Supreme Court of India
State Of Uttar Pradesh vs Chandra Mohan Nigam & Others on 19 September, 1977
Equivalent citations: 1977 AIR 2411, 1978 SCR (1) 521
Author: P Goswami
Bench: Goswami, P.K.

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
CHANDRA MOHAN NIGAM & OTHERS

DATE OF JUDGMENT19/09/1977

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
SINGH, JASWANT
KAILASAM, P.S.

CITATION:
1977 AIR 2411 1978 SCR (1) 521
1977 SCC (4) 345
CITATOR INFO :
D 1980 SC 563 (13,19,24,31)
RF 1980 SC2084 (5)
R 1981 SC 594 (5)

ACT:
Service Law-All India Services (Death-cum-Retirement Benefits) Rules, '1958, R. 16(3)-Instructions by Central Government regarding procedure, whether binding on Government-Review of officer's service records at completion of 50 years age-Favourable report of Review Committee accepted by State and Central Governments-Service records reviewed by second Review ,Committee an same materials, prior to completion of 54 years age-Compulsory retirement on recommendation of second Review Committee, whether valid-Retirement u/r 16(3) vis a vis the constitutional right under Preventive Detention Act.

HEADNOTE:
Shri Nigam was a member of the Indian Administrative Service. During his service career, he had some adverse entries in his character roll. He was suspended in 1964, pending enquiry on account of certain strictures passed against him by the Election Tribunal, but was reinstated

when the High Court expunged the strictures on appeal. On December 29, 1967, Shri Nigam attained the age of 50 years, and, following the Central Government's instructions, in October 1969, a Review Committee examined his service records under R. 16(3) of the All India Services (DCRB) Rules 1958, as amended in 1969. The Committee's recommendation for Shri Nigam's continuance in service, was accepted by the State Government, and the Central Government did not communicate any disagreement. In May 1970, the State Government set up a second Review Committee u/r. 16(3) which examined Shri Nigarm's service records on the same materials, and recommended compulsory retirement. The recommendation was accepted, and an order dated August 22, 1970, was passed, compulsorily retiring him. Shri Nigam's writ petition was allowed by a Single Judge of the High Court, and a State appeal was rejected by the Division Bench, which found. the case to be analogous with the infringement of a constitutional right under the Preventive Detention Act.

Dismissing the appeal by certificate, the Court,

HELD : (1) Since Rule 16(3) itself does not contain any guidelines, directions or criteria, the instructions issued by the Government furnish an essential and salutary procedure for the purpose of securing uniformity in application of the rule. They are embedded in the conditions of service, and are binding ,on the Government, and cannot be violated to the prejudice of the Government servant. [531 A-B]

Santram Sharma v. State of Rajasthan & Anr. [1968] (1) SCR 111 and Union of India v. K. P. Joseph & Ors. [1973] (2) SCR 752, applied.

(2) Once a Review Committee has considered the case of an employee, and the Central Government does not decide, on the report of the committee endorsed by the State Government to take any prejudicial action against an officer, there is no warrant for a second Review Committee under the scheme of rule 16(3) read with the instructions, to reassess his case on the same materials, unless exceptional circumstances emerge in the mean time or when the next stage for review arrives. [531 C-D]

(3) The principle governing the order of preventive detention with regard to effective representation against such order, is not applicable in the case of an order for compulsory retirement which casts no stigma on a Government servant. The test which has been laid down in the case of preventive detention is in context of right to individual liberty of a person which is a fundamental right enshrined in the Constitution while the order of compulsory retirement

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is passed in respect of a Government servant who has ceasedto have a right, as such, to continue in Government service under the rulesgoverning his employment. [528 G-H]

State of Orissa v. Bidyabhushan Mahopatra [1963] Supp.(1)

SCR 648, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.161 of 1974 and 1782 of 1973.

From the Judgment and Decree dated 13-4-1973 of the Allahabad High Court in Special Appeal No. 698 of 1971. S.N. Kacker, Sol. Gen., O. P. Rana for the Appellant in CA No161/74 and R-2 in CA No. 1782/73.

S.N. Kacker, Sol. Genl. and Girish Chandra for the Appellant in CA No. 1782/73.

Yogeshwar Prasad, (Mrs.) S. K. Bagga, Miss Meera Bali and Miss, Rani Arora for Respondent No. 1 in both the appeals. The Judgment of the Court was delivered by. GoswAmI, J. These appeals by certificate are from the judgment of the Division Bench of the Allahabad High Court centering round an order of compulsory retirement of a senior officer in the Indian Administrative Service. The first respondent, Chandra Mohan Nigam, (briefly the respondent) was recruited in the Indian Administrative Service in Uttar Pradesh Cadre as a, War-service candidate in 1946 and he joined service on March 23, 1947. For the purpose of seniority, etc. he was allotted to the year 1941. In 1949 he was promoted to the senior scale. He was appointed Commissioner of Faizabad and Gorakhpur Divisions in 1962. On June 4, 1967, he was, posted as Secretary, Local Self Department in the State Government. He was appointed Judicial Member of the Board of Revenue in 1969. He attained the age of 50 years on December 29, 1967. By an order dated August 22, 1970, the President of India, in consultation with the Government of Uttar Pradesh, in pursuance of the power conferred by sub-rule (3) of rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules 1958, passed the impugned order of compulsory retirement of the respondent in the public interest on the expiry of three months from the date of service of the order.

The respondent challenged the said order by a writ application before the Allahabad High Court and the learned single Judge allowed the same on the grounds of "contravention of the justifiable and binding rules and because the order was based on consideration of irrelevant matters and was also vitiated by bias".

Both the Union of India. and the State of U.P. appealed to the Division Bench of the High Court against the judgment of the learned single Judge. The High Court by an order dated April 13, 1973, dismissed both the appeals by a common judgment.. The Division Bench did not agree with all the reasons given by the learned single Judge and quashed the impugned order holding that "the decision of the Central Government to retire Shri Nigam being based on collateral facts was invalid".

The impugned order of compulsory retirement was based on four grounds. According to the Division Bench the ground relating to an order ofsuspension, on account of certain strictures of the Election Tribunalwas the "gravest' of all the four. Since according to the DivisionBench this ground was absolutely non-existent on account of the strictures having been later on set aside, it was of

opinion that the non-existent ground prevailed with the Central Government to take the decision for compulsory retirement of the respondent. The Division Bench observed "we are unable to hold that if the Government had excluded the case of suspension from consideration, it would nonetheless have reached the same decision, namely, to take action for' Shri Nigam's premature retirement'. It is complained before us by the appellants that the Division Bench erroneously invoked the principle of law laid down by this Court in the matter of preventive detention which is that if one of several grounds is irrelevant or non-existent and the said ground is not inconsequential or non-essential, an order of detention is invalid. Applying the above principle, the Division Bench quashed the impugned order. The High Court granted certificate to the appellants for leave to appeal to this Court and that is how these appeals have come before us.

Before we proceed further a brief reference to the facts and circumstances may be appropriate.

The respondent during his service career had the following adverse entries in his character roll :

> (1) A warning was administered to him on December 6, 1953, for taking undue interest in the ejectment of tenants from a house owned by him at Lucknow.
>
> (2) Another warning was issued to him on Au- List 31, 1962, for having acquired a car from the Varanasi Corporation while working as the Administrator of the Varanasi Municipal Corporation.
>
> (3) He was also once warned for not observing, proper rules and procedure for utilizing the fund earmarked for lower income, group housing scheme towards the construction of a market (1956-1957).
>
> (4) He, was also placed under suspension in 1964 in connection with some strictures passed on him by the Election Tribunal in a case relating to the Gorakhpur Parliamentary Constituency elections.

With regard to the fourth entry, it appears that although Shri Nigam had been suspended pending enquiry on account of certain strictures made against him by the Election Tribunal, these strictures were later on expunged by the High Court on appeal. As a result the order of suspension was set aside and Shri Nigam was reinstated in service in 1967. it appears, however, that even on December 20, 1969, the Secretary, Ministry of Home Affairs of the Central Government, while ,glancing through the character roll of Shri Nigam found the aforesaid entry containing the strictures.

The All India Services Act, 1951 (No. LXI of 1951) regulates the recruitment and the conditions of service of persons appointed to the All India Services. Under section 3 of that Act the Central Government, after consultation with the Governments of the States concerned makes rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service. In exercise of powers under sub-section (1) of section 3 of the said Act, the Central Government made the AU India Services (Death-cum-Retirement Benefits) Rules, 1958. Rule 16 of these Rules provides for superannuation, gratuity or, pension. The normal age of retirement of the officers in the

All India Service (hereinafter to Se described as the Service) is 58 years as per rule 16(1). Sub-rule (2) of rule 16 provides that a member of the Service who has completed 30 years of qualifying service or has attained the age of 55 years may, after giving at least three months' previous notice in writing to the State Government, retire from the Service on any date to be specified in the notice. We may read sub-rule (3) of rule 16 which is material for our purpose "16(3) : The Central Government, in consultation with the State Government, may require a member of the Service who has completed 30 years of qualifying service or who has attained the age of 55 years, to retire in the public interest provided that at least three months previous notice in writing will be given to the member concerned".

Later by a notification dated July 16, 1969, the figures and words ". 5 5 years" in sub-rules (2) and (3) of rule 16 were substituted by the figures, and words "50 years". Since sub-rule (3) of rule. 16 does not contain any guidelines with regard to premature retirement the Government of India, in the Ministry of Home Affairs issued certain instructions which are printed at page 596 of the All India Services Manual (corrected upto 1.5.1967) which is published under the authority of the Government. Paragraph 2 of those instructions reads as under "With a view to ensure all-,India uniformity of operation of this sub-rule [sub-rule (3) of rule 161 and also to ensure equitable treatment in all cases of premature retirement the Government of India have laid down the following criteria and procedure to be followed by the State Governments etc. while referring cases to the Central Government under this [sub-rule (3) of rule 16] (1)Six months before an officer attains the age of 55, his record should be carefully examined by the State Government, or if the officer is serving under the Central Government by the Central Government, and a provisional judgment formed whether he should be retired on attaining the age of 55 years.

(2) Where the State Government come to the conclusion a,,; a result of this examination that an officer should be retired prematurely under Rule 16 (2) referred to above, they may make a proposal according to the Central Government with a full indication of the considerations and reasons for their proposal. Where an officer is serving under the Central Government, the Central Government would send a similar statement to the State Government while inviting their views on the question of retiring the officer prematurely. It is to be hoped that this" process of consultation between the Central and the State Governments would be completed in each case in about three months' time so that in the event of retirement being finally decided upon, a notice could be given to the officer concerned at least three months before the date on which be is to attain the age of 55 years and his retirement thus given effect ,is soon as he does so.

(3) x x x
x
(4) In a case in which the State and the

Central Governments have reasonable cause to believe that an officer is lacking in integrity, it would be appropriate to consider him for premature retirement, irrespective of an assessment of his ability of efficiency in work.

(5) x x x x
(6) x x x x

(7). Once it is decided to retain an officer beyond the age of 55 years, he should be allowed to continue up to the age 58 without any fresh review unless this be justified by any exceptional reasons, such as his sub- sequent work or conduct or the state of his physical health, which may make earlier retirement clearly desirable. The Government of India feel that in order that an officer who is cleared for continuance at the stage of attaining the age of 55 years can settle down to another three years of work with a sense of security and those working under him accept his control and discipline without any reservation an annual review between 'the years of 55 and 58 would not be desirable. In arriving at this view , they have among other factors taken into consideration the fact that at these stages, members of all-India Services generally occupy very senior appointments on which particularly such a sense of security about their tenure is desirable in the public interest. Further, having arrived at an assessment in favour of further continuance in service at the age of 54 years or so, there would ordinarily be no occasion for changing the assessment during the next three years,, so that an annual review would serve little practical purpose. Finally, in any case, sub-rule (3) of rule 16 of the AIS (DCRB) Rules would enable appropriate consideration at any time in very exceptional circumstances".

On September 5 1967, the Ministry of Home Affairs issued further instructions to the Chief Secretaries of all the State Governments (except Nagaland) with regard to the criteria and procedure to be followed regarding premature' retirement of the All India Service officers. We may read paragraph 2 of those instructions :

> " In clarification of and supplemental to the previous instructions issued in the letter quoted above, the Government of India would suggest the observance of the following criteria and procedure for the aforesaid purpose :--
>
> (1) A review should be conducted twice a year in the month of January and July to determine the suitability for continuance of all officers who will attain the age of 55 years in the half year beginning with the following July and January respectively. The review may be conducted by committees constituted as follows x x x x
>
> (b) In the States, for I.A.S. Officers the Review Committee may consist of the Chief Secretary, Member/ Senior Member/Chairman, Board of Revenue. and one other senior officer."
>
> x x x
> x
>
> We may also refer to a notification dated August 14, 1969, from the Ministry of Home Affairs, Government of India, to the Chief Secretaries of all the State Governments with regard to the amendment to rule 16 for review of records of officers at the age of 50 Paras 2 and 3 of this notification may be quoted "2. 1 am to request that the State Governments may kindly take steps to review the records of all those All India Service officers, who have already completed or who are about to complete the age of 50 in the next 6 months or so and are serving in connection with the affairs of the State....

> 3. The, criteria and procedure for review of records and also service of notice on those, who are proposed to be retired will be the same as outlined in this Ministry's letter No. 29/67/66-AIS(11), dated the 5th September, 1967. This review at the age of 50 will be in addition to the one contemplated later at the age of 55".

It is in pursuance of sub-rule (3) of rule 16 and in consonance with the instructions set out above that the State Government of U.P. in October 1969 constituted a Review Committee consisting of Shri H. C. Gupta, Chairman, Board of Revenue, Shri B. B. Lal, I. C. S., Chief Secretary and the Member, Taxation Board of Revnue, to review the records of the members of the Service who were to attain or had attained the age of 50 years. The list of officers considered by this Committee included the respondent, Shri Nigam. The Committee did not recommend any of the officers including Shri Nigam for premature retirement and, on the other hand, recommended that they should be continued in service. The State Government accepted the report of the Review Committee and communicated its decision to the Central Government. On December 20, 1969, the Secretary, Ministry of Home Affairs of the Central Government, addressed a letter to the State Government as follows :-

> "I have glanced through the character rolls of the I.A.S. Officers of Uttar Pradesh Cadre, who have already reached the age of 50. 1 find that there are certain adverse remarks in the character roll of Shri C. M. Nigam (IAS-1941). A warning was administered to him on December 6, 1958 for taking undue interest in the ejectment of tenants from a house owned by him at Lucknow. Another warning was issued to him on 31st August 1962 for having acquired a car from the Varanasi Corporation while working as Administrator of the Varanasi Municipal Corporation. He was also once warned for not observing proper rules and procedure for utilising the fund earmarked for low income group housing scheme towards the construction of a market. Later he was also placed under suspension in connection with some strictures passed on him by the Election Tribunal in a case relating to the Gorakhpur Parliamentary Constituency elections.
>
> (2) In view of these, it appears to us that this is a fit case in which proposals for his premature retirement under rule 16(3) of the All India Services (DCRB) Rules, 1958 should be considered. The State Government however have not recommended his compulsory retirement. We do not know if there were any particular reasons for taking a different view or whether it was a case of oversight. We would like to have the considered views of the State Government before Central Government come to a decision."

On January 29, 1970. the Chief Secretary to the State Government replied that the review Committee bad considered the character roll and the merits of the case of Shri Nigam and found that he was suitable for continuing in service, that the decision of the Committee was accepted by the State Government, the State Government's decision in the matter was taken after thorough consideration and that it did not consider it necessary to go into this question again. No adverse decision contrary to the recommendation of the, State Government was communicated by the

Central Government to the State Government in pursuance of the recommendation of the first Review Committee in October 1969.

Next, we, find that the State Government constituted a second Review Committee in May 1970 consisting of Shri Musaddi Lal, Chief' Secretary, Shri J. D. 'Shukla, Member Board of Revenue and Shri J. B. Tandon, the senior-most officer of the Indian Administrative Service. Before this Committee 'the case of all the officers who had, attained the age of 50 years including those whose cases had been re- viewed earlier, in October 1969, were also placed for consideration. Thus Shri Nigam's case came to be considered again by the second Review Committee. This time the Committee recommended that two officers, one of whom was Shri Nigam, should be prematurely retired. The State Government having accepted this recommendation; forwarded the same to the Central Government. The Central Government asked the State Government to send the proceedings of the Review Committee. On receipt of that report the Central Government agreed with the views of the State Government and passed the impugned order of compulsory retirement of the respondent.

It is submitted by the appellants that no decision was made by the Government of India after receipt of the recommendation of the State Government in October 1969 or even after reiteration of the State Government's views in January 1970. Even the counsel for the State conceded in the High Court that only if the Central Government disagreed with the State Government a communication was made. The absence of communication until the second Review Committee goes to show that there was no adverse decision against the respondent.

As we have indicated earlier in the judgment the learned Solicitor General, on behalf of the appellants, emphasised before us his objection to the question of principle which was relied upon by the Division Bench for quashing the impugned order, that is to say, the principle applicable to the case of preventive detention.

We have no hesitation in holding that the principle governing the order of preventive detention evolved by this Court having regard' to the constitutional right of a person appertaining to effective representation aaginst such order is not applicable in the case of an order for compulsory retirement which casts no stigma on a Government servant and cannot be equated with an order affecting his right by way of disciplinary proceedings. An order of compulsory retire- ment, simpliciter, under rule 16(3) does not affect any right of the Government servant.

Under rule 16(2), a Government servant has a right to retire prematurely by giving three months' previous notice to the Government. Similarly under rule 16 (3), after a Government servant serves a period of 30 years or attains the age of 50 years, he cannot insist on a right to be retained in the service. The Government may also exercise a corresponding right under rule 16(3) to prematurely retire him at the age of 50 or 55 after giving three months' notice. Ins termination of service by way of premature retirement cannot be equated with a penal order of removal or dismissal. Even so, an order of compulsory retirement may be challenged in a court if it is arbitrary or is actuated by. mala fides. Even in the case of an order of dismissal. by way of punishment if there, are several grounds on which the order is founded and one or two of those fail and the order can still rest on the surviving ground or grounds disclosing a prima facie case of guilt or misconduct, the same cannot be

held to be invalid by applying the subjective test of preventive detention (see State of Orissa v. Bidyabhushan Mahopatra). Bidyabhushan (supra) was a case of dismissal of a Government servant for misconduct on several grounds, two of which failed. This Court, differing from the High Court on the point held as follows:--

> "If the order of dismissal was based on the findings on charges 1 (a) and- 1 (e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal.....
>
> x x x
> x x
>
> Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant".

If the above legal, position is true with regard to a case of dismissal of a Government servant who but for the proof of misconduct would have a right to continue in the service, it will, a fortiori, hold good in the case of termination of service by way of compulsory retirement under the rules where, after an employee' has done a specified years of service or reached a specified age of reasonable duration, his right to continue, as such, becomes again subject to his own volition under rule 16(2) or to exercise of an equal right by the Government to prematurely retire him under rule 16(3).

(1) [1963] Supp. 1 S.C.R. 648.

10-930SCI/77 As stated earlier, even in the case of compulsory retirement under rule 16(3), an order may be challenged in a court if it is arbitrary or mala fide. If, however, the Government reaches a decision to prematurely retire a Government servant, bona fide, the order, per se, cannot be characterised as by way of punishment since it does not cast any stigma on the employee nor does the employee forfeit any benefit which he has already earned by his service, nor does it result in any civil consequences.

The Division Bench took the view that since the "gravest" of the reasons which was the order of suspension, became non- existent and was still operating in the mind of the Central Government, the impugned order could not be supported on the ground that the same was based on collateral consideration, one serious reason being absolutely non-existent and thus illusory.

The High Court is not correct that the order of suspension which was pending enquiry was a punishment under the rules. It was not. Therefore, the degree of gravity attached to the order by the High Court was neither appropriate nor correct. We are also unable to agree with the High Court

that except one out of the several reasons, on which the impugned order was based, the entire order is liable to be struck down as invalid.

The test which has been laid down in the case of preventive detention is in the context of right to individual liberty of a person which is a fundamental right enshrined in the Constitution. The Order of compulsory retirement is passed in respect of a Government servant who has ceased to have a right, as such, to continue in Government service under the rules governing his employment. The analogy with cases under the Preventive Detention Act is, therefore, absolutely out of place. The Division Bench is not right in quashing the impugned order on that solitary ground.

This would, however, not conclude the controversy before us. Mr. Yogeshwar Prasad appearing on behalf of the respondent, dos not challenge before us that the impugned order is vitiated by mala fides. Even the Division Bench, differing from the learned single Judge, found against the plea of mala fides. We are, therefore, relieved of dealing with this plea.

This learned single Judge held the instructions of the Ministry of Home Affairs as statutory and as such binding, on a concession made in the counter-affidavit submitted before him by the Under Secretary of the Personnel Department (Cabinet Secretariat). According to counter-affidavit these instructions were made by the Government by rule 2 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960. It is not necessary to go into this aspect in detail in this case as to whether the instructions can be elevated If to the status of statutory rules or even constitutional directions as found by the learned single Judge. it is sufficient for our purpose that these instructions do not violate any provision of the Act or of the rules. Rule 16(3), being a rigorous rule vis-a-vis a Government servant not himself willing to retire under rule 16(2), has to be invoked in a fair and reasonable manner. Since rule 16(3) itself does not contain any guidelines, directions or criteria, the instructions issued by the Government furnish an essential and salutary procedure for the purpose of securing uniformity in application of the rule. These instructions really fill up the yawning gaps in the provisions, and are embedded in the conditions of service. These are binding on the Government and cannot be violated to the prejudice of the Government servant (see also Sant Ram Sharma v. State of Rajasthan & Anr(1) and Union of India v. K. P. Joseph and Ors.(2).

Whether all the aforesaid instructions issued by the Government are mandatory or not do not call for a decision in these appeals. Some of them may not be mandatory. Not- that every syllable in the instructions is material. Some of them may be described as prefatory and clarificatory. However, one condition is absolutely imperative in the instructions, namely, that once a Review Committee has considered the case of an employee and the Central Government does not decide on the report of the Committee endorsed by the State Government to take any prejudicial action against an officer, after receipt of the report of the committee endorsed by the State Government, there is no warrant for a second Review Committee under the scheme of rule 16(3) read with the instructions to reassess his case on the same materials unless exceptional circumstances emerge in the meantime or when the next stage arrives. We should hasten to add that when integrity of an officer is in question that will be an exceptional circumstance for which orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government. Although a faint attempt was made

before the learned single Judge that fresh facts were available for the purpose of the second Review Committee, the High Court did not accept the position nor do we find any reason to differ from that opinion. It is, therefore, clear that the respondent's order of termination was made not as a result of the report of the first Review Committee in accordance with the instructions but on the recommendation of the second Review Committee which could not have taken up his cage, as it was, on the self-same materials prior to his reaching the age of 55 years. We find from the instructions that reviews have to be conducted twice in the career of a Government servant, once six months prior to his attaining the age of 50 years and again six months prior to his attaining the age of 55 years. Since the amendment introducing the age of 50 years came in August 1969, after the respondent had already attained 50 years, the first review in his case could be held only in October 1969. The second Committee sat in May 1970 after the first Committee had recommended the continuance of the respondent in service in October 1969 which was agreed to by the State Government and even reiterated by it on a query from the Central Government in January 1970. If the Central Government did not choose to decide against the respondent then, the second Review Committee of May (1) [1968] 1 S.C.R. III.

(2) [1973] 2 S.C.R.752.

1970 could not again consider the case of the respondent in the usual course and under normal circumstances when he was not even 53 years of age after having already got a clearance from the first Review Committee which was endorsed by the, State Government only four months earlier. It was open to the Central Government to differ from the State Government's views. But it did not. We must make it clear that the decision would have been entirely different if we were satisfied that there were exceptional circumstances of any kind to reopen the case of the respondent. The correct position that emerges from rule 16(3) read with the procedural instructions is that the Central Government, after consultation with the State Government, may prematurely retire a civil servant with three months' previous notice prior to his attaining 50 years or 55 years, as the case may be. The only exception is of those cases which had to be examined for the first time after amendment of the rule substituting 50 years for 55 where even officers, who had crossed the age of 50 years, even before reasoning 55, could be for the first time reviewed. Once a review has taken place and no decision to retire on that review has been ordered by the Central Government, the offi- cer gets a lease in the case of 50 years upto the next barrier at 55 and, if he is again cleared at that point, he is free and untrammelled upto 58 which is his usual span of the service career. This is the normal rule subject always to exceptional circumstances such as disclosure of fresh objectionable grounds with regard to integrity or some other reasonably weighty reason.

Under Article 310, Government servants, high or low, hold service during the pleasure of the President or the Governor as the case may be., subject to two well-known limitations, namely, that they shall not be dismissed or removed by an authority subordinate to that by which they were appointed and secondly, that they shall not be dismissed or removed or reduced in rank except after an enquiry into the charges clearly levelled against them and affording a reasonable opportunity of being, heard in respect of the charges. We need not refer to the proviso to Article 311(2) which deals with certain exceptional cases.

Thus the pleasure doctrine under Article 310 is conditioned by constitutional restrictions under Article 31 1. Under Article 309 the appropriate legislature may regulate the recruitment and conditions of service and until so done, the President or his delegate and the Governor or his delegate may make rules regulating the recruitment and conditions of service. The Act passed by the appropriate legislature and the rules made under Article 309 will. however, be subject to the provisions of the Constitution which include Article 311 and certainly the Fundamental rights. The pleasure doctrine under Article 310 is in a way unoffendingly resuscitated with appropriate vigour towards the tail end of the career of a Government servant under rule 16(3) in the puublic interest Compulsory retirement under the service rules is not by way of punishment, as understood in service jurisprudence, however, unsavoury it may be otherwise. During the entire tenure of Government servants from the date of temporary or probationary appointment till termination or retirement, as the case may be, there is an undoubted security for them against dismissal, removal or reduction in rank except in the, manner laid down under Article 311(2), read with relevant laws or rules made under Article 309.

In order to pass the test of constitutionality, rule 16(3) must needs be safeguarded by reasonable procedural guidelines in order that here may be no scope for arbitrariness or discrimination. That is how rule 16(3), being silent, instructions speak and do vitative service in a vacuous field. The material procedure under the instructions, as if interwoven in rule 16(3)., can on no account be held invalid or impermissible. Compulsory retirement under rule 16(3) is a salutary safeguard in the armoury of the Government for maintenance of the services in trim and fitness. Rule 16(3) is a constant reminder to the slacker, the sluggish and the inefficient, not to speak of those who may be dishonest or unscrupulous by reputation beyond redemption. At a reasonable point of service a stage is reached when the Government reserves its undoubted right to have a second look at the officers whether their retention in employment would be useful in the public interest. That is the role of rule 16(3). Rule 16(3), with the instructions, is a warning poster for every Government servant to conduct himself properly, diligently and efficiently throughout his service career. The Government has advanced the time of the first review by amendment of rule 16(3). As stated earlier, there are now two stages in a service career, namely, at the age of 50 and 55, for the Government to take a decision to refurbish, invigorate and stimulate the Service and with that sole object a decision has' to be fairly taken well in time under rule 16(3) in accordance with the published procedure.

While purity in administration is certainly to be desired, the security and morale of the Service have also to be maintained. It is because of these high considerations that the Government has issued appropriate and reasonable instructions to guide the authorities in. passing orders for premature retirement. The instructions clearly show that "having arrived at an assessment in favour of further con- tinuance in service at the age of 541 years or so, there would ordinarily be no occasion for changing the assessment during the next three years, so that an annual review would serve little practical purpose". The principle behind this instruction is that the sword of Damocles must not bang over the officer every six months after he attains the age of 50 years.

The learned Solicitor General next submitted that the High Court was not right in going behind the order of compulsory retirement and delving into the files of the Government to see for itself whether the order could be sustained. We find that the records of service of the respondent and other papers

were produced by the learned Advocate General before the High Court without any objection and without claiming any privilege with regard to those documents. That being the factual position, we are not inclined to consider whether the course adopted by the High Court in this case is open to objection. It will, however, be proper to observe that when an order of compulsory retirement is challenged as arbitrary or mala fide by making clear and specific allegations, it will then be certainly necessary for the Government to produce all the necessary materials to rebut such pleas to satisfy the court by voluntarily producing such documents-as will be a complete answer to the plea. It will be for the Government also to decide whether at that stage privilege should be claimed with regard to any particular document. Ordinarily, the service record of a Government servant in a proceeding of this nature cannot be said to be privileged document which should be shut out from inspection.

The impugned order of compulsory retirement, as found above, was made on the recommendation of the second Review Committee and that is in the teeth of the conditions of service flowing from the instructions of the Home Ministry and hence cannot be sustained. The High Court was right in quashing the said order.

In the result both the appeals are dismissed although not on the ground stated by the High Court. The respondent is entitled to one set of costs to be shared by both the appellants.

M.R.

Appeals dismissed.