
(2000) 08 MAD CK 0013

In the Madras High Court

Case No : W.A. No's. 767 to 769 of 1998 and W.M.P. No's. 7993 to 7997 of 1998

Union of India (UOI) and Others

APPELLANT

Vs

T.K. Choudhuri

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 21, 311(2), 41

Citation : (2000) 3 LLJ 908

Hon'ble Judges : K. Gnanaprakasam, J; A.S. Venkatachalamoorthy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—The above writ appeals have been filed by the Union of India and others against the common order of

learned single Judge, allowing three writ petitions viz., W.P. Nos. 15071 of 1988, 5601 of 1989 and 12213 of 1990 and in all these writ appeals,

the respondent is same.

2. The respondent herein filed the Writ Petition No. 15071 of 1988, praying the Court to issue a writ of certiorarified mandamus, calling for the

records relating to the enquiry, from the appellants, quash the enquiry proceedings and the order of the 1st appellant made in VI

5014/19/87(L&R) dated September 23, 1988 as illegal and consequently direct the 1st respondent to change the Enquiry Officer and hold the

enquiry afresh at a place other than Seetalpour and Sidhabari. The writ petition was allowed and the appellants have filed the appeal viz.,

W.A.No.767 of 1998. Writ Petition No. 5601 of 1989 has been filed, praying the Court to issue a writ, calling for the records from the appellants

1 to 3 relating to charge memo No. V-15014/6/87/L&R of the 1st appellant and quash the same as illegal. Here again, the writ petition was

allowed and the writ appeal filed against this order is W.A.No. 768 of 1998.

The prayer in W.P.No. 12213 of 1990 is to issue a writ of certiorari, calling for the concerned records from the appellants 1 and 2 relating to the

impugned order No.E-28014/ 14/90/ Pers.II/1069, dated June 29, 1990 and quash the same. The writ appeal filed as against the order in this writ

petition is, Writ Appeal No. 769 of 1998.

3. The necessity for passing common judgment is that, some of the observations /discussions and findings in the first two writ appeals will have a direct relevance to the 3rd writ appeal.

4. Let us proceed to state the case of the respective parties in Writ Appeal No. 767 of 1998 before we take up the exercise of discussing the

acceptability or otherwise of the various claims of the parties.

5. The case of the respondent/writ petitioner is that both himself and 3rd appellant joined as Assistant Security Inspector in June, 1963 at

Durgapur Steel Plant, West Bengal. While he was an active member of the Hindustan Steel Security Force Association, the 3rd appellant was an

active member of a rival Union. According to the respondent as members of rival Unions, there were many altercations between them and in fact,

he was manhandled by the 3rd appellant in 1968. In 1979, the Central Industrial Security Force (in brief ""CISF"") came into force and in 1970, the

3rd appellant joined the said Force as Inspector. The management of Durgapur Steel Plant gave an option to the respondent and others similarly

placed either to join the CISF or go on retrenchment and the respondent opted to join the CISF. The respondent was appointed as Inspector and

joined in that post on August 13, 1970 at Border Security Force, Jollunder, Punjab. The 3rd appellant, who joined the CISF early, completed

training and was posted as Instructor to the Police Training College. According to the respondent, the 3rd appellant, thereafter started humiliating

him before other trainees and officers and even went to the extent of preferring false complaints against him. In 1983, the CISF was converted into

Armed Force. The 3rd appellant was sent to Delhi for a short course to Delhi Head Quarters in July. 1983. The respondent would specifically

claim that on one day, when he was standing outside th officers" Mess, the 3rd

appellant, who was inside the mess, called him in and told him before others that within a short time he would become a Commandant and that he would see some action is taken against the respondent and threatened with serious consequences. According to the respondent, he was posted to Eastern Coal Field, Seethalpur, West Bengal in February, 1986 on temporary duty and later transferred to Madras to the Office of the 3rd respondent, where he joined in June, 1986. The 3rd appellant took over charge as Commandant in Seethalpur in August, 1986. The respondent would claim that to his surprise, received a memo dated October 16, 1986 from the Director General, CISF, calling upon him to explain certain allegations and one of the allegations was that the respondent had kidnapped two Trade Union Leaders and extorted Rs. 15 from one of them. In fact, there was no complaint from either of the said Union Leaders. According to the respondent, he received the above said memo on September 28, 1986. Thereafter, the Deputy Inspector General, Eastern Zone, called upon the 3rd appellant to offer his remarks and he submitted his remarks, accusing the respondent of the misconduct and asserted that the respondent was guilty and recommending that he should be proceeded against. The respondent filed his explanation on November 5, 1986. Nothing happened for a long time and in fact, after a long delay of 11 years, the respondent was served with a charge memo on June 2, 1988, calling upon him to explain why disciplinary action should not be taken. The respondent would contend that he submitted his explanation on June 15, 1988 and the Deputy Inspector General, by an order dated May 26, 1988, informed that the 3rd appellant had been appointed as Enquiry Officer. Following this, on July 1, 1988, the respondent received a memo from the 3rd appellant, directing him to appear on July 6, 1988 for the enquiry at CISF Recruitment Centre at Sidhabari at 10.00 hours in West Bengal. But, as in the meanwhile, the respondent had already been deputed to take part in recruitment of Constable at Karnataka, the Commandant, CISF Unit, Madras Port Trust, informed about the same to the 3rd appellant. According to the respondent that in view of the fact that there had been ill-will between himself and the 3rd appellant, he made a representation to the 1st appellant on July 11, 1988, apprising all the facts regarding the enmity between him and the 3rd appellant and

requested him to change the Enquiry Officer and venue of the enquiry. Apart from that the respondent also pointed out that even though the 3rd

appellant was then posted as Principal at Sidhabari, he was bound to exercise his power to influence the witnesses as Sidhabari is within a

kilometer from Seethalpur within the Eastern Coal Field area and he apprehended that the enquiry would not be fair. Though the request of the

respondent was communicated to the 3rd appellant by the 1st appellant, who should have as per the rules stayed enquiry proceedings, was very

keen in proceeding with the enquiry and was posting the case for various dates. The respondent requested the 3rd appellant, not to proceed with

enquiry, pending orders on his representation to the 1st appellant for change of Enquiry Officer. It was only by a letter dated September 23, 1988,

which was received by the respondent on December 2, 1988, his request for the change of venue and Enquiry Officer was summarily, rejected.

The respondent received a telegram from the 3rd appellant on November 17, 1988 directing him to appear before him on November 19, 1988 at

10.00 a.m. and further making it clear that failing to so appear, the enquiry would be continued ex parte. The request of the respondent to stay the

enquiry was rejected and the respondent received a memo on November 29, 1988, accusing him of failure to attend the enquiry and the enquiry

would go on day to day basis. Since the request of the respondent was rejected by the 1st appellant, the respondent filed the above writ petition.

6. A counter-affidavit was filed by appellants 1 and 2 only. According to the same, that they had to take action because a complaint was received

from one T.N. Shukla, General Secretary of the West Bengal Colliery Mazdoor Congress, addressed to the Chairman-cum-Managing Director,

ECL, Seethalpur, stating that on May 16, 1986, the respondent had manhandled and slapped one Shri Ram Sakal Singh, a loading clerk and took

Rs. 15 from his pocket and the respondent took him forcibly in a Jeep for a distance of about 1 k.m. and let him off. The appellants though would

admit that the respondent was an active member of the Hindustan Steel Security Association, would deny that there was any rival Union as claimed

by the respondent. The appellants' further case is that the explanation given by the respondent was examined in detail and a charge memo dated

May 3, 1988 was served on the respondent on May 6, 1988 and for which, the respondent submitted his representation dated May 14, 1988,

denying the charges. With regard to the request of change of Enquiry Officer, the appellants would contend that there was no bias for the various allegations of enmity made by the respondent and after due enquiry, they had found that the allegations were baseless and the respondent had chosen to level those charges against 3rd appellant only to delay and protract the proceedings. It is also contended by the appellants that the respondent had made reckless allegations and his statement with regard to the distance of Seethalpur from Sidhabari and that the claim of most of the witnesses were then working close by, are all false. It is further stated that the receipt of the respondent's representation dated July 11, 1988, the Director General CISF, by his telegram dated August 12, 1988, directed the Enquiry Officer to stay the further proceedings in terms of Government of India's Instructions and the 3rd appellant was also informed by his letter dated August 30, 1988. It is claimed that the Enquiry Officer was not informed about the respondent's representation to the higher Authorities and only because of that, the Enquiry Officer had proceeded with the enquiry. It is also stated that the order of rejection dated September 26, 1988 for the request of the respondent to change the Enquiry Officer was despatched to the respondent. But, subsequently it was learnt that he did not receive the same. In view of that, another copy was sent on November 24, 1988. As the fact of non-receipt of the said order was not known to the Enquiry Officer, he proceeded with the enquiry after giving notice to the respondent. In view of the fact that the respondent did not receive the copy of the order referred to above in time and he received it only on December 2, 1988, the 3rd appellant viz., the Enquiry Officer was duly informed by a letter dated December 7/8, 1988 to ignore the enquiry held by him prior to December 2, 1988 and to conduct the enquiry afresh after giving notice to the respondent. According to the appellants, the respondent had chosen to make self-serving and false allegations with the sole aim of delaying the proceedings and had stooped to throw baseless, personal and malicious allegations against the 3rd appellant viz., the Enquiry Officer, a conduct unbecoming of an Assistant Commandant of disciplined Force like the CISF. The refusal to change the Enquiry Officer was because the allegations of enmity between the respondent and 3rd appellant are not based on any materials and are wholly unfounded. It is also stated that the plea of the respondent for the

change of venue is equally ill-founded.

7. The learned single Judge after elaborately considering the matter, came to the conclusion that the superiors viz., the appellants 1 and 2 ought to

have removed the 3rd appellant from being the Enquiry Officer and appointed somebody else, particularly in view of the reservations the writ

petitioner had about 3rd appellant. The learned single Judge also found that there has been clear violation of principles of natural justice and that

the respondent/writ petition has to succeed.

8. In the affidavit filed in support of the writ petition, the respondent has alleged that there has been enmity between him and the 3rd appellant for

the past several decades. The details of the same have been furnished by him in the explanation furnished to the show cause notice as well as in the

affidavit. Curiously, no counter affidavit was filed by the 3rd appellant in the writ petition. A common counter affidavit was filed by appellants 1 and

2 and it is stated therein that the 3rd appellant would file a separate counter affidavit, if so advised.

9. It is settled law that if the allegation levelled against a person is not refuted, then it should be deemed to have been proved and correct. In this

regard, we refer to following decision:

a) Smt. Naseem Bano Vs. State of U.P. and others, . In that case, the appellant, was C.T. Grade teacher in the College at the relevant time and

she made a claim that the post of L.T. grade teacher in Home Science should have been filled by promotion and if so filled, she would have been

appointed in the said post, but instead of being filled by promotion, the said post was filled by direct recruitment. The High Court took the view

that the appellant could not be appointed on the post of L.T. Grade teacher by promotion for the reason that on the relevant date she was not

eligible for promotion to the post since she did not possess the minimum qualifications prescribed therefore and further that up to 40% of the total

number of posts in the college could be filled up by promotion and that the appellant failed to establish that 40% of the appointments made in the

college in the L.T. Grade were not made by promotions but by direct recruitment. In fact, in that case, the respondents did not dispute the claim of

the appellant that 40% of the total number of posts had not been filled up by promotion. In the context, the Apex Court ruled as under 1994 I LLJ

84 at 87:

11. Since no dispute was raised on behalf of respondents Nos. 1 to 4 in their reply to the averments made by the appellant in the writ petition that

40% of the total number of posts had not been filled by promotion inasmuch as the said averments had not been controverted the High Court

should have proceeded on the basis that the said averments had been admitted by respondents.

b) On the question as to what will be the position in a case, where a person against whom certain allegations of mala fides are made, though made

a party, keeps quiet without refuting the same, the Supreme Court pointed out in a ruling reported in Express Newspapers Pvt. Ltd. and Others

Vs. Union of India (UOI) and Others, , the Supreme Court observed thus:

In C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, , the Court in a matter arising out of the Motor Vehicles

Act, 1939 where certain allegations against the Minister went uncontroverted, had occasion to administer a word of caution. Where mala fides are

alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refilling or denying such

allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so

remaining unrebutted and unanswered on the test of probability. That precisely is the position in the present ease, in the absence of any counter-

affidavit by any of the respondents. One should have thought that the Minister for Works & Housing should have sworn an affidavit accepting or

denying the allegations made by the petitioners..... .Mala fides on the part of the Government in power or its functionaries would be sufficient to

invalidate the impugned order if they were not exercised bona fide for the purpose for which the power was conferred.

[Italics supplied]

10. Hence, in this case it has to be taken that there has been enmity for the several decades between the 3rd appellant and the respondent. If that

is so, the 3rd appellant should not have been appointed as the Enquiry Officer.

11. That apart, we also find that the attitude of the 1st and 2nd appellants are not commendable for the reason that in the common counter affidavit

filed by appellants 1 and 2, it is stated as under:

Various personal allegations have been made in the affidavit regarding his relationship with the third respondent herein, which are unconnected with as far as the first and second respondents are concerned. Such of those averments are not dealt with hereunder and the third respondent, if so advised would be filing a separate counter-affidavit.

We are not able to appreciate the above stand taken by appellants 1 and 2. The above statement would show how indifferent they were and not willing to face the reality whether be intentionally or innocently. This Court has to proceed on the basis that in spite of the fact that there has been enmity between the respondent and the 3rd appellant, the appellants 1 and 2 appointed the 3rd appellant as an Enquiry Officer.

12. Few other aspects we do take note of:

(a) In the counter affidavit, the appellants 1 and 2 would say that after due enquiry, they found that the allegations of the respondent were baseless.

In fact, the rejection order does not speak of any enquiry conducted by the appellants. That apart, even in the counter affidavit, it is not stated as to whether in the enquiry conducted by the appellants 1 or 2, the 3rd appellant was enquired and if so, what was the stand of the 3rd appellant in the said enquiry.

(b) Curiously, the Enquiry Officer has joined with the appellants 1 and 2 to file this writ appeal.

(c) While filing the counter affidavit in W.P. No. 15071 of 1988 on March 31, 1989, the 3rd appellant did not join and the same was filed only by the appellants 1 and 2. But, in the subsequent writ petition viz., W.P.No. 5601 of 1989 the 3rd appellant also joined with the appellants 1 and 2 and filed a common counter affidavit some where during September, 1989.

(d) The 3rd appellant at the relevant time was in West Bengal and the respondent was in Madras. For the enquiry to be held on July 6, 1988, the respondent received notice only on July 1, 1988. Similarly, for the enquiry scheduled on November 19, 1988, the respondent received a Telex message only on November 16, 1988. Having taken 11/2 years by the appellants to serve a charge memo, what was a hurry for the 3rd appellant to proceed with the matter in a haste. This would in fact go very much in favour of concluding about the strained relationship between the 3rd appellant and the respondent. Under para. 17 of the Government of India's

Instructions, under Rule 14 of C.C.A. and C.C.S. Rules, if any

objection is taken to the Inquiry Officer, the Enquiry proceedings should be stayed immediately by that Officer. But, here, the 3rd appellant is bent

upon proceeding with the enquiry. Is it to be taken that the 3rd appellant is ignorant of the Government of India's Instructions?

(e) It is stated in the counter filed by the appellants 1 and 2 in the writ petition that the request of the respondent to change the Enquiry Officer was,

only to delay and protract the proceedings. It is not as if that to appoint a fresh Enquiry Officer, is a long drawn process and will take months and

years together. It could be done within a couple of weeks. Can the appellants, who slept over for 11/2 years be heard to say that the enquiry

cannot brook a delay of even a couple of weeks?

(f) Though the appellants 1 and 2 would claim in para. 10 of their counter-affidavit that they belong to a disciplined Force, we find the same is not

reflected in their actions. This we are saying with reference to the delay of 11/2 years in issuing a charge memo. Any enquiry must be a real,

meaningful and an effective one. The enquiry is not an empty formality. If the cumulative effect of the facts and circumstances are sufficient to create

in the mind of a reasonable man the impression that there is a real likelihood of bias in the inquiring officer, then in all fairness, the request of the

delinquent to change the enquiry officer must be entertained.

13. We deem it necessary to refer to the following rulings:

In *S. Parthasarathi Vs. State of Andhra Pradesh*, , the Supreme Court pointed out that there must be a "real likelihood" of bias and that means there

must be a substantial possibility of bias. The Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of

his own business. The Court further pointed out that the question is, whether a real likelihood of bias existed is to be determined on the

probabilities to be inferred from the circumstances by Court objectively, or, upon the basis of the impressions that might reasonably be left on the

minds of the party aggrieved or the public at large. In paragraph 16, the Court further observed thus 1973 II LLJ 473 at 477:

16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must

make a determination on the basis of the whole evidence before it, whether a

reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per LORD DENNING, H.R. in Metropolitan Properties Co. (F. G. S.) Ltd. v. Lannon and Ors., etc.) We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings.

In *Indrani Bai (Smt) Vs. Union of India (UOI) and Others*, , when a delinquent officer alleged bias against the Enquiry Officer and if that was not taken note of or ignored, then the delinquent officer has every reason to complain against the attitude of the superiors. In the said ruling, the delinquent officer had right through entertained a doubt about the impartiality of the Enquiry Officer. He made a representation at the earliest, requesting for change of Enquiry Officer, however, which was not accepted. The Supreme Court, in that case, found that this was wrong notice and observed that the request of the delinquent officer to have the Enquiry Officer changed, ought to have been granted and that there had been violation of principles of natural justice and fair play of offending Articles 41, 21 and 311(2) of the Constitution of India.

14. From the foregoing discussions we are inclined to come to the conclusion that the impugned order is contrary to law and against the principles of natural justice and consequently, it is liable to be quashed. The learned single Judge rightly allowed the writ petition.

15. The next question is, what should follow. Is it appellants 1 and 2 to appoint another Enquiry Officer and proceedings to be continued against the respondent. The alleged irregularities against the respondent were in the

year 1986. The stay was obtained in the year 1989. The respondent is also now aged more than 60 years and it appears he is suffering from cancer. As to what steps the appellants took to get an early disposal of this writ petition, we are not aware. The pecuniary loss to the Government if charges are proved, may be to the extent of round about Rs. 1,000.

Inasmuch as we have come to the conclusion that the 2nd appellant had passed patently an erroneous order and there was inordinate unexplained delay in issuing the memo of charges and that further now more than one decade is over, we hope, in fact rather recommend that the Union of India may not proceed with the enquiry afresh by appointing a new Enquiry Officer, on the other hand will give a quietus to the matter by closing the file/proceedings forthwith.

16. The writ appeal No. 768 of 1998 has been filed against the order in W.P.No. 5601 of 1989.

17. The writ petition came to be filed under the following circumstances. According to the respondent, he received a memo on February 17, 1989

bearing No. V-15014/6/78 L&R, dated February 10, 1989, calling upon him to explain some charges relating to some alleged misconduct

supposed to have been committed by him during the year 1983. The respondent while denying the charges by his letter dated February 26, 1989,

requested the appellants to furnish him with copies of certain documents, which are necessary to file his explanation since the alleged incident was

in the year 1983-84. This request was rejected by a letter dated March 21, 1989 of the Deputy Inspector General without assigning any reason

but merely stating that the documents would be shown in the enquiry. The respondent further stated in the affidavit filed in support of the said

petition that as per para 5 of D.O.No. 18013/5/87-Vs dated July 24, 1986 of the Ministry of Home Affairs enclosing a copy of D.P. & T.D.O

letter No. 134/2/83/AVD 1 dated May 2, 1985 as also para 3 of Force Head Quarters Circular 46/87 dated November 12, 1987 and para 5(f)

of the Force Head Quarters letter 15011/1/79 L&R dated September 25, 1980, he is entitled to copies of all materials that are relied upon by the

prosecution and necessary for him to submit his statement of defence before any oral enquiry is conducted and that as per CISF Circular No. 6/86

dated January 28, 1986, the appellants are obliged to hold a preliminary enquiry

and he is entitled to a copy of such preliminary report to file his explanation to the charge memo, which had also been denied to him. The respondent also took a stand that action had been initiated only to victimise him for having filed the earlier writ petition. The respondent also apprehends that the files with regard to the earlier memo calling for explanation have been subsequently tampered with by some interested persons by removing the note/ report made therein by the then officers, taking advantage of the fact that those officers had retired, in order to victimise him for filing the earlier writ petition. The respondent also pointed out in the affidavit that during the period the incident took place, he was directly working under Group Commandant, Calcutta Lt. Col. S.M.Lal and whatever respondent had done in the Unit, he had the prior approval of the, said Lt. Col. S.M. Lal and that he, in fact, appraised some of the important matters to D.I.G. (EZ) with the consent of Group Commandant. It is his specific case that both the Officers are no more in service and taking advantage of this, the correspondences and notes that were made during their time have been suppressed in order to hold him guilty. In fact, in his letter dated February 26, 1989, he requested that the copies of documents may be furnished to enable him to submit his written statement of defence and that the same has been refused by Deputy Inspector General by his communication dated March 21, 1989.

18. The appellants filed a common counter affidavit. With regard to the claim of the respondent that the appellants failed to supply copies of documents, they would state that they are bound to supply only those documents relied upon and cited on behalf of the disciplinary authority. The respondent had requested for supply of documents not relied upon and hence no prejudice will be caused to the respondent by non-supply of copies of documents requested for and in fact, the respondent is permitted to see those documents at the time of the enquiry. According to the appellants, there is no circular under which the respondent could claim copies of the documents with regard to the preliminary enquiry. The appellants would contend that the report of preliminary enquiry is a confidential document and hence the charged officer would not be entitled to a copy of the same. According to the appellants, the letter dated February 18, 1986 was not a charge memo and only the memo dated February 10,

1989 was a charge sheet and that was issued after the disciplinary authority was satisfied that *prima facie* case existed against the respondent.

19. While these proceedings were pending, on April 16, 1990, the respondent was served with another memo dated April 16, 1990, bearing

No.V-15014/6/L&R/350, alleging that the respondent failed to attend a meeting on August 28, 1989, called by the Commandant to discuss

security arrangement in connection with the Bharat Bandh and that on the evening of the same day, he had used abusive language against Dy.

Commandant Sri. S.P. Dwiwedi and tried to assault him when he asked the respondent the reason for not attending the meeting. The respondent

denied those allegations in his letter dated April 29, 1990. The respondent requested copies of certain documents, but however, copies of only few

documents were furnished. On June 16, 1990, the respondent made a request to the appellants to withdraw the charge memo.

Shortly thereafter viz., on June 29, 1990, the orders were passed under Rule 56(j), compulsorily retiring the respondent from service on July 7,

1990 and the respondent was relieved from service. Questioning this compulsory retirement, W.P.No. 12213 of 1990 was filed by the

respondent. The main ground of attack in the said writ petition is that the order is arbitrary, passed with *mala fides* and the same is nothing but a

misuse of power conferred under F.R.56 (j). The respondent also contended that such power can be exercised only where the integrity of the

Government employee is doubtful or where one has become ineffective. The respondent also contended that the powers under F.R.56(j) have

been invoked against him only as a short cut method to avoid formal disciplinary proceedings and it is a colourable exercise of power and

therefore, the same is liable to be set aside. According to the respondent, there was no adverse remark regarding his integrity or effectiveness has

ever been communicated to him.

20. The appellants resisted the writ petition viz., W.P.No. 12213 of 1990; contending that the review committee after considering the entire

service records of the respondent, decided that he was unfit to continue beyond 50 years. It is also specially stated that no *mala fides* could be

attributed. In the counter-affidavit, the appellants stoutly denied the allegation that the impugned order is a cover up for the real purpose of

punishing for the alleged misconduct without holding enquiry. The power conferred under F.R.56 is an absolute one and the same is being invoked

by the Government to weed out Government servants, who have outlived their utility and have become ineffective and also whose integrity is

doubtful. The intention is to improve the efficiency and strengthening the administrative machinery at all levels of the Government and to provide a

clean administration. As far as the present case is concerned, the case of the appellants is that the Review Committee consisting of (1) Home

Secretary to the Government of India, Ministry of Home Affairs Chairman, (2) Joint Secretary, Department of Industrial Development Member

and (3) Deputy Secretary (CPO.), Ministry of Home Affairs Member, after considering the overall records of the respondent found him unsuitable

for retention. In the counter-affidavit, it is also denied that the said order had been passed to circumvent the enquiry proceedings which had been

initiated against the respondent and that the impugned order is legal, valid and passed by the competent authority. According to the appellants, the

records of the respondent were not good and in that, there were many adverse reports during his service and he also earned four punishments and

it was only on the basis of appreciation of overall service records of the respondent, the review committee did not recommend his retention.

21. Going back to the W.P.No. 5601 of 1989, the learned single Judge came to the conclusion that the failure on the part of the appellants to

furnish copies of the documents sought for by the respondent to prepare his case, has caused considerable prejudice and consequently, it has to be

held that the appellants had not acted fairly. The learned Judge also found that a long delay in initiating proceedings has also to the great

disadvantage of the respondent and consequently, the writ petition has to be allowed for those reasons.

22. The points have to be considered. Firstly, whether the appellants are justified in refusing to give the copies of certain documents sought for by

the respondent, aid only permitting him to inspect the documents and to prepare his case personally during the enquiry. Secondly, whether the

proceedings are liable to be quashed in view of the long delay in initiating the proceedings.

23. The statement of article of charges framed against the respondent sets out three charges viz.,

(a) in 1983 - 84, the respondent has drawn an advance of Rs. 3,500 from the HFCL Management for the purchasing of sports items and

submitted bills dated December 3, 1983 for Rs.3,518.35 to the Management and that the sports articles as shown in the cash memo bills were

however not taken on ledger charge of the sports item, but endorsed a false certificate under his signature, stating ""Bills verified and taken on ledger charge.

(b) while functioning as Assistant Commandant in CISF Unit, HFCL Namrup, though sufficient Head Constable Drivers were available, irregularly

utilised the service of Constable D.B, Behera for driving Government vehicle; and

(c) while functioning as Assistant Commandant in CISF Unit, HFCL Namrup, misappropriated an amount of Rs. 1,935 from Canteen Fund on the

eve of farewell to Group Commandant, CISF Calcutta on September 14, 1984.

24. Deficiency in the stock is the first charge. Admittedly, the purchase was in the year 1983. Now, the respondent, to answer this charge, requires

the documents viz.,

(1) Copies of Annual Physical stock verification report as on March 31, for the year 1983 - 84, 1984 - 85, 1985 - 86 and 1986 -87 for the items

provided by the management to CISF unit HFCL Namrup.

(2) Copy of handing over/taking over charge report between Asst. Commandant and Deputy Commandant on February 28, 1985 regarding unit

stores of HFCL Namrup.

(3) A copy of the complaint made by the Management of HFCL Namrup regarding discrepancies detected by them with regard to the sports items

procured during December, 1983. It may be that the appellants may not rely on these documents, but certainly, these documents are absolutely

necessary for the respondent before he gives a written statement of defence. That being so, to permit the respondent to inspect the documents

during the enquiry would not be sufficient and such an enquiry cannot be a meaningful or effective enquiry.

25. The second charge is that the respondent utilised the service of a Constable to drive a vehicle, when the regular Head Constable drivers of that

Unit were available. To answer this, the respondent requested the Duty Registers of Drivers for the period from January, 1980 to September,

1983 of CISF Unit HFCL Namrup. Certainly, the respondent would not be in a position to answer that charge without the document. The

appellant should have permitted him to see the documents even before filing written statement of defence and if he desires to have copies of those

documents, then the same should be furnished to him on payment of charges.

26. With reference to third charge, it could be noticed that it is not known as to which period it relates to. The charge is very vague. We are

surprised that an Officer in the rank of Deputy Inspector General has not even applied his mind before framing/approving such a charge. The other

two document copies, which the respondent sought for are:

(1) A copy of the report submitted by DIC (EZ) CISF Calcutta.

(2) A copy of the preliminary enquiry report along with statement of allegations made.

The circular No. 6 of 1986 dated January 28, 1986 issued by the Director General, CISF (Ministry of Home Affairs) deals with holding of

preliminary enquiry. According to para 3 of the said circular, preliminary enquiry must be instituted at the first instance and regular departmental

enquiry is to be only on the basis of preliminary enquiry report. The subsequent circular No. 46 of 1987 dated November 12, 1987 had been

issued by the very same Officer. In that circular, paragraph 3 is to the effect that if there is a report of preliminary enquiry, the delinquent must be

furnished with a copy thereof and afford an opportunity to meet and, that unless these formalities are gone through, the regular departmental

proceedings are liable to suffer from legal infirmity. In this case, it is not known whether any such preliminary enquiry was conducted. But the

document dated March 21, 1989 implies that there is a preliminary report available.

The claim of the respondent for a copy of preliminary report is resisted by the appellants, contending that in view of the ruling of the Apex Court,

reported in Krishna Chandra Tandon Vs. The Union of India (UOI), , that the preliminary report being in the nature of inter-departmental

communications between officers preliminary to the holding of the enquiry, have really no importance, unless the Enquiry Officer wants to rely on

them for his conclusion and only in that case, it would be right that copies of the same should be given to the delinquent. Inasmuch as the

Department is not relying on the preliminary report, the copy of such a report need not be given. This claim of the appellants have to be negated

for two reasons:

(1) The Department having issued a Circular No. 6/86, dated January 28, 1986 to the effect that if there is a report of the enquiry, the delinquent

must be furnished, with a copy thereof, cannot now go back and cannot place reliance on the said ruling,

(2) The Supreme Court of India, in State of U.P. Vs. Shatrughan Lal and Another, , ruled that the opportunity that is given to a delinquent must be

an effective opportunity" and not mere a presence and that if copies of documents proposed to be utilised are not supplied to him and he is at the

same time, called upon to submit his reply, no effective opportunity to defend provided to him, so also, copies of witnesses statements recorded

during preliminary enquiry have to be furnished. As noted supra, in this case, the charge appears to be a deficit in stock. Unless the documents that

are sought for by the respondent are furnished, it would not be possible for him to furnish a statement in reply. It is not as if the respondent is

requesting for copies of those documents endeavored to find out as to whether there are any irregularities committed by the appellants.

To sum up, we come to the conclusion that the respondent was fully justified in asking for copies of documents as the same would be very relevant

for him to file written statement of defence. The appellants cannot be heard to say that the respondent could peruse the documents and present his

case during enquiry.

27. With regard to the delay, the alleged irregularities were committed in the year 1983-84. It is not known as to why the appellants kept quiet all

these years. No explanation has been given by them. The appellants should not have taken their sweet time to act. In the absence of any

explanation, in the background of the earlier litigation, this Court is only rather driven to come to a conclusion that the memo came to issued with

bad intention to harass the respondent. The inordinate delay would certainly cause hardship and irreparable loss to the respondent and

consequently, the impugned memo dated February 10, 1989 and the statement of article of charges are rightly quashed.

28. In this regard, we deem it necessary to refer to few rulings. In V.S.

Ramanarayanan v. The Food Corporation of India, 1984 T.N.L.J. 123, a

Division Bench of this Court had occasion to consider the hardships that may be caused to the delinquent in such cases. To quote the relevant

passage:

... As contended by the learned counsel for the petitioner, it will be impossible for the petitioner to remember the identity of witnesses whom he

could summon to appear before the Inquiring Authority to support his case. Even if he could summon their presence, it would be a doubtful

proposition to remember what happened more than six year back and help him in his defence. Further more, the petitioner may not be in a position

to effectively cross-examine the witnesses to be examined on the side of the Department in support of the charges. Practically, it would be a

doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and

advance the case of either the Department or the petitioner.

....The repercussions of unexplained delay when prejudice has been made out will be the same both in the case of initiation of disciplinary action.

.....the delay, as spoken against the Department, will constitute denial of a reasonable opportunity to the petitioner to defend himself and that it

would amount to violation of the principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone.

In The State of Madhya Pradesh Vs. Bani Singh and another, , it was held at p. 530 of LLJ as under:

4. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of

the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977

there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is

unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the tribunal. There is no

satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the

department enquiry to be proceeded with, at this stage.

In Kashinath Dikshita Vs. Union of India (UOI) and Others,

9. When a Government servant is facing disciplinary proceedings, he is entitled to be afforded a reasonable opportunity to meet the charges

against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless copies of the relevant

statements and documents to be used against him are made available to him. In the absence of such copies, the concerned employee cannot (sic)

prepare his defence, cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible.

In Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, , the Supreme Court ruled as under at 626 of LLJ:

6..... In the first instance, the delinquents should be given opportunity for inspection. and thereafter the enquiry should be conducted and then hear

the delinquent at the time of conclusion, of the enquiry.

In State of "U. P. v. Lal and Anr., (supra), it was held thus : (1998)IILLJ799SC :

4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of

hearing. This opportunity . has to be an effective opportunity and not a mere pretence. In departmental proceedings where chargesheet is issued

and the documents which are proposed to be utilised against that person are indicated in the chargesheet but copies thereof are not supplied to him

inspite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was

provided to him. Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), , Kashinath Dikshita v. Union of

India and Ors. (supra), State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., .

29. We are in entire agreement with the reasonings and findings arrived at in W.P.No. 5601 of 1988. Consequently, we dismiss the Writ Appeal

No. 768 of 1998.

30. The Writ Appeal No. 769 of 1998, as pointed out earlier, has been filed against the order in W.P.No. 12213 of 1990 in which, the

respondent questioned the order of compulsory retirement. The learned counsel appearing for respective parties endeavoured to explain the legal

position and placed various rulings. We point out the legal position and the reference hereunder:

31. The power conferred under F. R. 56(j) is an absolute one. But, that does not (sic) mean that judicial scrutiny is excluded altogether. The Court can interfere, if it is satisfied that the order is passed mala fide or that it is based on no evidence or it is perverse or arbitrary in the sense that no reasonable person would form the requisite opinion on the given material. An order of compulsory retirement is not a punishment and it implies no stigma nor any suggestion of misbehaviour. The order is passed on the subjective satisfaction of the Government. The High Court cannot examine the same as an Appellate Authority. The correctness of the opinion cannot be challenged. Similarly, the High Court cannot examine the records and substitute its own opinion. What the High Court has to see is as to whether the Officials acted bona fide in the public interest. To say that they acted mala fide, there must be a specific and clear pleading and proof. What is to be seen is, the entire records of the Government servant, more particularly of the later years. Not only communicated remarks, but uncommunicated remarks can also be looked into. Some observations/ notings, which may not amount to adverse remarks, shall also be taken note of. The efficiency and integrity are the relevant criteria. The order of compulsory retirement need not be a speaking order and the order need not say that the same has been passed in public interest. Even if the disciplinary proceedings are pending against the Government Servant, the Government can invoke this rule.

(1) R.L. Butah Vs. Union of India (UOI) and Others, ; (2) Gian Singh Mann Vs. High Court of Punjab and Haryana and Another, ; (3) J.D.

Srivastava Vs. State of M.P. and Others, ; (4) Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , (5)

Posts and Telegraphs Board and others Vs. C.S.N. Murthy, ; (6) Union of India (UOI) and Others Vs. Dulal Dutt, , (7) Chief General Manager,

State Bank of India, Bhubaneswar and others Vs. Suresh Chandra Behera, ; (8) I.K. Mishra Vs. Union of India and Others, ; (9) State of M.P.

and Others Vs. Indra Sen Jain, ; (10) M.S. Bindra Vs. Union of India and Others, ; (11) State of Gujarat v. Surya Kant Chunilal Shah .

32. Before we embark on the discussion as to whether the order of compulsory retirement is liable to be quashed for any reason, we deem it

necessary to refer to the following decisions. The legal position made clear in the rulings to be borne in mind while considering the matter. It has

been held in Baldev Raj Chadha Vs. Union of India (UOI) and Others, :

... So it is that we must emphatically state that under the guise of "public interest" if unlimited discretion is regarded acceptable for making an order

of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To

constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just protected. The exercise of power must be

bonafide and promote interest. There is no demonstrable ground to infer mala fides here and the only infirmity alleged which deserves serious

notice is as to whether the order has been made in public interest. When an order is challenged and its validity depends on its being supported by

public interest the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever

which to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of "public interest" justifying forced retirement of the

public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled

in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well known and we are confined to

an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer

considered is necessary in public interest.

18... A short cut may often be a wrong cut. The order of compulsory retirement fails because vital material, relevant to the decision, has been

ignored and obsolete material, less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of

overlooking or ignoring wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up

obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained. Legality depends on regard or the totality of

material facts viewed in a holistic perspective. For these reasons, the order challenged is obviously bad and we quash it.

It has been held in Anoop Jaiswal Vs. Government of India and Another, as follows:

10. As observed by RAY, C.J. in Samsher Singh 's case, the form of the order is

not decisive as to whether the order is by way of punishment

and that even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into

allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2).

12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always

open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that

the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be

debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.

In Ram Ekbal Sharma Vs. State of Bihar and another, , it has been held by the Supreme Court that:

13....if challenged, the Court, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government

servant concerned or the order has been made bona fide and not with any oblique or extraneous purpose. Mere form of the order in such cases

cannot deter the Court from delving into the basis of the order if the order in question is challenged by the concerned Government servant.

33. We called upon the appellants to produce the original confidential character roll of the respondent. The legal position is that the entire service

must be taken into consideration in judging a person; more importance will be given to the later years. We find the following notings in the

confidential file:

January 1975 to October, 1975: Independence of judgment; Satisfactory. Initiative and Drive: Good. Temperament; Normal. Capacity of

commanding respect: Satisfactory. Enforcing discipline: Satisfactory. Leadership: Can take the leadership of any nature of work. Promptness in

disposal of work: Quite prompt. Management; Satisfactory. Control of Crime: Efficient. Capacity of enquiring into cases: Quite good. Loyalty and

fidelity: quite loyal. Grading: Average. Fit for promotion: Yes.

Considering the various remarks/ assessments under the different heads, whether overall grading as average is correct? We are putting this

question because, under none of the headings, the assessment was average.

November 1975 to August, 1976: The assessment, under the various heads are either adequate or satisfactory. There is a noting by the Reporting

Officer viz., the Assistant Commandant that his attitude towards superiors was indifferent.

But, however, the Reviewing Officer viz., the Superintendent of Police has made a note as under:

I do not fully agree with the remarks of Reporting Officer, specifically in his attitude towards superiors. The Officer has proved himself to be of

average calibre, and his behaviour conduct, training and drill was found to be satisfactory during the period under review.

The DIG viz., the remarks of the higher Authority is to the effect that the respondent was argumentative with his seniors when orders given:

Probably, the DIG has endorsed the view of the Reporting Officer, ignoring the view of the Reviewing Officer. The DIG cannot have a personal

knowledge in this regard.

August, 1976 to December, 1976: The notings under various heads invariably are average and his integrity is beyond doubt. The Reporting Officer

has stated that the respondent was respectful and obedient and he was further reasonably prompt and accurate and generally liked and respected.

But, however, the Reviewing Officer would not agree with the remarks of the Reporting Officer.

January, 1977 to December, 1977: The assessment was generally adequate and average. It further says that the respondent has promptly come

forward and accepted responsibilities. With regard to the quality of work, the grading was good. It is also mentioned that he was respectful and

obedient to superiors and he was liked and respected. There is also a noting that his integrity was beyond doubt and he was reasonably prompt

and accurate in submission of reports. This assessment of the Reporting Officer was accepted by the Reviewing Officer, so also by the Deputy

Inspector General.

January, 1978 to November, 1978: The assessment was average. The promptness in disposing was found to be satisfactory and he had the ability

to assess situations and he could manage the situations and respond to them. He was further found to be respectful and obedient and generally

respected. He was also found to be reasonably prompt and accurate. This noting of the Reporting Officer was accepted by the Reviewing Officer

viz., the Commandant. In fact, it is noted that,

/ agree with the report of the Initiating Officer, He had improved considerably and proved that he can do well as a Coy. Commander.'"

The DIG also agreed on these remarks.

January 1979 to December, 1979: The general assessment was adequate. He was found to be reasonably prompt and accurate in submission of

reports and also pays adequate attention. The respondent was found to be liked and respected by others. This was accepted by the Reviewing

Officer as well the DIG.

January, 1980 to July, 1980: The assessment under various heads varies (i.e.,) adequate/average/satisfactory. For the first time, he was found that

there is a noting under the heading leadership - command and control, poor needs improvement. Similar notings are also found under the heads of

maintenance of discipline. With regard to the promptness and accuracy in submission of reports, he was found to be slow, but accurate and with

regard to maintenance of records and registers he was found to be satisfactory. He was warned for absenting during office hours. These notings of

the Reporting Officer was endorsed by the Reviewing Officer and D.I.G.

July, 1980 to December, 1980: The grading under various heads are, average/adequate/good.

January 1981 to December 1981: We would like to extract the notings here as under:

Professional knowledge: Good. Aptitude for intelligence work: Very good. Initiative and drive (Leadership) In good measure. Command and

control: Good. Organising ability: Good. Administrative ability: Good. Maintenance of discipline: Good, Promptness in disposal of work:

Adequate. Control of Crime: Good. Capacity for enquiring cases: Good. Knowledge of rules and regulations: Good. Attitude towards superiors:

Respectful and obedient. Relation with others: Generally liked and respected. Integrity: Not questioned. Promptness: Prompt and accurate.

Outstanding work: Inspector has put in hard work while attending Court case.

This was endorsed by the Reviewing Officer. The D.I.G. has noted that work and conduct ""remained satisfactory"".

January 1982 to December, 1982: The assessment under various heads are average/ adequate/good..

January 1983 to September, 1983: Generally, the assessment was good. In fact, with regard to aptitude for intelligence work and ability to work in

a team and promptness in disposal of work were found to be good He was also found to be reasonable and accurate in submission of reports and

also says attention to the maintenance of records. This noting of the Reporting Officer was found to be endorsed by the Reviewing Officer as well

as D, I. G.

October, 1983 to March, 1984: When he was posted to lead a sensitive unit, it was found that he was not fit enough. This was endorsed by the

Reviewing Officer and the D.I.G.

April, 1984 to October, 1984: The assessment was, that he was hard working and diligent officer and quite popular with all and that he carried out

his duties quite satisfactorily. The professional administrative knowledge was quite adequate. The Reviewing Officer has also noted that, ""quiet,

unassuming, intelligent officer. His performance during the period under review was satisfactory"". The overall assessment was average.

In view of the assessment made under different heads as above, the question is, whether the overall assessment as average is correct?

November, 1984 to March, 1985: The general overall assessment was average.

July 1985 to February 1986: The Reporting Officer has noted as under:

He should develop more confidence in his work. Non dependable officer"".

Whereas the Reviewing Officer has completely disagreed with the Reporting Officer and he has noted as under:

No. The initiating officer did not utilise the AC for any work on the plea that he had far too many ACs. So I attached this AC to another Unit

where the AC was on long leave and there Shri. Choudhury worked well. He is a sincere officer who knows his work.

The general assessment was average.

On the basis of the Reviewing Officer's assessment, can the general assessment be only average?

September 1986 to March, 1987: The noting was, ""He is an intelligent and hard working officer with a sound knowledge of rules and regulations.

Since he was confined to a desk job he could not display most of his abilities. But he gave a satisfactory performance as Asst. Comdt. Trg.

Reserve. He corrected himself when his faults were pointed out. He can express his views effectively on paper and in discussion. He pulled on well

with his colleagues and subordinates. His leadership qualities are average. He can work in a team. He cared for the welfare of this subordinates.

He is dependable "".

The Reviewing Officer has also agreed with that and made an endorsement that:

""An average type of officer who discharges responsibilities when the same are given to him. Carries on his daily work without complaining about that.

May, 1987 to August, 1987: The general assessment was average. There is a noting by the Reporting Officer to the following effect that,

An intelligent and work knowing officer. His power of expression on paper and in writing is good. His ability to assess situations and to take

action is satisfactory. Maintains satisfactory relations with the colleagues. Has concern for welfare of subordinate Quality of leadership is

satisfactory. He does not pay adequate attention to details.

The Reviewing Officer had noted that:

A work knowing officer who has done well during this year.

The above assessment by the Reviewing Officer would only show that the overall assessment can be only satisfactory.

August, 1987 to March, 1988: The grading was "good".

The Reviewing Officer has noted that:

A well turned out and quiet type of officer whose performance has improved considerably as compared to last year. With more opportunity he

should be able to do much better.

May 1988 to December 1988: The grading was average.

December 1988 to March, 1989: Grading was average. There is also a noting that:

His performance during the period of reporting was average. Though quite capable of working he did not take much interest in improving his

quality of out put. Perhaps the charge he is facing has hampered his enthusiasm.

The Reviewing Officer has noted that:

He is a capable officer, but has not put his heart and soul together in his job.

It may be noted that the respondent was facing two enquiries, subject matter of W.P.Nos. 15071 of 1988 and 5601 of 1989 during this period.

April, 1989 to November, 1989: The assessment was below average and there is a noting by the Reporting Officer that:

Insincere, disinterested, unreliable officer

But, however the Reviewing Authority has made as under,

I am unable to agree with the summary remarks of the Reporting Officer. This officer has been working in the intelligence branch from November,

1989 till this date. I found him to be quite prompt and hard working I rate this officer as "good." He is intelligent and hardworking.

The grading was good. However, the Inspector General has made the following remarks:

Seen. Adverse remarks to be communicated. Grading of the DIG is not supported by any justification. To be graded as below average.

34. We make it clear that we have referred to the file in extenso not with an intention to assess the officer from his service records afresh and

project our assessment in the matter The Court is also aware that it cannot substitute its view to that of the Department.

35. We referred the above to point out the following:

The observation by the Joint Secretary, Department of Industrial Development, in the file, concerning the order of compulsory retirement is:

Indeed, satisfactory or good annual remarks have been an exception in his case.

cannot be correct. Certainly the respondent cannot be said that he must be graded as poor.

(b) His integrity was beyond doubt.

(c) The averments in para 12 of the counter affidavit that there were some adverse remarks and a few punishments, appear to be true. But,

however, it cannot be said that the service record is studded with adverse entries. But, the question is, what importance can be given for these

remarks. We have also referred to this aspect in the later part of the judgment. Invariably at least for several periods the overall assessment goes

contrary to individual assessment under various heads.

(d) Even among officers viz., the Reporting Officer, Reviewing Officer and the D.I.G. there had been serious difference of opinion in assessing the

respondent during some periods. One can understand a minor difference of opinion But, one officer taking one extreme view and other officer

completely differing from it and taking just an opposite view cannot be well appreciated. For instances, at the risk of repetition, we may point out

one instance just for illustration out of what has been extracted as above. For the period July, 1985 to February, 1986, the Reporting Officer has

noted that the respondent should develop more confidence in his work and he was not a dependable officer. However, the Reviewing Officer viz.,

the D.I.G. has given a strong dissent note and has observed as under:

No. The initiating officer did not utilise the AC for any work on the plea that he had far too many ACs. So I attached this AC to another Unit

where the AC was on long leave and there Shri Choudhury worked well. He is a sincere officer, who knows his work." (also see the assessment

for the period November, 1975 to August, 1976, already referred).

36. Then, the question would arise, whether this difference of opinion was because of some personal reasons of animosity between the Officer,

who made the notings and the person concerned? What importance can be given to these assessments, then? Is it safe to rely on?

37. We find a communication sent by the Assistant Inspector General, dated February 18, 1986 to the respondent, calling upon explanation. One

of the allegations was as under:

Being the unit Comdr. of CISF Unit, HFCL Namrup you failed to organise the Independence day parade held on August 15, 1984 properly. As

a result of which the National Flag was not unfurled in time causing disregard to the National Flag in presence of VIPs. and others". :

38. When an explanation was called for in February, 1986 with reference to some alleged lapses in arranging the Independence Day parade held

on August 15, 1984, we have to necessarily come to an irresistible conclusion that something basically wrong with the very functioning of that

Division/Office in this context, we recall the counter affidavit filed by the appellants 1 and 2 in the Writ Petition No. 15071 of 1998, where it is

proudly claimed that the CISF is a disciplined force. If a disciplined force had for no reason to take 20 months to take action against certain lapses

that had happened that too during the Independence Day parade, we have to rate the performance of that office/Division only as very poor at the relevant time. If that is so, what is the importance to be given for the assessment made by the Officers of that Division?

39. In this context, we have to refer to the earlier two writ appeals, where we noticed the following:

(a) there was delay of 11 years in the 1st writ appeal for the appellants to issue the charge memo and there was no explanation for that.

(b) the appellants in W.A.768 of 1998 took 6 years to issue a charge memo. Here again, no explanation is forthcoming.

(c) the case of the appellants 1 and 2 in the first writ appeal is that the respondent asked for change of Enquiry Officer is, only to delay the

proceedings. If really that was a reason, which weighed with the appellants, they could have instead of waiting for 10 years before this Court,

moved this Court and acceded to the request of another enquiry officer and also sought for necessary direction to complete the enquiry within a

time schedule.

40. When we entertain our serious doubt and are inclined to describe the way of functioning of the said office/Division as ineffective and poor,

what importance can be attached to the various adverse notings even if studded made by the officials against the respondent? We are only

constrained to come to an irresistible conclusion that the relying of adverse entries in the service records of the respondent would only result in

arbitrary exercise of power,

41. At the first instance, a file was produced before this Court. That file contains a typed sheet, which contains four columns viz., (1) Period of

Report, (2) Brief Assessment, (3) Integrity and (4) Adverse Remarks, If any. The relevant noting therein for the purpose of discussion is extracted

hereunder:

Period of Report Brief Assessment

November 1, 1984 to March 31, 1985 Adverse

May 4, 1987 to August 14, 1987 Adverse (Average)

May 12, 1988 to December 1, 1988 Adverse

December 5, 1988 to March 31, 1989 Adverse

The learned single Judge, considered the matter, placing reliance on these entries and in fact, also quoted in his order. Obviously, the Review

Committee Members also placed reliance on that. However, when we examined the correctness or otherwise of the above notings with the original

Confidential Character Roll, we find that in fact, for the said four periods referred supra, the assessment in the original Confidential Character Roll

reads as average and not adverse.

Who is responsible for this? we are not able to find out from the files. However, we record our total dissatisfaction and it is rather disheartening.

Whoever be the Officer, this is a serious mistake. We do not understand how such mistakes have crept in and it does not seem to be a bona fide

mistake. This is yet another circumstance, which would further corroborate the finding that the impugned order of compulsory retirement came to

be passed with mala fides.

42. In this context, we are inclined to refer to the ruling of the Apex Court in a decision reported in *The State of Gujarat and Another Vs.*

Suryakant Chunilal Shah, :

26. The performance of a government servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the

efficiency, honesty or integrity of a government servant is to look at his character roll entries for the whole tenure from the inception to the date on

which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall

categorisation of the employee is poor and there is material also to cast doubts upon his integrity such a government servant cannot be said to be

efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "integrity". If this is missing the, whole bundle would

disperse. A government servant has, therefore, to keep his belt tight.

(Italics supplied)

43. We have discussed enough and we hold that the order of the President in No.E28014/14/90/Pers.IM069, dated June 29, 1990, is liable to be

quashed and accordingly quashed on the ground that the same came to be passed not in the public interest but with mala fides in an arbitrary way.

44. In the result, all the three writ appeals are dismissed with costs of Rs. 3,000 in each of the writ appeal payable by the respective appellants to

the Tamil Nadu State Legal Services Authority, High Court of Madras, Chennai-104, within a period of three months from today. Consequently, connected W.M.P. Nos. 7993 to 7997 of 998 are also dismissed.

45. Now, that the respondent has retired from service, the appellants shall take immediate steps to settle all benefits and amounts due to the

respondent within a period of three months from today. After so complying, the appellants- shall send a report of the same to the Registrar of this

Court.