
(1979) 05 DEL CK 0005

In the Delhi High Court

Case No : Letter Patent Appeal No. 70 of 1978

Union of India and Others

APPELLANT

Vs

S.S. Prasad

RESPONDENT

Date of Decision : 24-05-1979

Acts Referred:

Citation : (1979) ILR Delhi 139(2) : (1979) LabIC 1157 : (1980) 2 LLJ 86

Hon'ble Judges : V.S. Deshpande, C.J.; N.N. Goswamy, J.; Harish Chandra, J

Bench : Full Bench

Advocate : S.C. Malik, K.N. Kataria, D.R. Thandani, B.P. Aggarwal, L.M. Sanghvi, K.R. Nagraja, L.K. Pandey, S.K. Verma and Gayatri Balu, for the Appellant;

Judgement

V.S. Deshpande, C.J.

(1) When are remarks in confidential reports about officers regarded as adverse to them? What is the effect of non-communication to the officers of these adverse remarks? Does such non-communication vitiate the material consisting of the adverse remarks which could be taken into consideration by the Government for forming the opinion whether the compulsory premature retirement of an officer would be "in public interest" within the meaning of Fundamental Rule 56(j)? Whether the material on which disciplinary inquiry is to be held against an officer can be taken into account in passing an order of compulsory premature retirement against him? These are the main questions which arise in this appeal.

(2) Shri S.S. Prasad (respondent No. 1) born on 2-8-1921. while holding the post of Deputy Director General of Mines Safety and Technical Advisor in the Ministry of Labour, was considered fit to be retained in service beyond the age of 55 in February 1976 by the Ministry of Labour (including the Labour Minister). Apparently, there was nothing adverse against him in the record of his service till then. His case for retention in service beyond the age of 55 was considered by the Establishment Board again on 4-1-1977. The Board decided to postpone

consideration till the confidential report for the year 1976 become available. On 13-9-1977 the Central Establishment Board consisting of Sh. Gian Prakash, Shri F. C. Alexander and Shri U. C. Agarwal took the following decision

"Labour Secretary (Dr. N. A. Agha) was present and explained the proposal. The Board perused the confidential record of the officer and felt that apart from the integrity angle, the officer's performance was not such which would merit his retention beyond the age of 55 years. Shri Prasad (born 2-8-1921) had already completed 56 years of age. The Board did not consider him suitable for further retention in service and recommended his retirement under Fr 56(j)."

The recommendations of the Central Establishment Board seems to have been accepted and the impugned order compulsorily retiring Shri Prasad under Fr 56(j) was passed by the Government on 7-10-1977. Fundamental Rules 56(j) may usefully be read here. It is as follows:

"Notwithstanding anything contained in this rule, the appropriate authority shall if it is of 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 Government service before attaining the age of thirty-five years, after he has attained the age of fifty years (ii) in any other case after he has attained the age of fifty- five years. Provided that nothing in this clause shall apply to a Government servant referred to in clause (a) who entered Government service on or before 23rd July, 1966."

Shri Prasad challenged the validity of the impugned order in the writ petition No. 747 of 1977 mainly on the ground that there was no material on which the Government could form the opinion that it was "in public interest" within the meaning of Fundamental Rule 56(1) to retire respondent No. 1.

(3) The reasons why on 13-9-1977 it was decided to compulsorily retire Shri Prasad when in February 1976 it had been decided to retain him in service beyond the age of 55 as given in the above decision of the Board may be analysed.

(4) Firstly, the words "'apart from the integrity angle" have to be understood in the following context. The Ministry of Labour while putting up the case of Shri Prasad before the Central Establishment Board for consideration of action under Fundamental Rule 56(), had also stated that a case had been registered against Shri Prasad on Charge of obtaining pecuniary advantage for himself and/or others by corrupt or illegal means or by misusing his official position by the Central Bureau of Investigation. The Ministry of Labour was not Therefore, in a position to issue an integrity certificate in favor of Shri Prasad. It appears that the Central Bureau of Investigation after completing investigation found a prima facie case for holding a disciplinary inquiry against Shri Prasad. But such a disciplinary inquiry does not seem to have been held. At the time the Central Establishment Board met, there was no finding against Shri Prasad of having

committed criminal misconduct within the meaning of prevention of Corruption Act. It is doubtful if the with-holding of the integrity certificate by the Ministry of Labour in favor of Shri Prasad merely because investigation by the Central Bureau of Investigation was pending against him was justified. (*Gurdial Singh Fijji v. The State of Punjab and others*, 1979(1) Slr 804. The meaning of the words "apart from" is independent. They were to construe the decision of the Board to mean that the integrity angle was not taken into account in arriving at the decision to retire Shri Prasad. This construction is also in consonance with the pleadings of the parties. The petitioner had alleged in para 12(d) of the writ petition that the report of the Central Bureau of Investigation was the root cause of the order of retirement passed against him, but the Government in their counter-affidavit had denied this allegation.

(5) The only material on which the recommendation for retirement by the Board was based is, Therefore, "the officer's performance". It was the common case of the parties that the confidential reports on the work and conduct of Shri Prasad for the whole of his service were the material on which his performance was assessed by the Board. As already stated, his performance was rated to be "good" in February 1976 when he was allowed to continue in service beyond the age of 55. Shri Prasad was, Therefore, under the impression that there were no adverse remarks against his work and conduct in the confidential reports. The confidential remarks are recorded by three officers firstly by the Reporting officer, secondly by the Reviewing Officer and thirdly by the Accepting Officer. The last being the superior, it is his duty either to agree or to disagree expressly with the remarks of the Reporting and the Reviewing Officers. The remarks of Shri D. Bandyopadhyay for 1-1-1974 to 25-8-1974 were adverse. But they were expressly negated by the Reviewing Officer Shri D.S. Nim Joint Secretary, and by the Accepting Officer Shri N.P. Dube, Secretary, Ministry of Labour. For the first time, the effective adverse remarks against Shri Prasad were recoded on 21-3-1977 by Shri D. Bandyopadhyay, Joint Secretary and on 22-3-1977 by Shri A. U. Sarma, Joint Secretary, for the periods February to September 1976 and September to December 1976 respectively. These remarks were neither agreed to nor disagreed with expressly by the Secretary Shri N. A. Agha. The remarks of these three officers are reproduced below :

"For the period from February to September 1976. Name of the officer : Shri S. S. Prasad. Designation : Deputy Director General of Mines Safety and Chief Inspector of Mines, Dhanbad. "I had the opportunity to observe rather closely the activities of Shri S. S. Prasad, Deputy Director General of Mines Safety and the Chief Inspector of Mines, immediately after the Chasnala disaster for about seven months in 1976. It appeared to me that Shri Prasad had developed a persecution mania. He always complained of non cooperation from his colleagues and the industry. In spite of his great capacity to do hard, hazardous and arduous work, he failed to carry the team of his own officers with him. There were open dissensions among the officers and the morale of the organisation of Dgms sank very low. His mercurial temper and rather unpredictable behavior caused quite a

lot of avoidable embarrassment to the Ministry. He sought publicity where propriety and expediency necessitated a low public profile. On the operational level he was more interested in his regulatory function than promotional and development activity. It must be said to his credit that he prosecuted a number of very senior management personnel for infractions of Mines Act and various rules and regulations and was successful in instilling the fear of law in them. He had the handicap of his status in dealing with top management of the Public Sector. But he could have been more effective even as a purely regulatory authority if he had acted little more tactfully and soberly. His alienation from the close circle of the mining community put severe constraint on his operational efficacy. On the basis of preventive vigilance check, certain irregularities were noticed in respect of purchase of certain foreign equipment. The matter was handed over to the Cbi for enquiry who have registered two cases against him. prickly personality who demoralise his colleagues and subordinates, infrequently created problems for the Ministry. Sd/ (D). Bandyopadhyay) Joint Secretary Ministry of Labour. 21-3-1977 6th September to 31st December, 1976 : In October Shri Prasad was transferred and posted, in the same rank, as Technical Advisor in the Ministry. The transfer was done mainly because of his abrasive qualities mentioned in the report of Shri Bandyopadhyay, Joint Secy. Shri Prasad did not accept the transfer gracefully. He allowed an impression to gain ground that he sought the intercession of politicians to get the transfer order revoked and to get himself promoted as D.G.M.S. I think the officer is technically fairly sound. sd/- (A. U. Sarma) Joint Secretary, Ministry of Labour 22-3-1977. I have had occasion to watch his work during the past eight months. He is knowledgeable and technically sound. Nothing adverse came to the notice out of the work done during this period. sd/- (N.A. Agha) Secretary to the Government of India, Ministry of Labour. 26-4-1977

(6) The Reporting Officers S/Shri Bandyopadhyay and Sarma as also the Accepting Officer Shri N.A. Agha are all agreed that the work of Shri Prasad was good, but the Reporting Officers have given adverse remarks regarding the conduct of Shri Prasad. Shri N.A Agha is silent about his conduct. The logical inference would, Therefore, be that Shri Agha does not disagree with those adverse remarks. The analogy of an appellate judgment being silent about certain findings of the trial Court would be relevant. Unless there is something in the appellate judgment which is contrary to the relevant part of the trial Court judgment, the inference would be that the said part of the trial Court judgment is not disagreed to by the appellate Court. Since Shri Agha was required by the administrative instruction? either to expressly agree or to disagree with the adverse remarks to the Reporting Officers, his silence about the adverse remarks has to be construed as an implicit agreement with them since he was required to expressly disagree with them if he did not agree with them. The adverse remarks of Shri Bandyopadhyay and Shri Sarma thus remain the only material on which the order of retirement is based.

(7) When the writ petition was filed, Shri Prasad did not know about these

adverse remarks. For, they had never been communicated to him. Since he simply did not know about them, he could not take the plea that these adverse remarks were not communicated to him but were taken into account by the Establishment Board in recommending his retirement. He could not, Therefore, attack the order of retirement on that ground.

(8) The learned single Judge allowed Shri Prasad's writ petition and quashed the order of retirement on two main grounds. Firstly, it was held that there was no material at all in the confidential reports on the performance of Shri Prasad on the basis of which the Government could form the opinion that it was "in public interest" to retire Shri Prasad. Secondly, it was also observed that the principles of natural justice were violated by the Central Establishment Board when the report of the Central Bureau of Investigation was seen and taken note of and the integrity of the officer was considered to be under cloud. The learned single Judge observed that the principles of natural justice required that this undisclosed material should have been disclosed to the petitioner, his Explanation taken and then action taken.

(9) After this appeal was filed by the Union of India against the quashing of the order of retirement, respondent Prasad became aware of the adverse remarks made against him by S/Shri Bandyopadhyay and Sanna as they were referred to by the learned single Judge who had the benefit of seeing" these and other confidential reports. Shri Prasad, Therefore, filed a further affidavit on 2-3-1979 stating that it was during the course of the hearing that he came to learn that there were certain adverse remarks made against him which formed the basis of the impugned order. He complained that they had never been communicated to him. They could, not, Therefore, form the basis of the opinion that it was in the public interest to retire him. The Government did not reply to this affidavit. Shri Prasad filed another affidavit on 14-5-79 repeating and elaborating the contention that the non-communication of these adverse remarks vitiated the material which was taken into account by the Central Establishment Board in passing the order of retirement.

(10) In the final argument of Shri S. C. Malik and Shri K. N. Kataria for the appellants and Dr. L. M. Singhvi for respondent Prasad, it was common ground that the remarks of Shri Bandyopadhyay and Shri Saima were never communicated to Shri Prasad. the most crucial question for consideration, Therefore, is what is the effect of this noncommunication

(11) Shri Malik at first rightly pointed out that a Government servant may be retired without there being any adverse remarks against him. The authority for this proposition is Union of India (UOI) Vs. Col. J.N. Sinha and Another, where Hegde, J., observed as follows :

"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."

Shri Malik argued "that only adverse remarks had to be communicated and that the remarks of Shri Bandyopadhyay and Shri Sarma were not adverse and, Therefore, they need not even be communicated and that their non-communication did not prevent the Central Establishment Board from relying upon them to form the opinion that Shri Prasad should be retired in public interest.

(12) The next question, Therefore, is when the remarks in a confidential report should be regarded as "adverse". An authoritative guidance is given on this matter by O. M. No. 51/5, "2-Ests, (A), Government of India, Cabinet Secretariat, Department of Personnel dated 20-5-1972. This is what it says :

"There may be cases, where though the remarks in the Cr are not adverse in a strict or narrow sense, the effect of these remarks cumulatively on the service prospects of the officer is adverse. In such cases, the attention of the officer should be specifically drawn to that fact, so that he could be altered for improving his performance."

While Shri Bandyopadhyay and Shri Sarma have good words to say about the work of Shri Prasad, their opinion about his conduct is adverse. In a narrow sense, it may be said that the remarks that his work was good would show that the totality of the remarks were not adverse. But the Government is here on the horns of a dilemma. If their stand is that these remarks are not adverse, then there are no adverse remarks against Shri Prasad. The assessment of his work even by Shri Bandyopadhyay and Shri Sarma is good. Supplemented by Shri Agha, it is definitely good. Since Shri Agha has written about his work and he is the Accepting Officer, his remarks about the work of Shri Prasad are final. If any disagreement arises between the remarks of Shri Agha and those of Shri Bandyopadhyay and Shri Sarma, then Shri Agha's remarks prevail. Theoretically it is possible to visualise a case instanced by Hedge, J. in Col. J. N. Sinha's case, referred to above. But in the present case, it is not said in any of the confidential remarks of Shri Bandyopadhyay and Shri Sarma and Shri Agha that though Shri Prasad is efficient, someone else is more efficient and it would be in the public interest that the post held by Shri Prasad should be managed by someone else. Hence that theoretical argument is not applicable to this case. According to the instructions contained in the O.M. quoted above, the remarks on the conduct of Shri Prasad by Shri Bandyopadhyay and Shri Sarma were adverse. They formed the basis of the opinion of the Establishment Board without their being communicated to Shri Prasad. This is the only way for the Government to resolve the dilemma. The Government must realise that the remarks were adverse and they could form the basis to the opinion that Prasad should be retired in public interest. We have now to consider the effect of the non-communication of these remarks to Shri Prasad.

(13) A useful distinction is made by the Constitution Bench of five Judges in *R.L. Butah Vs. Union of India (UOI) and Others*, in this respect. On the one hand, there may be an adverse remark relating to a specific incident. But this should not find a place in a character roll unless in the course of the departmental proceedings, a specific punishment such as censure has been awarded on the basis of such an incident. Even if a departmental inquiry is not held, reasonable opportunity should be given to the officer concerned to explain his case relating to the incident before this matter is entered into the character roll. A disciplinary inquiry necessarily involves the grant of an opportunity to the officer concerned to explain the allegations or charges against him before any punishment is imposed on him. The material on the strength of which such an inquiry is held and such punishment is to be imposed is, Therefore, not communicated to the officer before his confidential report is written because the whole decision as to whether the officer is at fault or not has to be the subject-matter of an inquiry and a finding on the evidence taken on that account. Such action is taken under Article 311 or the Rules framed under the Proviso to Article 309 of the Constitution.

(14) On the other hand, and distinct from the above (see at page 794 of the report of Col. Sinha's case) is the pleasure doctrine embodied in Article 310 of the Constitution. The power to retire a Government servant otherwise than by way of punishment is an exercise of such pleasure by the President during which the officer holds his post. The very basis of the order of retirement is that it is not by way of punishment. Nevertheless, an order of retirement is adverse to the Government servant concerned, though it may not amount to a punishment. Therefore, a different rule has been evolved in the Government instructions and by the Courts regarding the adverse entries in the Character Roll which form the basis of the opinion of the Government resulting in the order of retirement. The effect of this rule which is the subject-matter of the *O. M.* referred to above and also the rules referred to by the Supreme Court in *R. L. Butail's* case is that the adverse remarks should be communicated expeditiously in all cases. Representations against the adverse entries should be decided expeditiously. It is then that it would be found that either the adverse remarks stand or they are modified or entirely deleted. The material to be taken into consideration to form the opinion as to whether an officer should be retired would be that material which will contain not only the adverse entries in the Character Roll but also the subsequent decision taken on the representation made by the officer concerned against the communication of such adverse entries. According to the Constitution Bench in *Butail's* case, the constitutional position is as follows :

"Further, the rules do not provide for nor require an opportunity to be heard before any adverse entry is made. The contention that an enquiry would be necessary before an adverse entry is made suffers from a misapprehension that such an entry amounts to be penalty of censure set out in r. 11 of the Central Civil Services (Classification, Control and Appeal) Rules. The entry is made under the office order of 1961 set out above by way of an annual assessment of the

work done by the Government servant and not by way of a penalty under the said Central Civil Services Rules. True it is that such remarks would be taken into consideration when a question such as that of promotion arises and when comparative merits of persons eligible for promotion are considered. But then, whenever a Government servant is aggrieved by an adverse entry he has an opportunity of making a representation. Such a representation would be considered by a higher authority, who, if satisfied, would either amend, correct or even expunge a wrong entry, so that it is not as if an aggrieved Government servant is without remedy."

(15) It would be thus seen that natural justice has to be observed even in respect of the adverse entries in the Character Roll. It consists in the communication of the adverse remarks to the officer, hearing the representation and then retaming, modifying or deleting the adverse remarks. It is only then that these remarks can be the basis of the opinion that retirement of the officer is in public interest. The principles underlying this observation of the Constitution Bench in Butail's case have been more categorically and elaborately stated by Chandrachud, C.J., speaking for the Court in Gurdial Singh Fijji's case at page 814 as follows:

"The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances, leading to the report. Such an opportunity is not an empty formality, its object partially, being to enable the superior authorities to decide on a consideration of the Explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his Explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of1 causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him."

(16) In Gurdial Singh's case, the adverse remarks were actually communicated to the officer concerned, but the multiplicity of the authorities concerned in considering the representation of the officer and deciding whether the adverse entries should be retained or modified prevented any decision being taken on the representation made by the officer. Even then the Supreme Court held that those adverse remarks could not be taken into account even in denying promotion to the officer. The facts of the case before us act more strongly in favor of Shri Prasad than the facts acted in the Supreme Court case in favor of Gurdial Singh.

For, in the present case, there was no communication at all of these adverse remarks to Shri Prasad. Further, the adverse remarks have been taken into account not only to deny promotion to Shri Prasad but to send him out altogether of the service. The observations of the Supreme Court in the cases of Butail and Gurdial Singh, Therefore, apply to our case with greater force.

(17) Now we are in a position to answer the questions raised to the opening of this judgment. Our findings on them in the context of the judgment appealed against are as follows :

(1) The remarks by Shri Bandyopadhyay and Shri Sarma in the confidential reports of Shri Prasad for the year 1976 were adverse. They had, Therefore, to be communicated to and his representation against them had to be considered and final decision had to be taken as to whether the adverse remarks should be retained or modified or deleted. (2) As these remarks were never communicated to Shri Prasad, he cannot be blamed if he filed the writ petition against the order of retirement on the ground that there was no material on which the Government could be of opinion that his retirement was in public interest. (3) When the adverse remarks were disclosed by the Government to the learned single Judge, they paled into insignificance when set out against all the rest of the confidential reports which were good. In fact, Shri Bandyopadhyay had tried to pick up very similar faults in the conduct of Shri Prasad in the confidential report written by him for the year 1974. A reasoned disagreement with such adverse remarks was expressed by Joint Secretary Nim and Secretary Dube then. The learned single Judge was, Therefore, not at all impressed by what Shri Bandyopadhyay and Shri Sarma had said and concluded that there was no material on which Government could form the opinion that Shri Prasad should be retired. The learned single Judge tried to make a distinction between the positive opinion that Shri Prasad should be retired and a negative opinion that it was not desirable to retain him in service. Dr. L. M. Singhvi for the respondent however, did not base this argument in favor of the respondent on any such distinction nor are we convinced that the question of the existence of the material to sustain the order of retirement can be decided on such distinction. The question must be considered and decided as one of substance and not by relying on technical considerations or by splitting hair, for, we are warned in the Supreme Court decision in Col. J. N. Sinha's case that the merits or the correctness of the order of the Government are not justiciable in this Court. Therefore, even if the material or a part of the material adverse to the officer concerned is in the opinion of this Court small or negligible, this Court cannot go into the question of the sufficiency of the material. That is exclusively for the Government to decide. Since in the present case it cannot be reasonably said that there was no adverse material before the Government to form the opinion that Shri Prasad should be retired in public interest, we are unable to agree with the learned single Judge when he found that such material did not exist. (4) We also want to make it clear that in our view the Central Establishment Board did not base the recommendation to retire Shri Prasad by taking into account the report made by

the Central Bureau of Investigation. Had that been done, that would have vitiated the order of retirement. For, if the Central Bureau of Investigation recommended a disciplinary inquiry against Shri Prasad with a view to get him punished and if the Government accepted the report of the Central Bureau of Investigation, then the duty of the Government was to hold the disciplinary inquiry and abide by the result of it. That would be a punitive proceeding. Such a punitive proceeding may result in punishment. But the very theory of an order of compulsory retirement is that. it is not a punishment but the exercise of the pleasure of the President under Article 310. Punishment is, on the other hand, imposed under the Rules framed under the proviso to Article 309 read with the provisions of Article 311 and the relevant Rules. The Central Establishment Board apparently appreciated this incongruity between these two different procedures and objects and, Therefore, deliberately kept out of consideration the Central Bureau of Investigation report in forming the opinion that Shri Prasad should be retired. This Court would have been unable to interfere with that opinion if the adverse remarks on which it was based had been communicated to Shri Prasad and the representation of Shri Prasad had been considered and the decision taken whether the remarks should be retained, modified or deleted. It is on the final shape of the Character Roll as it stands after this decision is completed that the opinion of the Government could be based. (5) Thus, it is not because the remarks of Bandyopadhyay and Sarma were not adverse but because these adverse remarks could not be taken into consideration without their communication to Shri Prasad and without considering his representation against those remarks that these adverse remarks could not form part of the material on which retirement should be based. If these remarks are excluded, then we agree with the learned single Judge that there is nothing else in the confidential reports which can form the material for forming the opinion that Shri Prasad should be retired.

(18) However, following the directions given by Chandrachud, C. J., speaking for the Supreme Court in Gurdial Singh's case, referred to above, we simply set aside the order of retirement, the result being as if the said order had never been passed. The effect would be that respondent Prasad is deemed to have continued in his job as he held it on the date of the impugned order.

(19) The appeal is thus dismissed though for reasons different than the reasons which had been given for quashing the impugned order by the learned single Judge.

(20) L.P.A. No. 96/78: In Gurdial Singh's case, the Supreme Court left it open to the Government to take the required action on the adverse remarks. We are respectfully bound by those directions in our case which is similar. The prayer in this appeal is that in addition to the relief of quashing the impugned order of retirement, the following additional reliefs may also be given :

(a) To direct the Government to hold the meeting of the Departmental Promotion Committee for filling the post of the Director General of Mines Safety ; (b) for

quashing the D.G.M.S. Rules 1977 for recruitment to that post; (c) To declare Shri Prasad as appointed to the post of D.G.M.S. with effect from 26-8-1974 ; and (d) to grant Shri Prasad any other or further relief.

(21) None of these reliefs can be granted merely because the quashing of the order of retirement by the learned single Judge has been upheld by the dismissal of L.P.A. No. 70/73. For, the result of the dismissal of L.P.A. No. 70/78 is to leave the Government free to consider afresh the confidential reports about Prasad for the year 1976 and either to take no action against him or to communicate to him the adverse entries in the Character Roll for 1976 and to obtain his reply to the same. Thereafter, the Government will have to decide whether the adverse remarks should be modified or deleted or should be retained. It is thereafter that the Government will have to take a decision whether Shri Prasad should be compulsorily retired or not. Since we do not know what action the Government will take, we cannot grant any of the reliefs asked for in this appeal by Shri Prasad. We further note that Shri Prasad is going to retire on 2-8-1979 according to his ordinary date of retirement. He may if he so disires apply to the Government for giving him extension to continue till the age of 62 as he submits that technical personnel are retained in service by the Government till the age of 62. Since the writ petition of Shri Prasad is full of allegations against the then Administration as being unfair to him and as having acted mala fide and since most of the officers then dealing with this case must have been changed by now, it is for Shri Prasad to put up his case before the new Administration. It is for the Central Government to take decision as to whether any adverse action is to be taken against Shri Prasad or whether, on the other hand, his services have to be appreciated and he should be given extension to serve till the age of 62. This appeal is, Therefore, dismissed.

(22) C.W. No. 1329/78 : The reliefs claimed in this writ petition are that after the order of retirement is quashed, the order by which Shri Bhat has been appointed as Director General should also be quashed and a fresh Departmental Promotion Committee should be held to consider the appointment of Shri Prasad to get that post. The reasons why the L.P.A. No. 96/78, referred to above, has been dismissed, also apply to this writ petition which is also dismissed for the same reasons.

(23) C.W. No. 174/78 : The prayer in this writ petition is that the records relating to the impugned orders be produced for perusal and scrutiny so that the impugned orders can be quashed. The impugned orders are at Annexures Ix and X to the writ petition. They are for conducting the departmental inquiry against Shri Prasad. Since the order of compulsory retirement has been quashed, there is no inconsistency between the retention of Shri Prasad in service as if no order of compulsory retirement has been passed against him and taking disciplinary proceedings against him. He will have full opportunity of defending himself in such proceedings. This Court cannot interfere with the said inquiry at this stage. This writ petition is also, Therefore, dismissed. Thus all the four cases are

disposed of.