
(1999) 10 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 2521 of 1998

Union of India (UOI)

APPELLANT

Vs

S.S. Ahluwalia and Others

RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16(3), 6
All India Services (Discipline and Appeal) Rules, 1969 — Rule 8
All India Services Act, 1951 — Section 3(1)
Arms Act, 1959 — Section 39
Constitution of India, 1950 — Article 226, 310

Citation : (1999) 3 GLT 419

Hon'ble Judges : Brijesh Kumar, C.J; D.N. Chowdhury, J

Bench : Division Bench

Advocate : K.K. Mahanta, for the Appellant; V.K. Hansaria and M.K. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—The core issue raised in this proceeding under Article 226 of the Constitution appertain to the validity of the order No. 25013/21/89-AIS(II) dated 7.1.93 communicated vide Memo of the Joint Secretary to the Govt. of India, Ministry of Personnel, Public Grievance and Pension, Department of Personnel and Training, compulsorily retiring the Respondent No. 1 from service in exercise of powers conferred by Sub-rule (3) of Rule 16 of the All India Services (Death cum Retirement Benefit) Rules, 1958, hereinafter referred to as "the Rules". The above order was first assailed by the Respondent No. 1. in Original Application No. 66 of 1993 before the Central Administrative Tribunal, Guwahati Bench, Guwahati, hereinafter referred to as "the Tribunal" and the learned Tribunal by judgment and order dated 24.11.97 allowed the application and set aside the order dated 7.1.93. The legality and propriety of the judgment and order dated 24.11.97 in Original Application No. 66 of 1993 of the Tribunal is the subject matter of this proceeding. The above proceeding before the Tribunal

arose in the following circumstances.

2. By an order dated 7.1.93 passed in exercise of powers conferred by Sub-rule (3) of Rule 16 of the All India Services (Death cum Retirement Benefits) Rules, 1958, the President in consultation with the Government of Nagaland compulsorily retired Shri S.S. Ahluwalia, hereinafter referred to as "the Respondent No. 1", a member of the Indian Administrative Service in the cadre of State of Nagaland, in public interest. Along with the order a cheque for a sum to the approximate amount of his pay and allowances for the period of three months was also enclosed. The legitimacy of the order was thus challenged in the aforesaid proceedings as illegal, arbitrary and discriminatory.

3. The Respondent No. 1 further questioned the propriety and legitimacy of the orders bearing No. PER-A/26/88-AIS (Pt) dated 7.1.93 and PCA-A/26/88-118-88/AIS/Pt dated 7.1.93 issued in the name of Chief Secretary to the Govt. of Nagaland communicating the decision to hold enquiries under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. The Respondent in his petition contended that the authorities took a conscious decision to hold enquiry by way of a departmental proceeding against the Respondent and instead of allowing the same to reach its logical conclusion, the Respondent sought to side step and over reach the departmental proceeding and knocked out the Petitioner from service as a punitive measure. The Petitioner who was one of the Respondents before the tribunal along with Ors. seriously contested the application and stated that the impugned order of compulsory retirement of the Petitioner was made bonafide in the public interest. The Respondent also stoutly denied the allegation of the Petitioner to the effect that the impugned order of compulsory retirement was punitive in nature. The present Petitioner's contention was that the same was passed in conformity with law and in the public interest. After hearing the respective parties, the learned Tribunal allowed the application and set aside the order of compulsory retirement dt. 7.1.93. The Tribunal found that the charges framed against the Respondent officer in the criminal prosecution were initiated on the basis of the sanction. Referring to the sanction of the Union of India, the learned Tribunal reached to the conclusion that the charges, allegation of misconduct, namely disproportionate assets to his source of income and also prosecution regarding violation of Arms Act were the basis of compulsory retirement. The Tribunal accordingly held that though the order of retiring compulsorily apparently was innocuous in appearance, the said order was in fact passed as a punitory/retaliatory measure. The Tribunal held further that the impugned order was stigmatic in content. According to the learned Tribunal the Respondent/Appellants with a view to elude and side-step the lengthy process of holding enquiry, adopted short cut measure to eliminate the officer in the garb of an order of compulsory retirement. The above order of the learned Tribunal is thus challenged in this application under Article 226 as illegal, arbitrary and perverse.

4. Mr. K.K. Mahanta, learned Senior Central Govt. Standing Counsel submitted

that the order of compulsory retirement was passed by the Govt. of India bona fide on formation of opinion that it was in the public interest to retire the Government servant compulsorily. The said order was passed in conformity with the policy laid down in Rule 16(3) of the Rules in lawful exercise of its power.

5. Learned Counsel for the Appellant inviting our attention to the records of the case submitted that the entire service record pertaining to career of the Petitioner was looked into by the Government at different stages by different officials and bonafide formed an opinion to compulsorily retire the officer in the public interest. Shri Mahanta pointing at the official notes submitted that the service records of the officer itself called for the supplication of the aforesaid provisions to compulsorily retire the officer in the public interest. In support of his contention Shri Mahanta has placed reliance on the Constitution Bench decision of the Apex Court in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, , *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, , *Haryana State Electricity Board v. K.C. Gombhir (1977) 7 SCC 85* and *K. Kandaswamy Vs. Union of India*,

6. Shri Vijay Kumar Hansaria, learned Counsel appearing for the Respondent No. 1 stoutly defended the judgment of the learned Tribunal and submitted that the learned tribunal on evaluation of the factual situation passed the order and found that the order of compulsory retirement was illegal and without jurisdiction. Shri Hansaria, learned Counsel for the Respondent has submitted that the Appellant faulted in the decision making process of compulsorily retiring the Respondent by taking into consideration irrelevant consideration overlooking the relevant considerations. Learned Counsel has pointedly referred to the two notifications issued by the Chief Secretary on the same date and submitted that the said two notifications revealed the existence of departmental proceedings relating to the same allegations which influenced the Petitioner to compulsorily retire the Respondent in terms of the Rules. It was a punitive measure submitted Shri Hansaria. Learned Counsel has further referred to some of the entries made in File No. 25013/21/89, which he came across in course of his inspection of records on being permitted by the Tribunal and cited about the notes dated 2.5.89, 25.5.89 and 6.4.90 of the file. The learned Counsel also indicated about the note dated 21.1.92 in File No. 105/12/87. The aforesaid fact read with other circumstances lead to the only inference that the Respondent/Petitioner acted in a most arbitrary and discriminatory fashion to get rid of an officer of lustrous track submitted Shri Hansaria, learned Counsel for the Respondent. He further pointed out that there was no adverse entry in the ACR and on the circumstance, there could be not have been any justification for compulsorily retiring the Respondent No. 1. Lastly, the learned Counsel submitted that the Tribunal in exercise of its jurisdiction on evaluation of the materials on record, reached its own conclusion on the basis of the materials on record. The High Court in the exercise of powers conferred under Article 226 ought not go to re-appraise the evidence on record and reach a different conclusion. According to the learned

Counsel, on the facts and circumstances of the case it was not a fit case for exercise of power of judicial review and interfere in the lawful exercise of jurisdiction made by the tribunal. In support of his contention, Shri Hansaria referred to the following decisions of the Supreme Court--

- (1) Anoop Jaiswal Vs. Government of India and Another,
- (2) Brij Mohan Singh Chopra Vs. State of Punjab,
- (3) Madan Mohan Choudhary Vs. The State of Bihar, and
- (4) High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another,

7. Before the necessary inquiry is made as to respective merits of the contention of the parties, it would be appropriate to set out the material facts giving rise to this proceedings. The Respondent No. 1 at the relevant time was a member of the Indian Administrative Services (IAS) belonging to Nagaland Cadre. In December, 1990, he was appointed as Chief Secretary to the Govt. of Nagaland. The Respondent No. 1 attained the age of 50 years on June 30, 1989. In the year 1989 a review of his service record was made and for that purpose a Review Committee was set up by the Government of Nagaland and on review the Committee recommended for his retention in service. The said committee also recorded that the Respondent was under suspension in 1987 and that his ACRs for the period 1986-87, 1987-88 and 1988-89 was not found available. The committee also alluded to consider the charge levelled against him by the CBI on the basis of which cases were pending before the Courts of law against him. On reviewing the record of the officers of All India Services by the Department of Personnel and Training, Govt. of India, a decision was taken to hold back the review pending till investigation were completed by the CBI on the assets recovered. The department concerned also sought for advice of the Ministry of Law. The Ministry of Law obtained instruction of the CBI which stated that action to retire the officer would not adversely affect the prospect of the investigation. The Law Ministry did not concur with the department for retiring the officer compulsorily in pursuance of Rule 16(3) of the Rules. The Department accordingly decided to keep back the review and requested the CBI to pursue the case vigorously. The Government of Nagaland, however, withdrew the consent given to the CBI thereby stymied the investigation. In January, 1990 the department decided to ask the State Government to revive its consent for investigation by the CBI. The matter was placed before the Civil Services Board for premature retirement of the Respondent No. 1. The Board in its meeting held on 26.3.90 observed that the Officer's integrity was consistently doubtful and there was no purpose in keeping him in service and the views of the State Government was sought for as to the premature retirement of the Respondent No. 1. The State Government in response to the Department's proposal of retirement of Respondent No. 1 informed that the State Government restored the consent for CBI investigation. For the alleged reason that the CBI had seized all

relevant documents, the State Government expressed their ineptitude to offer comment on the proposal of the Government of India relating to the retirement of the officer. The State Government expressed its desire that the cases registered by the CBI against the officer was to be carried to its logical end, instead of making any further move. The relevant file with the CBI report was transmitted to the Central Vigilance Commission for its opinion. The CBI in their report also sought for sanction of the Central Government for prosecution of the officer under the Prevention of Corruption Act and the Indian Penal Code. Two cases mentioned were pertaining to--(1) possession of illegal fire arms, and (2) acquisition of assets disproportionate to his known source of income. The other case related to possession of gold coins and foreign liquor. The CBI in its report also mentioned about the Customs cases against the officer wherein the Customs authorities which imposed penalty of Rs. 5000/- for the possession of gold coins and Rs. 10,000/- for possessing foreign liquor. The Director in his note dated 30.4.92 after referring to the relevant fact pointed out of the withdrawal of consent by the State Government for CBI investigation to continue and indicated that the State would like to take any disciplinary action against officer in the Customs case and also advised for taking appropriate action under the law. The file was endorsed to the Ministry of Law also which endorsed the file to the Department.

8. The matter was thereafter again placed by the Committee along with respective deliberations of the Secretary, Appointment Committee of the Cabinet, Law Secretary and the Cabinet Secretary. The Cabinet Secretary in his note dated 7.9.92 expressed that efforts of the CBI to investigate against the Respondent No. 1 was aborted by the State Government when he was Chief Secretary to the Govt. of Nagaland, lateron the Govt. of Nagaland recommended for invoking Rule 16(3) of the Rules vide DO No. PAR-A/26/88/AIS-Pt dated 24.8.92. By the said letter the Adviser to the Governor also reported further instances calling in question the integrity of the officer. By the said communication the Adviser to the Governor reported that the service record of the officer, when it was searched after imposition of President Rule, appears to have disappeared during his tenure as Chief Secretary. The Cabinet Secretary also recommended for the compulsory retirement of the officer under Rule 16(3). The matter was in depth examined by different departments and the final proposal for compulsory retirement was approved by the Prime Minister and informed the same to the Cabinet Secretary. The Cabinet Secretary accordingly requested the Secretary, Personnel Department to take immediate further action for issuance of notice for compulsory retirement on 16.3.92. Pursuance thereof the decision was communicated to the Respondent No. 1 through the Joint Secretary. Govt. of India under Memo No. 25013/21/89-AIS-II dated New Delhi 7.1.93 which was the subject matter for adjudication by the Tribunal.

9. Before entering into the merits of respective cases it would be pertinent to refer to Rule 16(3) of the Rules which reads as follows:

16(3): Superannuation, Gratuity or Pension--

(i) A member of the service shall be required to compulsory retire from the service with effect from the afternoon.... Central Government may in consultation with the State Government concerned and giving the member of service at least three months previous notice in writing or three months pay and allowance in lieu of notice, require a member to retire in public interest from service on the date on which such members completed 30 years of qualifying service or attains the age of 50 years or on any date thereafter to be specified in the notice.

The above Rule is made in exercise of power conferred by Sub-section (1) of Section 3 of All India Services Act, 1951. The Rule conferred on the Central Government an unqualified right to retire a government servant when it forms an opinion that it is in public interest to retire him from service, the aforesaid power can be resorted to subject to conditions mentioned in the Rule which insists upon concerned authority for formation of opinion to retire the Government Officer in public interest from service. It is needless to state that if the authority honestly forms an opinion to retire a member from service the correctness of the said opinion cannot be a subject to challenge before the Court in a judicial review. The aforesaid provision is not meant for taking any punitive measure against a government servant, it only has incorporated one of the aspect of the pleasure doctrine indicated in Article 310 of the Constitution. An order of compulsory retirement does not take away any rights acquired by a member of the service that he acquired before retirement. It also does not involve any civil consequence. The Rule only provided the Government with the power to retire a Government Servant in the public interest, which may be passed due to various considerations. In J.N. Sinha (supra) the Supreme Court recounted some of the cases of compulsory retirement and indicated that the said power may be exercised within view of revitalising its machinery and make it more efficient. The Court observed--

8. ...Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(i) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public

interest.

9. It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three month's notice is provided so as to enable him to find out other suitable employment.

10. Public interest is the guiding factor for compulsory retiring an employee. The Rule of natural justice does not have any role to play in such a situation. When the appropriate authority forms the requisite opinion bonafide, the said opinion cannot be assailed before the Court as being violative of the principles of natural justice, though it would always be open to the aggrieved party to contend that requisite opinion has not been formed or that it is based on irrelevant extraneous considerations. In *Union of India (UOI) Vs. M.E. Reddy and Another*, the Supreme Court held that an order of compulsory retirement does not amount to punishment. Hence, the principles of natural justice is not required to be observed in passing an order of retirement. In the said case, the Respondent M.E. Reddy was belonged to Indian Police Service retired compulsorily as per Rule 16(3) of All India (Death cum Retirement) Rules, 1958. It was contended that the authority acted illegally in relying upon the adverse entries against the officer behind his back which was accepted by the High Court. The Supreme Court while dealing with the contention held that it was not necessary to communicate the adverse entry or remark against the officer. The superior Officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest, but those who have had the opportunity to watch the performance of the said officer from close quarter are in position to know the nature and character not only of his performance but also of the reputation that he enjoys. In the above case the Supreme Court relied upon the principles referred in *J.N. Sinha (supra)* that the principles of natural justice are not attracted in the case of compulsory retirement since it is neither a punishment nor does it involve any civil consequences.

11. In a three Judges' decision of the Apex Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, the Court further reiterated that the principles of natural justice does not have any place in the context of an order of compulsory retirement. It was further observed that an order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. Principles of natural justice have no place in the context of an order of compulsory retirement. Since the nature of the function is not quasi-judicial in nature and because the action has to be taken on the

subjective satisfaction of the government, there is no room for importing the audi alteram partem rule, in such a case more so when an order of compulsory retirement is not a punishment nor does it involve any stigma.

12. The Supreme Court, in the said case has enunciated the following principles--

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour;

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government;

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether while the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary--in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter--of course attaching more importance to record of and performance during the last years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it, uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

13. The note dated 2.5.99 of the Desk Officer only recounted the review of the records of the officer by the Government of Nagaland under the Rules which recommended for retention of his service. In the said note the Review Committee of the State Government referred to the summary of the ACRs of the officer for the period 1.4.82 to 20.9.82, 1.10.82 to 25.1.83 and 19.4.84 to 30.3.85. The said note further recounted that the ACRs for the period 1987-88 and 1988-89 up-to-date were not available. It was also recorded in the notings of the Government of Nagaland that those records were not available. Note in the main spoke about the records of the preceding years/minutes of the Government as cited above. Mention was made about the registration of regular case against the officer regarding possession of disproportionate assets by the officer. The said committee did not consider the charges leveled against him by the CBI. On 25.5.89, there is an Anr. note of the Joint Secretary to the higher authority after

discussion with the Secretary, Department of Personnel. By the said note the advice of Law Ministry was sought for taking appropriate action. The note indicated about three cases registered against the Officer. One relating to acquisition of disproportionate assets, the second relating to contravention of Gold Control Act and the third was pertaining illegal possession of fire arms. The note also indicated about the CBI's readiness to file charge sheet u/s 39 of the Arms Act, but they were hamstrung because of the writ petition filed by the officer in the Delhi High Court. Similarly, investigation of disproportionate assets also suffered a set back because 11 writ petitions were filed by the officer and his benamdars challenging jurisdiction of the CBI. The note dated 6.4.99 pertains to the noting of the Desk Officer relating to the minutes of the Civil Service Board held on 26.3.90. The note contained the information that the Board reviewed the records of the officer and recommended for the retirement of the officer under Rule 16(3) of the Rules.

14. We have also perused the note of the Director dated 21.1.92 addressed to the Director, Central Vigilance Commission as mentioned by Shri Hansaria, the learned Advocate. The Director in the said note mentioned about the CBI report as well as investigation of the case pertaining to accumulating assets/properties to the tune of Rs. 67.90 lacs in the names of the officer concerned, dependants, relatives, friends etc. The note also contained the views of the officer on the technicalities of the sanction of prosecution etc. In the above note, the officer expressed his circumspection in regard to the proposal of the Personnel Department to compulsorily retire the officer. This was a view of an individual officer only. Later on, it reached the higher authorities and finally the authorities decided to retire the officer on consideration of the entire materials on record. On the administrative area, different officials are entitled to express their opinion at different level without any inhibition which ultimately is to go through a process of deliberations at different levels. Open dialogue at various provinces of the administration, recommendations etc. are part of the decision making process before a final decision is taken by the competent authority who is/are by the statute authorised to take the decision. The view of the aforesaid Director, Central Vigilance Commission was not the view of the Government. This was only the view expressed by a particular officer at a particular stage in the deliberation process. We have already indicated various notings which only indicated that the Government at different level considered the case dispassionately and reached its own conclusion on considering all aspects of the matter. In the circumstances, therefore, it cannot be said that the Respondents acted malafide or the decision was passed arbitrarily.

15. In the instant case, the authority bonafide exercised the power. We have already mentioned that at several stages and different authorities reasoned out on the matter, considered pros and cons. The decision making process in the circumstances cannot thus be faulted as arbitrary. Shri Hansaria was right in his submission that even compulsory retirement are no less malefic in effect on the member of service personnel and therefore, it requires due application of mind,

more so, when it involves the right of an officer to continue in his post. In our view, on the one hand, the rights of the Government servant to continue in service is required to be taken notice of. On the other hand, the authority also is to keep in mind the public interest and balance accordingly. In the case in hand, the authority on overall assessment of the fact situation thought it fit to retire the member from its service compulsorily, which cannot be said to be arbitrary or discriminatory. It is not for the Court or for the tribunal in the exercise of the power of judicial review to re-evaluate the merits of decision. No malafide or unlawfulness is discernible requiring interference from this Court under Article 226 of the Constitution of India. The decision of the Central Government to compulsorily retire the public servant was made in consultation with the State Government and view of the State Government agreeing to the proposal of the Central Government as alluded earlier and thereafter the Central Government took its decision prior to 7.1.93 and the same was indicated in the impugned order dated 7.1.93. There was no justification or any reason in whatsoever manner for the State Government after conceding to the measure of the Central Government for compulsorily retiring the officer to issue the two notifications on the same date in aid of the All India Services (Discipline and Appeal) Rules. The reason for this pitch and loss is not difficult to understand in the perspective--the circumstances only suggest that the above move was seemingly made just to water down the order of compulsory retirement. This is the only conclusion that one is to reach in the backdrop of the proven facts and the anxiety of the State Government to prop up the officer, for no good reason time and again, save for the brief interval when the State was under President Rule.

16. On the survey of the facts as enumerated above, it thus emerges that the Review Committee as well as the Central Government took into account the entire record of the matter bonafide reached its decision to retire the employee compulsorily. The Review Committee as well as the Central Government considered the entire service records dispassionately and thereafter formed its opinion on the totality of the materials on record. From the record it does not appear to us that the competent authority was swayed by one or two remarks favourable or adverse to the employee. The decision of the authority does not suffer from vice of malafide, nor it can be labelled as perverse nor it can be termed as arbitrary, in the sense that no reasonable person properly instructed by law would form requisite opinion on the given materials. The decision was arrived at by the authority after considering all the aspects of the matter. Records clearly disclose that the authority reached the requisite opinion in prior consultation with the State Government concerned. The competent authority while passing the above order took note of all the aspects of the matter as indicated above and thereafter reached its own conclusion bonafide. The considerations those were taken by the authority were relevant considerations. The order does not carry any stigma as was observed by the learned Tribunal purpose of interference to hold that the impugned order was stigmatic as was held by the learned tribunal.

17. We have already indicated the circumstances under which the Govt. of Nagaland took its decision to hold the enquiry against Respondent No. 1 under Rule 8 of the All India Services (Discipline and Appeal) Rules 1969 vide PCA-A/26/88-118-88-AIS/Pt dated 7th Jan 1993) as well as the decision of the Govt. of Nagaland to hold Similar enquiry. Under Rule 8 of the said Rules read with Rule 6 of the All India Services (DCR) Rule 1958 vide Memo. PAR-A-26/88-AIS-D-(Pt) dated Kohima, 7th Jan 1993. Admittedly the Govt. of India took its decision for compulsorily retiring the Respondent in consultation with the State Govt. prior to the decision of the State Govt. to monitor the department proceeding. In the circumstances there could have been no scope for the State Govt. to initiate the proceeding. The authority competent to retire the Govt. servant was the president of India and not the State Government of Nagaland. That apart, it is not a case where the order of compulsory retirement was primarily based upon the charges or on the basis of the materials referred to in the order two notices of the State Government. The facts and circumstances do not lead to any inference to hold that the said order was passed as a retaliatory or punitive measure.

18. For the reasons stated above, we are unable to agree with the conclusion reached by the Tribunal. We accordingly allow the writ petition, set aside the judgment and order of the Central Administrative Tribunal, Guwahati Bench, Guwahati dated 24.11.97 passed in the Original Application No. 66 of 1993. In the circumstances of the case we make no order as to cost.