

(1992) 01 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 14999 of 1989

Kuldeep Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: Jan. 28, 1992**Acts Referred:**

- Constitution of India, 1950 - Article 311, 311(2)
- Punjab Civil Services (Premature Retirement) Rules, 1975 - Rule 3(1), 3.26, 6

Citation: (1993) 1 ILR (P&H) 407**Hon'ble Judges:** V.K. Bali, J; A.L. Bahri, J**Bench:** Division Bench**Advocate:** Jagan Nath Kaushal, B.K. Gupta and Rosy A. Singh, for the Appellant; O.P. Goyal, A.A.G., for the Respondent**Final Decision:** Allowed

Judgement

V.K. Bali, J.

Petitioner, who was Superintending Engineer in the Public Works Department in the State of Punjab, is aggrieved of order dated September 25, 1989, by which tenure of his service was cut short by about 6 1/3 years, by giving him premature retirement under Rule 3(1) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter referred, the Rules of 1975). The order aforesaid is challenged on variety of grounds, inclusive of that the same has been passed as a measure of punishment, inasmuch as the Petitioner was under suspension on September 25, 1989, and that no order of his re-instatement had been passed and, therefore, the retirement in the circumstances, as noticed above, was on the basis of the allegation, which was yet pending enquiry/investigation. That being so, the order is styled to be as a measure of penalty. The order is also said to be without jurisdiction under the retirement rules contained in Rule 3.26(c) of the Punjab Civil Services Rules, Volume I, Part I, inasmuch as a person working in the Public Works Department (B and R) in the rank of the Superintending Engineer has a right to

continue till the age of superannuation, i.e. 58 years, and that the special rules exclude the officers, who have attained the rank of the Superintending Engineer from premature retirement and that these special rules also exclude the application of the General Premature Retirement Rules, 1975. It is also the case of the Petitioner that the order has been passed in violation of Article 311(2) of the Constitution of India and provisions of the Punjab Civil Service (Punishment and Appeal) Rules, 1975, as also principles of natural justice and that the order is mala fide because it suffers from malice in law, inasmuch as it is based on the material, which could not have been taken into consideration. Before the points as have been noticed above are discussed any-further, it shall be useful to have brief resume of the facts culminating into the present petition. The Petitioner was born on February 19, 1938, and had graduated in Civil Engineering in the year 1959 from the I.I.T. Kharagpur. He was thereafter selected for appointment to the Punjab Service of Engineers in the year 1960 and joined service on March 2, 1960. As per case of the Petitioner he was promoted as Executive Engineer on February 8, 1989 on the basis of his good and satisfactory service record. He was placed in the selection grade as Executive Engineer with effect from January 1, 1978, and was promoted as Superintending Engineer initially in the officiating capacity in the year 1979 and then in the substantive capacity,-vide order dated May 15, 1986. The Petitioner claims to be the senior most Superintending Engineer irrespective of his claim for higher seniority from the persons working as Chief Engineers, which claim is under adjudication in another writ petition filed by him. The case of the Petitioner further is that some vested interests connived to affect him adversely so as to prevent him from being promoted to the rank of the Chief Engineer and the said matter was brought to the notice of the Respondent through repeated representations, but ignoring all the pleadings of the Petitioner, he was placed under suspension,-vide order dated September 20, 1988. The suspension of the Petitioner was ordered due to the sanction accorded by him. to 36 estimates for repairs to various roads, but no charge-sheet relating to this particular allegation was served upon him till he filed the present petition. However, another charge-sheet relating to the sanction of four other estimates was of course served upon the Petitioner along with a copy of statement of the charges and a detailed reply to the aforesaid charges was filed by him on December 7, 1988. Even though a period of more than one year had elapsed, no further action by way of enquiry, as required under the rules, had been initiated against the Petitioner and he continued to be under suspension. When the suspension of the Petitioner continued unabated for a sufficiently long time and no enquiry was instituted against him, the Petitioner was constrained to file a Civil Writ Petition, bearing No. 8857 of 1988, in this Court, which was dismissed in limine by passing the following orders:

The order of suspension pending a contemplated enquiry was made by the Government. Most of the allegations in the petition related to the conduct of the Chief Engineer towards him or some other officers. These facts were also before the

Government and we have no doubt that the Government had taken into account all these allegations also before issuing the impugned order. If the Government is satisfied that there is a prima facie case for conducting a departmental enquiry and they further considered that it was necessary to suspend the officer concerned pending an enquiry, we cannot interfere with this discretion of the Government. This writ petition is accordingly dismissed.

2. The order reproduced above would show that the Respondents were at liberty to conduct the enquiry against the Petitioner, but instead of adopting that course, as per pleadings of the Petitioner, another method was devised by the Respondent to punish him, i.e. by giving him premature retirement. It is in the wake of aforesaid facts and circumstances that the Petitioner pleads that the order of his premature retirement is violative of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as also Article 311(2) of the Constitution of India and principle of natural justice. Premature retirement during the suspension is said to be vitiated as the same would be punitive in nature. In so far as the service record of the Petitioner is concerned, he pleads that he was promoted as Superintending Engineer in 1979 and subsequently confirmed on that appointment in 1986 and, therefore, the service record of the Petitioner upto the date when he was so promoted and confirmed has necessarily to be treated as good. Any adverse remarks recorded in the confidential reports of the Petitioner prior to that promotion and confirmation are said to be wholly insignificant and cannot be considered for framing opinion to retire him prematurely. After confirmation as Superintending Engineer, -vide order dated May 15, 1986, the next annual confidential report was due for the period 1st April, 1986 to 31st March, 1987. The Petitioner pleads that this report is also to be presumed as good as no adverse remarks relating to that period were ever conveyed to him. With regard to next year, i.e. 1st April, 1987 to 31st March, 1988 as well, the Petitioner pleads that no adverse remarks were conveyed to him and, therefore, his work and conduct has also to be treated as good/satisfactory. The Petitioner, however, received two communications, the first dated September 21, 1983, indicating the period under report from October 15, 1987 to March 31, 1988 and the second dated November 16, 1988, indicating the period under report from July 22, 1987 to March 31, 1983. As per the aforesaid communications, the Petitioner was assessed "average" and he was also said to have committed financial irregularities and he was also conveyed that there were complaints against him regarding his integrity. The case of the Petitioner is that the adverse remarks contained in both the communications are vague. He also requested the accepting authority, i.e. the Secretary to Government of Punjab, Public Works Department (B and R), to supply him material, facts and figures, on which the aforesaid remarks were based so that he could file a meaningful representation for expunction of the aforesaid remarks. This request was made through various representations, the last two being dated November 28, 1988 and December 25, 1988. The Secretary to Government, however, -vide letter dated January 4, 1989, refused to supply any

material, which formed the basis of adverse remarks and further advised the Petitioner to submit his representation. The Petitioner, however, submitted representation without having advantage of scanning through the material that was made the basis for the reports, aforesaid on March 30, 1989, which as per case of the Petitioner, was not decided till such time, he filed the present petition. The positive case of the Petitioner is that except the two reports, given above, no complaint reflecting adversely, the work and conduct of the Petitioner was ever conveyed to him at any time whatsoever. It is on these facts that the Petitioner has challenged the order of his premature retirement on the grounds, which have already been noticed.

3. The case of the Petitioner is being seriously opposed by the Respondent through the written statement, filed by Shri Jatinderbir Singh, IAS, Joint Secretary to Government of Punjab. Whereas it is admitted that at the time of passing the order of premature retirement, the Petitioner was under suspension, it is pleaded that several departmental and other proceedings were pending against him at that time and the same had not been finalised till the order of premature retirement was passed, but" the decision of retiring him prematurely was based mainly on the facts and matters, which are separate from the charges on which he was, placed under suspension. It is the case of the Respondents that the Petitioner was retired according to Rule 3(1) of the Rules of 1975, which rules are applicable to all categories of employees of the Government and, therefore, reference to Rule 3.26(c) of the Punjab Civil Services Rules, Volume I, Part I, was irrelevant. It is further averred that the decision of premature retirement of the Petitioner was taken by the Government after most careful deliberations and keeping in view all the rules and law, applicable in the matter. In order to weed out the corrupt and inefficient officers, the Government constituted a high level Apex Committee, comprising of the senior most officers of the State Government. The Committee was headed by the Chief Secretary to the Government of Punjab and keeping in view the provisions of the rules and law, especially laid down by the Supreme Court in [Brij Mohan Singh Chopra Vs. State of Punjab](#), . The Apex Committee meeting held on May 19, 1989 impartially and closely went through the entire service records of the Petitioner and came up with the recommendation that the Petitioner had a very bad record of service and, therefore, deserves immediate premature retirement. It is this recommendation of the Apex Committee which was accepted. It has been further pleaded that while coming to the conclusion that the Petitioner should be retired prematurely the competent authority, inter alia, noted that the Petitioner had himself admitted on many occasions that he had been using the power of, money to influence his superior officers so that they help him in promoting his official career. In CWP No. 8857/88 filed by the Petitioner himself in this Court, it has been averred that he had been doing personal favours to his superiors with the object of getting favourable reports from them. Along with the writ petition aforesaid, the Petitioner had himself appended Annexure P-4, which is a copy of the representation filed by

him to the Government. With this petition another petition that was filed by him before Senior Sub-Judge Ferozepur was annexed. A reading of these two documents shows that the Petitioner admitted that he discharged many types of personal services at a great monetary expense to his superiors with the sole object of getting favours. This, in view of the Respondents, was sufficient to establish that the Petitioner could indulge in any corrupt and undignified practice to further his career which makes him absolutely unfit to be retained in Government service at the senior level. It has also been pleaded that the Advisor to the Governor had made enquiries from the Vigilance Department as well with a view to know about the conduct of the Petitioner; in particular, with regard to his reputation, and a report was received from the Vigilance Department which too was taken into account before passing the order of premature retirement. The record of the Petitioner is stated to be so bad that even if the adverse remarks contained in his confidential reports were not to be relied upon, he deserved to be given premature retirement as was noticed by the Secretary of the Department. It is denied that any vested interest connived to affect the Petitioner adversely so as to prevent him from being considered for promotion to the rank of Chief Engineer and so far as the representation of the Petitioner in that regard is concerned, the same, however, is admitted to have been filed. Suspension of the Petitioner is said to be valid although it has also been stated that the enquiry of the charges had not been completed when the Petitioner was prematurely retired. In so far as "average" report for the period 1st April, 1986 to 3rd March, 1987 is concerned, the same is stated to have not been treated as adverse by the Committee and the Government but so far as adverse remarks for the period 15th October, 1987 to 31st March, 1988 are concerned, the same are stated to have been conveyed to the Petitioner by the then Financial Commissioner, vide his D.O. letter dated September 2, 1988. The second adverse entry regarding his reputation of honesty for the period 22nd July, 1987 to 31st March, 1988 is also stated to have been conveyed to the Petitioner, vide letter dated November 16, 1988. Under instructions of the Government, separate and different officers are required to give assessment of a particular officer and said assessments are consolidated at an appropriate higher level and final view is then taken. In the case of the Petitioner, whatever adverse remarks were recorded by the authorities competent to assess the work and conduct of the Petitioner, the same were conveyed to him. The communications, as has been stated above, were actually received by the Petitioner, who acknowledged receipt thereof, but insisted that in order to enable him to file representation against the said adverse remarks, he should be supplied the material, on the basis of which the said remarks were passed. The case of the Respondents is that the Petitioner was rightly informed by the Financial Commissioner, Public Works Department and the Secretary of the Department that such an information could not be supplied to him and that he should make a representation within a stipulated time, which is stated to be three months. In as much as the Petitioner did not make any representation within the time prescribed under rules and in fact sent the representation after the said period

the same was rightly rejected being belated and barred by time. Besides aforesaid two reports, the Petitioner, as per case of the Respondents has also earned an adverse entry in the year 1983-84 and the same also reflected upon his bad reputation for integrity. In the year 1984 as well, he is reported to have earned adverse remarks that he did not enjoy good image in the public. This adverse remark was also conveyed to the Petitioner through a registered letter dated September 24, 1985, but no representation was made by the Petitioner against the said remarks. The positive case of the Respondents is that the order of pre-mature retirement of the Petitioner was passed under the Rules of 1975 and so far as Rule 3.26(c) of the Punjab Civil Services Rules, Volume I, Part I, is concerned, the same stood repealed by Rule 6 of the Rules of 1975. Since the stand of the Respondents is that the order of premature retirement was based mainly on the confidential reports and reports of the Vigilance Department, reference of which has been given above, and not on the basis of various allegations, subject-matter of suspension and charge-sheet, the Petitioner chose to file rejoinder by way of an affidavit dated February 14, 1990, so as to highlight the adverse reports in question and provide reasons as to why such confidential reports and the reports of the Vigilance Department could not be relied upon to give him premature retirement. In so far as the first report for the year 1983-84 is concerned it has been averred in the rejoinder that no such report had ever been conveyed to him and the department should be called upon to prove/produce the letters by which the said report was conveyed. The case of the Petitioner, on the other hand, is that the said report was "good". With regard to the second report for the year 1984-85 conveyed, vide letter dated September 24, 1985, the case of the Petitioner is that this too was not conveyed to him and had it been conveyed, he must have made representation against the same. With a view to support the non-receipt of the reports, the Petitioner pleads that had such report been recorded and conveyed to him, there was no question for the Respondents to confirm him as Superintending Engineer on May 15, 1986. With regard to the third adverse report for the period 15th July, 1987 to 31st March, 1988 and 22nd July, 1987 to 31st March, 1988, the Petitioner pleads that the period of the two reports is overlapping and that no report giving the correct factual position was ever communicated to him. Copies of the letters conveying the adverse reports were although received by the Petitioner, the case of the Petitioner is that if the original record is summoned, these would be found to be self-contradictory. As for the remarks pointing out various defects in the two reports, the Petitioner pleads that the authorities did not give him any material on the basis of which the adverse remarks were recorded. Further, a considerable time was lost by finally telling him that the material could not be supplied and from the date the report of refusal was conveyed to him, he did file representation within three months prescribed under rules. He even filed writ petition bearing No. CWP 623/1989, complaining about non-supply of the material on the basis of which the adverse remarks were recorded against him, which is said to be pending adjudication in this Court. He further pleads that in the wake of the facts that have been fully narrated above, the action of the

Respondents in rejecting the representation as time-barred, is arbitrary. With regard to the vigilance report that as per written statement has been taken into consideration, the case of the Petitioner is that he was never associated with any enquiry and not even a copy of the report was ever shown to him and, therefore, taking such ex parte reports into consideration which was said to have been received from the Vigilance Department was not permissible, as the same also shows allegations against the Petitioner which could not be made the basis for giving premature retirement without associating him with the said enquiries and coming to some final conclusion. The action taken on the basis of the said reports is, thus, said to be punitive in nature.

4. The Respondents have filed reply to the aforesaid rejoinder as well. The two reports, the period of which was overlapping, is stated to be on account of typographical mistake. In fact, the two reports are for the period from 15th July, 1987 to 31st March, 1988 and 22nd July, 1987 to 31st March, 1988. The material which was considered for premature retirement of the Petitioner is again reiterated to be different from the record/cases mentioned by the Petitioner in Annexure P-13. It is further reiterated that the Petitioner was not given premature retirement on the basis of the charges which were framed against him and regarding which no final decision had been taken at the relevant time. The assertion of the Petitioner that the report for the year 1983-84 was not conveyed to him is not categorically denied for the reason that the same was not available on record. It is, however, pleaded that the report for the year 1983-84 was adverse for the reasons that in the year 1984 a panel of four Superintending Engineers, including the Petitioner, was sent to the Punjab Mandi Board for appointment on deputation. The file of annual confidential reports of all the four officers, including the Petitioner, were also sent to the Punjab Mandi Board and while examining the panel of officers, the Secretary, Punjab Mandi Board, who was a senior IAS officer had commented that the annual confidential report of the Petitioner for the year 1983-84 contained adverse remarks regarding his reputation about integrity. The adverse remarks for the year 1984-85 were conveyed to the Petitioner through registered post on September 24, 1985 and adverse remarks for the period 15th October, 1987 to 31st March, 1988 and 22nd July, 1987 to 31st March, 1988 were also conveyed to him as already mentioned in the written statement. In so far as the right of the Petitioner to inspect the material on the basis of which adverse remarks were passed, it is pleaded that there are no provisions or instructions under which an official/officer is authorised to inspect the record. The action of the Government in rejecting the representations of the Petitioner on the basis of time limit is also justified on account of instructions contained in Government letter dated 20th October, 1971, relevant portion of which reads as follows:

A representation for the expunction of adverse remark(s) communicated to the employee can be filed within a period of three months from the date of letter communicating adverse remarks to the officer/official concerned. The

representation against the adverse remark(s) is to be addressed to the authority conveying the adverse remarks. This time limit is to be followed rigidly and that time-barred representation should be rejected. It is dangerous to allow officers to go on putting up representations whenever they think the situation is favourable to them and post-facto attempts to clean up the personal files resisted.

With regard to the vigilance enquiry, the case of the Respondents is that the Petitioner was not associated as it was not a regular enquiry. Apart from the recommendations of the Apex Committee to prematurely retire the Petitioner, the State Government had also sought a report from the Vigilance Department about officers who were not having good reputation or whose integrity was doubtful. On the recommendations of the apex committee and the reports received from the Vigilance Department, the case of the Petitioner alongwith other officers was examined in the light of instructions/rules and the competent authority after applying its mind independently in a just and unbiased manner thought it fit to retire the Petitioner prematurely in public interest.

5. Pleadings of the parties having been noticed, the time is ripe to examine the points observed in the earlier part of this judgment on which the order of pre-mature retirement is under challenge, Mr. Jagan Nath Kaushal, senior advocate, appearing for the Petitioner, taking a cue from the written statement that one of the reasons to prematurely retire the Petitioner was the report received from the Vigilance Department, contends that neither the Petitioner was apprised of the contents of the Vigilance report nor was he ever associated with the vigilance enquiry that was conducted by the vigilance department against him nor was any opportunity given to make representation against the same and yet the said report was made the basis for passing the impugned order of compulsory retirement. In view of the patent facts as have been noticed above, the minimum requirement of the principles of natural justice were given a go-bye; thus, rendering the impugned order unsustainable, contends the counsel. For his aforesaid stand, reliance is placed upon a judgment of the Supreme Court in SLP No. 862-63/1990 (V.K. Jain v. The State of Punjab) decided on 24th August, 1990. V.K. Jain, Appellant in the afore-mentioned case, was also Superintending Engineer and was also given compulsory retirement on 25th September, 1989, the same date when the Petitioner of the present case was so retired. The case of Shri V.K. Jain was considered by the apex committee and it was found that on the basis of material available he could not be retired compulsorily but considering the vigilance report against him it was opined by the said committee that he should be so retired. The facts of the aforesaid case would, thus, demonstrate that V.K. Jain was given compulsory retirement on the basis of the report of the vigilance department alone and in this view of the matter, the Supreme Court held that V. K. Jain was not apprised of the contents of the report of the vigilance department nor was he given any opportunity whatsoever to make a representation and - that being so, the order of compulsory retirement was in violation of the principles of natural justice and, therefore, could

not be sustained. If the present Petitioner was retired only on the basis of the report of the vigilance department, no other question would have arisen in this case and the case would have been squarely covered in his favour on account of the Supreme Court judgment in V.K. Jain's case (supra). The facts, as have been fully detailed above would manifest that the report of the vigilance department was also taken into consideration but the same was not the sole ground on which the Petitioner was given premature retirement. Faced with this situation, learned Counsel for the Petitioner contends that if one of the reasons on which the compulsory retirement was given is not justifiable, in that event the case has to be remitted to the concerned authorities to re-decide the matter by taking into consideration only that material which is unassailable. We do not find any substance in the aforesaid contention of the learned Counsel for the Petitioner. If there are several grounds on which the order is founded and one or two of those fail, and if the order can still rest on the ground or grounds surviving, the same cannot be held to be invalid by applying the subjective test which is normally applied in detention matters. The Supreme Court in [State of Orissa Vs. Bidyabhushan Mohapatra](#), held that "the reasonable opportunity contemplated by Article 311 of the Constitution of India had manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But the court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justifiable; nor is the penalty open to review by the court. If the order of dismissal 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. The court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice." Surely, it was, within the competence and jurisdiction of the authorities to prematurely retire the Petitioner on the basis of his confidential reports, particularly when the said reports adversely commented upon his integrity. The ratio of the judgment in Bidya Bhushan's case (supra) was reiterated in [State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others](#), and followed by a Division Bench of Kerala High Court in *State of Kerala v. P. Achuthan Nair* 1977 (2) SLR 720 and rightly so. The first submission of learned Counsel for the Petitioner is, thus, rejected.

6. Second contention of Mr. Kaushal that the impugned order during the currency of suspension and proceedings initiated against the Petitioner by issuance of a charge-sheet would be vitiated on the ground that the same is punitive, although in the facts and circumstances of the case, is not required to be adjudicated upon, but

since the learned Counsel appearing for the parties have addressed arguments at considerable length, we propose to go into this issue. Before, however, the matter proceeds further on the point referred to above, it requires to be mentioned that the positive case of the Respondents so pleaded in the written statement and canvassed at the time of arguments is that the order of pre-mature retirement was not on account of suspension of the Petitioner and the allegations that were made against him by virtue of the charge-sheet that was submitted. During the course of arguments, learned Additional Advocate-General produced before us the proceedings of the meeting of the apex committee held on 19th May, 1989 under the Chairmanship of Shri R.P. Ojha, IAS, Chief Secretary to Government, Punjab. After mentioning the confidential reports for the years 1983-84, 1984-85 and 1987-88 it was recorded that the said adverse reports were less than ten years old and that the committee was of the opinion that the Petitioner had a very bad record of service and he may be retired immediately in the public interest. It shall, thus, be seen that the order of compulsory retirement was passed exclusively on the basis of confidential reports of the Petitioner although in the written statement, as referred to above, the plea raised is that even the reports of the vigilance department were considered.

7. The sole argument with regard to invalidity of the impugned order at the time the Petitioner was under suspension and departmental proceedings against him with regard to allegations supported from the charge-sheet were pending against him is that if the services of the Government servant are terminated during such suspension without any enquiry being held against him, such termination would amount to punishment attracting there to the provision of Article 311 of the Constitution of India. Obviously, it is the element of punishment which if attracted would suffer from the vice of Article 311 of the Constitution of India. The facts of the present case, however, would demonstrate that the impugned order does not take notice of either the suspension or the allegations, subject-matter of the charge-sheet, and so is the stand of the Respondents in the written statement. It is true that it is well within the jurisdiction of the court to lift the veil and see as to whether actually the impugned order has been passed on account of suspension or allegations, the subject-matter of departmental proceedings, but as an abstract proposition of law that the moment an order of compulsory retirement is passed during pendency of departmental proceedings, it would straightaway attract the provisions of Article 311 of the Constitution is, in our opinion, neither sound nor supported by any binding precedent. In the case of suspension, all that the Government does is that it temporarily stops the Government servant from performing the duties of his office, which duties the Government servant was performing on account of terms of the contract of his service. The mere fact that the order of suspension was passed or departmental proceedings were going on, in our view, is not decisive for the question that needs to be determined. As referred to above, what is decisive is whether the order is by way of punishment. This element

of punishment can be determined where two tests as were laid down by the Supreme Court in [Shyam Lal Vs. The State of Uttar Pradesh and The Union of India \(UOI\)](#), are satisfied. The two tests are as to whether a charge or imputation against the public servant is made the condition of exercise of power of retirement and as to whether by compulsory retirement the officer is losing the benefit that he has already earned as he does by dismissal or removal. The impugned order in the present case, as fully discussed above, was passed not on the basis of allegations, subject-matter of charge-sheet against the Petitioner. We do not see how merely because the Petitioner was under suspension and an enquiry was pending against him at the time the impugned order was passed, the same would amount to an order of punishment. A single judge of this Court while dealing with an identical issue in J.M. Sharma v. The State of Haryana 1981 (1) SLR 554 held that "it is patent that to be in public employment is a right to hold it according to the rules. This right to hold is defeasible in accordance with the rules. If the rules give jurisdiction to the competent authority to compulsorily retire a public servant and the said authority passes order of such compulsory retirement in exercise of that jurisdiction, then unless it is shown that the order is by way of punishment, no fault can be found with the said order of retirement. Merely that a public servant has been placed under suspension before the order of his compulsory retirement is passed does not, to my mind, lead to the only inference that it has been passed by way of punishment. Suspension as such, as has been observed by their Lordships of the Supreme Court in H.L. Mehra v. Union of India and Ors. 1974 (2) SLR 107, does not in any manner affect the relationship of master and servant. What the Government as master does in such a case is merely to suspend the Government servant from performing the duties of his office. It is only that the Government issues a direction forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service at the same time keeping in force the relationship of master and servant. Thus, the factum of pendency of an enquiry or the continuance of the employee under suspension when the order of his retirement is passed, is not decisive of the question that needs to be determined. What is decisive is whether the order is by way of punishment? For determining this question, the Supreme Court laid down two tests as far back as in the year 1951- in [Shyam Lal Vs. The State of Uttar Pradesh and The Union of India \(UOI\)](#), and reiterated the same in a number of subsequent judgments. These two tests are: (i) whether a charge or imputation against the officer is made the condition of the exercise of power of retirement and (ii) whether by compulsory retirement the officer is losing the benefit that he had already earned as he does by dismissal or removal. Applying these two tests to the impugned notice Annexure P-6, I do not find the same to suffer from either of these. It is wholly innocuous so far as the question of imputation of any charge or misconduct is concerned. It does not in any manner affect the benefits which the Petitioner has already earned and which have necessarily to flow, such as pension etc. from his retirement. Therefore, I do not see how, as has been maintained by the learned Counsel for the Petitioner, that merely because the Petitioner was under

suspension without anything more at the time when the impugned notice Annexure P-6 for his compulsory retirement was served on him, the same would amount to an order of punishment. It is the admitted case that but for the serving of the charge-sheet on him, no other step had been taken in the enquiry initiated against him."

8. A Division Bench of Patna High Court in "Nageshwar Singh v. State of Bihar and Ors." 1976 (1) S.L.R. 389, likewise held that temporary suspension of the relationship of master and servant is on account of the provisions contained in the contract of employment or the statutes or the rules framed thereunder. It has not the effect of terminating the relationship of master and servant between the employer and the employee and that even if the order of compulsory retirement mentions that the officer is under suspension, it would not per se show that the order of compulsory retirement is by way of punishment. It is well settled that suspension pending enquiry or in contemplation of an enquiry is no punishment and that being so, the mere fact that an officer under suspension is compulsorily retired, in our view, would not cast any stigma so as to attract the provisions of Article 311 of the Constitution. In "Union of India and Anr. v. Inderjit Rajput" 1990 (1) S.L.R. 144, the Supreme Court upheld the order of compulsory retirement on the basis of adverse entries recorded in the confidential reports of the Petitioner of the said case from 1981 onwards. The fact that in between there was also a punishment of withholding of three increments in 1981 as well as strictures passed by a Court against him in 1981 for his conduct which he did not attempt to explain even to the departmental authorities in spite of opportunities given for the purpose was also taken into consideration. In addition, his intemperate and unbecoming conduct with his superior officers giving rise to an enquiry which was dropped only when the decision to retire him compulsorily had been taken was also taken into consideration. The facts of the aforesaid case clearly goes to show that the charge-sheet dated 6th December, 1976 was served on Inderjit Rajput alleging that he had used insolent and abusive language against a Lady Assistant Collector, Central Excise and had also made false allegations in his complaint against his superior officers using intemperate and abusive language. The enquiry aforesaid was almost complete when it was decided to drop the same in view of the order of compulsory retirement of Inderjit Rajput. Even though the enquiry was almost complete yet the same was not considered in itself enough to render the order of compulsory retirement to be vitiated. It is the cumulative effect of everything that was taken into consideration and the order of premature retirement was held to be valid.

9. The counsel appearing for the Petitioner, however has eadeavoured to persuade us to hold otherwise on the basis of judgment of a single Judge of this Court in Shri Manohar Lal Gupta v. The State of Punjab"" CWP 5777/75, decided on 23rd Nov. 1982. The facts of the said case would show that the Petitioner therein was placed under suspension with effect from 31st May, 1974, which was later followed by

order of compulsory retirement. While dealing with the matter, it was held that the question whether the order of compulsory retirement passed against the Government servant amounts to dismissal or removal from service so as to attract the provisions of Article 311 of the Constitution of India depends upon the nature and incidence of the action resulting in such action which the court is clearly competent to examine and that it is well settled that in dealing with the matter as has been raised in the said case it is the substance of the order and not its mere form which is the deciding factor. It is relevant to mention that the facts of the aforesaid case do not show that but for the allegations made in the charge-sheet which followed the suspension, there was something else also against the Petitioner of the said case and it is in that context that it was held that his removal from service, in fact, was a punishment inflicted upon a delinquent employee and, therefore, alone it could not escape attracting the provisions of Article 311 of the Constitution of India by seeking to camouflage it under the garb of an order of compulsory retirement under the service rules. As has been observed above, the court is well within its jurisdiction to lift the veil and, by so doing, if it is found that simply a short-cut of an enquiry against the delinquent official/officer is the sole aim of compulsory retirement, in that case it would attract the provisions of Article 311 but simply if a person is under suspension and departmental proceedings are pending against him it cannot be said as an axiom that the same would always suffer from the vice of Article 311. The aforesaid contention of the learned Counsel for the Petitioner, thus, merits rejection. It requires to be mentioned that the decision in J.M. Sharma's case (supra) was not brought to the notice of the learned single Judge deciding Manohar Lal Gupta's case (supra), otherwise the distinction that we have made would have been specifically noticed although such a distinction is clearly spelt out. The counsel appearing for the Petitioner contends that the judgment in Manohar Lal Gupta's case was affirmed in LPA No. 102 of 1985, reported as 1989 (2) SLR 45, but as held above, that would not make any difference as we do not find any conflict of opinion in the decision rendered in Manohar Lal Gupta's case and J. M. Sharma's case. Besides the specific question called for scrutiny by the Division Bench was as to whether the Petitioner, who was under suspension on the date of notice of his compulsory retirement and as to when was the subsequent order dated 27th September, 1985, - vide which he was compulsorily retired was passed. The legal proposition whether the Government servant, who is under suspension, can be retired compulsorily or not was not argued by the Appellant.

10. The only surviving controversy that requires to be adjudicated upon is as to whether on the basis of confidential reports adversely commenting upon the work, conduct and integrity of the Petitioner, an order of compulsory retirement can be entailed and as to whether the said reports can possibly be taken into account for either non-communication of the same or rejection of the representations sent against the said reports on the ground that the same were barred by time as

envisaged under the instructions. Also it has to be decided as to whether the Petitioner, in case the order of his compulsory retirement is set aside, deserves to resume his duties by quashing the order of suspension as well. The adverse reports are as follows:

Period
and
year,
1.4.1986
to
31.3.1987
22.7.1987
to
31.3.1988
(1987-88)
Period
and
year,
15.10.1987
to
31.3.1988
(1987-88)

Remarks.

1983-84

1984-85

Remarks.

11. In so far as remarks for the year 1983-84 are concerned, the ease of the Respondents is that it cannot be categorically denied that the same were conveyed to the Petitioner or not in as much as the A.C.R. for the said period was not available on the records. The inference of adverse remarks is, however, drawn from the contents of Writings of Secretary Punjab Mandi Board who while considering the ease of Petitioner alongwith others made a mention with regard to reputation and integrity of Petitioner which was adverse in nature. However, as stated above the Respondents are unable to confirm as to whether the aforesaid report was conveyed to the Petitioner or not. In so far as the adverse remarks for the year 1984-89 are concerned, the same are stated to be conveyed to the Petitioner through registered post,-vide demi-official letter dated September 24, 1985 although, as referred to above, the case of Petitioner is that no such report was received by him and had he received the same there was no question for him not to file the representation against the said remarks. As regards the other two reports, it is admitted between the parties that the adverse reports were conveyed to the Petitioner and that the representation of the Petitioner filed against the aforesaid reports was rejected on the ground that the same was beyond a period of three months as prescribed under the instructions.

12. The case of the Petitioner is that in so far as the reports which were uncommunicated, the same cannot be taken into consideration as also that he was not conveyed adverse remarks contained in his report for the year 1984-85 and that the representations filed by him against the last two reports were arbitrarily rejected on the ground of delay. He further contends that the reports that came into being prior to his confirmation on the post of Superintending Engineer could not be taken into account as after confirmation the effect of the same would, be washed out. The stand of the Respondents, on the other hand, is that it is the overall record of an officer which requires to be considered for the purpose of compulsory retirement

and no hard and fast rule can be made that the reports pertaining to the period prior to confirmation, crossing of efficiency bar or promotion would be of no consequence in such consideration. The facts of the case given above would reveal that prior to the confirmation of the Petitioner, there are two bad reports against him and whereas with regard to the report for the year 1983-84, the Respondents have not been able to place on record the report as such and have only chosen to draw inferences from the remarks made by the Secretary while considering the case of the Petitioner who was in the Punjab Mandi Board on deputation, the report for the year 1984-85 is available and is said to have been conveyed to the Petitioner. In our considered view, the report for the year 1983-84 cannot be considered as the Respondents have not been able to show that the same was conveyed to the Petitioner and the said report is said to be based on the inferences drawn. It is by now, well settled proposition of law that the adverse reports which are not communicated or if communicated, the representations if filed against the same have not been decided, the same cannot be taken into account for pre-maturely retiring a Government employee. The adverse reports for the year 1984-85 is, however, proved to have been conveyed but the contention of learned Counsel for the Petitioner is that the same can also not be taken into account as the same came into being prior to confirmation of Petitioner on the post of Superintending Engineer. For the afore-stated contention, the learned Counsel relies upon the decision rendered by the Supreme Court in [Brij Mohan Singh Chopra Vs. State of Punjab](#), . The facts of aforesaid case would show that Brij Mohan Singh Chopra was promoted in the year 1968 to the post of Joint Director (Industries) which post he continued to hold till he was prematurely retired by Government order dated 19th March, 1980. The record of Brij Mohan Singh Chopra had also been good but some adverse entries of remote past were considered enough to retire him. The same, as per the case of the Respondent-State were for the years 1960-61, 1963-64, 1964-65, 1969-70, 1970-71, 1971-72, 1972-73 and 1975-76. The same indicated that the overall service record of the Appellant was bad and his integrity was frequently challenged. The Supreme Court while dealing with the case held that adverse entries prior to the year 1968 when he was promoted could not be taken into consideration. Therefore, the adverse entries for the years 1960-61, 1963-64 and 1964-65 could not legally be taken into consideration for forming the requisite opinion for retiring Brij Mohan Singh Chopra prematurely from service. It further held that it was by how well settled that while considering the question of premature retirement, it may be desirable to make an overall assessment of the Government servant's record but while doing so, more value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. After considering number of judgments on the point, the Supreme Court proceeded to hold that it had consistently taken the view that old and stale entries should not be taken into account while considering the question of premature retirement and instead the entries of recent past of five to ten years should be considered in forming the requisite opinion for retiring the Government employee. In para 8 of the judgment,

it is mentioned that on perusal of record for the last ten years, it was revealed that Brij Mohan Singh Chopra was awarded adverse remarks for the year 1971-72 and 1972-73 and for the rest of the years, he was not awarded any adverse remarks. On the other hand, for the years 1974-75 and 1975-76, the reporting officer rated him as a "very good" officer although the reviewing officer treated him as "average". In 1976-77, the reporting officer rated him as a "good" officer while the reviewing officer rated him as an "average". For the year 1977-78, 1978-79 and 1979-80, the reviewing officer assessed his work and conduct "good". During the last five years of his service, the Appellant had earned good entries which were commendable in nature. Except the two entries awarded to him for the years 1971-72, 1972-73 the Appellant had not earned any adverse entry reflecting upon his work and conduct and in none of the entries, his integrity was doubted. So far as entries for the year 1971-72 and 1972-73 were concerned, the contention of Brij Mohan Singh Chopra was that even though he had filed representations in accordance with the rules against those entries, his representations had not been considered or disposed of yet the appropriate authority had considered these entries against him. It is while considering the aforesaid two entries that the Supreme Court returned a finding that the same could not be taken into consideration to form the requisite opinion. In paragraph 6 of the judgment, guidelines issued by the State Government for the purpose of premature retirement have also been mentioned and one of such guidelines is that the remoteness of an adverse entry, the scrutiny of the service record of the employee concerned such as crossing of efficiency bar, confirmation and promotion to a higher post or any other meritorious service rendered by the employee, would have their relative importance. In ultimate analysis, it was held that the entire service record of employee may be considered while deciding the question of his premature retirement but if the service record of the last ten years of his service does not indicate any deficiency in his work and conduct it would be unjust and unreasonable to retire him prematurely on the basis of entries which may have been awarded to him prior to that period. The aforesaid judgment, thus does not advance the case of Petitioner and it cannot be said that adverse entries particularly with regard to integrity-recorded prior to confirmation would be totally meaningless and these cannot be relied upon for forming the requisite opinion. Whereas we are of the opinion that the overall record of an officer has to be considered we are yet inclined to also hold that the fact that the officer was confirmed, promoted or permitted to cross efficiency bar have also be taken into account. A single Judge of Rajasthan High Court in *Kishan Chand Mathur v. The State of Rajasthan* 1977 (1) S.L.R. 609 after considering the case law on the question came to the conclusion that compulsory retirement was not a punishment and the entire service record of the concerned employee has to be scrutinised for the purpose of deciding the question as to whether he should be prematurely retired or not. It was further held that adverse entries made in the service rolls of the Petitioner were not completely wiped out for all purposes merely because the Departmental Promotion Committee, which met on July 19, 1972 approved the Petitioner for appointment as a

regular officiating Assistant Engineer in the Public Works Department which post he was already holding in a temporary capacity since September 11, 1959. A Division Bench of this Court in Letters Patent Appeal No. 1319 of 1990 "The State of Punjab and Anr. v. Prithi Singh Monga", after considering the decision rendered by the Supreme Court in Brij Mohan Singh Chopra's case (supra) came to the conclusion that it is the overall record of the person concerned which is relevant for forming the requisite opinion. In ultimate analysis, it was held that "the case of the Respondent is totally different". His work and conduct has been uniformly poor to "Average" throughout his career coupled with 6 reports of doubtful integrity and, as such, to confine scrutiny to ten years alone would not be proper. It would be anomalous to lay down this as an inflexible rule. It would also be a travesty of justice to ignore all adverse entries of doubtful integrity starting from the 11th year backward. No hard and fast rule can, therefore, be formulated". In Brij Mohan Singh Chopra's case as well, two matters were decided by the Hon'ble Supreme Court. The first point pertained to the order of the Government dated August 4, 1978 wherein it was pointed out that if there was a single entry describing the employee concerned as a person of doubtful integrity that would justify the premature retirement under the rules. In a recent judgment delivered by the single Bench of this Court in "Chander Singh Negi v. State of Punjab", 1990 (2) S.L.R. 293, it has been held that even a single entry casting doubt on the integrity of the Government servant can be sufficient to retire him prematurely. It is pertinent to mention here that the observations of Supreme Court in Brij Mohan Singh Chopra's case (supra) were also taken into consideration for coming to the conclusion aforesaid. It is significant to mention here that the Petitioner of the said case had only one entry which dubbed him as a "corrupt official" whereas during his entire service record spread over a period of 30 years, all the annual confidential reports were from "Good" to "Outstanding". In fact, the perusal of various judgments that have been cited at the Bar, in our considered opinion, clearly make out a distinction where the adverse remarks are with regard to doubtful integrity. In "Union of India v. M.B. Reddy and Anr. 1979 (2) S.L.R. 792, the Supreme Court itself has categorised a person with doubtful integrity as a class apart to be dealt with in a manner different from other persons who are otherwise efficient or lacking in the performance of their duties. Integrity of officer in question is itself an exceptional circumstance and he would stay on entirely different footings.

13. In view of the discussion made above, we have reached the conclusion that it cannot be held that the moment a person is confirmed, all adverse entries prior to the date of confirmation would be automatically wiped off, although we are also of the opinion that the fact that the Petitioner was confirmed should have been taken notice of in forming the requisite opinion of premature retirement.

14. In so far as adverse entries recorded in the confidential report of the Petitioner pertaining to the period from 22nd July, 1987 to 31st March, 1988 and 15th October, 1987 to 31st March, 1988 are concerned, the pleadings of the parties manifest that

adverse entries were conveyed to the Petitioner but the representations filed against the said remarks were dismissed on the ground of delay. The first point raised by the learned Counsel for the Petitioner with regard to these entries as also the entry for the year 1984-85 which adversely commented upon the honesty and integrity of the Petitioner is that if such reports were made the basis for forming the requisite opinion that in itself would contravene Article 311 of the Constitution and unless and until a regular procedure of inquiry was not exhausted, the order would be by way of punishment. For the aforesaid proposition, the learned Counsel relies upon a decision of single Judge of this Court in "V.D. Gaur v. State of Haryana 1991 (4) S.L.R. 132. This is how the matter has been dealt with in paragraph 12 of the report:

There is another aspect of the matter. If an officer is compulsorily retired on the basis of his confidential report according to which his integrity has been doubted, action on the basis of such a report will be considered to be an action by way of punishment. Supreme Court has taken a similar view in [Jarnail Singh and Others Vs. State of Punjab and Others](#). In Jarnail Singh's case, the services of an ad hoc employee were terminated on the basis of the adverse report regarding his integrity and their Lordships of the Supreme Court held that the impugned action was by way of punishment and the services could not be terminated without following the procedure laid down in Article 311 of the Constitution. The Petitioner's case is on a better footing. He is a permanent employee of the Government and his services have been terminated by way of compulsory retirement on the basis of a solitary report in which his integrity has been doubted. This case, in my opinion, is fully covered by the principles laid down by the Supreme Court in Jarnail Singh's case (supra). As the report for, the year 1984-85 is the sole basis for the compulsory retirement of the Petitioner, no such action could be taken without following the mandatory procedure laid down in Article 311(2) of the Constitution of India. Admittedly, no such procedure was followed in the present case and therefore, the order of compulsory retirement of the Petitioner was passed in clear contravention of the provisions of Article 311(2).

15. Reading of the aforesaid para would manifest that for arriving at the conclusion that if an officer is compulsorily retired on the basis of his confidential report according to which his integrity has been doubted, action on the basis of such a report would be considered to be an action by way of punishment, the sole reliance is upon the view said to be taken in "Jarnail Singh v. State" 1986 (2) U.J.S.C. 235. We have gone through the judgment in Jarnail Singh's case (supra). The facts of the said case were that the Appellants were appointed on ad hoc basis as Supervisors on various dates between December 1976 to November 1977 through Employment Exchange upto the date till the regular candidates to be recommended by the Board were to make place for the regular employees as also that their services can be dispensed with any time without any notice or reason. The Government of Punjab in order to regularise the services of all the ad hoc employees who had completed the

minimum period of one year service on September, 1980 examined their records. This regularisation was required to be done in view of some circular letter issued in that behalf and while so considering the case of regularisation, the services of the Petitioner in the said case were terminated. The crucial question that came to be decided was as to whether the impugned order of termination of services of the Petitioners could be deemed to be an innocuous order of termination simpliciter according to the terms and conditions of the services without attaching any stigma to any of the Petitioners or it is one in substance and in fact an order of termination by way of punishment based on misconduct and made in violation of the procedure prescribed by Article 311(2) of the Constitution of India. It is significant to note that when order of termination is challenged as casting stigma on the service career the Court can lift the veil in order to find out the real basis of the impugned order even though on the face of it the order in question appears to be innocuous. The Supreme Court after so observing did lift the veil and found that the orders were in fact passed on the ground of mis-conduct at the back of Petitioners. The serious allegations of misconduct against the Petitioners and adverse entries in their service record were taken into consideration by the Departmental Selection Committee without giving them an opportunity of hearing and without following the procedure prescribed by Article 311(2) of the Constitution of India. It is in the aforesaid facts that the orders of their termination were quashed. The aforesaid judgment nowhere holds that where an order of compulsory retirement is passed which, we have already observed, cannot be considered to be an order entailing punishment and the same is on the basis of reports adversely commenting upon the integrity of the officer/official concerned would, in itself be stigmatic. With utmost respect to the learned Judge deciding V.D. Gaur's case (supra), we are unable to concur. Based upon the same very judgment, i.e. Jarnail Singh and Oer's. case (supra), the learned Counsel for the Petitioner also contends that the allegations of doubtful integrity should have been supported by reasons and the material on which the same came to be recorded ought to have been disclosed. The consequence of non-disclosure of reasons as also the material on which the same were based amount to denial of opportunity, thus, violating the principles of natural justice, contends the counsel. It is true that such a finding has been returned in V.D. Gaur's case (supra). For arriving at the aforesaid conclusion, the learned single Judge was commenting upon the provisions of para 4 of the Consolidated instructions governing the field wherein it was contained that the purpose of writing the annual report is to give guidance to the officer so that they may remove their defects. The instructions were held to be mandatory. Further as a general principle, also it was held that non-disclosure of material as also the reasons would amount to denial of an opportunity to represent against the reports. The counsel appearing for the Petitioner, in the present case, as well relies upon the instructions issued from time to time dealing with recording of annual confidential report. Vide circular letter dated 18th November, 1967, instructions were issued as to what a report has to contain and mentioned that the complaints, if any, without sifting the truth thereof, should be avoided and the

assessment be made on the basis of personal knowledge. It also contains that slight defects need not find mention in the annual confidential reports and these may be pointed out verbally by way of advice and guidance. Dealing with the report regarding integrity, the Punjab Government-vide circular letter No. 2334-ASI-60/15708, dated 3rd May, 1960 as also circular No. 3778-SII(I)-71/17239, dated 5th July, 1971 has mentioned as under:

The integrity of the Government employees, being of greatest importance, needs a special mention in the confidential reports. It should be clearly stated if the officer/official is suspected of corruption or is believed to be corrupt and this opinion should generally be fortified by reasons, which may be in the possession of the reporting officer. Any ill-considered remarks in this respect may do a lot of harm to the officer/official reported upon. The reporting officers should give a definite, frank and honest opinion on the integrity of their subordinates in the column "Defects, if any" or elsewhere. The practice of making non-committal/ill-considered remarks in this regard should be discouraged. Reporting officers should give a definite opinion on the integrity of their subordinates and avoid remarks like "no complaints". Further, instances have come to the notice of Government in which even though, officers/officials reported upon were proceeded against for serious forms of corruption their confidential reports for the same periods certified their integrity to be good. It is felt that contradictions of this type arise only because reporting officers fail in their duty to make entries in the column relating to integrity, forth-rightly and without hesitation. In case an officer/official has been given a good report of integrity which is later proved to be wrong, the reporting officer will run the risk of earning Government displeasure. Ordinarily, the inference would be that, either, he did not exercise proper supervision or he was in dishonest collusion with his subordinate. The intention of Government is that the truth about subordinates should be known to reporting officers and appreciation or commendation on the basis of generally good work done over a period of time. Their remarks in respect of generally good work done by subordinates should appropriately be recorded in annual confidential reports.

The Punjab Government,-vide the same circular i.e., dated 3rd May, 1960 also mentioned the procedure which is required to be followed for communicating adverse remarks. The relevant instructions are quoted below:

41. Adverse remarks in all cases are to be communicated so that the employee concerned should get an opportunity to know his defects, if any, which he should consciously endeavour to remedy in the subsequent year.

42. For communicating adverse remarks to the Government employee concerned, following -general principles are to be followed:

(a)(i) When report is built up on the individual opinions as noted of different departmental superiors in gradation it is only the opinion as accepted by the highest

authority which need be considered from the point of communication.

(b) An officer/official should not at any time be kept ignorant of reporting officer's opinion where his service is not considered satisfactory; criticism should be communicated promptly and should indicate in suitable language the nature of the defect(s) in question.

(c) The reporting officer should specifically state while writing the report whether the defect(s) reported has/have already been brought through any other communication to the notice of the officer/official concerned or not. Any departure from these instructions will be taken serious note of by the Government;

After noticing the relevant instructions on the subject, it shall have to be seen whether the same are statutory, non-compliance whereof would vitiate the order or they only deal with such procedure, violation of which would not affect the merits of the case particularly if no prejudice had been caused. While dealing with the similar question, a Division Bench of this Court in "State of Punjab v. Janah Raj Jain", 1987 (1) ILR (P&H) 412 held that recording of annual confidential reports is, in essence, subjective and administrative. The recording of such reports is in the sheer public interest and in a large governmental organisation, the same would be imperative and equally, its confidential nature must also be maintained to a certain extent. Once that is so, either on the basis of a larger public policy or usually in compliance with the Government instructions on the point, the superior officers are enjoined and indeed duty bound to put down their subjective assessment of the public servants conducted in the shape of a confidential report. A superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. It will indeed be difficult, if not impossible, to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer in close quarters to know the nature and character not only of his performance but also of the reputation that such officer enjoys. The recording of annual confidential report being, therefore, a matter of subjective satisfaction of the concerned officer in the very nature of things the correctness thereof could not be gone into by a civil Court. "Based upon the aforesaid findings, a single Judge of this Court in "Head Constable Amarjit Singh v. Deputy Inspector General of Police, Patiala Range, Patiala and Ors." 1989 (5) S.L.R. 169, held that the "whole process is non-statutory and administrative in nature, violation whereof is not justiciable. The breach of the administrative instructions which are in the nature of guidelines for the internal consumption by the officers at the time of recording of annual confidential reports and expunction of adverse remarks etc. do not confer upon the officer concerned a right to challenge in the Court of Law". For arriving at the aforesaid conclusion, the learned single Judge also relied on the decision rendered by a Division Bench of this Court in "A.R. Darshi v. State of Punjab", C.W.P. No. 102 of 1987. It appears that the aforesaid decisions were not brought to the notice of the learned Judge deciding

"V.D. Gaur's case". With utmost respect, we are unable to concur with the view taken by the single Judge in V.D. Gaur's case. We rather hold that the decision rendered in "State of Punjab v. Janak Raj Jain", (supra) "A.R. Darshi v. State of Punjab" C.W.P. No. 102 of 1987, decided on October 27, 1988, and "Head Constable Amarjit Singh v. Deputy Inspector General of Police, Patiala Range. Patiala and others" (supra), depict correct enunciation of law.

16. The facts of this case also show that no material prejudice was caused to the Petitioner in not supplying him with the material on which the adverse confidential reports came to be recorded. The representation Annexure P-10 filed by the Petitioner against the adverse reports for the period 15th October, 1987 to 31st March, 1988 and 22nd July, 1987 to 31st March, 1988 although described by him to be interim representation is exhaustive and deals with all the aspects of the case. The various remarks contained in the two confidential reports were dealt with vis-a-vis facts on which the said reports came into being. In view of facts and circumstances fully detailed above, we do find that the Petitioner was in any manner prejudiced on account of non-supplying him the material on the basis of which the adverse reports came to be recorded.

17. The learned Counsel for the Petitioner also contends that there was absolutely no justification for the Respondent to reject the representations filed by him against the adverse remarks for the period 22nd July, 1987 to 31st March, 1988 and 15th October, 1987 to 31st March, 1988 on the basis of delay. On facts, the learned Counsel contends that the representations were not in fact beyond the period of three months prescribed under the instructions quoted in the earlier part of this judgment and in any case even if there was some delay, it could not be attributed to the Petitioner. He further contends that the instructions containing period in which the representations can be filed cannot partake the character of limitation provided in a statute like law of limitation. He further contends that even if there was delay and the limitation as prescribed in instructions was to be strictly construed, there was sufficient justification pleaded and proved on the records to condone such delay. This contention of learned Counsel has considerable force. It is proved on the records of the case that, vide letter dated November 3, 1988 (Annexure P-14), the Petitioner requested that the material on the basis of which adverse remarks had been recorded may be supplied to him and in turn he was informed that in this connection he should get direct information from the Chief Engineer Patiala. On receipt of the letter aforesaid, the Petitioner addressed a letter to the Chief Engineer on November 10, 1988 requesting him to supply the requisite information. Copy of this letter has been placed on the record as Annexure P-15. When nothing was heard in this connection, the Petitioner again addressed a letter to the Government on December 20, 1988 reiterating his request. A copy of this letter as well has been placed on the records as Annexure P-16. The Petitioner once again requested to supply him the material on the basis of which adverse remarks were recorded against him, vide letter dated February 13, 1989 and the Petitioner in reply to the

aforesaid letter was again informed that he should approach the Chief Engineer. It is only on January 4, 1989 that he was finally told that the relevant material could not be supplied. The Petitioner besides filing Civil Writ Petition No. 623 of 1989 also then filed his rerepresentation on March 30, 1989. It is not disputed by the Respondents that if the limitation of three months is calculated from the date of refusal to supply the material, the representation was within time as also that even if the terminus-a-qua is considered from the date when the adverse remarks were conveyed to the Petitioner, the same was beyond the period of three months only by few days. The purpose of regulating a time limit as spelled out from the instructions which have been relied upon by the Respondents themselves would show that it is dangerous to allow officers to go on putting up representations whenever they think the situation favourable to them is available as also that post facto attempts to clean up the personal files have to be resisted. The present was not a case of the Kind where on account of change of Government or the administration, the Petitioner was trying to take any advantage. Further, the time limit prescribed under the instructions is not such which cannot be extended or condoned, in any circumstances whatsoever. It is not the kind of limitation that normally governs filing of proceedings by way of suits, applications and other petitions for which limitation is prescribed under the law of limitation. Even under the law of limitation, there are various provisions on account of which time limit prescribed has necessarily to be condoned or extended. The facts of the present case would go to show that the Respondents themselves exhausted a considerable period of three months by finally disposing of the representations of the Petitioner with regard to supply of material on which adverse remarks conveyed to him were recorded. That in itself was enough for the Respondents to condone the delay, if any and decide his representations on merits instead of dismissing the same on the ground of limitation. In the circumstances aforesaid, we have no choice but for to hold that the representations of the Petitioner against the adverse remarks for the period 22nd July, 1987 to 31st March, 1988 and 15th October, 1987 to 31st March, 1988 were wrongly rejected. We have already held that the report for the year 1983-84 having not been conveyed to the Petitioner could not be taken into account for forming the requisite opinion with regard to compulsory retirement of the Petitioner. We have also held that the report for the year 1984-85 which was conveyed to the Petitioner and against which no representations have been filed could be considered but the same had to be considered after taking into consideration the fact that the Petitioner had been confirmed thereafter.

18. The learned Counsel appearing for the Respondents has cited a number of judgments like [Union of India \(UOI\) Vs. Col. J.N. Sinha and Another](#), "R.L. Butail v. Union of India and Anr." 1971 (1) S.C.R. 55, [Dr. N.V. Puttabhatta Vs. The State of Mysore and Another](#), and, "C.D. Ailawadi v. Union of India and Ors." 1990 (4) S.L.R. 224, to contend that the right conferred on the appropriate authority to give premature retirement is absolute one and the same can be exercised subject to the

conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so and that the authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before the Courts. However, it will be seen from the reading of aforesaid judgments alone that it is always open to the aggrieved party to contend that the requisite opinion had not been formed for the decision is based on collateral grounds or that it is an arbitrary decision. The decision to prematurely retire the Petitioner as noticed from the discussion made above is based upon the confidential reports and the report of the Vigilance Department. In so far as the report of Vigilance Department is concerned, as already observed above, the same cannot be considered. The only surviving grounds on which the action is sought to be defended are the confidential record of the Petitioner. As noticed above, the report for the year 1983-84 could not be considered as also that report for the year 1984-85 was considered without considering the fact that the Petitioner had been confirmed thereafter as also that the representations filed by the Petitioner against the adverse remarks for the period 22nd July, 1987 to 31st March, 1988 and 15th October, 1987 to 31st March, 1988 were wrongly rejected. The impugned order, in our view, is thus arbitrary and, therefore, deserves to be quashed and as such is quashed. It is, however, made clear that the Respondents shall not be precluded from re-considering the matter on the basis of the principles enunciated above.

19. Dealing with the last contention of the learned Counsel for the Petitioner that the order of suspension (Annexure P-2) deserves to be quashed on setting aside of the order of pre-mature retirement. Suffice it to say that the enquiry that was initiated against the Petitioner does not appear to have made any progress. The Petitioner could be under suspension only if the enquiry is pending against him or the same is contemplated and inasmuch as the enquiry did not proceed after the order of pre-mature retirement, the Petitioner deserves to assume his duties. It shall, however be open to the Government to decide the question afresh and place the Petitioner under suspension in case it feels desirability of proceeding against the Petitioner. The order of suspension ceased to operate on compulsory retirement of the Petitioner and cannot be automatically revived on setting aside the said order. However, as observed earlier, it shall be open to the Government to decide the matter afresh.

20. In view of the observations made above, this petition is allowed and:

(a) the order of premature retirement dated September 25, 1989 (Annexure P-I) is quashed and the Petitioner is ordered to be re-instated with all consequential benefits;

(b) the Respondents, however, are not debarred from re-considering the matter in the light of the principles fully detailed above; and

(c) on the question of suspension, it shall be open to the Government to decide the matter afresh.

21. In view of peculiar circumstances of the case, there shall be no order as to costs.