

**(1970) 09 DEL CK 0017**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No. 370 of 1968

S.S. Pasupathy

APPELLANT

Vs

The Union of India and Others

RESPONDENT

---

**Date of Decision :** 11-09-1970

**Acts Referred:**

**Citation :** (1970) ILR Delhi 883

**Hon'ble Judges :** V.S. Deshpande, J

**Bench :** Single Bench

**Advocate :** P.P. Rao, K.C. Dua and R.L. Tandon, for the Appellant;

---

## **Judgement**

V.S. Deshpande, J.

(1) The petitioner, born on 17-3-1913, was ordered to be retired on attainment of the age of 55 years under F.R. 56(j) by the impugned order dated 16/02/1968 at Annexure 1" to the writ petition. F.R.56(j) is as follows-

"NOT WITH STANDING anything contained in this Rule ,the appropriate authority shall, if it is of the opinion that it is in the public interest to do so have the absolute right to retire any Government servant after he has attained the age of fifty - five years by giving him notice of not less than three months in writing."

(2) The impugned order runs as follows:-

" UNDER the provisions of F.R. 56(j), the President hereby gives notice to Shri S.S. Pasupathy, a permanent Stenographer of Central Secretariat Stenographers "Service (Grade II) in the Ministry of Finance, Department of Economic Affairs thathe shall stand retired from service with effect from the date of expiry of three months" from the date of service of this notice on him."

(3) The petitioner has challenged the order of his retirement on the following grounds, namely-

(1)That circumstances Constituting" public interest "did not exist at all and hence

the government had no power to retire him under F.R. 56(j)(2) The decision to retire him was based on an adverse confidential report written against him by Shri R.S. Nakara who was inimical towards the petitioner. The retirement was therefore mala fide and bad.(3) The opinion requisite under F.R.56(j) was formed by an authority other than the President who alone was competent to retire the petitioner.(4) The expression "public interest" is vague and does not provide any objected standard or norm of guidance and therefore F.R. 56(j) is itself arbitrary and unconstitutional as it suffers from the vice of excessive delegation. It is also contrary to Articles 14 and 16 of the Constitution.

(4) The petition was resisted on the ground that the whole of the service of the petitioner was placed before the departmental promotion committees and the Finance Minister (as the petitioner was serving in the Finance Ministry )who decided that the petitioner should be retired under F.R.56(j). Shri R.S. Nakra bore no enmity towards the petitioner. F.R.56(j)is valid and the retirement of the petitioner could not Therefore be challenged .

(5) Let us consider the grounds urged by the petitioner to challenge the order of retirement Seriatim.

"While F R 56(j) gives a discretion to the Government to retire a Government servant prematurely on the attainment of the age of 55, that discretion has to be exercised only in "public interests" In accordance with the principle laid down by the Supreme Court in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, and Rohtas Industries Vs. S.D. Agarwal and Others, , the petitioners entitled to challenge the existence of the circumstances Constituting the public interest though the Government is to be the judge as to the sufficiency of those circumstances ,that is to say, whether the totality of them amounts to public interest or not. The defense to the writ petition is that the total record of the service of the petitioner was placed before the departmental promotion committee and the Finance Minister. The record consists of the annual confidential reports written on the work of the petitioner by his superiors. The learned counsel for the respondents produced the original file containing the confidential reports of the petitioner before me. it is found that the confidential reports for the years 1965 and 1966 were written by Shri R.S. Nakra. Both of them were adverse to the petitioner. The Departmental Promotion Committee which met on 30-9-1967 was of the opinion that the petitioner was not fit to continue in service beyond the age of 55 years. As Sbri Pasupathy had, however, to put in one more year of service, the department rightly thought that the final decision as to his retirement should be taken after the confidential report of the work for the year 1967 was considered. Thereafter the departmental Promotion Committee which met on 9-1-1968 considered the confidential report of the work of the petitioner for the year 1967 also. After going through the said report, the said Committee felt that there were no grounds for revising the view already taken by it in the petitioner"s case. The Committee therefore reiterated its previous recommendation that the petitioner was not fit for continuance in

service beyond 55 years of age. A self-contained note was prepared by the Deputy Secretary Shri R K. Ganguly on 13-2-1968 in which the full particulars of the service record of the petitioner were given. The confidential reports on the basis of which the Departmental Promotion Committee had come to the conclusion that the petitioner has ceased to be efficient were also placed along with the self-contained note. The whole file was then put up to the Joint Secretary who stated that the recommendation of the Departmental Promotion Committee was for approval of the Finance Minister. The Finance Minister Shri Morarji Desai wrote on the file in 14-2-1968. "He should be retired".

(6) The adverse reports on the work of the petitioner for the years 1965 and 1966 constitute the main circumstances showing that it was in public interest to retire him. It is true that the confidential report for the year 1967 is favorable to the petitioner. It cannot, however be said that the confidential report of 1967 was so good that it wiped out the effect of the confidential reports of 1965 and 1966. It is only the existence of the circumstances Constituting public interest which is to be seen by this Court. Once the circumstances are shown to have existed, the sufficiency of the circumstances is for the Government to decide. It is not for this Court to say that the confidential report of 1967 should wipe out the effect of 1965 and 1966 reports. That is essentially for the Government to consider. In view of the existence of the bad reports for 1965 and 1966 I am unable to say that the circumstances Constituting public interest did not exist. The Government has to take into consideration not only the last confidential report but the service record of the petitioner as a whole. As his record for two years, i.e., 1965 and 1966, was not good, it was for the Government to consider whether it was in public interest or not to retire the petitioner. The merits of the Government decision are not open to review by this Court. I, Therefore, find that the circumstances Constituting the public interest within the meaning of F.R.56(j) existed and their existence enabled the Government to take action under F.R.56(j) against the petitioner. I am fortified in the above view by the decision of the Supreme Court in *Western M.P. Electric Power and Supply Company Ltd. Vs. State of U.P. and Another*, (Q). In that case, the power conferred by the statute on the Government to supply electrical energy in an area in respect of which a license had already been granted was to be exercised only if the State Government deemed such supply to be necessary "in public interest". The High Court had thought that the subjective opinion of the Government was final in the matter. The Supreme Court however observed that they were unable to agree with that view. Their Lordships further observed in paragraph (11) of the judgment as follows:

" IF challenged, the Government must show that exercise of the power was necessary in public interest. The Court is thereby not intended to sit in appeal over the satisfaction of the Government. If there be prima facie evidence on which a reasonable body of persons may hold that it is in the public interest to supply energy directly to the consumers, the requirements of the statute are fulfilled "

(7) 2. The only concrete ground on which the petitioner alleged that Shri R.S. Nakra was inimical to him was that an application had been made by the petitioner and some other stenographers against Shri R.S. Nakara. Shri R.S. Nakra has denied this allegation. It is Therefore the word of the petitioner against the word of Shri R.S. Nakra. I cannot say therefore whether Shri R.S. Nakra was inimical towards the petitioner or not. Shri Nakra has written two confidential reports against the petitioner in 1965 and 1966. The petitioner alleged that Shri Nakra was not entitled to write his confidential report for 1966 as he did not work with him at all. Shri Nakra in his affidavit has explained that he had to write the confidential report of the petitioner because the officers with whom the petitioner worked had stated that the petitioner was not generally available and these officers could not take any work from him and they were Therefore unable to write his confidential report. Shri Nakra was in overall charge of the stenographers and Therefore he had to write the confidential report of the work of the petitioner. I told the learned counsel for the respondents during The argument that it would be proper if these other officers also were to file affidavits as to whether the petitioner was really not available to them for work and if they really expressed their inability to write confidential report on that ground. The respondents thereupon filed two affidavits one sworn by Shri B.P. Kapoor and the other by Shri Lachman Dev. Both of them support the Explanation given by Shri Nakra that the petitioner was not generally available when he was required for work and Therefore they could not write his confidential report .The third officer to whom the petitioner was attached , rarely , Shri K.V.R. Advani was said to be on leave and his affidavit could not Therefore be filed. Three responsible officers have thus sworn that the petitioner was not available for work when he was wanted. The petitioner has no Explanation why Sarvshri Lachman Dev and B.P. Kapoor should support Shri R.S. Nakara against him. I am, Therefore, of the view that the explanation given by Shri Nakra as to why he had to write the confidential report of the petitioner was correct.

(8) The petitioner has further objected to The manner in which the confidential reports For the years 1965 and 1966 were written by Shri Nakra. The form in which the confidential reports are to be written contains a number of specific heads such as (1) Regularity and punctuality in attendance: (2) Proficiency and accuracy in stenographic work: (3) Intelligence, keenness and industry; (4) Trustworthiness in handling Secret and Top Secret matters and papers: (5) Maintenance of engagement diary and timely submission of necessary papers for meetings, interviews etc., (6) general assistance in ensuring that matters requiring attention are not lost sight of: (7) initiative and tact in dealing with telephone called and visitors: (8) nature of other duties, if any, on which employed and whether carried them out satisfactorily (9) fitness for promotion to the next higher grade ,etc. But Shri Nakra did not divide the confidential report into these headings and Therefore did not state anything specific against each of these headings. He wrote general confidential reports in which he stated that the petitioner was not able to discharge his duties efficiently and was indifferent to

work because of bad health which included high blood pressure and defective hearing .The petitioner contends that his blood pressure never came in the way of his work and he did not suffer from defective hearing at all. Shri Nakra explains that his knowledge about these defects of the petitioner was gathered by him from the petitioner himself. Shri Nakara further explained that he had to write the confidential report of the petitioner in such general terms because the petitioner was not available to do the work and his confidential report divided into several headings could not ,Therefore, be written. If the petitioner was not ,available, for work as is stated by Shri Nakra, Shri Kapoor and Shri Lachman Dev, then such a general confidential report against him was justified. It is also not denied by the petitioner that he had the complaint of high blood pressure, The petitioner may not be hard of hearing though Shri Nakra had thought so. The question is whether the confidential reports for 1965and 1966 written by Shri Nakra amount to a mis-representation of facts. If the answer is in the affirmative then the decision taken by the authorities on the strength of these reports would be vitiated. It would have then to be said that there were no circumstances Constituting public interest for the retirement of the petitioner at all .If on the other hand the confidential reports were substantially correct, then the decision to retire the petitioner could not be said to have been vitiated bythe absence of the circumstances Constituting" public interest .In the confidential report for the year 1965it is said that the petitioner "is not able to discharge his duties as efficiently as is expected from a stenographer of his seniority". In the confidential report for the year 1966 it is stated that the petitioner" has not achieved any position of responsibility. . . . He is being tolerated and suffered". These reports are justified by the affidavits sworn by Shri Nakra, Shri Kapoor and Shri Lachman Dev that the petitioner was not generally available for any work. Whether the petitioner was avoiding to work or whether he was unable to do the work due to his ill-health is not material. Whatever be the reason, the result is the same. The efficiency of the petitioner was reduced due to his unwillingness or inability to do the work. This is what the confidential reports arrived at. Even if, Therefore, IT is assumed that the petitioner was not hard of hearing or that his blood pressure did not disable him from doing the work, the petitioner was actually not available for work and that is all that mattered in judging his efficiency .

(9) Learned counsel for the petitioner argued that it was unbelievable that the petitioner should himself inform Shri Nakra that he was suffering from blood pressure or he was hard of hearing. It is true that one does not ordinarily inform his superior officer of his own defects. But it is not improbable that the petitioner may have told or hinted about the existence of these defects by way of an excuse for not being able to do his work. Firstly, Therefore, I do not find these statement in the confidential reports to be unbelievable. Secondly even if they may not be strictly accurate, they do not vitiate the main conclusion in the confidential reports that the petitioner was no longer efficient. The general form in which the reports are written is also justifiable by the fact that it was not possible for specific answers to be noted against the different headings given in

the confidential reports inasmuch as the petitioner was not available for work at all. I Therefore find that the petitioner has not proved any mala fides on the part of Shri Nakra. On the contrary, the adverse reports against the petitioner were justified and Shri Nakara is supported by two other officers against whom the petitioner cannot allege any enmity.

(10) 3. It is well known that the President himself does not govern. He is aided and advised by the Council of Ministers who are themselves in the general charge of their ministries and departments and under whom many other civil servants work. The Departmental Promotion Committees and the Deputy Secretary and the Joint Secretary-in-charge of administration in the Ministry of Finance were the civil servants who were specifically doing the work of assessing the efficiency of the petitioner and other stenographers in the Ministry of Finance. It is they who had to express their opinions on the efficiency of the petitioner as judged objectively by confidential reports of his work by his superiors. This was what was done. The Finance Minister was the highest authority being the head of the Ministry of Finance and he also apparently applied his mind to the case of the petitioner. The order of the retirement of the petitioner is issued in the name of the President and is signed by an authorised officer, namely. Deputy Secretary-in-charge of administration. It must be held, Therefore, that the decision that the retirement of the petitioner was in public interest was taken by the President, namely, by the appropriate authorities concerned.

(11) 4. What is the meaning of "public interest" as used in F.R. 56(j) ? In paragraph (2) of the self-contained note put up to the Finance Minister regarding the retirement of the petitioner it has been stated that the ground of "Public interest" enabled the Government to retire a Government servant on the ground that the officer has ceased to be efficient. The primary object of public service is efficiency, it is Therefore in public interest that a Government servant should be efficient. It would also follow that it would be in public interest to retire a Government servant who has ceased to be efficient. The efficiency of a Government servant has to be assessed by officers under whom he has worked and this is why the annual confidential reports of the work of a Government servant constitute the chief material on which the assessment is based. It may be asked then why "efficiency" and not "Public interest" was made the test for retirement under F.R. 56(j). The answer to this question may be found in the observations made by the Supreme Court in the recent decision in Union of India v. Col. J.N. Sinha (Civil Appeal No. 381 of 1970 decided on 12-8-1970). Speaking of F.R. 56(j) the court observed as follows :-

" THAT rule merely embodies one of the facts 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. 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 deadwood. 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."

(12) The Government has to take into account all possible considerations before coming to the conclusion that the retirement of a public servant is in public interest. As the Supreme Court has observed, the individual public servant may be efficient but some other more efficient public servant may have to be preferred over him. Similarly, an individual public servant may have something against him which makes it undesirable for him to continue in service. This something may not be efficiency but some defect of character or some consideration of the security of the State etc. This is why a comprehensive term "public interest" is used in F.R.56(j).

(13) Learned counsel for the petitioner relied upon the Supreme Court decision in *Harakchand Ratanchand Bantia v. Union of India* (1970) T. S.C.R. 479, for the proposition that the expression "public interest" is vague and is not a sufficiently definite guideline for the exercise of executive power. The decision of the Supreme Court was followed by the Rajasthan High Court in *M/s Gem Palace v. Union of India* (Civil Writ No. 823 of 1968 decided on 4-12-1969). The context in which these decisions were given was one of fundamental rights. The fundamental right of a citizen to trade or practice an avocation is given by Article 19(1)(g) of the Constitution. Article 19(6) of the Constitution enables the Government to impose reasonable restrictions on the said right in the interest of general public. But this is only the general framework within which the restrictions must operate. The Constitution is the basic law laying down the standards for legislation. It does not mean however that the legislation which follows this standard can be as wide as the Constitution itself. Article 19(6) applies to a wide variety of occupations and businesses. It would depend upon the nature of the business and occupation as to what kind of restriction would be reasonable and in the interest of the general public. It cannot be said that the same restriction would hold good in respect of different kinds of occupations. Proviso (g) to section 27(6) of the Gold Control Act, 1968 laid down "public interest" as one of the considerations to which the administrator was to have regard in issuing or renewing a license. The right to trade in gold was a fundamental right. Could it be restricted on such a widely worded ground as "public interest"? Almost anything could be included in "public interest" in that context and it would be giving a wide discretion to the administrator to refuse to renew a license because he thought it to be opposed to public interest. This was

why their Lordships of the Supreme Court thought that the words "public interest" do not provide any objective standard or norm or guidance by which a fundamental right could be restricted .

(14) The contest in which the words "Public interest" are used in F.R. 56(j) is entirely different. Under Article 310, a civil servant holds his office during the pleasure of the President. The only limitation on the exercise of this pleasure is imposed by Article 311 of the Constitution. It has been established by a series of decisions of the Supreme Court that the compulsory retirement of a Government servant does not attract Article 311 and does not contravene Articles 14 and 16 of the Constitution. The validity of F.R. 56(j) was not, Therefore, allowed to be challenged by the Supreme Court in T.G. Shivacharana Singh and Others Vs. The State of Mysore, . In paragraph (55) of their judgment in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., their Lordships of the Supreme Court noted the submissions made by the learned Solicitor-General that in dispensing with the services of a government servant under the impugned rule "the appropriate authority would be .to take into account all the relevant circumstances in regard to the nature and the quality of the work of the Railway servant in question and will have to decide whether there are circumstances which require that the services of the said servant should be terminated. In dealing with such a question, it is plain that the appropriate authority would naturally have regard for considerations of public interest". It was, Therefore, argued that the rule could not be struck down on the ground that it conferred absolute, unguided and uncanalised power on the appropriate authority. It is to be noted that the impugned rule in that case did not expressly lay down this guideline inasmuch as the expression "public interest" was not used in it. Nevertheless The argument was that "public interest" would have to be considered in dispensing with the services of a government servant. The Supreme Court was not required to decide the question whether, even in the absence of such a definite guideline, the Government was bound to consider the public interest before dispensing with the services of an individual Government servant. In the present case, on the contrary, F.R. 56(j) expressly lays down the guideline of "public interest" which has to be followed by the Government in retiring a particular Government servant. F.R. 56(j) is Therefore immune from the attack which was made on the rule governing the Railway servants in Moti Ram Deka's case. Even in the absence of such a guideline, the Supreme Court did not hold that the rule relating to the railway servants in Moti Ram Deka's case was bad for excessive delegation. A fortiori, F.R. 56(j) cannot be challenged on the ground of excessive delegation in as much as it lays down definitely the guideline of "public interest" in retiring a Government servant.

(15) The expression "public interest" has to be construed in F.R. 56(j) in the following background. The Supreme Court has held in Kailash Chandra Vs. Union of India (UOI), and in Col. J.N. Sinha's case referred to above that the Government servant has no absolute right to continue in service after the age of 55. For, F.R. 56(j) gives the Government an absolute right to retire the

Government servant on attaining the age of 55. For, F.R. 56(j) gives the Government an absolute right to retire the Government servant on attaining the age of 55. Much less has such a Government servant any fundamental right to continue in Government service. The decision of the Government as to the assessment of the work of the Government servant concerned cannot be reviewed by this Court on merits. This Court is therefore concerned only to see whether the circumstances constituting "public interest" existed. If they existed, then this Court cannot inquire into their sufficiency. What the Government has therefore to consider under F.R. 56(j) is only such "public interest" as is involved in retiring an individual Government servant. This public interest is generally restricted to the efficiency of the public servant concerned unless there are some exceptional considerations such as considerations of security etc. to be taken into account. In the large majority of the cases therefore the Government would go merely by the confidential reports available to them regarding the work of a particular government servant in deciding whether he should be retired or not. In fact even considerations like those of security of the State etc., may also be reflected in the confidential Government reports. In the vast majority of these cases the confidential reports of the government servants, the ambit of the expression "public interest" is very severely restricted to the considerations of the work and character of the individual government servant only. So restricted, the expression "public interest" in F.R. 56(j) cannot be said to be vague or too wide. Consequently the power given to the President to retire a Government servant at the age of 55 on this consideration cannot be attacked on the ground of excessive delegation or as enabling the President to exercise an arbitrary and uncanalized power.)

(16) As pointed out in *Ajit Singh v. Union of India* (Civil Writ 710-D of 1966 decided by me on 26-8-1970) (10) the meaning of the words "public interest" would differ in different statutes according to the context in which these words are used. Therefore, it is not permissible to think that the meaning which is given to these words in the Gold Control Act would be the same as the meaning which is given to them in F.R. 56(j). The two contexts are entirely different and the meaning of these words is also therefore bound to be different. As restriction on fundamental rights, the mere use of words "public interest" could not be said to be reasonable. But when Article 310 and F.R. 56(j) already give absolute power to the Government to retire a public servant, it cannot be said that a guideline more definite than the words "public interest" is required to make the power of retirement valid. I therefore find that F.R. 56(j) is valid and is not vitiated either by any vagueness in the expression "public interest" or by any arbitrariness involved in it. As the retirement of a government servant under F.R. 56(j) is to be based on the consideration of his individual merit judged by his confidential reports, a government servant who is thought to be inefficient would form a class separate from the rest of the public servants who are not thought to be inefficient. As the object of this classification is the efficiency of the public service, the classification is a reasonable one and F.R. 56(j) is not contrary to Articles 14 and

16 of the Constitution. (See also R.L. Butailv. Union of India 2nd 1969 Del 137 (DB) (11) Appeal to Supreme Court is understood to have been dismissed.)

(17) The writ petition, Therefore, fails and is dismissed but in the circumstances of the case there will be no order as to costs.