
(2006) 02 DEL CK 0135
In the Delhi High Court
Case No : Writ Petition (C) 11 of 1987

R.A. Khemani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16(3)
Constitution of India, 1950 — Article 310, 311
Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 — Rule 6
Fundamental Rules, 1956 — Rule 56
Penal Code, 1860 (IPC) — Section 120B, 420, 477A

Citation : (2006) 128 DLT 161 : (2006) 88 DRJ 247

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : G.D. Gupta and Alok Singh, Adv Anusuya Salwan and Monica Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The writ petitioner here questions an order dated 23.12.1985 retiring him compulsorily. The impugned order was issued by the respondent Delhi Development Authority (hereafter "DDA"). The facts leading to the impugned order are outlined below.

2. The petitioner joined Class-I service in the Central Public Works Department (CPWD) on 24.4.1958; he was promoted as Executive Engineer on 2nd June, 1964. He was further promoted as Superintending Engineer on 7th September, 1970. Whilst in employment with the CPWD, the petitioner was awarded a gold medal in 1973 by the Arunachal Pradesh Government for merited service. He joined the DDA as a deputationist in May 1976, in the post of Superintending Engineer. The next year, he was promoted within the organization (i.e. DDA) as Chief Engineer. In 1978 the petitioner was repatriated to the CPWD and joined the post of Superintending Engineer.

3. On 27th July, 1978, the petitioner was placed under suspension; he continued to be under suspension till the order was revoked on 7th March, 1980 and the Central Government decided to post him back as Chief Engineer in the DDA. Accordingly an order was issued on 11.3.1980 appointing him as Chief Engineer in DDA. This, again, was on deputation basis. On 13th June, 1981, the petitioner was granted selection grade in his substantive post of Superintending Engineer in CPWD, even while he functioned as Chief Engineer in DDA. It appears that on 17th December, 1982 the CPWD proposed to promote the petitioner as Chief Engineer. The DDA appears to have written on 20th December, 1982 to the CPWD, requesting for the petitioners permanent absorption within the organization, since it wanted to retain him in its services. It, also expressed no objection for his promotion as Chief Engineer (Civil) Level-II in his substantive cadre in the CPWD. Accordingly w.e.f. 19th April, 1983, the petitioner was promoted as Chief Engineer in the CPWD.

4. Apparently on 20th March, 1984, the Central Government approved the proposal to absorb petitioner permanently as Chief Engineer in the DDA. A consequential order was issued by the DDA on 26th March, 1984. With this development, the petitioner was permanently absorbed as Chief Engineer in the DDA; he was deemed to have retired in terms of Central Civil Services (Pension) Rules, 1972 w.e.f. 25th March, 1984, from the CPWD. The petitioner requested for grant of pension in respect of the entire period of service between 1958 and 1984 with the CPWD; he also applied for encashment or commutation of the pension amount on 7th November, 1984.

5. It is averred that the Lt. Governor of Delhi who was also the Chairman of the DDA directed re-designation of the petitioners post as Engineer-in-Chief but those orders were not implemented by the then Engineer Member, the 5th respondent here. The petitioner alleges that the 5th respondent who belonged to the CPWD cadre was working as an Engineer Member in the DDA at the relevant time. He was interested in continuing in that position and was bent upon ruining the petitioners career. The petitioner had apparently sought for appointment as Engineer Member in the DDA on account of his having enjoyed the pay scale of Rs.2500-2750 in the CPWD which was higher than what was enjoyed by the said fifth respondent. This led to a conflict situation whereby the 5th respondent allegedly went out of his way to harm the petitioner. In this background, the petitioner alleges that he had requested the Vice-Chairman of the DDA not to allow the 5th respondent to write his Annual Confidential Report (ACR) on 14th August, 1985. Similar letters had been previously written. The petitioner had been suspended from the services of DDA, on 14th June, 1985.

6. On 3rd July, 1985, a memorandum was issued calling for the petitioners Explanation in respect of the construction of some of the 944 houses under the SFS scheme at Kishangarh, Pocket-C during 1982 and 1984 when was in-charge of the work. It was alleged that serious lapses and deficiencies were found in regard to the execution of the work, in that, large scale defects in construction of

foundation in respect of depths and widths that endangered stability and safe usage of the structure occurred. It was also alleged that the executed width did not confirm to the requirement spelt out in the drawings. The buildings were, Therefore, constructed with weaker and inadequate foundations leading to adoption of strengthening measures at an exorbitant costs for the DDA. The memorandum also alleged that deficiencies and defects in the work were brought to the petitioners notice by letters dated 4th February, 1984, 13th February, 1984, 8th February, 1984 and 17th February, 1984 in spite of which he did not take corrective action such as black-listing contractors, transferring the staff involved in the irregularities, ensuring recoveries from contractors for over payments made to them on the basis of fictitious measurements, ordering and arrangement of re-measurement of the work and initiating action for lodging report with the police for prosecuting the culpable staff and contractors.

7. The petitioner gave an elaborate Explanation. In that reply dated 17th July, 1985, he took the stand that he could not be blamed for any irregularity; the Works Advisory Board had approved the award of work without administrative approval and technical sanction. His stand was that the Chief Engineer could not be faulted since his job was to exercise overall control of nearly 50,000 houses all over Delhi and it was neither possible nor required of him to determine the plinth level, ground level and foundation level for individual housing blocks. He relied upon certain provisions of the CPWD Manual to say that the job of Chief Engineer was not to oversee each and every work but to exercise overall supervision. He also relied upon extracts of the Estimates Committee of Parliament to say that if the lower and middle level officials failed in the discharge of their responsibilities, the Chief Engineer could not be held to responsible.

8. The petitioner also stated in his reply that he had directed suspension of delinquent officials promptly and that it was he who had suggested referring the issue to an independent expert body, namely, IIT for carrying out investigations, soil testing and suggesting remedial measures. The petitioner stated that all these issues were discussed with the Engineer Member and Vice Chairman of DDA several times but since he did not possess any disciplinary powers, he could not take action against the subordinate officials. The petitioner had annexed two detailed notes along with his reply indicating the various items in respect of which technical administrative approvals or technical sanctions were granted and/or denied.

9. On 23rd December, 1985, the DDA issued the impugned order which reads as follows:

WHEREAS the President is of the opinion that it is in the public interest to do so; now Therefore, in exercise of the powers conferred by clause (j)(1) of Rule 1956 of the fundamental rules, the President hereby retires Sh. R.A. Kehmani, Chief Engineer, Delhi Development Authority with immediate effect. He having already attained the age of 50 years on 14th January, 1984. The President also directs

that Sh. R.A.Khemani shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement.

10. The grounds urged in support of the petition are that the impugned order is without jurisdiction and contrary to Fundamental Rule 56(j); it is claimed that only the Lt. Governor, acting as Chairman DDA could have made the substantive appointment to the post of Chief Engineer and also issued the order of compulsory retirement. Since that was not done, the order was vitiated. It is claimed that the impugned order could not have been issued because the sequence of events clearly showed that between the period 1982 and 1985 the petitioners services were deemed excellent so as to warrant his promotion as Chief Engineer and within a short span permanent absorption in the DDA. Such being the case, the petitioner could not have been prematurely, or compulsorily retired from the services. It is also alleged that the petitioner had an unblemished record of service and had not been communicated with any adverse remark in his entire career; the option to compulsory retiring him should have been taken immediately after his having attained the age of 50 years. It could not have been done much after the event, in December 1985. It is also urged that the impugned order is punitive and casts a stigma. Lastly, it is claimed that the impugned order was motivated by mala fides on the part of the 5th respondent.

11. The DDAs stand is that the impugned order is not punitive. It alleges that whilst in charge of construction of 944 houses in the Self Finance Scheme (SFS) at Kishan Ganj Pocket C, the houses collapsed for want of strong foundation. It alleges that the petitioner was suspended on 14-6-1985. The DDA relies upon the memorandum issued on 3-7-1985, and also alleges that the Central Bureau of Investigation (CBI) had registered a case, FIR No. RCI/85/SIV-II dated 7-9-1985 under Sections 120-B read with 420 and 477-A of the Indian Penal Code. The petitioner's records including the suspension order, as well as initiation of criminal case were taken into consideration.

12. The decision to issue the impugned order is defended as a bona fide exercise of power. It is asserted that the order was issued by the properly constituted authority. The order was passed by the Lt. Governor after prior approval of the Central Government; hence it was expressed to be in the name of the President of India. It is also alleged that under the DDA (Salaries, Allowances and Conditions of Service) Regulations, 1961, framed under provisions of the Delhi Development Act, 1957, the authority empowered to impose penalties upon class I officers is "the Authority" i.e the DDA, with the prior approval of the Central Government. The impugned order is Therefore justified as correct.

13. The DDA denies that the impugned order was punitive in nature; it avers that it was on account of relevant considerations, after going through the entire records pertaining to the petitioner's service. It also avers that the absence of any adverse entry, or non-communication of any adverse entry in the ACR, did

not mean that the DDA could not exercise the power under FR 56(j)(i). The DDA denies the averment of the petitioner that it could have resorted to the power under FR 56 only when the official concerned attained 50 years, and not later. The petitioner had completed 50 years on 15-1-1984, and Therefore, fulfilled the criteria for review, for purposes of compulsory retirement, in 1985, when the impugned order was passed.

14. The counter affidavit of the DDA further alleges that the petitioner had approached the civil court, and sought injunction. It is also alleged that the review committee again considered the representation of the petitioner, for reconsideration of the decision to compulsorily retire him, and rejected his request, on 3-10-19986. The DDA lastly states that the petitioner himself sought for voluntary retirement, on 1-5-1986, with the condition that the compulsory retirement order ought to be withdrawn.

15. The fifth respondent was served in these proceedings; he has not filed any return. During the proceedings, an interim order was made on 5-1-1987, staying the eviction of the petitioner from the quarters occupied by him; it had been allotted by the Central Government, when he was working in the CPWD; he continued to occupy them after his absorption by DDA. When the petition was heard, on 6-11-2003, the DDA stated that the original records pertaining to the impugned order were not available. On a subsequent date, i.e 30-9-2004, it was stated on behalf of the DDA that the relevant records were with the Central Government. On this statement, the concerned officer was directed to file an affidavit and be present in court. An affidavit was filed on behalf of the Central Government, by the Director, Urban Development, on 10-11-2004, that no files were available. Subsequently, on 6-12-2004, the Director (Personnel) of the DDA stated in an affidavit that the files could not be traced. He relied upon the case of another (unnamed) official and deposed that orders of compulsory retirement were issued at the relevant period, pursuant to a review committees recommendation; the committee comprised of the Vice Chairman, DDA and the Joint Secretary, Government of India, Ministry of Works and Housing. Further time was sought to trace the records.

16. The petitioner moved an application seeking stay of an order directing recovery of Rs. 4,76,091/- towards the amount payable as damages for occupying Government quarters. It was averred in the application, that the petitioner would have attained the normal age of retirement on 31-1-1992, but for the interim order, and that he had vacated the quarters on 23-3-1995. By order dated 28-10-2005, limited interim relief to the extent of staying recovery of 50% of the amount was granted. The DDA was again directed to produce the records. Since the writ petition was old, it was set down for hearing. The petition was heard on 6-12-2005, 12-12-2005 and 20-12-2005. The DDA did not produce any records.

17. Mr. G.C. Gupta, learned counsel for the petitioner submitted that the impugned order is illegal and arbitrary. The petitioner was admittedly absorbed in

1984, after having been granted promotion, and selection grade in the Chief Engineers post. In fact, he was absorbed at the request of DDA. This fact assumed significance, according to counsel, since the DDA had all the materials before it, including the alleged omission to take action in respect of the defective flats. Yet, the DDA found the petitioner fit in 1984, and absorbed him into its services. Therefore, the impugned order betrayed complete non- application of mind.

18. Learned counsel relied upon the decision in S.C. Dikshit Vs. Union of India and Others, to say that in that decision, the court had held that an order of compulsory retirement, imposed upon a person who was absorbed on 1-1-1981, by the DDA, was illegal. A valid compulsory retirement order could be issued under FR 56(j) only if the officer entered the service of DDA before attaining the age of 35 years. Learned counsel stated that on a parity of reasoning, the petitioner stood absorbed with DDA only on 26-3-1984, when he was deemed retired from CPWD. Therefore, he could not have been compulsorily retired in terms of FR 56(j)(i); the DDA could have taken sought recourse to FR 56(j)(ii) after the petitioner attained 55 years, provided other conditions were fulfilled.

19. Counsel also submitted that the petitioner was the victim of a witch hunt. It was the petitioner who had taken a decision to go in for an external expert evaluation of the faulty foundation of facts. Instead of appreciating his initiative, he was held to be the person responsible, which was contrary to facts. It was also submitted that the other officials who had been compulsorily retired, were even permitted to occupy the quarters; in the case of Shri SC Dikshit, the court quashed the retirement order; the judgment was not upset by the Supreme Court.

20. Counsel submitted that every order of compulsory retirement, can be justified only if it is in public interest. In this case, the original records containing the relevant recommendations were never produced despite several court orders; the DDA even misled the court into believing, at one stage that the original records were with the Central Government. In the absence of the original file, there was no material to justify the impugned order. The averments about institution of CBI case, etc are only stories, without any materials. The petitioner has no information of any such proceeding. Similarly, counsel submitted that no vigilance enquiry existed, or was proposed; the petitioner was never asked to submit any reply, apart from the reply to the memorandum dated 3- 7-1985. The only inference which can be fairly drawn, in the light of these circumstances is that the impugned order is in fact punitive, and without application of mind; Therefore it is arbitrary. Learned counsel relied upon the judgments of the Supreme Court, reported as The State of Gujarat and Another Vs. Suryakant Chunilal Shah, State of Gujarat Vs. Umedbhai M. Patel, ; Union of India (UOI) and Others Vs. Shaik Ali, to say that the power to compulsorily retire a public servant cannot be resorted to as a short cut to avoid an inquiry into his conduct.

21. Ms. Anasuya Salwan, appearing for DDA, disputed that the power under FR

56(j)(i) could not be invoked. She stated that the judgment in SC Dikshit could not be construed as good law, since in later judgments, the Supreme Court has clarified that as long as the content of FR 56(j) (i) is fulfilled, the question of length of service of the employee would not arise. She relied upon the decision reported as U.P. State Mineral Development Corpn. and Another Vs. K.C.P. Sinha, for the purpose.

22. It was contended that the review committee, comprising of high officials, had considered all the records, and had concluded, bona fide, that it would not be in public interest to retain the petitioner in services of DDA. She also submitted that right from the decision in Union of India (UOI) Vs. Col. J.N. Sinha and Another, , it had been held that an order of compulsory retirement, issued in bona fide exercise of power, cannot be construed as punitive or casting a stigma upon the employee. Reliance was also placed upon K. Kandaswamy Vs. Union of India, . As regards absence of any adverse entry in the confidential reports is concerned, counsel urged that such a consideration is not conclusive, as to the utility or otherwise of the public servant's continuation in the service; a single action or omission of the kind involved in this case was sufficient for a reasonable decision as to the officer having outlived his utility in the organization.

23. Fundamental Rule 56(j) reads:

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

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

(ii) In any other case after he has attained the age of 55 years:

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

24. Public interest, the guiding principle upon which every order of compulsory retirement has to be based, was explained by the Supreme Court, in Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The court held that the rationale of such action was to weed out the inefficient, corrupt, dishonest employees from the government service. Public interest in relation to public administration means that only honest and efficient persons should be retained in service while the services of the dishonest or the corrupt or who are almost dead wood, should be dispensed with. The Court observed :

Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the government servants. That Rule merely embodies one of the facets of the pleasure doctrine

embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the Rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is a good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest. It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired but then as the Rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired government servant does not lose any of the benefits earned by him till the date of his retirement. Three months notice is provided so as to enable him to find out other suitable employment. In our opinion, the High Court erred in thinking that the compulsory retirement involves civil consequences.

25. The Supreme Court affirmed the view of in *H.C. Gargi Vs. State of Haryana*, . In *Gian Singh Mann Vs. High Court of Punjab and Haryana and Another*, the court held that public interest in the context of premature retirement had a well-settled meaning. It refers to cases where the interests of public administration require the retirement of a government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competency and utility called for by the government service to which he belongs. *Kailash Chandra Agarwal Vs. State of Madhya Pradesh and Another*, stated that the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment. In *Union of India (UOI) Vs. M.E. Reddy and Another*, it was again pointed out that the object of compulsory retirement was to weed out the dead wood in order to maintain a high standard of efficiency and initiative in service. Rule 16(3) of the All-India (Death-cum-Retirement) Rules, 1958, empowered the Government to compulsorily retire officers of doubtful integrity. The safety valve of ``public interest was held to be the most powerful and the strongest safeguard against any abuse or colourable exercise of power under the Rule.

26. A three-Judge Bench of the Supreme Court, in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, : laid down five principles, to be considered in judicial review, while determining validity of orders of compulsory retirement. Those principles have been universally followed, in subsequent decisions. The judgment and formulation of law was affirmed, by

another three-Judge Bench of the Supreme court, in Posts and Telegraphs Board and others Vs. C.S.N. Murthy, . The court held as follows:

An order of compulsory retirement is not an order of punishment. FR 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona side and on the basis of material available on the record.

27. In K. Kandaswamy Vs. Union of India, , the Supreme Court, after reiterating the law laid down in the previous judgments, also added that the opinion (to issue an order of compulsory retirement) has to be based on the material on record otherwise it would amount to arbitrary or colourable exercise of power. It was also held that the decision to compulsorily retire an employee can, Therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision. In M.S. Bindra Vs. Union of India and Others, it was laid down as under :

Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion, the same can be obviated on the assumption that other materials alone need be looked into.

It was further held that:

13. While viewing this case from the next angle for judicial scrutiny, i.e., want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials, no reasonable man would reach such a conclusion.

28. In Umedbhai M. Patel's case (supra) the Supreme Court re-stated the law on the point as follows:

11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarized thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a

punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favor of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

29. In order, Therefore, to find out whether any government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of the official has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest. The scope of judicial review is limited, to satisfying that the parameters indicated in Baikuntnath Dass's case and Umedbhai Patel's case (supra) are complied with. The court has to, wherever occasion warrants, consider the original records and see that the review committee, or the competent authority took note of the relevant records, and materials, while concluding that the public servant outlived his utility. In Umedbhai Patel, M. S. Bindra's case and Surya Kant Chunilal Shah (supra) the court had held the materials to be inadequate, and the decision to retire the public servant to be vitiated. Umedbhai Patel's case was an instance where the decision was premised upon lodging of a criminal complaint, without any further action, which impelled, inter alia, the State to retire the public servant compulsorily.

30. The first point to be decided is whether the impugned order is vitiated as being in conflict with FR 56-j(i). In SC Dikshit (supra) the Court proceeded on the footing, presumably on the derivative reasoning that by virtue of Rule 6 of the 1961 Rules, which extended inter alia, the Fundamental Rules, mutates mutants, to DDA employees, that the rule read as follows:

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

(i) If he is in Class I or Class II Service or post and had entered the DDA service before attaining the age of thirty five years, after he has attained the age of fifty

years.

The assumption is not based on any amendment of the Fundamental Rule; it continued to read ``the Government service and not the DDA service as quoted in the judgment. The entire reasoning in the judgment that previous government service was not to be reckoned, is on the assumption that the rule specifically read as if the officer entered ``the DDA service before attaining the age of thirty five years. This interpretation is not borne out by the rule; indeed, the petitioner himself asserts that the rule reads as if the official held a Class I/ Class II post and ``had entered the Government service before attaining the age of thirty five years. Such being the correct position, it would be immediately apparent that the petitioner's previous service with the CPWD too had to be taken into consideration, since it was ``Government service'' If the other construction placed, viz that the absorption meant fresh employment, were to be accepted, as it was in Dikshit's case, the very rule would be rendered redundant, since DDA would be powerless to invoke FR 56(j)(i) in the case of Class I and Class II employees absorbed into its services, after they cross 35 years, whereas, in the case of those who entered before such age, in the same category of posts, the power would be available. There is no discernible rationale for such a classification; indeed the amplitude of the power, and the logic of its existence would be undermined. Secondly, the decision of the Supreme Court in K.P.C. Sinha (supra) contains observations which suggest that absence of a minimum qualifying service, where the rule provided a minimum age for issuing an order of compulsory retirement, do not necessarily invalidate the order. I am of the opinion, Therefore, that the decision in SC Dikshit is not good law, both on account of its not taking into account the text of FR 56-j(i) as also in view of the decision in K.P.C. Sinha's case.

31. The second point, i.e. as to the competent authority, though urged initially, was not pressed, in view of the assertion that the Lt. Governor had approved the impugned order, but it also received the approval of the Central Government and since that was the position, it was issued in the name of the President.

32. The main point is as to the validity of the order of compulsory retirement. The fact that the petitioner was initially in CPWD, but deputed to DDA at the latter's request, and later absorbed; that he was promoted while in DDA, in the organization, and later, in his substantive post, in 1982-84, and that his records were considered while he was absorbed in 1984, are not denied. Equally, the DDA's assertion that the petitioner was Chief Engineer at the relevant time when the Kishan Garh flats were constructed is not disputed. However, the role of the petitioner was disputed; he submitted that as Chief Engineer, he could at best play a supervisory role, and could not be held liable for faulty foundation. He has, of course, given an elaborate Explanation, with reference to the manual, about the role of such a chief engineer, and also given specific comments about each point. He has also taken the position that quick and remedial action was proposed, and the IIT Delhi was asked to submit a report.

33. The loss caused to the DDA on account of the faulty execution of the work has not been disputed. The petitioner has given the Explanation that he had discussed the matter with the fifth respondent and the Vice Chairman. He has, in addition, expressed that without any disciplinary powers, he could not take remedial action. As regards other action, he stated in his Explanation that action to black list contractors, and recover amounts had been initiated.

34. The main theme urged by the petitioner's counsel was that in the absence of records, and having regard to the background of animosity between the petitioner and the fifth respondent the impugned action is vitiated. Considerable arguments were addressed on the fact that the flats were constructed, at the time when the petitioner received promotion, and higher pay scales in DDA and CPWD, and all the facts were known to the DDA, when it absorbed him into the services.

35. In cases like the present, the public interest in ensuring transparency cannot be overstated. The DDA has no doubt asserted that the role of the petitioner in the construction of the flats, having regard to his rank cannot be lost sight of; it has also come on record that other officials, such as Shri Dikshit, Shri R.A. Jindal, and Shri Ved Prakash, were compulsorily retired. The decision as to whether the impugned order can be held legal would to a large measure, also depend on whether the adverse inference to be drawn for non- production of the files, would outweigh all considerations.

36. In *Union of India and others Vs. E.G. Nambudiri*, the Supreme Court ruled that even though the requirement of spelling out reasons on the face of the administrative order may not exist, nevertheless, every public authority must be able to justify its action, with reference to reasons in the records. This reasoning has been endorsed in certain subsequent decisions. Therefore, the non-production of the documents, and also the absence of a return of the fifth respondent on the allegations of mala fides, would to a certain extent be reflective of the state of the records. The surviving question is Therefore, whether the materials disclosed on the judicial file, through affidavits, are sufficient to conclude that the impugned order is either legal or is not legal.

37. The two set of factors which have to be weighed in order to see the justification of the impugned order are the petitioner's contemporaneous record of service, leading to his permanent absorption in 1984, which were preceded by his promotion, and grant of selection scale. The absorption was also upon a request of the DDA itself. These facts do show, prima facie, that at least till the order of absorption in March, 1984, the petitioners' service was considered of a high standard. Therefore, the question is whether the period of service later disclosed deterioration in service, to such an extent that the impugned order was warranted. The DDA's rationale for the action are the serious deficiencies in the construction of the Kishan Garh Pocket C flat, over which the petitioner exercised overall supervision; and also that the CBI had registered a case. It is also on record that other officers were held responsible, and compulsorily retired from

service.

38. Compulsory retirement is not per se a punishment. It is, as observed in the earlier part of the judgment, a measure adopted by the employer to infuse efficiency, and discard deadwood or officials who outlive their utility. Though the nature of entries in confidential records of the official are reflective of his conduct and efficiency, nevertheless consideration of the authority is by no means confined to such material. It can and ought to take into account all relevant factors, since the determinative guideline is ``public interest an expression of the widest possible magnitude. Thus, the involvement of an official in serious irregularities, or his being implicated in some enquiries, or in criminal proceedings or complaints, cannot be irrelevant factors. The nature of the conduct which comes up for scrutiny, and its implications within the organization, have to be considered. It cannot be disputed that the passing of an order of compulsory retirement depends on the subjective satisfaction of the competent authority, of course on objective consideration of circumstances. Unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that such formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the court cannot interfere.

39. I am not persuaded by the contention of the petitioner that being the chief engineer, he could not be held responsible for the lacunae or deficiencies which led to losses in respect of construction of the flats. As held by the Supreme court, in *State of Bihar and others Vs. Subhash Singh*, , the bureaucracy is accountable for the acts done in accordance with rules, for all action within its domain and that hierarchical responsibility for the decision is their in- built discipline. The head of the Department/designated officer is ultimately responsible and accountable. Therefore, the petitioner, the Chief Engineer in charge of the project (one among several such), cannot take shelter of faulty discharge of work by his subordinate officers. The materials on record suggest that the matter was of sufficient seriousness to warrant a conclusion that the petitioner's services were no longer required, and that he had outlived his utility. The impugned order Therefore, was not arbitrary.

40. As far as allegations of mala fides by the fifth respondent is concerned, apart from stating that he was bent upon ruining the petitioner's career, and that there was objection as to the move to permit him to write the ACRs, there is no averment that he was actively involved in the decision making process leading to the impugned order. The respondents have averred that the Vice chairman of the DDA was a member of the review committee; it is also on record that the petitioner's representation for review of the impugned order was independently considered by the Central Government and declined, on merits. In my opinion, there is insufficient material to conclude that the impugned order is vitiated by mala fides of the fifth respondent.

41. That brings me to the question of relief. In view of the above findings, the

order of compulsory retirement cannot be quashed. During pendency of proceedings, the Court had directed that respondent not to evict the Petitioner. The order has subsisted till date. In the normal cause, the Petitioner would have retired on 31-1-1992. However, he vacated the quarters on 23-3-1995. The respondents have now demanded Rs.4,76,091/- as damages for overstay. In view of the subsistence of the interim order, and no attempt by the respondents to seek its variation or vacation, I am of the opinion that it would be inequitable to permit the respondents to recover the entire amount. At the same time, the Petitioner has not succeeded in showing arbitrariness by DDA in issuing the impugned order; he also stayed on in the premises more than 3 years after the normal retirement age. In view of all these factors, the respondents are restrained from recovering damages in excess of the normal license fee for the period between 1-1-1986 to 31-12-1989. It is open to the respondents to demand damages for the use and occupation of the premises, from the petitioner, as per relevant rules, and recover it in accordance with law, for the period 1-1-1990 to March, 1995.

42. The writ petition is accordingly dismissed, subject to the directions in Para 41 above. Rule discharged. No costs.