R. L. Butail vs Union Of India & Ors on 8 September, 1970

Bench: M. Hidayatullah, J. M. Shelat, G. K. Mitter, C. A. Vaidialingam, A. N. Ray

PETITIONER:
R. L. BUTAIL

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT:
08/09/1970

BENCH:
[M. HIDAYATULLAH, C.J., J. M. SHELAT, G. K. MITTER,C. A. VAIDIALINGAM AND A. N. RAY, JJ

ACT:
Departmental Rules-Central Water and Power Commission (Power Wing)-Adverse entries in confidential reports whether must set out specific instances justifying them-Whether must be made after reasonable opportunity to show cause-Non-promotion on basis of such entries whether punishment attracting Art. 311 of Constitution.
Fundamental Rules-Rule 56(1)-Compulsory retirement-Validity of rule-'Public interest.'

HEADNOTE:
The appellant, an electrical engineer, entered the service of Simla Electricity Board in 1934. In 1949 his services were transfeere d to the Central Electricity Commission, later designated as Central Water and Power Commission (Power Wing). In 1955 he was also promoted to the post of Direct(* and was confirmed as such with effect from 1960. There were adverse remarks in his confidential reports for the years 1964 and 1965. On these being communicated to him he made representation asking for specific instances on which adverse information about him bad been recorded. These representations were rejected. In the meantime the question of filling the post of Director (Selection Grade)/Deputy Chief Engineer arose. Both in 1964 and 1965 the appellant was over-looked by the Departmental Promotion Committee and the Union Public Service Commission for this post or that of a member. Later with effect from August 15,

1967, on completion of the age of 55 years he has compulsorily retired under r. 56(j) of the Fundamental Rules made under Art. 309 of the Constitution. The appellant filed three writ petitions in the High Court of Punjab challenging the validity of the said entries. and the said order of compulsory retirement. The High Court dismissed all the writ petitions. Appeal in this Court was filed with certificate. The appellant's contentions which fell for consideration were (1) that the said two confidential reports were contrary to the Departmental Rules in as much as they did not set out specific instances justifying them; (2) that they were placed before the Departmental Promotion Committee and the Public Service Commission before they were communicated to him and he was prejudiced thereby; (3) that the refusal of the Departmental Promotion Committee to recommend him for the higher posts and of the Public Service Commission to select him based on such invalid reports was also invalid; (4) that making an adverse entry which resulted in withholding promotion to him amounted to a penalty; since no opportunity was given to him of being heard in this respect, there was a violation of Art., 311 of the Constitution; (5) that making an entry without holding a departmental inquiry and hearing him was contrary to natural justice; (6) that the adverse entries in question were contrary to facts; (7) that the 'said entries were mala fide; (8) that the higher posts to which he was eligible were promotion and not selection posts at the relevant time; (9) that the order compulsorily retiring him was bad in as much as Fundamental Rule 56(j) was itself invalid; (10) that in any

56

event the order was not made in public interest and was, therefore, contrary to the rule and also, Arts. 14 and 16 of the Constitution.

HELD: (1) An examination of the departmental rules clearly shows that a confidential report is intended to be a general assessment of work ,performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation etc. arise. They also show that such reports are not ordinarily to contain .specific instances upon which assessments are made except in cases where as a result of any specific incident censure or a warning is issued and when such warning is by an order to be kept in the personal file of the ;Government servant. Such cases an officer making the order- has to give reasonable opportunity to the Government servant to present his case. The contention, therefore, that the adverse remarks against the appellant did not contain specific instances and were, therefore, contrary to the rules could not be sustained. Equally unsustainable was the corollary that because of that omission the appellant could not make an adequate repre-

sentation and that therefore the confidential reports were vitiated. [62 C--E]

(2) Whenever a Government servant is aggrieved by an adverse entry he has an opportunity of making a representation. Such a representation would be considered by a higher authority, who, if satisfied would either amend, correct or even expunge a wrong entry, so that it is not as if an aggrieved Government servant is without remedy. Making adverse entry is not equivalent to imposition of a penalty which would necessitate an enquiry or the giving of a reasonable opportunity of being heard to the ,Government servant. It does not amount to the penalty of censure set out in r. 11 of the Central Civil Service (Classification, Control & Appeal) Rules. [62 H]

(3) The confidential report in respect of the appellant for the year 1964 was prepared on March 18, 1966. Since the Departmental Promotion Committee had met in 1964, obviously, the adverse entry for the year 1964 was not and could not be before that Committee. If at all the Committee declined to recommend the appellant's name because of adverse confidential reports, such reports could only be for the earlier years. The record showed that confidential reports for 1955, 1956 and 1959 were adverse to, him. The confidential report for 1965 was prepared in 1966. Therefore, that report also would not be before the Committee when it declined to recommend the appellant in 1965. The fact that the appellant's representation against the report for 1964 was not before the Committee when it made its recommendation did not make any difference. The representation made by the appellant though made subsequently was actually rejected with the result that the confidential report for 1964 remained unchanged. The practice followed by the Promotion Committee was that if in such a case a representation were to be accepted and in consequence the confidential report was altered or expunged, the Promotion Committee would have to review its re-commendations in the light of such result. In the present case no question of such a review arose as the reports for 1964 and 1965 were, in spite of representations by the appellant neither altered nor set aside. There was, therefore, no question of injustice having been done to the appellant despite the fact that the Committee had before it the confidential report without there being along with it any representation made by the appellant. Nor did the question of breach of natural justice arise in view of the aforesaid practice followed by the Promotion Committee. [63 F-64 D]

57

(4) Under r. 11 of the Central Services Rules, 1965, although with holding promotion is not a penalty which could be imposed on a Government servant; the explanation thereto expressly provides that non-promotion of a Government servant after consideration of his case does not

constitute a penalty. There was, therefore, no question of the department having to hold an inquiry and then only to decide not to promote the appellant to the higher posts. [64 E]
(5) The appellant could also not challenge his non-promotion on the ground of seniority alone. The post of a Member was declared to be a selection post by the President as early as in 1952. By Rules made by the President under Art. 309 dated November 6, 1965, the post of a Member along with certain other posts was declared to be a selection post. The respondent's counter affidavit clearly affirmed that the post was a selection post. The burden of proving otherwise was on the appellant which he had not discharged. On the material brought on record it could not be held that the post of a Member was not a selection post so that the mere fact of the appellant being the seniormost amongst the Directors in the department could not entitle him to be appointed [64 F65 B]
(6) The appellant had been unable to prove that the action against him was mala fide. [69 H-70 A]
(7) The validity of r. 56(j) cannot be challenged in view of the earlier decisions of this Court [,71 F-G]
Union of India v. Vol. J. N. Sinha, [1971] 1 S.C.R. 791, applied.
Moti Ram Deka v. General Manager, N.E.F. Railway, [1964] 5 S.C.R. 587, Gurdev Singh Sidhu v. Punjab, [1964] 7 S.C.R. 587, T. C. Shivacharana Singh v. Mysore, A.I.R. 1965 S.C. 280 and Takhatrav Shivdatrai Mankad v. Gujarat, [1969] 2 S.C.C. 120, referred to.
(8) On the facts of the case it could not be held that the order of compulsory retirement was not in public interest or that the authority concerned had not applied its mind. [72 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1614 to 1616 of 1968.

Appeals from the judgments and orders dated April 10, 1968 of the Delhi High Court in Civil Writs Nos. 608-D and 607-D of 1966 and 1550 of 1967.

The appellant appeared in person (in all the appeals). Jagadish Swarup, Solicitor-General, L, M. Singhvi and S. P. Nayar, for the respondents (in all the appeals). Shyamala Pappu, Bindra Thakur and Vineet Kumar, for the Intervener (in C.A. No. 1616 of 1968).

ORDER After having heard and considered the arguments urged on behalf of the parties we are of the view, for reasons which we shall set out later on, that all the three appeals fail and should be35Sup CI/71 dismissed. Order accordingly. The appellant will pay to the respondents the costs of

these appeals. Such costs to be one set of costs.

The Judgment of the Court was delivered by Shelat, J. On August 14, 1970 we pronounced our order dis- missing these three appeals with costs stating at the time that our reasons for the same would follow. The order was pronounced at the request of the appellant who desired that we should do so before August 15, 1970 when he was completing 58 years of his age. Accordingly we are now setting out the reasons for the said order.

The three appeals, by certificate, question the validity of two ,confidential reports for the years 1964 and 1965 made against the appellant by the reporting and the reviewing officers in the Central Water and Power Commission (Power Wing) and the order dated May 12, 1967 by which the appellant was compulsorily retired on his attaining the age of 55 years.

The appellant, an electrical engineer, began his career in the Simla Electricity Supply Undertaking and worked there from 1934 to 1949. In 1949, he was appointed as a Project Officer in the Central Electricity Commission, now designated the Central Water and Power Commission (Power Wing). He was confirmed in that post in 1950 and later on was promoted to the post of a director, in which post he was working since 1955. He was confirmed in that post by an order, dated April 15, 1963 with retrospective effect from August 5, 1960.

By a communication dated September 16, 1965 he was informed of an adverse entry in the annual confidential report for the year 1964. The entry reads as follows :

> ".... A 'Problem Director' in that it falls to the inevitable lot of some member to have him under his charge and manage as far as practicable. . "
>
> "....I agree with the above even though the officer is intelligent and capable of good work if he wishes to apply himself wholeheartedly."

By another communication dated July 7, 1966 the appellant was informed that an adverse entry had been made in his confidential' report also for the year 1965. That entry reads as follows "His work during the year was below the average, considering his senior position in the Directors' Cadre. Shri Butail can do good work if he like(s) to do so."

On receiving these communications the appellant made repre- sentations in which he asked for specific instances on which adverse opinions about him had been recorded. These representations were, however, rejected. In the meantime, the question of filling in the post of Director (Selection Grade)/Deputy Chief Engineer arose. According to the appellant, this post as also certain other higher posts including that of a member were promotion posts. Being the only permanent director amongst the candidates, he was the seniormost of them all and claimed that he, was for that reason entitled to be promoted. Both in 1964 and 1965, however, he was overlooked by the Departmental Promotion Committee and the Union Public Service Commission. On May 12, 1967, he was served with an order compulsorily retiring him from service with effect from August 15, 1967 on completion of the age of 55 years. The order was made under r. 56(j) of the Fundamental Rules made under Art.

309 of the Constitution.

The appellant filed three writ petitions Nos. 608 and 607 of 1966 and 1550 of 1967 in the High Court of Punjab challenging the validity of the said entries and the said order of compulsory retirement and praying that the said two entries should be expunged and proper entries made, that the orders declaring him unfit for promotion and the said order of compulsory retirement should be quashed. The High Court dismissed all the writ petitions, Hence these appeals. The appellant contended (1) that the said two confidential reports were contrary to the rules inasmuch as they did not set out specific instances justifying them; (2) that they were placed before the Departmental Promotion Committee as also the Public Service Commission before they were communicated to him, and therefore, before he could make representations against them. that the consequence was that the said two bodies had before them the said reports only and were not aware of his objections to them; (3) that the refusal of the Departmental Promotion Committee to recommend him for the higher posts and of the Public Service Commission to select him, based on such invalid reports. was also invalid; (4) that making an adverse entry which resulted in withholding promotion to him amounted to a penalty; therefore, an adverse entry which had such a result would be governed by Art. 31.1 and could not be made unless before making it the concerned Government servant was given a reasonable opportunity of being heard; (5) that, in any event, making such an entry without first holding a departmental inquiry and hearing such a Government servant was contrary to natural _justice; (6) that his work as a director was satisfactory, that the said entries were contrary to facts and that no reasonable person would have arrived at such adverse conclusions as recorded in the entries; (7) that the said entries were made, mala fide; and (8) that the higher posts to which he was eligible were promotion and not selection posts at the relevant time, that they were made selection posts only in November 1965, and therefore, being the only permanent director amongst all the rest of the directors, he was entitled by his seniority to the hip-her post in preference to others. Even assuming that those posts were at the relevant time selection posts, he being a permanent director, his case could not be referred to the Public Service Commission.

Regarding the order compulsorily retiring him, the contention was that Fundamental Rule 56(j) was invalid, that in any event the order was not made in public interest as his work as a director was satisfactory and was therefore contrary to the Rule and also Arts. 14 and 16 of the Constitution, The question raised in regard to the impugned confidential entries is thus three fold. Firstly, whether the reporting authority was required to give specific instances to enable the appellant to make an adequate representation. Secondly, whether the reporting officer was bound to hear the appellant before deciding to make the entry. And thirdly, whether such an entry amounts to censure, one of the penalties provided by r. 1 1 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. That rule enumerates several penalties which can be imposed on a Government servant and amongst minor penalties there set out are (i) censure, and (ii) withholding a promotion. Compulsory retirement is under the rule one of the major penalties.

In considering this question we may at the very outset notice that the rules regarding preparation and maintenance of confidential reports, are by way of departmental instructions and are neither statutory rules nor rules made under Art. 309. Prior to 1961 these instructions were contained in an office order dated July 28, 1955 issued by the Central Water and Power Commission (Water Wing).

We do not know whether they also applied to the Power Wing. But for the present we will assume that they applied to the Power Wing. R. 2 of these rules sets out the object of maintaining confidential reports, viz., to ensure that promotions were made with the utmost fairness to the officers on the one hand and with due regard to the interest of the public service on the other. The rules, therefore, enjoin upon officers at each level to keep a proper watch over the work and conduct of those below them and provide training and guidance to such officers whenever necessary. For this purpose a continuous record of service in the form of confidential reports of all the officers working in the Commission was necessary. Rr. 3 and 7 indicate that what was required was a general assessment of work for the whole of the year, the conduct of the officer concerned, his efficiency, ability, initiative or lack of it etc. and not a judgment with reference to any specific incident. R. 7 in express terms provides that an adverse entry relating to a specific incident should not ordinarily find place in a character roll, unless, in the course of departmental proceedings a specific punishment such as censure has been awarded on the basis of such an incident. Where, however, a reporting officer feels that though the matter is not important enough to call for departmental proceedings, it is important enough to be mentioned specifically in the confidential report, he should, before making such an entry, satisfy himself that his own conclusion has been arrived at only after a reasonable opportunity has been given to the officer report- ed to present his case relating to the incident. The rule also provides that while communicating adverse remarks to the officer concerned the substance of such remarks and not their actual wordings need be conveyed.

On March 3, 1961, an office order was issued by the Commis- sion which superseded all instructions issued previously on the subject of maintenance of confidential reports. This order applied to all officers of the Commission, gazetted and non-gazetted, and also to its subordinate offices. The order once again recites the importance of preparing and maintaining confidential reports. R. 4 requires that such a report should contain an appreciation of the general qualities of the Government servant such as integrity, intelligence, keenness, industry, tact, attitude towards his superiors and subordinates, relations with fellow-employees, work-attitudes etc., and also "a summing-up" in general terms of the Government servant's good and bad qualities and a categorisation or rating such as 'Outstanding', 'Very good', 'Good', 'Fair', or 'Poor'. Such a categorisation is, however, not necessary in the case of officers of or above the rank of Superintending Engineer. Rule 10 expressly provides that the reporting authority is not required to give any specific instances of his good or bad work or conduct upon which the opinion is based. R. 28 provides that while communicating an adverse remark to the concerned Government servant the substance of such report and not its actual wording need be conveyed. That is because the primary object of such communication is, firstly, that the concerned Government servant may remedy his defects, and secondly, that it should serve as a timely warning to the Government servant of such defects which might otherwise deprive him of chances of promotion in future. R. 32 entitles a Government servant to make a representation. Such representation would be examined by an officer superior in rank to the reviewing officer. That officer would either reject the representation or alter the remark where he thinks necessary and in the event of his finding that the remark is actuated by malice or is incorrect or unfounded, be would expunge it. R. 34 provides that adverse centuries relating to any specific incident will not ordinarily find place in the confidential record. But, where a warning is issued as a result of any specific incident, a copy thereof will ordinarily be kept in the personal file of the Government servant concerned. In that case he has to make a specific order to that effect. But before making such an

order he must give to the concerned Government servant a reasonable opportunity to present his case relating to the incident. In case, departmental proceedings are instituted as a result of such an incident and a formal punishment, such as censure, is awarded, a copy of the order of such punishment should invariably be placed in the confidential record of the Government servant. These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant. In such a case the officer making the order has to give a resonable opportunity to the Government servant to present his case. The contention therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because, of that omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated.

Further, the rules do not provide for nor require an opportunity to be heard before any adverse entry is made. The contention that an enquiry would be necessary before an adverse entry is made suffers from a misapprehension that such an entry amounts to the penalty of censure set out in r. 1 1 of the Central Civil Services (Classification, Control and Appeal) Rules. The entry is made under the Office Order of 1961 set out above by way of an annual assessment of the work done by the Government servant and not by way of a penalty under the said Central Civil Services Rules. True it is that such remarks would be, taken into consideration when a question such as that of promotion arises and when comparative merits of persons eligible for promotion are considered. But then, whenever a Government servant a aggrieved by an adverse entry he has an opportunity of making a representation. Such a representation would be considered by a higher authority, who, if satisfied, would either amend, correct or even expunge a wrong entry, so that it is not as if an aggrieved Government servant is without remedy. Making of an adverse entry is thus not equivalent to imposition of a penalty which would necessitate an enquiry or the giving of a reasonable opportunity of being heard to the concerned Government servant. This part of the appellant's grievance, therefore, has to be rejected.

The Departmental Promotion Committee and the Union Public Service Commission which met in 1964 and 1965 did not recom- mend or select the appellant for the post of Director (Selection Grade) or that of a Member. The argument was that being the only permanent director amongst all the rest of the directors,. he was the senior most of them all. Yet, one Aswath was first promoted to the post of Director (Selection- Grade) in December 1964 and then a few days later to the post of Member. In this connection the appellant's allegations were two. The first was that the adverse confidential reports for 1964 and 1965 were placed before the Departmental Promotion Committee and the Commission long before they were communicated to him and therefore before he could make any representation against them. Consequently, the two bodies had no opportunity of knowing his side of the case and relying on the said reports only overlooked his right to promotion. Further, the refusal to recommend him for the higher post amounted to withholding of promotion, a penalty which could not be inflicted on him without a departmental inquiry. The second was that in any case

Aswath ought not to have been raised to the higher post as allegations of financial irregularities were outstanding against him in consequence of which he resigned on August 1, 1965 and left for the United States of The confidential report in respect of the appellant for the year 1964 was prepared on March 18, 1965. It was, no doubt, released to the appellant on September 16, 1965. But the Promotion Committee met in May 1964 and recommended Aswath for the post of Director (Selection Grade). Aswath was promoted to that post in December 1964. Obviously, the adverse entry for the year 1964 was not and could not be before that Committee. If at all the Committee declined to recommend the appellant's name because of adverse confidential reports, such reports could only be for the earlier years. The record shows that confidential reports for 1955, 1958 and 1959 were adverse to him. These had been communicated to him from time to time and the appellant had made representations against them and bad failed. Aswath was appointed a member on December 30, 1964 when the appel- lant was again overlooked both by the Promotion Committee and the Public Service Commission. But that again could not be on account of the confidential report for 1964, which as aforesaid, was recorded much later in March 1965.

The confidential report for 1965 was prepared in 1966. Therefore, the report for 1965 would not be before that Com- mittee when it declined to recommend the appellant in 1965. This time the report for 1964 would be before it and' that too without his representation against it as,, that report had been conveyed to the appellant in September 1965. That fact, however, cannot make any difference. The representation made by the appellant, though made subsequently, was actually rejected with the result that the confidential report for 1964 remained unchanged. The practice followed by the Promotion Committee was that if in such a case a representation were to be accepted and in con- sequence the confidential report was altered or expunged. the Promotion Committee would have to review its recommendations in the light of such a result. In the present case, however, no question of such a review arose as reports for 1964 and 1965 were, in spite of representations by the appellant, neither altered nor set aside. There was, therefore, no question of any injustice having been done to the appellant despite the fact that the Committee had before it the confidential report without there being along with it, any representation made by the appellant. Nor did the question of a breach of natural justice arise in view of the aforesaid practice followed by the Promotion Committee. Under r. 11 of the Central Services Rules, 1965, although withholding promotion is one of the penalties which can be imposed on a Government servant, the explanation 'thereto expressly provides that non-promotion of a Government servant after consideration of his case does not constitute a penalty. There was, therefore, no question of the department having to hold an enquiry and then only to decide not to promote the appellant to the higher post. Again no question of breach of the principles of natural justice arises in such a situation.

The appellant also cannot challenge his non-promotion on the ground of seniority alone. It appears that the post of a Member was declared to be a selection post by the President as early as 1952. That decision is evidenced by the letter dated March 15, 1952, Appendix III to the counter-affidavit of the respondents in Writ Petition No. 608/D of 1966. By rules made by the President under Art. 309, dated November 6, 1965, the post of the Member along with certain other posts was once again declared to be a selection post. The respondents' counter-affidavit clearly affirms that the post was a selection post and that when Aswathi was appointed to that post in December 1964. the selection made from amongst the candidates was on an all India basis and not on the footing that the post was

one where appointment was to be made on the basis of seniority in the Department alone. The appellant has not shown that the statement in the said letter of March 15, 1952 that the President bad declared the post of Member a selection post was not correct or that that declaration was not under Art. 309. For such a challenge the burden of proof was upon him, a burden which he has not discharged. We are, therefore, bound on the material brought by him on record to proceed on the footing that the post of a Member was a selection post since 1952, and therefore, the fact of his being the seniormost amongst the directors in the department did not by itself entitle him to be appointed.

The appellant's contention that Aswath ought not to have been appointed first to the post of Director (Selection Grade) and then as a Member as there were allegations of financial irregularities against him was denied by the respondents. The contention involves questions of disputed facts. We do not think that the circumstances of the present case make it necessary for us to undertake the task of inquiring into such disputed facts which require leading considerable additional evidence by both the parties. But assuming that there were allegations made against that officer, both the Promotion Committee and the Public Service Commission were competent to take that fact into consideration and assess its worth. On the materials on record we can hardly be called upon to arrive at any such assessment and substitute our opinion in place of theirs. We cannot consequently accede to the appellant's contention that his non-promotion to the aforesaid superior posts or either of them was vitiated for any of the reasons advanced by him.

On the question of non-promotion, the appellant had demanded disclosure of the proceedings before the Promotion Committee, which demand was resisted by the respondents by claiming privilege. In our opinion it is not necessary to go in this case into the vexed question of privilege, firstly, because the demand for disclosure was in the nature of a fishing inquiry into the papers relating to the proceedings of that Committee, and secondly, because the adverse confidential reports, which, according to the appellant, were responsible for the Committee's refusal to recommend his name, were communicated to the appellant and have been produced by him. The demand for disclosure of those prcceeding's, therefore, cannot be entertained as a bona fide demand.

There, now remains his allegation of mala fides. In Writ Petition 1 550 of 1967 relating to the order of compulsory retirement the appellant bad stated that in order that this allegation may be properly appreciated he would set out in one consolidated statement, Ex. G to that petition, all the incidents on which be relied upon to, prove his case of mala fides. The allegations collected in that exhibit briefly stated are as follows : (i) that he was declared unfit for promotion to favour Aswath in spite of a warning having been given to him for financial irregula-

rities, that the said Aswath resigned and left for the U.S.A. as soon as the appellant took resort to the court and that some higher authorities were also involved in those irregularities; (2) that though the Promotion Committee met in 1963 no promotions were recommended; that this was "presumably" done because Aswath could not then be promoted on account of the said warning; (3) that there was no adverse confidential report against the appellant for 1963; therefore, when the Promotion Committee met in 1964, his grading could not be reduced. Yet, he was superseded, in spite of his being the only permanent director, by three officers who had not yet been confirmed as directors.

"Presumably" he was declared unfit for promotion as the said Aswath did not get a grading higher than "good"; that the post of Member was filled in by direct recruitment and not by promotion "presumably" because the Promotion Committee was prejudiced against him as he had taken recourse to the court and desired that lie should be superseded by Aswath; (5) that the appellant was desirous of ascertaining whether those who made and confirmed adverse entries against him were also involved in the said alleged financial irregularities and whether they sat on the Promotion Committee which declared him unfit for promotion; (6) that as he was superseded by three officers who were not yet confirmed as directors he applied for the reasons for withholding promotion from him. Instead of furnishing those reasons the appellant was given threats and a transfer order which had the effect of his having to work under Aswath, the said two adverse reports and finally the order of compulsory retirement; (7) that though he called for the files relating to the said transfer orders to ascertain if he had been shown responsible for the failures of the reporting officer, V. Venugopalan, their production was refused on the plea of privilege; (8) that in 1958, the appellant complained against the Administrative Officer, one Dhawan, and demanded a disciplinary enquiry against him, that no action was taken against that officer and the appellant "fears" that some grave irregularities were made in that case "and the same are being used to prejudice the authorities against him".

He called for the connected file but its production was refused on the ground of privilege; (9) that in the matter of Dhawan, the appellant's personal assistant, one Nidhan Singh, was asked to disclose the evidence which the appellant had collected against Dhawan, that Nidhan Singh was victimised for his refusal to do so, and therefore, successfully filed two writ petitions, that while one of them was pending, one K. P. S. Nair and the said Venugopalan asked the appellant to file false affidavits which the appelant refused; (10) that the work of the appellant in each of the directorates where he worked was satisfactory though the volume of work was increased and the minimum essential staff was not made available to him, that though there were no causes for complaint against him, the appellant was served with the order compulsorily retiring him; (ii) that the adverse confidential report for 1964 was put up before the Promotion Committee months before it was communicated to him resulting in withholding of his promotion; (12) that under the regulations made under Art. 320 of the Constitution the appellant's case for promotion had not to be Placed either before the Promotion Committee or the Public Service Commission. The President's order declaring the superior posts for which the appellant was \ eligible as selection posts was made months after the selection by those bodies. The said posts not being selection posts then, if the appellant was to be denied promotion a departmental enquiry was necessary under r. 16 of the Central Civil Services Rules, 1965; and (13) that while the present writ petitions, were still pending, he was asked to vacate the premises occupied by him and the allotment thereof in his favour was cancelled.

In the counter-affidavit filed by the Under Secretary to the Ministry of Irrigation and Power it is denied that Aswath was promoted to the post of the Member, the respondents' case being that the post was a selection post and Aswath was appointed in that post on the basis of an all India selection by the Union Public Service Commission. The selection was made on merits with due regard to

seniority and not seniority alone, and the appellant was not appointed to that post because the Commission did not find him fit enough for that post. The counter-affidavit denied that Aswath had committed any financial irregularities or that he had resigned or left India because of any such alleged irregularities. He resigned and went to U.S.A. to take up a more remunerative post. Barring a bare allegation, no materials are brought on record by the appellant to prove the alleged irregularities by Aswath or his having resigned and left this country on account of any such alleged irregularities or of any action having been taken against him. There is also no material on record to justify the allegation that "some higher authorities" were also involved in those alleged irregularities. Allegations 2, 3 and 4 are merely conjectures on the appellant's part and are not based on facts. There is no material on record to show that Aswath was given any warning or that the Promotion Committee did not recommend any promotions in 1963 because, in consequence' of such an alleged warning. Aswath could not be promoted in' that year. The counter-affidavit concedes that there was no adverse confidential report against the appellant for the year 1963. It also concedes that amongst the directors the appellant was the only confirmed director. The respondents' case, however, was that promotions to the higher posts, such as that of the Director (Selection Grade), Deputy Chief Engineer, Member etc., were made on merits with due regard to seniority and not seniority alone, as those higher posts were selection posts. Appointment to those posts were made on the basis of recommendations by the Promotion Committee, who made such recommendations after considering the comparative merits of persons who were eligible. The fact that the appellant was senior to the rest of the directors did not, therefore, mean that he had for that reason alone to be recommended. The allegation that the Promotion Committee was prejudiced against him because he had taken resort to the court cannot be seriously taken. There is no averment as to who amongst the members of that Committee were prejudiced against him as alleged, or whether and how they were affected by his having gone to the court. Allegation (5) is obviously irrelevant on the question of mala fides and the demand made there was actuated by a desire to have a fishing inquiry into the records. There is nothing on record which would cast any doubt that the members of the Promotion Committee did not make their recomendations on the basis of comparative merits of the candidates before them, whose records of service were before the Committee. As regards the allegation about the transfer orders, the respondents' reply was that they were made according to the administrative exigencies. There is no evidence on record to show that they were actuated by any malice or any such other motive. It may be that the appellant might have felt galling to have to work under Aswath after Aswath had been appointed to the higher post. It is possible to take the view that such a position should, if possible, have been avoided. But the fact that the appellant would have to work under Aswath by itself cannot necessarily mean that that particular transfer order was made mala fide. Allegation (7) is again sheer conjecture. Further, it is founded on an assumption that there were failures on the part of the said Venugopalan and that an attempt was made to shift those failures on to the appellant. Regarding the case of Dhawan, it was conceded that in 1958 the appellant had asked for a disciplinary inquiry against that officer. No action, however, was taken against him presumably because no case was made out justifying such an enquiry. The allegation that the appellant "fears that some grave irregularities have been made in this case" (i.e., in the matter of Dhawan) and that the same were now being used against him is again a matter of speculation on the appellant's part and is, therefore, no evidence on which the question of mala fides can be decided. Allegation (9) was denied by K. P. S. Nair and Venugopalan in their respective affidavits. Beyond the assertion by the appellant and the denial by Nair and Venugopalan there is no independent material

on which one can judge the truth or otherwise of the allegation. In the proceedings referred to there, Dhawan had filed an affidavit denying that Nidhan Singh was asked to disclose the evidence collected by the appellant against him or that Nidban Singh for his refusal to do so was victimised. There is no material to show that Dhawan's said affidavit was disbelieved in those proceedings. As regards allegation (10), the appellant's own estimate of his work cannot be a basis for any decision. According to the counter-affidavit, the staffing of each, directorate in the Commission depended on the available staff and the exigencies of work in each department. Even assuming that the appellant was not given an adequate staff, it does not follow that that was done with any mala fide object. Allegation (11) has already been considered, and therefore, we need not repeat what has been earlier stated. As regards allegation (12) we have already referred to the letter, dated March 15, 1952 stating that the posts to which the appellant was aspiring had been declared selection posts by the President. There is nothing on record to show that the contents of that letter were not correct or that the President had not validly made such- a declaration. If those posts were thereupon made selection posts and the selection for them were to be made on the basis of an all India selection, it is difficult to understand the appellant's case that because he was a confirmed director his case need not have to go before the Promotion Committee and the Public Service Commission. In any event, consideration of his case, as also the cases of others by the Promotion Committee has no relevance so far as the case of mala fides is concerned. Further, there is nothing to show that the reporting officer and the reviewing authority, who were responsible for the confidential reports relating to the appellant, were members of the Promotion Committee or were in any event responsible for the appellant not having been recommended. The last allegation that the demand from him of the premises allotted to him was made because of animus against him has no relevance to the case of mala fides, as that demand must have been made in the usual course after the order of compulsory retirement was passed. Obviously, he could not be allowed to retain possession of those promises once be was made to retire from service.

As earlier stated, some of the allegations as to mala fides are matters of conjectures and speculation and some are vague in the sense that they do not specify who the particular officers were who mala fide made adverse entries against him, as, during the years 1955 to 1965 there were various officers who as part of their duty had. to make assessment of the appellant's work and record such assessment in his confidential reports. Reading the material on record one cannot help forming an impression that the appellant had entertained a high estimate of the work done by him, was piqued by his not having been recommended and selected for the higher posts to which he believed be bad become entitled and began since then to nurse an obsessed feeling of being persecuted by all who were above him. In view of the reasons afore-stated, we are of the view that he has not been able to make out a case, of mala fides in spite of his long and detailed arguments before us.

As stated earlier, W. P. 1550 of 1967 challenged the validity of the order by which the appellant was compulsorily retired from service with effect from August 15, 1967 when he completed the ,age of 55 years. The order was admittedly passed under r. 56(j) of the Fundamental Rules, as amended by Fundamental (Sixth Amendment) Rules, 1965. Cl. (a) of that rule provides that, except as otherwise provided in the rule, every Government servant shall retire on the day he attains the age of 58 years. Cl.

(d), however, authorises the Government to grant extension of service up to the age of 60 years provided such extension is in public interest and the grounds therefor are recorded in writing. Cl. (j), with which we are presently concerned, reads as follows :

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

The Office Memorandum, dated July 10, 1966 issued by the Ministry of Home Affairs provides (1) that six months before a Government servant attains the age of 55 years, his case should be reviewed and a decision taken whether or not his retention in service beyond the age of 55 years is in public interest, and (2) that once a decision is taken to retain him beyond the age of 55 years, such Government servant would continue in service automatically till he attains the age of compulsory retirement. i.e., 58 y`ars of age. It further provides that if the appropriate authority considers that retention of a Government servant beyond the age of 55 years is not in public interest, such authority must take necessary action to serve three months notice in terms of cl. (j) of F. R. 56. That the requisite notice in terms of cl. (i) of F.R. 56 was served on the appellant is not in dispute. In Union of India v. Col. J. N. Sinha(1) this Court stated that F. R. 56(j) in express terms confers on the appropriate authority an absolute right to retire a Government servant on his attaining the age of 55 years if such authority is of the opinion that it is in public interest so to do. The decision further states "If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an agrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

(1) [1971] 1 S.C.R. 791.

The appellant relied on Moti Ram Deka v. General Manager, N.E.F. Railways(1) where rules 148 (3) and 149 (3) of the Indian Railway Establishment Code were held to contravene Art. 311 (2), and therefore, invalid. That decision cannot apply to the present case as the rules there in question dealt with the right to terminate service on notice of a prescribed period. 'The Court there held that a rule cannot confer on the Railway administration power to terminate service while at the same time laying down the age, of superannuation so as to be in contravention of the pro- visions of Art. 311(2). Similarly, in Gurdev Singh Sidhu v. Punjab(1) a rule conferring an absolute right to retire a Government servant after he had completed ten years of qualifying service, though providing that such power shall not be exercised except when it is in public interest, was struck down as contravening Art. 311(2). The Court, however, held that there were two valid exceptions to the protection afforded by Art. 3 11 (2). These were (1) where a permanent public servant was asked to retire on the ground that he had reached the age of superannuation which was reasonably fixed, and (2) that he was compulsorily retired under the rules which prescribed the normal age of super- annuation and provided a reasonably long period of qualifying service after which alone compulsory retirement could be ordered. The first would not amount to dismissal or removal from service within Art. 311(2) and the second would be justified by the view taken by this Court in a long series of decisions. In T. C. Shivacharana Singh v. Mysore, (3) rule 255 of the Mysore Civil Services Rules,

1958 conferring power on Government to retire compulsorily a Government servant in public interest on his completing twenty-five years of qualifying service or attaining fifty years of age, though the age of normal superannuation under r. 95 (a) was fixed at fifty-five years, was upheld on the ground that the rule laid down a reasonably long period of qualifying service. (See Takhatrav Shivdatrai Mankad v. Gujarat, (4) particularly the observations at p. 123). Since the question of validity of such a rule has thus been concluded, such a challenge is no longer available to the appellant.

The affidavit in reply by the respondents, dated February 6, 1968, in clear terms avers that before passing the impugned order the appropriate authority, in accordance with the said Office Memorandum of the Ministry of Home Affairs, reviewed the case of the appellant and came to the conclusion that it was in public interest that he should be compulsorily retired on his attaining fifty-five Vears of age. The affidavit also avers that the appropriate authority had "carefully considered all relevant factors (1) [1964] 5 S.C.R. 587.

(3) A.I.R. 1965 S.C. 280.

(2) [1964] 57 S.C.R. 587.

(4) [1969] (2) S.C.C. 120.

relating to the case of the petitioner (the appellant) and came to the definite opinion that it was not in the public interest to retain the petitioner in service beyond the date on which he attained the age of fifty-five years." In their reply-affidavit, dated July, 10, 1967, in *.P. 1550 of 1967 it is further stated that before the said decision was reached, the appellant's entire service record was considered including his confidential reports, that where such reports were adverse they had been earlier comnunicated to him from time to time, that the appellant had made representations against them to the competent authority and even personal interviews before superior officers had been granted to him to vindicate his point of view. It was after all this had been done and the confidential reports had remained unaltered that the appropriate authority considered his entire record of service and then reached the conclusion that F. R. 56(j) should be resorted to. It may well be that in spite of the work of the appellant being satisfactory. as he claimed it was, there may have been other relevant factors, such as the history of the appelant's entire service and confidential reports throughout the period of his service, upon which the appropriate authority may still decide to order appellant's retirement under F. R. 56(j). Further, there is nothing to show that the impugned order was not in public interest. As aforesaid, Col J. N. Sinha's case(1) clearly lays down that the question as to the correctness of such a decision by the appropriate authority, provided it is bona fide, would not be gone into by this Court. We have already negatived the plea of mala fides raised by the appellant. Consequently, a plea of lack of bona fides can hardly be entertained. Likewise, the plea that the appropriate authority had not applied its mind must also fail in view of the clear averments made in that regard in the affidavits cited earlier, no reason having been adequately shown to discard those statements as untrue or otherwise unbelievable. That being the position, we are constrained to come to the conclusion that the appellant has-failed to make out his case in any one of his three writ petitions.

The appeals must fail and are dismissed with costs.

G.C. Appeals dismissed.

(1) [1971] 1 S. C. R. 791.