that the authority did not apply its mind to the relevant facts. The requisite opinion is then lacking and the condition precedent to the exercise of the power u/s 237(b) is not fulfilled. On this ground I interfered with the order u/s 237(b) in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . The opinion (of the authority) is displaced as a relevant opinion if it could not be formed by any sensible person on the material before him. The reason is that the Court may then infer that the authority either did not honestly form the opinion or that informing, it, it did not apply its mind to the relevant facts.

9. His Lordship then refers to the decision in *Ross Chris v. Papadopoulos* (1958) 2 All E.R. 23 already quoted, and also his own judgment delivered on behalf of the Bench in *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, .

10. In *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, the Government acquired some land applying the urgency provisions of the Land Acquisition Act, (Section 17(1) and (4) and dispensing with the enquiry u/s 5-A of the Act and the Collector took possession of the land even before the award was passed. The provision, in case of urgency, empowers the Collector to take possession of any waste land or arable land for a public purpose. It was contended that the land was neither waste nor arable land. The Court found it as a fact that it was a forest land covered by a large number of trees and was not a waste or arable land. The Court observed thus:

It follows, therefore, that Section 17 (1) of the Act is not attracted to the present case and the State Government had therefore no authority to give a direction to the Collector to take possession of the lands u/s 17(1) of the Act. In our opinion, the condition imposed by Section 17(1) is a condition upon which the jurisdiction of the State Government depends and it is obvious that by wrongly deciding the

question as to the character of the land, the State Government cannot give itself jurisdiction to give a direction to the Collector to take possession of the land u/s 17(1) of the Act. It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled, in a proceeding of writ of certiorari to determine, upon its independent judgment whether or not that finding of fact is correct.

It was contended that the opinion of the State Government was subjective and that must be taken to be conclusive. Dealing with this contention, the Court observed thus:

It is true that the opinion of the State Government which is a condition for the exercise of the power u/s 17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government u/s 17(4). The legal position has been explained by the Judicial Committee in AIR 1945 156 (Privy Council) and by this Court in a recent case *Jaichand Lall Sethia Vs. State of West Bengal and Others*, . But even though the power of the State Government has been formulated u/s 17 (4) of the Act in subjective terms, the expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. If, therefore, in a case the land under acquisition is not actually waste or arable land, but the State Government has formed the opinion that the provisions of Sub-section (1) of Section 17 are applicable, the Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue.

11. The learned Counsel placed before us a copy of the judgment, dated 12th August, 1970 of the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, That is also a case of compulsory retirement under Clause (J) of Fundamental Rule 56, a provision which is similar to the one before us. The contention was that no opportunity had been given to the officer to make representations against the proposed order and the order was vitiated for failure to observe the principles of natural justice. The contention was repelled with the following observations:

That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.

This has been quoted with approval in the more recent judgment of the Supreme Court in *Butail v. Union of India* C.A. Nos. 1614 to 1616 of 1968 dated 8th

September, 1970.

12. Though the provisions dealt with in the *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and the *Rohtas Industries Vs. S.D. Agarwal and Others*, are from the Companies Act, 1956, the reasoning is general and would apply to the case before us. In other words, if it could be shown that there were no reasons before the Central Government for taking the action under Rule 16(3) 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 particular, it may be noted that Hegde, J., in the *Rhotas Industries* case⁹, quotes from the judgment of Rand, J. in *Roncarelli v. Duplessis* (1959) S.C.R. L.R. 121 that "in public regulation of this sort, there is no such thing as absolute and 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 its 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 the public services. The same principle can also be deduced from the reasoning in the *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, . The principle is also affirmed in the recent judgments of the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, and *Butail v. Union of India* C.A. Nos. 1914 to 1616 of 1968 dated 8th September, 1970 which it may be noted, were cases of compulsory retirement, as in this case.

13. It is in the light of the above decisions that we have to discuss the question. As we have said, the reasons which impelled the Central Government to pass the impugned order have been set out in paragraph 3 of their further counter-affidavit and are these:

The Government of Tamil Nadu under whom the petitioner was serving, requested for orders of the first respondent for giving three months' notice to the petitioner and retiring him from services. On receipt of this proposal, the same was considered by the first respondent with reference to the history of the case, the antecedents as well as as the finding of this honourable Court in its judgment and other principles which had been followed in cases in which Rule 16(3) of the All India Services (Death-cum-Retirement Benefit) Rules, 1958, were invoked. After full consideration of the matter, it was decided to retire the petitioner under Rule 16(3) of the said rules in public interest as there were grave doubts on the petitioner's integrity and even the judgment of this Honourable Court had not absolved the officer of his guilt completely.... Having regard to the facts that were found in the enquiry, the antecedents, and the observations of this Honourable Court itself in the judgment in the prior case, the retirement of the petitioner was found to be in public interest.

We have italicised the important words.

14. Since the reasons refer to the history of the case and the findings of this Court in its judgment (always the reference is only to the judgment of this Court in the Writ Appeal), it is necessary to give an idea of the history of the case. We have taken the narration of facts mainly from the judgment of Ramakrishnan and Natesan, JJ.

Sometime in 1956, what is well known as the Kundah Hydroelectric Scheme was launched with foreign collaboration on the Nilgiris plateau for the purpose of storing the water running away in hill stream in a series of reservoirs and using the water stored, for generating electric power. For this purpose, certain areas of land under valuable plantations, wattle, tea and coffee, belonging to private owners had to be acquired. The project was considered urgent, and to avoid the delay with normally proceedings under the Land Acquisition Act would entail the Electricity Department decided to enter and take possession of the land which they required, in advance of formal land acquisition proceedings. For this purpose, the authorities of the Electricity Department entered into agreements with the owners of the lands stating that compensation for the trees would be: given as per the Revenue Department's valuation. This was made clear by a letter Exhibit A-2, dated 7th May, 1956 sent by the Executive Engineer, Electricity Department, Kundah Scheme, to I.T. Muthoor Pillai, who is the owner of a substantial extent of the land taken over, viz., 27 acres out of a total extent of land proposed for acquisition, namely, 52 acres which were mainly under wattle plantation. Thereafter the Electricity Department entered the lands and their subordinates cut wattle and other trees. As the subordinates of the Electricity Department went on cutting wattle trees and plants, they issued receipts to the owners. The receipts issued to Muthoor Pillai were marked as Exhibit A-27 series. The Executive Engineer wrote a letter on 9th May, 1956, to Shankar Rao, the writ petitioner, who was then Collector of Nilgiris requesting him to fix and intimate the rates of compensation payable in respect of Wattle trees, cypress trees and potato plants. This letter concluded with a request that tariff rates may please be intimated based on seigniorage charges so that compensation payment may be arranged without any delay. Shankar Rao, appears to have construed this letter, as a request to him to make an estimate of valuation of the trees on seigniorage basis, i.e., treewise. In the case of wattle, the bark is the most important product as it is very useful for tanning leather. The yield of the bark varies with the girth of the tree. These facts are well known. In the meantime, it would appear that Muthoor Pillai, who was interested in getting compensation for 26 acres under wattle plantation also submitted a petition to the Collector (Shankar Rao) on 5th September, 1956, which is marked as Exhibit A-10 in the case, giving a schedule of valuation for wattle trees and certain other minor trees. With the latter minor trees we are not concerned in this dispute. In his petition Muthoor Pillai stated that the Electricity Department had cut wattle trees whose girth had varied from 2 1/2 feet to 1 1/2 feet with a height from 50 feet to 15 feet. They had also cut plants and trees in the range 9 feet to 6 feet height aged 2 to 3 years besides very small plants one year old and below 3 feet height. After giving extensive

data, Muthoor Pillai stated that mature wattle tree having 2 1/2 feet girth, and having 40 to 50 feet height would yield bark which could be valued at Rs. 16-12-9 per tree, and that the average rate, even for trees less than 2 1/2 feet girth may be granted as these trees would reach the same girth, if left for some more time. He also seems to have written to the Executive Engineer pressing for this rate of Rs. 16-12-9 on an average for 70,000 trees cut and removed, which would work out to 11 1/2 lakhs of rupees, apart from the value for smaller plants. Shankar Rao, immediately wrote a letter to the District Forest Officer, Nilgiris, to send proposals for the fixation of suitable rates for wattle trees. The District Forest Officer recommended a rate of Re. 1 to Rs. 3, depending upon the girth of a wattle tree. Shankar Rao, asked the District Forest Officer to furnish the basis upon which the rates had been arrived at by him. Shankar Rao, also asked the Special Tahsildar for land acquisition to enquire into the price of wattle bark at the market in the Coimbatore district. The Special Tahsildar appears to have consulted the Forest Range Officer, one Saldhana, and their reports were submitted to Shankar Rao, by the District Forest Officer. But the District Forest Officer independently sent a report suggesting payment of compensation for the trees acrewise. At this stage Shankar Rao, the District Forest Officer, the Special Tahsildar for Land Acquisition and the Forest Range Officer made a local inspection of a typical wattle plantation. At the inspection bark of one tree which had been stripped off earlier by the Range Officer, D.W. 1, was weighed. Its yield was found to be 340 pounds. The District Forest Officer who was present protested saying that the yield thus found on weighment would not be the true yield of a single wattle tree. In fact, the owner had claimed only 100 to 150 pounds for a single tree in his petition. The District Forest Officer suggested that further experiments should be made. According to the evidence of the District Forest Officer (P.W. 3) at that stage Shankar Rao, is said to have made a remark that "Let us take it as the advantage of private enterprise", and he did not make further experiments by cutting another tree and measuring the weight of its bark. The Board of Enquiry has construed this remark of Shankar Rao, to mean that in his view the benefit of the doubt should be given to the landowner, by accepting the above said bark yield figure instead of making any further experiments. Shankar Rao, again called for reports from the Range Officer and the Special Tahsildar. They claimed to have conducted certain experiments by stripping trees and weighing the bark. They prepared documents of their verification Exhibits A-14, A-14 (a) and A-15. These were again forwarded to the Collector by the District Forest Officer. At the same time, the District Forest Officer also submitted that compensation should not be given on the basis of these experiments. The District Forest Officer furnished a different basis of valuation, relying upon certain rates of bark yield available in the working plan records. These working plan records gave the yields from plantations classified under the First, Second and Third quality, in terms of tons per acre. Evidently these plantations from which the working plan figures were obtained were Government plantations. The District Forest Officer finally suggested valuation of wattle trees acrewise at a maximum of Rs. 1,700 per acre.

With the above data before him Shankar Rao, passed orders in a detailed note file prepared by his official subordinates on 10th November, 1956. The Board of Enquiry has proceeded on the basis that this order is a crucial order, wherein Shankar Rao, had applied his mind for the first time to the data afforded before him for the making of the valuation of wattle trees. The decision then given by him has been marked as Exhibit A-19(a) at the time of the enquiry. The Board of Enquiry called this decision of the Collector as "award".

It is on the basis of this award that charge No. 1, which is the most important charge, was framed. It reads as follows:

That he as Collector, Nilgiris, ignoring all accepted and prescribed methods of valuation and arbitrarily overruling the technical and expert advice of the District Forest Officer, grossly overpitched the valuation (by about 17 lakhs) of trees standing on about 27 1/2 acres of land in Nilgiris district, belonging to one Sri Muthoor Pillai and which had to be taken over by Government for the execution of the Kundah Hydro-Electric Scheme, and that in doing so, he had been actuated by corrupt motives and colluded with the would be beneficiary, Sri Muthoor Pillai, to the detriment of Government interests?

15. The Board of Enquiry found this charge proved. Venkatadri, J., however, held that in arriving at that finding, the Board of Enquiry overlooked the important qualification which Shankar Rao, had made in paragraph 8 of his award, that he had fixed the rates for plants of smaller girth on the assumption that wattle had been planted as regular plantation and that they would not apply at all in the case of spontaneous wild growth where the owner had not done anything to tend the plants. Such area should be classed as "scrub jungle" and no compensation at all was payable in respect thereof. The Electricity Department had, however, issued receipts without noting whether the wattle plants had been regularly planted or were only spontaneous wild growth. Further, there was reason to believe that the figures of plants cut which were given by them had been unduly exaggerated. The Board of Enquiry, however, proceeded on the wrong assumption that compensation was payable under the award in respect of the plants according to the figures furnished in the receipts. They overlooked two important facts : (i) The Collector had stated that no compensation was payable in respect of the wild growth and there was no material to distinguish the regular growth from the wild growth; (ii) the figures of plants cut given by the Electricity Department were unduly exaggerated. These omissions vitiated the finding of the Board of Enquiry.

16. This, in essence, represents the reasoning of Venkatadri, J., and the Division Bench, but, since the point is crucial, it is necessary to explain it by further quotations from the judgment of the Division Bench. The Division Bench explains the award thus:

The crucial part of this decision of the Collector Shankar Rao, recorded in the note file on 10th November, 1956, comprises of four paragraphs 5, 6, 7 and 8. In

paragraph 5 he has given a schedule of rates for wattle trees of varying girths. In column 1 he has classified trees according to the girth at breast level, the classification varying from "1 to 1 1/2 foot" in the first range to above 3 feet "in the final range" Against each range of girth level, the yield of bark in terms of pounds is quoted, which varies from 96 pounds to 340 pounds. In column 8 the value is given for the standing trees in the different ranges of girth varying from Rs. 5-8-0 at the lowest to Rs. 34, at the highest range. In paragraph 6, Shankar Rao, has dealt with the market rate to be paid for wattle trees with girth below one foot. He has accepted the yield figures furnished by the Special Tahsildar and fixed a flat rate of Rs. 3 for such trees.

Then follow paragraphs 7 and 8. These paragraphs appeared to the learned Judge (Venkatadri, J.) to be very important in the context of the bona fides of the Collector's decision, which is the gravamen of charge No. 1. The two paragraphs are extracted below:

7. Beside the above, the Electricity Department have issued receipts to the owners for cutting young plants where no girth has been given. They neither come under the classifications of trees nor under "scrub" jungle. Compensation has to be paid in this case also. Only, cost of planting and other incidentals are to be taken into consideration. In my view a sum of Rs. 2 per plant will be fair.

8. In all the above cases, I have assumed that wattle has been planted as a regular plantation. For spontaneous wild growth which are not tended after and where no amount of expenditure is incurred by the owners of 1 he Estate I do not think we will be justified in giving any value for such wild growth which is less than 3 feet in height and the girth measurements negligible. Nor will we be justified in taking their potential or other factors into consideration. Such area can be classed as "scrub jungle."

It will be clear from the above that what the Collector had in mind was the fixing of the flat rate of Rs. 3 per tree, for standing trees of some appreciable girth and which had been noted specifically in the receipts. But in the case of plants where no girth at all is noted because the plants were Very young and provided also that they had been reared by human labour and cost, only the cost of planting and other incidental charges should be taken into consideration. For this purpose, a sum of Rs. 2, was fixed, as stated in paragraph 7. Paragraph 8 contains the further important qualification (which we have italicised) that the entire scheme of valuation given by the Collector would apply only if the wattle plants had been regularly planted. On the other hand, if there is only spontaneous wild growth for whose rearing and nurture the owner has not incurred any expenses and if in such cases the plant is less than three feet in height and the girth measurement is negligible no compensation would be given. The flat rate of Rs. 2 per plant on which a great deal of controversy has arisen will not obviously apply to such plants.

When the scheme of valuation given by the Collector was communicated to the

Electricity Department, they found themselves in a dilemma. By that time the Electricity Department had cut according to the receipts which they had issued by then about eight lakhs of trees and plants which had been also removed and sold by auction. The Subordinate Officers of the Electricity Department had not taken the care to note in the receipts whether the plants had been regularly planted or were of spontaneous growth. This will have particular relevancy in applying Collector Shankar Rao's valuation, because if they were less than 3 feet in height with negligible girth, no compensation would be payable, if they were of spontaneous growth, but a flat rate of Rs. 2 per tree will be payable, if they had been planted and reared by human labour.

The Board of Enquiry worked out the financial implication of the Collector's valuation contained in paragraphs 5 to 8 of his "award". They prepared a tabular statement. In the opinion of the Board of Enquiry, this tabular statement justified the conclusion that actuated by mala fides, viz., to give undue benefit to the owner of the wattle plantation, Muthoor Pillai and to cause undue loss to the Government, Collector Shankar Rao, had given an excessive valuation for the wattle trees and plants. This tabular statement is enclosed as an appendix to the Board of Enquiry's report. A perusal of this tabular statement shows that they have included in their computation a list of plants which according to the receipts have no girth, and arrived at a total of Rs. 13,56,565, for such plants. They multiplied this number by Rs. 2 per plant, purporting to adopt paragraph 7 of Shankar Rao's valuation and arrived at a total of Rs. 27,13,130. Adding to this the Value of trees with girth and height measurements in the different ranges from below 1 foot to above 3 feet girth, they worked out the value on the basis of the table given in paragraph 5 of the Collector's valuation. This gave a value of five lakhs and odd. The gross total thus arrived at is Rs. 32,20,566 and odd for the wattle trees and plants on 27 acres of Muthoor Pillai's land. The Board of Enquiry then observed that this valuation involves a figure of such a magnitude as to permit of no explicable hypothesis or reconciliation, and that the Collector had given this valuation notwithstanding the recommendation of the District Forest Officer suggesting acrewise Valuation, at Rs. 1,700 per acre.

At first blush, the valuation of Rs. 32,20,566 for wattle trees and plants on 27 acres would work out on an average to rupees one lakh and odd per acre which will be an "astronomical" figure when compared with the District Forest Officer's suggested Valuation of Rs. 1,700 per acre. As against this charge of making a very high Valuation, the Collector in his defence pleaded that the qualifications he had stressed in paragraphs 7 and 8, namely, that his Valuation should be applied only to cases of plants reared as a regular plantation, but would not be applicable to spontaneous wild growth in whose cases till the plants assume at least three feet height and an appreciable girth, no value should be given.

The Board of Enquiry in their report in the context of their finding about the abnormally excessive nature of the valuation when dealing with the above defence of the Collector, rejected his defence with the comment:

Paragraph 8 in which the Collector refers to spontaneous wild growth does not in any sense modify the award in paragraph 7.

Venkatadri, J., in his judgment under appeal, while dealing with the Collector's defence, observed:

One of the most important features of successful wattle cultivation is the maintenance of the vigour of the wattle plants during the early stages of their growth because the wattle is an extremely intolerant species and suffers greatly due to competition from other growth, and therefore, weeds and grass competing with Wattle will have to be removed frequently, until such time the wattle occupies the soil completely." In all areas planted with Wattle, weeding will be done thrice in the first year, and twice in the second year. Natural regeneration of wattle springs up in profusion in the clear-felled wattle areas with suitable soil preparation. That was why the Collector, when he passed the order, fixed the value of such plants without girth measurements at Rs. 2 per plant, if they were regularly planted. And he ruled out wild and spontaneous growth as scrub jungle. Evidently the Electricity Department did not understand the significance of this order-Their minds were very much obsessed with the idea that they would pay compensation for all the countless trees and plants for which receipts had been issued by them. The receipts show that they had cut about eight to ten lakhs of plants. When the officers of the Department issued receipts they little realised that most of these plants were of spontaneous growth and not regularly planted by the owners of the soil.

Venkatadri, J., has made a further comment, and, in our opinion, with justification, that the Board of Enquiry had failed to give due weight, and, in fact, ignored, the above crucial part of the Collector's defence, to the charge of "overpitching the valuation by about 17 lakhs of rupees for plants standing on 27J areas belonging to Muthoor Pillai." When referring to paragraph 8, which we have extracted above, Venkatadri, J., made the comment:

The rates fixed by the Collector were in respect of plants regularly planted. In spite of this the Electricity Department complained that the Collector should not at all fix the value for wattle plants. But by the time the Collector gave his opinion, the staff of the Electricity Department had cut lakhs of plants and also issued receipts for them. It was not possible for them from such receipts to say how many plants had been regularly planted. It is clear that the Department issued receipts without counting actually the trees and plants cut and removed by them.... But, in Exhibit A-21, the letter written by the Executive Engineer to the Superintending Engineer, it is specifically mentioned that about eight lakhs of plants have been cut and that about five lakhs of plants have yet to be cut and cleared. But he has not stated how many plants were regularly planted and how many of them were of spontaneous growth. There is clear evidence in the case that the Electricity Department had unduly swelled the figures of plants and trees cut and removed in the receipts granted by them. When pressed by the Electricity Department to revise the valuation on acreage basis, because the

Department would otherwise be burdened with a heavy liability, the receipts cover a very large number of trees and plants, the Collector replied on 16th March, 1957 (Exhibit A-25).

I did not expect that over 14 lakhs of trees and plants would be cut in a limited area and I doubt the accuracy of the enumeration made by your subordinate officers. The receipts issued by them do not bear any remarks as to wild growths.

....

Inasmuch as the wattle trees were cut by your Department with the owner's permission and without consulting the Collector, the matter has to be settled by you with the owners in accordance with the terms of the agreement, if any. In the alternative compensation will have to be paid for the trees already cut at the rates fixed in this office proceedings Re. B 1. No. 11122 of 1956, dated 12th November, 1956. As regards the trees to be cut hereafter, included those standing on the area already entered upon by your Department and for which receipts have already been issued, all spontaneous and wild growths and plants below 3 feet in height although regularly planted will have to be ignored in computing the number of trees.

This last mentioned part of the Collector's reply reflects the purport of his order, dated 12th November, 1956. He also stated that he could not help the Electricity Department, in the case of trees and plants already cut and removed where receipts had been carelessly issued, very much in excess of the real number and without taking care to specify whether the plants were of spontaneous growth or were regularly planted. The stand taken by the Collector was that, if he had been consulted in advance by the Electricity Department, before cutting and removing the trees, he could have given them proper advice in the matter; but they had acted recklessly in cutting the trees and plants and issuing receipts indiscriminately without due care and caution.

Subsequent verification by the officers of the Board of Revenue, and, in particular, by a member of the Board of Revenue, Sri. T.N.S. Raghavan fully justified the Collector's stand about the receipts. The Board of Enquiry in part 12 of its report has included Sri Raghavan's findings on inspection and evidence among facts which are not "very greatly significant." On the other hand, those findings and the successive reports of the Board of Revenue based thereon have a real significance in the context of the Collector's main defence that the receipts issued by the Officers of the Electricity Department are entirely unreliable. The Board of Revenue upheld the Collector's stand that this was not a proper case where trees should be valued acrewise. For this purpose reference can be made to the report of the Board of Revenue on 6th July, 1957 to the Government which is part of the records. The Board of Revenue stated that the adoption of the valuation given by the District Forest Officer, i.e., on acreage basis, would be in order only if proceedings under the Land Acquisition Act had been taken.

17. The Division Bench, then refers to the fact that the Collector after inspection

some time - before 28th May, 1967 pointed out that even in respect of wattle trees (as distinct from plants) the figures given in the receipts issued by the Electricity Department exaggerated the number nearly tenfold. They then sum up:

What we have stated above shows that, in coming to the conclusion that the Collector had deliberately over-pitched the valuation for the trees, the Board of Enquiry arrived at that finding without giving due weight to certain crucial points appearing in the record, viz., (1) the qualification which the Collector had given for the application of his valuation in paragraphs 7 and 8 of the note file, dated 12th November, 1956, and (2) the likelihood of considerable inflation in the number of trees, as well as plants noted in, the receipts given by the Electricity Department to Muthoor Pillai. There is a clear finding by the Board of Revenue that the particulars in the receipts issued to Muthoor Pillai could not at all be correct. There is a clear averment by the Collector based upon the test check made by him that the particulars in the receipts contained an exaggeration, nearly tenfold, against the actuals, ascertained by test check in a comparative plantation in respect of wattle trees. These points required definite consideration by the Board of Enquiry in the context of the Collector's explanation to the charge of overpitching the valuation. It is, therefore, surprising that the Board of Enquiry should have given the finding that paragraph 8 in the Collector's order, dated 12th November, 1956 did not modify the award in paragraph 7. In our opinion that finding is clearly opposed to the crucial points we have noted above and which form part of the record in this case.

18. The Division Bench then went on to point out that charge No. 1 did not stop with the allegation of over valuation and that the seriousness of the course rose because of the over-valuation being coupled with a corrupt motive to benefit Muthoor Pillai and to cause detriment or loss to Government interests. The Division Bench pointed out that the Board of Enquiry in arriving at that conclusion about corrupt motive proceeded on the assumption that according to the Collector's award compensation was payable for lakhs of plants. The Division Bench pointed out that the Board of Enquiry:

Does not take into account the significant stand of the Collector, and which was subsequently vindicated by the Board of Revenue that the receipts cannot be considered genuine and that the schedule of rates given by the Collector should be applied only with specific limitation for excluding particular types of plants and trees. The Board of Enquiry has not considered whether, if these crucial factors of exaggeration in the receipts and limitation had been borne in mind, the astronomical magnitude of the compensation would not disappear and give place, to a valuation within a reasonable margin of error. This again would have obvious effect on the allegation of corrupt motive viz., that the Collector wanted to confer undue benefit on Muthoor Pillai and undue loss to Government.

19. The Division Bench then quotes paragraph 17 of the report of the Board of Enquiry:

It is not alleged for Government that Sri P. Shankar Rao has received any specific money or moneys from the land owner in this case, as consideration for his course of conduct. It may be that moneys were so received or that there was some future consideration or even that Sri Shankar Rao benefited materially to a Very limited extent. But that he has acted in this matter without good faith, leaving alone the question of due care or efficiency, mainly with motive to benefit Sri Muthoor Pillai, there is no room for doubt. The circumstantial probabilities, taken together, are, in our opinion, irresistible in pointing out to this inference. We must reiterate that had Sri Shankar Rao been an honest but a misguided man he would have acted far differently, at least at the later stage when true facts and implications were stressed and brought to his notice. But, as far as we are able to analyse and dissect the facts of the record, we have no doubt that Sri Shankar Rao was throughout acting with a definite purpose of benefiting Sri Muthoor Pillai to an inordinate extent by the consequences of his valuation.

20. Commenting on this, the Division Bench observed:

But, as mentioned above, the motive to benefit Muthoor Pillai was derived solely from the astronomical magnitude of the value of compensation which again has to depend directly upon the receipts which were issued with incomplete particulars and which contain gross exaggeration in the number of plants and trees cut, and which the Collector was never prepared to accept as genuine. This aspect of the case was received little or no attention from the Board of Enquiry.

21. It was urged before the Division Bench by Thiru Govind Swaminathan appearing for the Government that the subsequent conduct of the Collector, when the Electricity Department tried to make him change the valuation, must also be given due weight in that connection. With reference to that the Division Bench observed:

A charge can be levelled against the Collector of a certain amount of obstinacy and non-co-operation with the Electricity Department to help them out of the dilemma in which they found themselves through the carelessness of their subordinate officers in issuing the receipts indiscriminately. As head of the district he could have been more co-operative.

But they went on to observe that this could not be Viewed as conclusive of the circumstantial probabilities pointing to corrupt motive.

22. The Division Bench then went on to point out that the finding of corrupt motive on the part of the Collector on the first charge was linked up with charge No. 2. Charge No. 2 proceeded on the basis that Shankar Rao as Collector confirmed a certain sale held for collection of arrears of agricultural income--tax, in favour of Muthoor Pillai without acceding to the request of the Assistant Commissioner of Agricultural Income--tax to hold a resale and that the action o? the Collector in confirming the sale was to benefit Muthoor Pillai. The full facts bearing on this charge have been set out in the judgment of the Division Bench and it will be sufficient for our purpose to state the following. One Lakshmi

Planting Company had a leasehold right in a property in Gudalur Taluk of the Nilgiris District, it was being worked as a tea plantation. The jenmi right over the property had already been purchased by Muthoor Pillai. Lakshmi Planting Company fell into arrears of Agricultural Income Tax to the tune of Rs. 11,000. The Agricultural Income Tax Department addressed the Collector to arrange for the sale of the leasehold right for realising the arrears under the Revenue Recovery Act. During the revenue sale proceedings the plantation was attached and Muthoor Pillai was appointed as agent or receiver. The revenue sale was held on 21st September, 1956 by the Tahsildar. Several individuals were present. The upset price was fixed at Rs. 12,000. There was only one bid, namely, that of Muthoor Pillai, for Rs. 1.2,000. The Tahsildar, Gudalur, recommended the confirmation stating that the estate was not well-kept and that a re-sale was not likely to fetch a better price, because the lessee was in heavy arrears of rent to the jenmi and that it would constitute an encumbrance. The Agricultural Income Tax Officer, who was also present at the sale, recommended that the sale be set aside because of some irregularities. The Collector in his order of confirmation of 13th November, 1956 stated that the irregularities were not material.

23. The Board of Enquiry proceeded on the footing that there was really no encumbrance. They recognized that decrees had been obtained by the owner against the lessee (Lakshmi Planting Company) for Rs. 75,000 for arrears of rent, but the Board of Enquiry proceeded on the footing that it did not constitute a charge on the property. The Division Bench, however, pointed out that there was a provision in the original lease permitting the jenmi to re-enter the property for default of rent and under that provision Muthoor Pillai could evict any purchaser for arrears of rent. The Division Bench also referred to the report of the Tahsildar that a re sale might fetch even a lower price in the same way as it happened in another case. The Bench then observed:

In the above circumstances, one can come to the conclusion that the Board, of Enquiry was acting only on mere suspicions when it concluded that the Collector had a motive to benefit Muthoor Pillai when the data as well as the report of the Tahsildar were entirely in favour of the decision taken by the Collector. In our opinion, Venkatadri, J., was justified in coming to the conclusion that the finding of the Board of Enquiry on this charge was based only on suspicions that it was corrupt motive on the part of the Collector in favour Muthoor Pillai unduly. This would show that the first two charges are inter-dependent so far as corrupt motive is concerned, and that the basis of the finding of the Board of Enquiry of a corrupt motive under both the charges was one of suspicion and vitiated by the failure to give due regard to adequate and relevant evidence.

24. The Division Bench then went on to discuss the third aspect of the evidence which would have a bearing on the corrupt motive, namely, about the financial resources of the Collector during the period. The Board found that when he came to the Nilgiris District he had only a net savings of Rs. 750 and that during the period of two years at Nilgiris he might have saved about Rs. 6,000 to Rs. 7,000.

But he purchased a car on 11th October, 1956 for Rs. 11,000 paid some advance for acquiring building sites, etc. leading to a total expenditure of about Rs. 20,000. Shankar Rao claimed that he raised this money from his father-in-law and friends. The Board of Enquiry was not inclined to accent this explanation. As against this, Venkatadri, J., pointed out that there was no evidence to show that Muthoor Pillai was the man through whom the Collector got the extra money. The Bench agreeing with Venkatadri, J., held:

Unless there is some evidence to show that the extra money, even if it is not properly accounted for, is traceable to Muihoor Piliyai the alleged beneficiary under charges 1 and 2 there is no purpose served by seeking to connect the fact that the Collector had Rs. 12,00,0 not adequately accounted for with the corrupt motive dealt with in charges 1 and 2. The above discussion would also show that the finding about corrupt motive which figures as the crucial ingredient for charges 1 and 2 was based upon suspicion and not on real evidence.

25. That fifth charge ran thus:

That in his application for a motorcar advance he furnished a false declaration to Government on 22nd October, 1956, that he had not paid for and taken delivery of the Car MDU 4210 though he had paid cash and taken delivery of the same on 11th October, 1956.

The explanation of the Collector was that the application form and declaration had been prepared by a clerk prior to the date of the purchase of the car namely 11th October, 1956, that he took delivery of the car on 11th October, 1956 paying cash and that when he signed the application and declaration subsequently on 22nd October, 1956 he was busy attending a conference and inadvertently failed to make the necessary alteration in the application and declaration. The Board of Enquiry did not accept this explanation and found the charge proved.

26. It is seen from the judgment of Venkatadri, J., that this application was rejected by the Government for paucity of funds and the Collector filed another application wherein he informed the Government that he had already paid cash for the car purchased from Lingam & Company and that he only wanted to be reimbursed from out of the advance. Venkatadri, J. pointed out that the petitioner was eligible for the loan even if he had paid the amount, provided the application form had preceded the date of payment in point of time. The Bench accepted the finding of Venkatadri, J., The Board of Enquiry had, however, made a comment with reference to this charge that the true significance of the false declaration was clearly much deeper than the mere signing of a loan application or certificate which the officer must have known to be incorrect in its particulars and that obviously the officer did not want to reveal at that stage the particulars of acquisition or the source of the moneys for the purchase. Dealing with this the Division Bench observed:

It is submitted by learned Counsel appearing for the respondent-Collector in this

appeal that in referring as above to the true significance of the facts being much deeper than the mere signing of a loan application or certificate, containing incorrect particulars, the Board of Enquiry was being influenced by its finding about the corrupt motive of the officer dealt with under charges 1 and 2. When it is found that the corrupt motive is not proved and it amounts at best only to a suspicion, it is clear that the reference in the finding under charge 5 to the true significance being much deeper than the mere signing of a loan application with incorrect particulars, will also lose its basis. It will fall only in the category of suspicion. Therefore there is every reason to put this charge in the category of an erroneous or incorrect statement in a loan application, which the officer should have taken care to avoid. But it is going far out of a reasonable approach to the matter when a "deeper motive" is inferred and grave penalty is proposed to be visited on the officer for what was essentially a venial transgression. We are inclined to accept the finding of the learned Judge, in regard to this charge also.

27. Charges, 3, 4, 7 and 8 read as follows:

3. That on the 11th October, 1956, he proceeded out of his jurisdiction to Coimbatore, without notifying the Government and after falsely reporting to Government that he was leaving for Mysore that day.

4. That he contravened Rule 15(2) of the All India Services (Conduct) Rules, 1954, in not having obtained the prior sanction of the Government for the purchase of car No. MDU 4210 for Rs. 11,500.

7. That he contravened Rule 15(1) of the All India Services (Conduct) Rules, 1954. in not having obtained the prior sanction of Government for purchasing plots in City Improvement Trust Nagar in his name and his wife's name (cost of the plots being Rs. 10,789-5-0.) and Rs. 7,176-3-0 respectively) and for subsequently transferring the latter plot to one Yesodamma, wife of a friend of his Chandrasekara Reddy, a mica miner in the same District.

8. That he acquired for his perosed use timber (teak) worth about Rs. 3,500 from Gudalur within his jurisdiction without making payment for the same and that he contravened Rule 15(2) of the All India Services (Conduct) Rules in not having reported the acquisition of movable property over Rs. 1,000 in value.

27. With reference to these charges the Division Bench observed:

The other charges found proved viz., 3, 4, 7 and 8, are not serious charges even according to the Board of Enquiry. Before us also it is not claimed by learned Counsel appearing for the Government of India that these charges 3, 4, 7 and 8, standing by themselves, would have led to the consequence of the Collector's removal from service. Therefore it is not necessary to devote any consideration to the finding of the Board of Enquiry, on these charges.

28. The Division Bench then sets out the law. They quote from *Rex v. Paddington Valuation Officer* (1965) 2 All E.R. 836:

....If a tribunal bases its decision on extraneous considerations which it ought not to have taken into account, or fails to take into account a vital consideration which it ought to have taken into account, then its decision may be quashed on certiorari and a mandamus issued for it to hear the case afresh.

29. Referring to Union of India (UOI) Vs. H.C. Goel, , the Division Bench says:

The Supreme Court observed that proceedings held against a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi--judicial proceedings and there can be little doubt that a writ of certiorari can be claimed by the public servant, if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of the dismissal, is based on no evidence.

30. Referring to another case, the Division Bench refers with approval to a decision of the Calcutta High Court in Golam Mohiuddin Vs. State of West Bengal and Others, .

On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises.

They then observe:

Bearing the above legal principles in mind, we agree with the finding of the learned Judge, Venkatadri, J., for the reasons stated above, that the finding of the Board of Enquiry about the guilt of the respondent-Collector on charges 1, 2 and 5 should be set aside, because it has been arrived at affected to a significant extent by surmises and conjectures, and that the finding was given after having failed to give due weight to crucial points of facts as well as of law, which have a vital bearing on the charges.

They conclude:

Therefore, if the finding on charges 1, and 2 and 5 cannot be supported, it will not be possible to maintain the order of dismissal on the finding on the remaining charges, which have been conceded before us to be not substantial charges which will justify the punishment of removal from service.

31. The substantial reason given by the Government of India in paragraph 3 of their further counter-affidavit in justification of the retirement of the petitioner under Rule 46(3) is "as there were grave doubts on the petitioner's integrity and even the judgment of this Honourable Court had not absolved the Officer of his guilt completely." This makes it clear that the basis of the retirement was the doubt which existed in the mind of the Central Government about the petitioner's integrity. It seems to us, however, that once the matter had been thrashed out in this Court, it would not be open to the Central Government to fall back on their earlier impression about the petitioner's integrity prior to the judgment of this Court in the writ appeal, and they could sustain their action only on the basis of the findings of this Court and, may be, any observations of this

Court. Thiru Govind Swaminathan, the learned Advocate-General, who appeared for both the respondents, did not himself dispute the correctness of this proposition and he explained the statement in the further counter affidavit to mean that, according to the Central Government, the Judgment of this Court itself, contained expressions of doubt on the petitioner's integrity. It is clear, however, that no (such doubts were expressed by the judgment of this Court. The learned Advocate-General conceded that even the Bench had held that the finding of the Board of Enquiry on charges 1, 2 and 5 could not be supported, because it was affected to a significant extent by surmises and conjectures and was reached without due weight to the crucial points of facts as well as of law. The learned Advocate-General, however, submitted that certain portions of this judgment of this Court (Division Bench) showed that the learned Judges themselves expressed doubts about the integrity of the petitioner. The learned Advocate-General relied, in this connection on the following sentences already extracted.

When it is found that the corrupt motive is not proved and that it amounts at best only to a suspicion, it is clear that the reference in the finding under charge 6 to the true significance being much deeper than the mere signing of a loan application with incorrect particulars, will also lose its basis. It will fall only in the category of suspicion.

The learned Advocate-General interprets the two sentences as meaning that the learned Judges themselves had suspicion that the petitioner had a corrupt motive. We are, however, entirely unable to interpret the sentences in the above manner. It is clear to us that the learned Judges were only characterising the finding of the Board of Enquiry as based only on suspicion. We may, in this connection, fall back on the earlier statement (at page 120):

The above discussion would also-show that the findings about corrupt motive, which figures, as the crucial ingredient for charges 1, 2 and 5 was based upon suspicion and on no real evidence.

This is also made clear by the next sentence, dealing with charge 5 (P) 121:

Therefore there is every reason to put this charge in the category of an erroneous or incorrect statement in a loan application which the officer should have taken care to avoid.

That makes it clear that the Division Bench considered the statement in the loan application merely as an erroneous or incorrect statement and the Bench did not say anywhere that they themselves had suspicion about the integrity of the Collector. It follows that the assumption of the first respondent that the judgment of this Court itself expressed doubts about the petitioner's integrity is wrong. The natural meaning of the reasons given by the first respondent in paragraph 3 of the further counter affidavit in support of its action (the relevant portion of which we have already extracted.) is that the first respondent had still grave doubts on the petitioner's integrity even after the judgment of this Court in the

writ appeal. Since the point is important we repeat that, in law, it was not open to the first respondent to continue to have these doubts after the judgment of this Court. In the earlier sentence the reasons given are, "with reference to the history of the case, the antecedents as well as the findings of this Honourable Court in its judgment" and lower down they say, "Having regard to the facts that were found in the enquiry, the antecedents and the observations of this Honourable Court itself in the judgment in the prior case." It is clear that these have relevancy only to the petitioner's integrity, because that alone is specifically mentioned in the crucial sentence, "As there were grave doubts on the petitioner's integrity."

Hence the reference in these sentences would be relevant only if they bear on the petitioner's integrity. We have indicated that there is nothing in the observations of this Court by way of "expression of doubts on the petitioners [integrity. Certainly there were no such findings, adverse to the petitioner on the question of his integrity. It is true that the Division Bench was of the opinion that "a charge can be levelled against the Collector of a certain amount of obstinacy and non-cooperation with the Electricity Department to help them out of the dilemma, in which they found themselves through the carelessness of their subordinate officers in issuing the receipts indiscriminately", and "As head of the district he could have been more co-operative" but they hasten to add that it could not be a factor irresistibly pointing to corrupt motive. They, therefore, did not charge him with any lack of integrity as the word is commonly understood and only accused him of obstinacy and non-cooperation with the Electricity Department. The learned Advocate-General submitted that such obstinacy and non-cooperative attitude on the part of the petitioner would itself be sufficient to retire him in public interest. That may be so, but that is not the basis on which the Government say they proceeded. The only reason given in paragraph 3 of the further counter affidavit is grave doubts on the petitioner's integrity and nowhere does the first respondent say that the order was based to any extent on this obstinacy and non-cooperative attitude of the petitioner. We hasten to add that for the same reason the order of retirement cannot be sustained on the basis of charges 3, 4 and 7 and 8, as the learned Advocate-General wanted to sustain it. It is sufficient to say that these charges cannot be said to cast grave doubts on the petitioner's integrity and in paragraph 3 of the further counter affidavit there is nothing to indicate that the first respondent based its order of retirement to any extent on charges 3, 4, 7 and 8.

32. In paragraph 3 of the further counter affidavit the Union Government also refers to "the history of the case" and "the facts that were found in the enquiry." These are vague. We may recall the observations of Hidayatullah, J., (as he then was) *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , that "it is not sufficient to assert that the circumstances exist and give no clue to what they are," quoted with approval by Sikri and Hegde, JJ., in *Rohtas Industries Vs. S.D. Agarwal and Others*, . The words "the history of the case" and "the facts that were found in the enquiry", give no clue as to what

exactly the Government meant. We have seen that they could only refer to charges 1, 2 and 5. If, by those words, the Union Government meant any facts other than those which were brought up in the writ proceedings in this Court, they should have specified them. As it is, we must proceed on the assumption that the Union Government refers only to "the facts found in the enquiry" or "the history of the case" as brought up before this Court in the writ proceedings. But we have seen that the findings of the Board of Enquiry were not accepted, by the Division Bench. In fact, they observed that the findings were based on no real evidence and were based only on suspicion. At the expense of re-petition we must point out that, once the matter has come up to this Court and has been thrashed out here, so far as those facts are concerned, it is only the judgment and observations of this Court which can be taken into consideration, and there is nothing in the judgment or observations which would support the impugned order.

33. The remaining ground put forth in the further counter affidavit of the Central Government is "antecedents." The antecedents have not been specified, and, if they mean only what was brought up in the enquiry before the Board of Enquiry, they would no longer be operative in law, because all that was vacated by the Division Bench. It is permissible to add that the antecedents prior to those charges could not have influenced the Central Government, because the petitioner (Shankar Rao) was promoted to the I.A.S.

34. It is clear from the above discussion that the reasons given by the first respondent in their counter affidavit have no existence in the eye of the law. This means that the order was based on no reason whatever. It would also mean that the Central Government did not apply their mind to the case. This means that the order of the Central Government was really arbitrary and, according to the principles already explained, the order must be set aside.

35. The learned Counsel for the Central Government brought to our notice the recent decision of the Supreme Court in *R.L. Butah Vs. Union of India (UOI) and Others*, . That case is distinguishable, because the confidential record of the appellant Butail contained adverse remarks and they had been communicated to him from time to time and he had also been given an opportunity to make representations in respect of these remarks.

36. It will be noted that in the above discussion we have not made any reference to the file of the Government of India. As the order of reference of Ismail, J., shows, it was not the Court which asked for the file, but Thiru Ramasubramaniam, the learned Counsel for the first respondent, offered to produce the file and the file was produced before us. We have also looked into it, but it will be seen that we are not basing our conclusion to any extent on what we saw in the file. However, we may add that the file also confirms our interpretation of paragraph 3 of the further counter affidavit and shows that the action of the Government of India was based only on their grave doubts on the petitioner's integrity as a result of his conduct in valuing the trees and they did

not base their action to any extent on the observations of this Court about his obstinacy and non-cooperative attitude or on charges 3, 4, 7 and 8. In particular, in the second note of the Government of India it is stated that even the judgment of the High Court has not absolved the officer of his guilt completely, but, since it has been decided not to go on appeal and action is proposed under Rule 16(3), the Law Ministry was consulted by the Home Ministry. It will be noted that the question of going on appeal to the Supreme Court would not have arisen in respect of charges 3, 4, 7 and 8, because those charges were held proved, and the petitioner did not dispute them at any material stage. The reference to going on appeal could only be in respect of charges 1, 2 and 5, because the judgment of the Division Bench considered only those charges and gave findings against the Government only in respect of those charges. The passage "even the judgment of this Court had not absolved the officer of his guilt completely" could not have reference to charges 3, 4, 7 and 8, because in respect of those charges, this Court had held the charges proved.

37. It will be noted that in the foregoing discussion we have not found it necessary to refer to the contention of the learned Counsel for the petitioner that in passing the impugned order the Central Government did not observe the criterion laid down by themselves in their instructions. Instructions 4 and 5 may now be quoted:

4. In a case in which the State and the Central Government have reasonable cause to believe that an officer is lacking in integrity, it would be appropriate to consider him for premature retirement, irrespective of an assessment of his ability of efficiency in work.

5. In a case in which an officer's integrity is not in doubt his physical or mental condition is such as to make him inefficient for further service, it would be appropriate to consider him for premature retirement. However, in such cases, it may be desirable, once it has been decided with the approval of the Central Government to retire an officer prematurely, that the State Government first advise the officer to opt to retire under Sub-rule (2) of Rule 16 of the A.I.S. (DCRB) Rules formal action under Sub-rule (2) being taken only in the event of the officer failing to avail himself of this advice.

38. The contentions of the learned Counsel are these : The instructions are binding on the Government of India. In any case, they have themselves admitted in paragraph 9 of their further counter affidavit that they passed the order in conformity with the instructions. It is clear that they did not mean to act under Instruction 5, because, if they had done so, they would have first advised the petitioner to opt to retire under Sub-rule (2) of Rule 16 of the rules. Hence, it is clear that they meant to act only under Instruction 4. Under Instruction 4 it was necessary that they should have reasonable cause to believe that the officer was lacking in integrity. The words "reasonable cause to believe" have a definite meaning in law. There must exist some facts or reasons as a result of which they could have cause to believe that the officer was lacking "in integrity. Mere

suspicion would not do. Applying these standards, the impugned order would not satisfy this criterion, We do not, however, think it necessary to decide this contention, in view of the fact that the petitioner is entitled to succeed on his main contention, that the order of the Central Government was really arbitrary.

39. In the result, we set aside the order of the Central Government, dated 11th August, 1969, retiring the petitioner under Rule 16(3) of the All India Services (Death-cum-Retirement Benefit) Rules, 1958. By virtue of the stay order he is actually continuing in service. Therefore, it is not necessary to pass an order directing him to be reinstated.

The writ petition is allowed, but, under the circumstances, without any order as to costs.