O.P. Gupta vs Union Of India & Ors on 3 September, 1987

Equivalent citations: 1987 AIR 2257, 1988 SCR (1) 27, AIR 1987 SUPREME COURT 2257, 1987 (4) SCC 328, 1987 LAB. I. C. 1904, (1987) 3 JT 532 (SC), 1987 (9) IJR (SC) 694, 1987 SCC (L&S) 400, (1987) 2 LAB LN 847, (1987) 2 CURCC 755

Author: A.P. Sen

Bench: A.P. Sen, B.C. Ray

PETITIONER:
O.P. GUPTA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT03/09/1987

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 2257 1988 SCR (1) 27
1987 SCC (4) 328 JT 1987 (3) 532
1987 SCALE (2)457

ACT:
Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 12-Departmental proceedings against Civil Servant-Not to be protracted unnecessarily-Necessity for concluding with reasonable diligence.
Civil Services: Fundamental Rules.-FRs 25 and 54: Civil Servant-Placed under suspension-Necessity for departmental proceedings being concluded within reasonable period-Crossing of efficiency bar-To be considered at appropriate time-Rules of natural justice applicable.
Constitution of India, 1950: Article 309-Service rules have to be reasonable and fair and not grossly unjust.
Words & Phrases: 'Ordinary'-Meaning of.

HEADNOTE:

Fundamental Rule 54 requires that when a Government servant who had been dismissed, removed or suspended is reinstated, the authority competent to order reinstatement has to make a specific order (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and (b) directing whether or not the period of suspension shall be treated as a period spent on duty. Fundamental Rule 25 lays down that the increment next above the efficiency bar in a time scale shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increment under R.24. The Government of India, Ministry of Finance's decision dated September 21, 1967, as clarified by Ministry of Home Affairs, Department of Personnel & Administrative Reforms Memorandum dated April 6, 1979, stated that if after the conclusion of the disciplinary proceedings, the Government servant is completely

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exonerated, he may be allowed to cross the efficiency bar with effect from the due date retrospectively, unless the competent authority decides otherwise. Rule 2.636 of the C.P.W.D. Manual, Vol.I, 1956 edn., laid down that Divisional and Sub-Divisional Officers who fail to pass the departmental examination should not ordinarily be considered either for promotion or for crossing the efficiency bar.

The appellant, an Assistant Engineer in the Central Public Works Department was placed under suspension on September 3, 1959 pending a departmental enquiry. That order was revoked by the Chief Engineer on May 8, 1970, and he was reinstated in service on May 25, 1970 but the departmental proceedings were kept alive. Immediately thereafter, the appellant made a representation to the department to pass an order under FR. 54 for payment of full pay and allowances for the period of suspension, which was rejected on the ground that the departmental enquiry was still pending. Thereafter, the appellant was compulsorily retired by an order of the Chief Engineer dated April 25, 1972 under FR. 56(j).

In the writ petition filed by the appellant under Article 226 of the Constitution challenging the validity of the order of compulsory retirement, and seeking directions in terms of FR 54 for payment of full pay and allowances for the period of suspension and also for payment of all increments to which he was entitled, a Single Judge of the High Court found the order of compulsory retirement bad in law, quashed it, and held that the appellant shall be deemed to have continued in service till March 31, 1978, the date when he attained the normal age of superannuation. It was further held that the suspension of the appellant was not justified, and the period of suspension must be regarded as spent on duty and therefore the appellant under FR 54(2) was entitled to full pay and allowances and the increments for

that period, and that r.9(2)(b) of the Central Civil Services (Pension) Rules, 1972 was not attracted, and accordingly quashed the departmental proceedings. The Division Bench declined to interfere.

Thereafter the Director General of Works on September 17, 1982 passed an order on the recommendation of the departmental promotion board declaring the appellant unfit to cross the efficiency bar at the stage of Rs.590 in the grade Rs.350-900 with effect from October 5, 1966.

In the contempt proceedings taken by the appellant, the government stated that there were two conditions for an Assistant Engineer to
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cross efficiency bar namely, (i) that he should have passed the departmental examination in Accounts, and (ii) he should have obtained good reports for the preceding five years. The Single Judge declined to interfere with the governmental order. The Division Bench dismissed the appeal and reiterated that a writ petition should be filed.

The appellant thereupon filed the present writ petition on July 10, 1985 under Article 226 of the Constitution to enforce his right to increments after crossing of the efficiency bar and also for grant of interest on delayed payment of pension. The High Court held that the crossing of the efficiency bar depends on the satisfaction of the competent authority under FR 25 and also on the passing of the departmental examination under r. 2.636 of the C.P.W.D. Manual, Vol. 1, 1956 edn. and that if the authority concerned had chosen not to give the sanction under FR 25, the Court had no jurisdiction to interfere particularly as the appellant was not actually in office for such a long period of time.

In this appeal by special leave, on the questions: (i) was the Union of India justified in passing the oder in terms of FR 25 declaring the appellant unfit to cross the efficiency bar, and (ii) was the appellant entitled to interest on the delayed payment of his pension?

Allowing the appeal,

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HELD: 1.1 The order passed by the competent authority under FR 25, prejudicial to the interest of the appellant must be subject to the power of judicial review. [44AB]

1.2 The stoppage of increment at the efficiency bar during the pendency of a departmental proceeding is not by way of punishment, and therefore the government servant facing a departmental inquiry is not entitled to a hearing. The court does not come into the picture at that stage. But where despite the fact that the departmental inquiry against the government officer had been quashed, and it had been held by the High Court that the suspension was wholly without justification, there was no occasion for the competent authority to enforce the bar against him under FR 25, particularly after his retirement, unless it was by way

of punishment. [43G-44A]

1.3 It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Strict adherence to this rule is mandatory where a public authority or body has to deal with rights.

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There is always the duty to act judicially in such cases. There is, therefore, the insistence upon the requirement of a fair hearing. There is no reason why the power of the Government under FR 25 should not be subject to the same limitations. [41G, 42B,C]

1.4 The note beneath Government of India, Ministry of Finance Memorandum dated April 23, 1962, as amended from time to time enjoins that the cases of government servants for crossing of the efficiency bar in the time-scale of pay should be considered at the appropriate time and in case the decision is to enforce the bar against the government servant, he should be informed of the decision. In enforcing the bar under FR 25 against the appellant the competent authority acted in flagrant breach of these instructions. [44FG]

1.5 There was no question of the appellant having adverse record for five years preceding his compulsory retirement since for three years he was under suspension and for the next two years there was nothing blameworthy against him. Furthermore, he having compulsorily retired on July 28, 1972 and also having reached his normal age of superannuation on March 31, 1978, his failure to pass the departmental examination under r. 2.636 could not be treated as a ground for denying him the benefit of crossing the efficiency bar under FR 25. The word 'ordinary' in r. 2.636 must be given its plain meaning as in normal circumstances. [44CE]

2.1 Suspension where there is no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fairplay in action. The conditions of service are within the executive power of the State or its legislative power under the proviso to Art. 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. [41DF]

2.2 There is no presumption that the Government always acts in a manner which is just and fair. In the instant ease, there was no occasion whatever to protract the

departmental inquiry for a period of 20 years
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and keeping the appellant under suspension for a period of 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. [40F]

2.3 The public interest in maintaining the efficiency of the services requires that civil servants should not be unfairly dealt with. The Government must view with concern that a departmental inquiry against the civil servant should have been kept alive for so long as 20 years or more and that he should have been placed under suspension without any lawful justification for as many as 11 years, without any progress being made in the departmental inquiry. It should also view with concern that a decision should have been taken by the competent authority to enforce the bar under FR 25 against the civil servant long after his retirement without affording him an opportunity of a hearing with a view to cause him financial loss. [45AB]

3. The Court, as a settled practice has been making direction for payment of interest at 12% on delayed payment of pension. There is no reason for it to depart from that practice in the facts of the present case. [45E]

4. The Director General of Works is directed to make an order in terms of FR 25 allowing the appellant to cross the efficiency bar according to the decision of the Government of India, Ministry of Finance dated September 21, 1967 as later clarified by the Ministry of Home Affairs Memorandum dated April 6, 1979 and to re-fix his pension accordingly. The appellant would be entitled to interest at 12% per annum on the difference in salary as well as in pension. [45G-46A]

Ridge v. Baldwin, LR [1964] AC40; M. Gopala Krishna Naidu v. State of Madhya Pradesh, [1968] 1 SCR 355; B.D. Gupta v. State of Haryana, [1973] 2 SCR 323; Khem Chand v. Union of India, [1958] SCR 1080 and Board of Trustees of the Port of Bombay v Dilip Kumar Raghavendranath Nadkarni & Ors., [1983] 1 SCR 328, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3582 of 1986.

From the Judgment and Order dated 24.7.1985 of the Delhi High Court in Civil W.P. No. 435 of 1985.

S. Rangarajan and Ms. Asha Rani Jain for the Appellant. V.C. Mahajan, Ms. C.K. Sucharita and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by SEN, J. This appeal by special leave directed against the judgment and order of the High Court of Delhi dated July 24, 1985 raises two questions, namely: (1)

Was the Union of India justified in passing an order dated September 17, 1982 in terms of FR 25 declaring the appellant to be unfit to cross the efficiency bar as Assistant Engineer, Central Public Works Department at the stage of Rs.590 in the prerevised scale of pay of Rs.350-590-EB-900 as from October 5, 1966? And (2) Is the appellant entitled to interest on the delayed payment of his pension?

This litigation has had a chequered career. The appellant who was as Assistant Engineer in the Central Public Works Department was placed under suspension pending a departmental enquiry under r.12(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 on September 3, 1959. He remained on suspension till May 25, 1970 when on repeated representations the Chief Engineer, Central Public Works Department revoked the order of suspension and he was reinstated in service. During the aforesaid period of suspension, adverse remarks in his confidential reports for the period between April 1, 1957 and August 31, 1957 and between April 1, 1958 and March 31, 1959 were communicated to him on December 16, 1959. After a period of nearly five years, the departmental proceedings culminated in an order of dismissal from service dated March 12, 1964 but the same on appeal by him, was set aside by the President of India by order dated October 4, 1966 with a direction for the holding of a fresh departmental inquiry under r. 29(1)(c) of the Rules, with a further direction that he shall continue to remain under suspension. The order of suspension was revoked by the Chief F Engineer on May 8, 1970 but the departmental proceedings were kept alive. As a result of this, the appellant was reinstated in service on May 25, 1970. Immediately thereafter, he made representation to the Department to pass an order under FR 54 for payment of full pay and allowances for the period of suspension i.e. the period between September 3, 1959 and May 25, 1970 but the same was rejected on the G ground that departmental inquiry was still pending.

There was little or no progress in the departmental inquiry. on April 25, 1972 the Chief Engineer passed an order of compulsory retirement of the appellant under FR 56(j). The appellanrmade representations to various authorities, including the President of India, H against his compulsory retirement but the same was rejected Eventu-

ally, on July 20, 1972 the appellant filed a petition under Art. 226 of the Constitution in the High Court challenging the validity of the order of compulsory retirement and prayed for a direction in terms of FR 54 for payment of full pay and allowances for the period of suspension and also for payment of all increments to which he was entitled. He also prayed for quashing of the departmental proceedings.

A learned Single Judge (Wad, J.) by his judgment and order dated January 5, 1981 held that the order of compulsory retirement of the appellant was bad in law, not being relatable to FR 56(j) inasmuch as the action was not based on an overall assessment of the appellant's record of service and was in breach of the instructions issued by the Government of India, Ministry of Home Affairs dated June 23, 1969 laying down the procedure to be followed under FR 56(j). He further held that the action to compulsorily retire the appellant in 1972 under FR 56(j) could not obviously be taken on the basis of adverse remarks for the years 1950-51 when he was an Overseer, nor on the adverse remarks for the years 1957-59 communicated to him on December 16, 1959, after a lapse of 20 years

and 13 years respectively. Further he observed that the adverse remarks of 1957-59 were not serious enough to cut short the career of the appellant as a Government servant, particularly in view of the fact that the general confidential reports for two years immediately preceding his retirement on July 28, 1972 did not reveal anything blameworthy against him. He accordingly quashed the order of compulsory retirement of the appellant and held that he shall be deemed to have continued in service till March 31, 1978, the date when he attained the normal age of superannuation.

During the course of his judgment, the learned Judge also adversely commented on the failure of the Department to pass an order in terms of FR 54 consequent upon the reinstatement of the appellant on May 25, 1970 within a reasonable time. He observed that ordinarily he would have left it to the Department to pass an order under FR 54 as to whether the suspension of the appellant for the period from September 3, 1959 to May 25, 1970 was justified or not but due to the inactivity or refusal on the part of the Government to pass an order under FR 54, the Court was left with no other option but to deal with the question. After referring to the various stages of the departmental proceedings, the learned Judge held that the suspension of the appellant was not justified and the period of suspension must be regarded as spent on duty and therefore the appellant under FR 54(2) was entitled to full pay and allowances and the increments for that period. He further held that r. 9(2)(b) of the Central Civil Services (Pension) Rules, 1972 was not attracted and accordingly quashed the departmental proceedings. The operative part of the judgment of the learned Judge reads as follows:

> "The petition, for the reasons stated above, succeeds. The order of compulsory retirement dated 25.4.1972 is set aside. The petitioner would be entitled to continuation in service upto March 31, 1978 (the date when he reached his normal age of superannuation) and consequential benefits. The continuation of suspension of the petitioner was without any justification. The petitioner would be entitled to full pay and allowances from 3.9.1959 to 24.5.1970 with increments and other service benefits according to Rules. The pending departmental proceedings are quashed."

Aggrieved, the Union of India went up in appeal but a Division Bench by its judgment dated March 24, 1982 declined to interfere. The appellant had in the meanwhile submitted his bill of arrears and the respondents having failed to comply with the direction of the learned Single Judge, he moved the High Court for contempt. In response to the notice issued by the High Court, respondent no. 4 Director General of Works entered appearance on September 6, 1982 and tendered a written apology, upon which the High Court dropped the proceedings. It appears that the Department paid the appellant about Rs.86,000 in compliance with the judgment of the learned Single Judge.

Although there is a healthy trend and the Government of India has set up an independent Ministry-Ministry of Personnel, Public Grievances & Pension-for settlement of claims in regard to pension, this case is an instance where a civil servant had been subjected to endless harassment for no fault of his own. While it is true that the charge levelled against the appellant was serious enough to merit the imposition of a major punishment, there was little or no progress for keeping the departmental proceedings pending for over 20 years. There was persistent effort on behalf of the Department to visit the appellant with civil consequences, first by placing him under suspension

under r. 12(2) of the Rules for a period of 11 years and secondly by directing his compulsory retirement when it was realised that the charge levelled could not be substantiated. Under FR 54 when a Government servant who had been dismissed, removed or suspended is reinstated, the authority competent to order reinstatement has to make a specific order (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and (b) directing whether or not the period of suspension shall be treated as a period spent on duty. Despite repeated representations made by the appellant, the Government failed in its duty to pass an order in terms of FR 54 within a reasonable time. The Government also failed to comply with the judgment of the learned Single Judge and pay to the appellant the arrears of pay and allowances amounting to about Rs.86,000 till the High Court issued a notice for contempt. It is regrettable that respondent no. 4 Director General of Works had to enter personal appearance and tender a written apology. The payment of Rs.86,000 to the appellant was therefore under threat of contempt and does not redound to the credit of the Government.

The miseries of the appellant did not end with this. The Department apparently never forgave the appellant for having dragged the Government to litigation and compel the personal appearance of the Head of the Department. It was expected that the Government would act with good grace but just within a fortnight of the termination of the contempt proceedings, the Director General rejected the appellant's case for crossing of the efficiency bar at the stage of Rs.590 w.e.f. October 5, 1966 as indicated hereinafter.

In the counter-affidavit to the contempt proceedings, the Government stated that there were two conditions for an Assistant Engineer to cross the efficiency bar, namely: (1) that he should have passed the departmental examination in Accounts prescribed for Assistant Engineers, and (2) he should have obtained good reports over the last five years. The increments above the stage of efficiency bar are to be allowed in accordance with the provisions contained in FR 25 and the Government of India's decisions thereunder. The appellant's case for crossing of efficiency bar at the stage of Rs.590 w.e.f. October 5, 1966 was said to have been considered by the Departmental Promotion Committee on the basis of his performance reports. Evidently, the Departmental Promotion Committee recommended on the basis of such reports that he was not fit to cross the efficiency bar at the stage of Rs.590 from October 5, 1966 or on any subsequent date upto October 5, 1971. The report of the Departmental Promotion Committee was accepted by the competent authority. Accordingly, the Director General of Works on September 17, 1982 passed an order to the following effect:

> "No.32/426/66.EC.III New Delhi, dated 17.9.82 OFFICE MEMORANDUM Sub: Crossing of Efficiency Bar by Shri O.P. Gupta, Assistant Engineer (Civil), Retired. The Executive Engineer, Central Stores Division No. 1, C.P.W.D. New Delhi is informed that the case of crossing of efficiency bar by Shri O.P. Gupta, Assistant Engineer (Retired) at the stage of Rs.590 in the pre-revised scale of pay of Rs.350-25-500-30-590-EB-30-800-EB-30-830- 35-900 has been considered by the competent authority, who has found him unfit to cross the efficiency bar w.e.f.5. 10.1966 or from any subsequent date upto 5. 10.1971."

The impugned order is not as innocuous as it looks. Just as suspension of a government servant pending a departmental inquiry is not by way of punishment, so also the withholding of increments at the efficiency bar pending such inquiry. But when the High Court quashed the departmental proceedings which were pending for over 20 years with little or no progress as being wholly invalid and unfair, there was no occasion for the Department to have passed an order under FR 24 for withholding increments to the appellant at the stage of Rs.590 w.e.f. October 5, 1966 unless it was with a view to penalise him financially. As already stated, the authority competent to order reinstatement failed to make an order in terms of FR 54 after the appellant had been reinstated in service on May 25, 1970 within a reasonable time. Looking to the long lapse of time, the High Court was entitled to go into the question as to whether the appellant upon his reinstatement was entitled to the full pay and allowances to which he would have been entitled had he not been suspended. Undoubtedly, the High Court gave a direction in terms in FR 54(2) that the appellant would be entitled to his full pay and allowances as also to his increments etc. but this would be the normal increment prior to the crossing of the efficiency bar for purposes of FR 54(2). There has to be a specific order in terms of FR 25 before a government servant can be allowed to draw his increments above the efficiency bar. The Government was justified in withholding increments under FR 25 pending the departmental inquiry but after the High Court had quashed the departmental inquiry, the question whether the appellant could be deprived of his increments under FR 25 was a live issue till the controversy was settled by the Government of India, Ministry of Finance decision dated September 21, 1967. We shall first reproduce FR 25 and it is in the following terms:

> "Where an efficiency bar is prescribed in a time- scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increment under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may,by general or special order, authorise in this behalf."

The Government of India, Ministry of Finance's decision dated September 21, 1967 as clarified by Ministry of Home Affairs, Department of Personnel & Administrative Reforms Memorandum dated April 6, 1979, insofar as relevant is reproduced below:

> "(7) Procedure for consideration of cases-(a) When disciplinary proceedings are pending-A Government servant against whom proceedings are pending but who is due to cross the efficiency bar prescribed in his time-scale of pay, may not be allowed to cross the bar until after the conclusion of the proceedings. A question was raised as to the date from which a Government servant whose case for crossing the efficiency bar has not been considered on account of the pendency of a disciplinary/vigilance case against him, should be considered for being allowed to cross the efficiency bar, after the enquiry is over. It has been decided, in consultation with the Ministry of Home Affairs, that if after the conclusion of the proceedings, the Government servant is completely exonerated, he may be allowed to cross the efficiency bar with effect from the due date retrospectively, unless the competent authority decides otherwise. If however, the Government servant is not completely exonerated, his case for crossing the efficiency bar cannot be considered with retrospective effect from the

due date. Such cases can be considered only with effect from a date following the conclusion of the disciplinary/vigilance case, taking into account the outcome of the disciplinary/vigilance case.

(b) When conduct is under investigation-Same procedure as at (a) may be followed after the conclusion of the investigation and where the competent authority on consideration of the results of the investigation, has formed the opinion that a charge-sheet may be issued to the Government servant concerned on specific imputations where departmental action is contemplated or that sanction for prosecution may be accorded where prosecution is proposed. Otherwise, the normal procedure should be followed.

..... The sealed cover should be opened after conclusion of the proceedings. If he is fully exonerated, the recommendations in the sealed cover may be considered by the competent authority who may lift the bar retrospectively from the date recommended by the D.P.C. In that case, the Government servant will be entitled to the arrears of the increment(s). In case, however, the proceedings do not result in complete exoneration of the Government servant, he cannot be allowed to cross the bar with retrospective effect."

The relevant provision in r. 2.636 of the C.P.W.D. Manual, Vol. 1, 1956 edn. at p. 53 is in the following terms:

"2.636. The Government of India have decided-

(a) that a departmental examination shall be held by the Chief Engineer twice a year and as far as possible in the months of January and July every year, for all Divisional and Sub-Divisional Officers in the Central Public Works Department;

(f) Divisional and Sub-Divisional Officers who fail to pass the departmental examination should not ordinarily be considered either for promotion or for crossing the efficiency bar."

It is somewhat strange that when the appellant applied to the learned Judge (Wad, J.) for review, he by his order dated February 2, 1983 declined to interfere saying that there was no ground for review inasmuch as the appellant had not been allowed to cross the efficiency G bar under FR 25 for two valid reasons, namely: (1) his failure to pass the departmental examination, and (2) his confidential reports for the preceding five years were not satisfactory. As to the question of the appellant being afforded an opportunity before an order under FR 54(2) adverse to him was passed by the disciplinary authority, the learned Judge observed that 'the matter was at large when the petition H for contempt was filed' and further that 'all pros and cons of the matter had been gone into through the affidavits filed by the parties and at the hearing in the Court' and added:

"I do not think that it is necessary to give any further opportunity to the petitioner for this purpose, particularly when he has admitted that he has not passed the

examination."

The learned Judge failed to appreciate that no prejudicial order under FR 25 could be made without giving the appellant an opportunity of a hearing as it visited him with civil consequences. The appellant was thus constrained to move another application for review. This time the learned Judge by his order dated November 30, 1983 dismissed the application observing that no ground for review had been made out and that the earlier order declining to review had been passed after fully hearing the parties and no further relief could be granted. But he added a rider that if the appellant was not satisfied with the Government decision, his remedy was to file a separate writ petition.

Thereupon, the appellant went up in appeal but a Division Bench by its order dated April 30, 1984 dismissed the same and reiterated that he should file a writ petition. The appellant accordingly filed a petition under Art. 226 of the Constitution to enforce his right to increments after the crossing of the efficiency bar under FR 25. Again, a Division Bench by its order dated October 30, 1984 declined to interfere saying that the appellant should make a representation to the competent authority with the direction that the same should be considered sympathetically. In accordance therewith, on December 10, 1984 the appellant made a representation to the Director General of Works, Central Public Works Department. He thereafter addressed several communications to the authorities on the subject. Eventually, the Deputy Director of Administration by her letter dated April 9, 1985 informed the appellant that his representation had been rejected. She further intimated the appellant the following order with respect to his crossing of the efficiency bar under FR 25.

> "I am further to inform you that your case for crossing the E.B. at the stage of Rs.590 w.e.f. 5.10.1972 in the prerevised scale of Rs.350-25-500-30-590-EB-30-800-EB-30-830-35-900 and also at the stage of Rs.810 in the revised scale of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200, w.e.f. 5-10.1973 or from any subsequent date upto the date of your superannuation viz. 31.3.1978 has also been considered carefully by the competent authority. It is regretted that you have not been found fit to cross the E.B. w.e.f. 5.10.1972 at the stage of Rs.590 in the pre-revised scale of Rs.350-25-500-30-590-EB-30-800-EB-30-830-35-900, as also at the stage of Rs.810 in the revised scale of Rs.650-30-740-35-810-EB-35-880-40-1000-
>
> EB-40-1200, w.e.f. 5.10.1973 or from any subsequent date upto the date of your superannuation viz. 31.3.1978."

On July 10, 1985 the appellant filed the present petition under Art. 226 of the Constitution for redressal of his grievance as regards the crossing of the efficiency bar at the stages indicated in the impugned order and also for grant of interest on delayed payment of pension. A Division Bench (D.K.Kapur and Mahinder Narain, JJ.) by its order dated July 24, 1985 dismissed the writ petition. It held that the crossing of the efficiency bar depends on satisfaction of the competent authority under FR 25 and also on the passing of the departmental examination under r. 2.636 of the C.P.W.D. Manual, Vol. 1, 1956 edn. at p. 53. It further observed that the sanction of the

authority competent under FR 25 was not forthcoming and that 'if the authority concerned had chosen not to give the sanction, the Court had no jurisdiction to interfere particularly as the appellant was not actually in office for such a long period of time'. Curiously enough, the Division Bench also added that it felt, considering the harassment to which the appellant had been subjected during the long years of suspension, it was a fit case in which the authority concerned should have granted the requisite sanction.

We have set out the facts in sufficient detail to show that there is no presumption that the Government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension as explained by this Court in Khem Chand v. Union of India, [1958] SCR 1080 is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance-generally called subsistence allowance-which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means-means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in r. 11 of the rules, an order of suspension is not to be lightly passed against the government servant. In the case of Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni & Ors., [1983] 1 SCR 828 the Court held that the expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fairplay in action. The conditions of service are within the executive power of the State or its legislative power under the proviso to Art. 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within

a reasonable period of time. If such a principle were not to be recognised, it would imply that the Executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration.

It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Both the Privy Council as well as this Court have in a series of cases required strict adherence to the rules of natural justice where a public authority or body has to deal with rights. There has ever since the judgment of Lord Reid in Ridge v. Baldwin LR [1964] AC 40 been considerable fluctuation of judicial opinion in England as to the degree of strictness with which the rules of natural justice should be extended, and there is growing awareness of the problems created by the extended application of principles of natural justice, or the duty to act fairly, which tends to sacrifice the administrative efficiency and despatch, or frustrates the object of the law in question. Since this Court has held that Lord Reid's judgment in Ridge v. Baldwin should be of assistance in deciding questions relating to natural justice, there is always 'the duty to act judicially' whenever the rules of natural justice are applicable. There is therefore the insistence upon the requirement of a 'fair hearing'. In the light of these settled principles, we have no doubt whatever that the Government acted in flagrant breach of the rules of natural justice or fairplay in passing the impugned order. We do not see why the principles enunciated by the Court in M. Gopala Krishna Naidu v. State of Madhya Pradesh, [1968] 1 SCR 355 should not apply with equal vigour to a case like the present. There is no reason why the power of the Government to direct the stoppage of increments at the efficiency bar on the ground of unfitness or otherwise after his retirement which prejudicially affects him should not be subject to the same limitations as engrafted by this Court in M. Gopala Krishna Naidu while dealing with the power of the Government in making a prejudicial order under FR 54, namely, the duty to hear the government servant concerned after giving him full opportunity to make out his case.

Under FR 54 when a government servant who had been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall make a specific order (a) regarding the pay and allowances to be paid to the government servant for the period of his absence from duty, and (b) directing whether or not the said period shall be treated as a period spent on duty. In the present case, the Government failed in its duty to pass an order in terms of FR 54 despite repeated representations made by the appellant in that behalf. The learned Single Judge was therefore justified in dealing with the question whether or not the period of suspension should be treated as a period spent on duty and to make a direction regarding payment of the full pay and allowances as also to increments to which he would have been entitled to but for the disciplinary proceedings. In M. Gopala Krishna Naidu's case the civil servant concerned had been exonerated of the charges framed against him in a departmental inquiry. The Government however held that the appellant's suspension in that case and the departmental inquiry

> instituted against him 'were not wholly unjustified' and tried to support its action in this Court on the ground that the making of an order under FR 54 was a consequential order. This Court repelled the contention and held that an order passed under FR 54 is not always a consequential order or a mere continuation of the departmental proceedings against the delinquent civil servant. Inasmuch as consideration under FR 54 depends on facts and circumstances in their entirety, and since the order may result in pecuniary loss to the government servant, consideration under the rule 'must be held to be an objective rather than a subjective consideration'. Shelat, J. who delivered the judgment of the Court went on to observe:
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> "The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice."

There is thus a duty to hear the concerned Government servant under FR 54 before any prejudicial order is made against him. The same principle was reiterated in B.D. Gupta v. State of Haryana, [1973] 2 SCR 323.

It must follow that when a prejudicial order is made in terms of FR 25 to deprive the government servant like the appellant of his increments above the stage of efficiency bar retrospectively after his retirement, the Government has the duty to hear the concerned government servant before any order is made against him. There has to be as laid down in M. Gopala Krishna Naidu's case an objective consideration and assessment of all the relevant facts and circumstances.

We find it difficult to subscribe to the doctrine evolved by the Division Bench that if the competent authority declines to sanction the crossing of the efficiency bar of a government servant under FR 25, the Court has no jurisdiction to grant any relief. No doubt, there has to be a specific order in terms of FR 25 by the competent authority before the government servant can get the benefit of increments above the stage of efficiency bar. The stoppage of such increments at the efficiency bar during the pendency of a departmental proceeding is not by way of punishment and therefore the government servant facing a departmental inquiry is not entitled to a hearing. Ordinarily, therefore, the Court does not come into the picture at that stage. But in a case like the present where despite the fact that the departmental inquiry against the appellant had been quashed, and it has been held by the High Court that his suspension was wholly without justification.

there was no occasion for the competent authority to enforce the bar against him under FR 25, particularly after his retirement, unless it was by way of punishment. That being so, the order passed by the competent authority under FR 25 prejudicial to the interests of the appellant in such circumstances must be subject to the power of judicial review.

The reasoning of the learned Single Judge that the authority competent was justified in refusing to allow the crossing of the efficiency bar under FR 25 in the case of the appellant on the ground that

(1) the appellant did not have good record of service over the last five years preceding his compulsory retirement, and (2) he had not passed the departmental examination in Accounts prescribed for Assistant Engineers, does not bear scrutiny. In the first place, there was no question of the appellant having an adverse record for five years preceding his compulsory retirement since for three years he was under suspension and, according to the learned Judge himself, for the next two years there was nothing blameworthy against him. Secondly, the failure to pass a departmental examination under r. 2.636 obviously could not stand in the way of the appellant since he had already been compulsorily retired. The appellant having compulsorily retired on July 28, 1972 and also having reached his normal age of superannuation on March 31, 1978, his failure to pass the departmental examination under r. 2.636 could not be treated as a ground for denying him the benefit of crossing the efficiency bar under FR 25. The word 'ordinarily' in r. 2.636 must be given its plain meaning as 'in normal circumstances'.

It is extremely doubtful whether in a case like the present the Director General of Works, Central Public Works Department, as the competent authority, could at all have taken a decision to enforce the bar under FR 25 against the appellant after his retirement. That apart, the competent authority acted in flagrant breach of the instructions contained in the Note beneath Government of India, Ministry of Finance Memorandum dated April 23, 1962, as amended from time to time. It enjoins that the cases of government servants for crossing of the efficiency bar in the time- scale of pay should be considered at the appropriate time and in case the decision is to enforce the bar against the government servant, he should be informed of the decision. This clearly implies that the competent authority must conform to the rules of natural justice. It would be a denial of justice to remit back the matter to the competent authority to reach a decision afresh under FR 25, in the facts and circumstances of the present case.

The public interest in maintaining the efficiency of the services requires that civil servants should not be unfairly dealt with. The Government must view with concern that a departmental inquiry against the civil servant should have been kept alive for so long as 20 years or more and that he should have been placed under suspension without any lawful justification for as many as 11 years, without any progress being made in the departmental inquiry. It should also view with concern that a decision should have been taken by the competent authority to enforce the bar under FR 25 against the civil servant long after his retirement with a view to cause him financial loss. Such a course not only demoralises the services but virtually ruins the career of the delinquent officer as a government servant apart from subjecting him to untold hardship and humiliation. We hope and trust that the Government in future would ensure that departmental proceedings are concluded with reasonable diligence and not allowed to be protracted unnecessarily. The Government should also view with concern that there should be an attempt on the part of the competent authority to enforce the bar against a civil servant under FR 25 long after his retirement without affording him an opportunity of a hearing. It comes of ill-grace from the Government to have defeated the just claim of the appellant on technical pleas.

Normally, this Court, as a settled practice, has been making direction for payment of interest at 12% on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case.

The result therefore is that the appeal succeeds and is allowed with costs. The judgment and order passed by the High Court are set aside and the writ petition is allowed. The impugned orders passed by the Director General of Works, Central Public Works Department dated September 17, 1982 and April 9, 1985 declining to permit the appellant to cross the efficiency bar at the stage of Rs.590 in the pre-revised scale of Rs.350-900 w.e.f. October 5, 1966 as also from October 5, 1972, and also at the stage of Rs.810 in the revised scale of Rs.650-1200 w.e.f. October 5, 1973 or from any subsequent date upto March 31, 1978, the date of his superannuation, are quashed. We direct the Director General of Works to make an order in terms of FR 25 allowing the appellant to cross the efficiency bar at the stage of Rs.590 w.e.f. October 5, 1966 and at the stage of Rs.810 w.e.f. October 5, 1973 and subsequent dates, according to the decision of the Government of India, Ministry of Finance dated September 21, 1967 as later clarified by the Ministry of Home Affairs Memorandum dated April 6, 1979 and to re-fix his salary upon that basis and pay the difference, as also re-fix his pension accordingly. The appellant would be entitled to interest at 12% per annum on the difference in salary as well as in pension. We further direct that the Government of India will make the payment to the appellant within four months from today.

P.S.S. Appeal allowed.