(1977) 07 CAL CK 0003

Calcutta High Court

Case No: Appeal No. 319 of 1975

Rohini Kanta Dey		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: July 19, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226, 310, 311(2), 320(2)
- West Bengal Services Rules - Rule 75

Citation: (1978) 1 ILR (Cal) 592

Hon'ble Judges: S.C. Ghose, J; R.N. Pyne, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

R.N. Pyne, J.

This appeal is against the judgment and order of A.N. Sen J. dated January 20, 1975, whereby the Appellant''s application made under Article 226 of the Constitution challenging the validity of the order dated June 27, 1974, compulsorily retiring the Appellant, who was then acting as a District Fishery Officer (Officiating) under the Government of West Bengal, was dismissed.

2. In or about 1944 the Appellant was appointed as a Demonstrator in the Fisheries Department by the Government of West Bengal. It appears that the Appellant completed a tenure of service of 30 years and in September 1974 when the Appellant (who was the Petitioner in Court below) made the said application under Article 226 of the Constitution of India from which the present appeal has arisen he was 53 years of age. In the petition of the said application it is stated that the Appellant was promoted to the position of District Fishery Officer on January 7, 1960 and at the time of his compulsory retirement he was a Class II Gazetted Officer. For the purpose of this appeal it is however not necessary to state the different posts which were held by the Appellant from time to time, but in June 1974 the Appellant

was acting as a District Fishery Officer which is in Class II service. While the Appellant was acting as a Class II Officer as stated above he was served with an order dated June 27, 1975, compulsorily retiring him from his service. The said order reads as follows:

Whereas you Shri Rohini Kanto De a District Fishery Officer (Officiating) entered Government service before attaining the age of thirty five years.

And whereas the Governor being the appointing authority in respect of your service under the Government is of the opinion that it is in the public interest so to do.

Now therefore in exercise of the powers conferred by Sub-rule (aa) of Rule 75 of the West Bengal Service Rules Part I the Governor retires you Shri Rohini Kanto De from Government service with effect from the 1st day of October 1974.

By order of the Governor

J.B. Singh

Secretary to the Government of

West Bengal

After service of the said order the Appellant in September 1974 made an application under Article 226 of the Constitution of India to this Court challenging the validity of the said order and the said application as stated earlier was dismissed by A.N. Sen J. on January 20. 1975.

3. From the judgment of the Court of the first instance it appears that it was conceded by the Appellant''s counsel before the learned Judge hearing the said application that the petition of the said application was not happily drawn and various proper grounds which should have been taken were not taken in the petition. It was submitted on behalf of the Appellant before the Court of the first instance that such further grounds were taken in the affidavit-in-reply affirmed by the Appellant on December 10, 1974 and in hearing the application the Court should take into consideration the entire materials which were before the Court including those contained in the affidavit-in-reply.

4. It appears that the main contention of the Appellant before the Court of the first instance was that formation of the requisite, opinion by the appointing authority to retire the Appellant was not, bona fide and there was no proper material which could lead., to the, formation of the requisite opinion by the appointing authority, that in the public interest it was necessary to retire the Appellant,. It was also contended that the Appellant was indeed removed from, service by virtue of the provisions contained in Rule 75(aa), by compulsorily retiring him from service as the Government, had failed to substantiate, the charges which were preferred against the Appellant and in respect of which after an enquiry the Appellant was acquitted. It was argued that having failed in the enquiry proceedings the Government had

taken recourse to the said particular Rule. It was also submitted that the procedure laid down in the memorandum bearing No. 510 C.A.C. dated May 16, 1973, (hereafter referred to as ''the said memorandum'') to be followed in case of passing of an order of compulsory retirement under Rule 75(aa) of the West Bengal Service Rules, Pt. II, was not followed because in the instant case no Review Committee sat and in any event there was no recommendation by a Review Committee to the appointing authority suggesting compulsory retirement of the Appellant. Reliance was placed on the case of A.C. Bose v. Union of India (1974) 29 F.L.R. 269. For all the aforesaid reasons it was submitted that the said order of compulsory retirement made under the said Rule 75(aa) against the Appellant was invalid.

5. On behalf of the Respondent the State of West Bengal it was contended before the Court of the first instance that the order was properly and lawfully passed by the appointing authority under Rule 75(aa) on due consideration of the relevant materials and hence it could not be said that the materials for formation of the requisite opinion by die appointing authority for passing an order of compulsory retirement of the Appellant were absent. It also appears that the relevant records relating to the case of the Appellant was procedure before the learned trial Judge and he considered the same. Regarding the nature of the procedure laid down in the said memorandum it was submitted that the same was only directory in nature but in passing the said order the procedure as laid down in the said memorandum was, however, followed in the instant case.

6. The learned trial Judge, after considering the contentions of the parties and perusing the relevant records of the Appellant''s case produced before him by the Respondent State, was of the view that from such records it was abundantly clear that there were sufficient materials which could lead to the formation of the opinion that the retirement of the Appellant was in public interest. The learned trial Judge was also of the view that the order in question could not be considered to be an order by way of punishment nor does it cast any stigma or reflection on the Appellant. According to the learned trial Judge, the existence of materials was clearly established and after considering the said materials his Lordship was of the view that the compulsory retirement in the facts of the instant case was just and proper and the said order was properly passed. The learned trial Judge was also of the view that it was not necessary for him to decide whether there was any non compliance of the procedure laid down in the memorandum No. 510 G.A.C. dated May 16, 1973 and if so, what was the effect of such noncompliance, because no specific case in that regard was made in the petition. But his Lordship observed that the records would go to show that there was a Review Committee which had considered the case of the Appellant. From the judgment it further appears that the learned trial Judge expressed view, (though obiter in our opinion) that the procedure to be followed as laid down in the said memorandum was only directory in nature. In the aforesaid view of the matter the learned trial Judge dismissed the Appellant''s application and discharged the Rule nisi.

7. As in this case we are concerned with Sub-rule (aa) of Rule 75 of the West Bengal Service Rules, pt. I and the memorandum No. 510 G.A.C. dated May 16, 1973, the same may be set out here:

Rule 75(aa): Notwithstanding anything contained in this rule, the appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than 3 months in writing or 3 months'' pay and allowances in lieu of such notice:

(i) If he is in Class I or Class II service or post had entered Government service before attaining the age 35 years after he has attained the age of 50 years; and

(ii) in all other cases, after he has attained the age of 55 years.

Memorandum No. 510 G.A.C. dated the 16th May, 1973.

Under Rule 75(aa) of the W.B.S.R. Part--I, all appointing authorities under the State Government, have the power to retire, if they are of opinion that it is in the public interest to do so, any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice:

(i) If he is in Class I or II service or post and had entered Government service before attaining the age of 35 years after he has attained the age of 50 years; and

(ii) in all other cases, after he has attained the age of 55 years.

2. In order to give effect to the above provisions of the rule, the following procedure should be followed:

(i) A review should be conducted twice a year in the months of January and July to determine the suitability for continuance or otherwise of all officers who will attain the age of 50 or 55 years, as the case may be, in the half year begining with the following July and January respectively.

(ii) There should be a review committee consisting of three senior officers for reviewing the case of officers as in (i) above. The Committee''s recommendations should be submitted to the appointing authority and the decision may be made with the approval of the Minister-in-Charge of the Department concerned. Where it is proposed to retire an Officer of Class I or Class II service after he has attained 50/55 years of age the case should be placed before the Chief Minister through the Chief Secretary after the Minister-in-Charge has approved.

3. The following criteria may be followed in considering proposal for retiring a person under Rule 75(aa) of W.B.S.R., Part--I:

(i) In case where there is reasonable cause to believe that the officer concerned is lacking in integrity, it would be appropriate to consider him for premature retirement under the rule, irrespective, of ant assessment of his ability or efficiency in work.

(ii) In case where the officer''s integrity is not in doubt, but his physical or mental condition is such as to render him unfit for continuance in Government service it would be appropriate to consider him for premature retirement under this rule. However, in such a case, it will be desirable first to advise the Officer to opt to retire voluntarily under Rule 75(aa) and in the event the Officer fails to avail himself of such advice action under Sub-rule 75(aa) may be taken. A Government servant who is retired on this ground may however be given all the leave that is due to him including half pay leave and leave on medical certificate prior to his compulsory retirement.

(iii) If, on the result of review, it is considered that an officer who had done well in a lower grade is not, adequate to die responsibilities of the post held by him or will not be able to perform efficiently the duties of the post he is likely to hold for the next three years, it will be desirable to consider him for premature retirement under this rule.

(iv) In the case of officers coming under Clause (i) of Rule 75(aa) there should be reviewed at two stages, viz. at the age of 50 years and again at the age of 55 years. Once it is decided to retain an officer beyond the age of 55 years he should normally be allowed to continue up to the age of 58 years without any fresh review unless this be justified by an exceptional reasons, e.g. his subsequent work or conduct or the state of health which may make earlier retirement desirable.

4. All Departments are requested to take necessary action on the above basis. The above instructions to all Government servants to whom Rule 75 of the W.B.S.R., Part--I, applied. The Head of Department/Directorates etc. may be informed.

8. Counsel for the Appellant has submitted that the impugned order does not show that conditions laid down in Rule 75(aa) were complied with. According to counsel under the said Rule in case of Government servants holding Class I or Class II post two conditions are to be satisfied. Firstly, he had entered the service before attaining the age of 35 years and secondly, at the time of passing of the order of retirement he has attained the age of 50 years. It is submitted that the impugned order mentions the fulfilment of the first condition but not the second one i.e. at the time of the passing of the said order the Appellant had attained the age of 50 years. Counsel submitted that this shows that the appropriate authority at the rime of passing of the said order did not apply its mind on the question of the fulfilment of the second condition and therefore, the impugned Order was not validly passed.

9. Counsel for the Respondent submitted that from the petition it is clear that at the time when the said order was passed the Appellant had already attained the age of 50 years and as such there was no Violation of the said condition of Rule 75(aa).

10. In para. 26 of the Appellant''s petition verified by his affidavit affirmed on September 5, 1974, the Appellant has stated that at that time his age was 53 years. Therefore, admittedly when the impugned order was passed the Appellant had

already attained the age of 50 years and therefore, there could not be any question of non-fulfilment of the condition of the said Rule or non-application of mind of the appointing authority as contended on behalf of the Appellant. Since no appeal lies against an order of compulsory retirement and such order can be challenged only on limited ground, in our view, it is not essential that such order should state any reasons or mention about the fulfilment of the condition of the said rule. Such order need not be a speaking order. As admittedly the Appellant had attained the age of 50 years when the said order was passed, we are unable to accept the above contention of the Appellant.

11. It Was further submitted on behalf of the Appellant that the learned trial Judge misdirected himself by considering the materials contained in the file produced before him and on the basis of such materials came to the conclusion that there were materials for formation of the requisite opinion as required by the said rule. This contention, in our view, cannot be accepted. As stated earlier, the petition in the instant case was not properly framed and all the ground which should have been stated were not stated in the petition but some facts were staged in the reply. In these circumstances, the learned trial Judge, for the sake of justice, had to see the relevant file of the Appellant''s case and upon perusal of such file he was satisfied that the impugned order was properly passed. It should however be noted that in case of an application made under the Constitutional Writ Jurisdiction and particularly, in an application praying for a writ of certiorari there is no bar to the Court''s looking into the relevant records of the case. In such cases, the entire record is before the Court and it is open to the Court to go through such record. Further, it appears that the Appellant did not object to the Court''s looking into such record. Therefore, there is no merit in this contention of the Appellant.

12. The principle laid down by the Supreme Court for judging the validity of an order of compulsory retirement under Rule 56(j) of Fundamental Rules, which is more or less similar to Rule 75(aa), appears to be that where an appropriate authority bona fide forms opinion that a Government servant be retired in public interest he can pass order of compulsory retirement. That opinion cannot be challenged before the Courts. Nor Rule 56(j) requires that opportunity to show cause against compulsory retirement must be given. Order of compulsory retirement can be challenged only on the ground that either the requisite opinion was not formed or that the order was passed arbitrarily or on collateral ground. Compulsory retirement involves no civil consequences. Rule 56(j) is not intended for taking any penal action against the Government servant. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. See Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The above principle is also applicable when considering the validity of an order of compulsory retirement made under Rule 75(aa) of the West Bengal Service Rules, pt. I, (hereinafter referred to as ''the said Rule''). In the instant case, as stated hereinbefore, as the petition was not properly framed and some further allegations/were made in the affidavit-in-reply relevant records of the

case were produced before the learned trial Judge and he perused the same. And the learned trial Judge for reasons recorded in his judgment came to the conclusion that there were sufficient materials for formation of the requisite opinion that the retirement of the Appellant was in the public interest and was justified. Learned trial Judge in his judgment has also recorded the reasons for upholding the said order and we fully agree with the reasons as stated by the learned trial Judge in his judgment.

13. It was next contended on behalf of the Appellant that the appointing authority in passing the order of compulsory retirement did not follow the recommendation of the Review Committee, constituted under the said memorandum. It is submitted that the Review Committee was of the view that there was no material. Therefore, if, according to the appointing authority, there was material for formation of the requisite belief that it was necessary to pass the order in public interest then in the order the appointing authority should have stated why the recommendation of the Review Committee was not accepted. According to counsel the order in the instant case should have been a speaking order. The said order, according to the counsel, is only a mechanical act. Reliance has been placed on the cases of Travancore Rayon Ltd. Vs. Union of India (UOI), and Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, . In this case, the Appellant should not be permitted to raise this particular contention. Neither this point was taken in the petition or in the affidavit-in-reply; nor this point was argued before the trial Court. Further, this point involves consideration of facts which do not appear from record of this case. Therefore, in our view, this point cannot be gone into or considered at the appellate stage. It however appears, as stated hereinbefore, from the judgment of the trial Court that there was a recommendation by the Review Committee which considered the case of the Appellant.

14. It was further submitted on behalf of the Appellant that the procedure laid down in the memorandum No. 510 G.A.C. dated May 16, 1973, are mandatory and not directory in nature and in the instant case, the condition laid down in the said memorandum has not been fulfilled. Reliance was placed on the case of A.C. Bose v. Union of India Supra. It is also submitted that the requirement of Clause 2 as also of Clause 2(1) read with Clause 3(iv) of the rule was not complied with in the instant case. Counsel submitted that according to the terms of the said memorandum in case of Class II officer there should be review once at the age of 50 years and thereafter at 55 years. It is further submitted that in this case assuming there was a review of the Appellant''s case by a Review Committee such review was not done in accordance with the conditions of the said memorandum. Therefore, the order of the appointing authority under Rule 75(aa), which is based on a recommendation of the Review Committee not properly made according to the requirements of the said memorandum, cannot be said to be valid.

15. Regarding the said memorandum No. 510 G.A.C. counsel for the Respondent submitted that no case was made about this memorandum in the petition and it was only mentioned in para 12(j) of the affidavit-in-reply. It was further submitted that the Appellant firstly made out the case that the Review Committee did not sit at all but later on it was submitted that there was violation of the rules contained in the said memorandum. Counsel has pointed out that it was established and the learned trial Judge was satisfied that there was a recommendation of the Review Committee to the appointing authority who passed the order of compulsory retirement of the Appellant. Counsel also pointed out that though in the affidavit-in-reply it was stated that the sitting of the Review Committee was not in accordance with the procedure laid down in the memorandum yet this point was not urged before the learned trial Judge and therefore, the same was not considered by the learned trial Judge. Further, in the grounds of appeal this point has also not been taken. Counsel has, however, submitted that there was also no violation of the procedure indicated in the memorandum because according to him after a Government servant attains the age of 50 years there should be a review of this case every year. Counsel has also submitted that Rule 75(aa) is similar to Rule 56(j) of the Fundamental Rules and relying on Article 320(2) of the Constitution it was submitted that as in the case of the Central Government servant the requirement of the said Article has been held to be only directory in nature similarly the procedure laid down in the said memorandum, which is similar in nature as that of Article 320(2), should also be held to be directory and not mandatory. In support of his above contention counsel has referred to the cases of State of U.P. v. Manbodhan Lal Sribastava AIR 1970 S.C. 912 and Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, .

16. Though the learned trial Judge has expressed a view, which appears to be obiter, that the procedure laid down in the memorandum No. 510 G.A.C. dated May 16, 1973, is directory in nature and the contention of the Appellant is that the procedure laid in the said memorandum is mandatory yet, in our view, in the facts and circumstances of this case it is not necessary to express any opinion on this point and therefore, we are not expressing any opinion on the question as to whether the procedure laid down in the said memorandum is mandatory or directory in nature. On the said memorandum Appellant''s case, as will appear from his affidavit-in-reply, before the trial Court was that no Review Committee ever sat, nor it found any material on which it could make any recommendation to the appointing authority for compulsory retirement of the Appellant and further, if at all a Review Committee sat in connection with the Appellant''s case the said committee sat disregarding the provisions of the said memorandum. Before us it has been mainly contended on behalf of the Appellant that the Review Committee did not sit in accordance with the provision of the said memorandum. As stated earlier, according to the Appellant, the requirement of the memorandum is that in the cases of officers coming under Clause (i) of Rule 75(aa) i.e. Class I and Class II officers, review should take place twice, i.e. once at the age of 50 years and again at the age of 55

years and the Appellant''s contention is that in his case review was not made according to the above condition.

17. It appears that the case made out in the affidavit-in-reply regarding the said memorandum was not urged before the trial Judge because the judgment of the trial Court records that--

In the facts of the instant case I do not consider it necessary to decide whether there has been any non-compliance with the procedure laid down in the said memorandum No. 510 G.A.C. dated 16th May, 1973 and if so what is the effect of such noncompliance as no specific case with regard to the same has been made in the petition.

But the learned trial Judge found that records would go to show that there was a Review Committee which considered the case of the Appellant. The judgment appealed against, therefore, clearly shows that it was not urged before the trial Court that the Review Committee did not sit according to the requirement of the said memorandum. As the point now sought to be urged by the Appellant was abandoned before the trial Court and the consideration of this point involves investigation into and consideration of fresh facts we are not inclined to allow the Appellant to agitate this point at this stage. In the facts and circumstances of this case, in our view, it cannot be said that the procedure laid down in the memorandum No. 510 G.A.C. dated May 16, 1973, was not followed. We are also in agreement with the reasons given by the learned trial Judge for holding that A.C. Pose''s case Supra is distinguishable.

18. It was also submitted on behalf of the Appellant that when the said order of compulsory retirement was passed disciplinary proceedings were pending against the Appellant as fully stated in para. 12 of his affidavit-in-reply filed in the trial Court. It was further submitted that considering the fact that such disciplinary proceedings would not succeed the Respondent, the State, took recourse to Rule 75(aa) and'' passed the said order of compulsory retirement of the Appellant. It is the submission of the Appellant that in the background of the facts of the disciplinary proceedings as stated in the said paragraph the order of compulsory retirement amounts to an order by way of punishment of the Appellant and it also casts a stigma against the Appellant. Therefore, before passing of the said order the Appellant should have been given an opportunity of being heard and as that was not done there is a violation of the principle of justice and the impugned order is violative of Article 311(2) of the Constitution of India. In support of the above contention reliance was placed on the cases of Chief Security Officer, Eastern Railway v. Ajoy Chandra Bagchi 79 C.W.N. 740, G.A. Sial v. Union of India 1977 L. and I. Cases 378, The State of Bihar and Others Vs. Shiva Bhikshuk Mishra, and The State of Bihar and Others Vs. Shiva Bhikshuk Mishra, .

19. In the case of Chief Security Officer, Eastern Railway v. Ajoy Chandra Bagchi 79 C.W.N. 740 the validity of the order of compulsory retirement of the Respondent dated June 23, 1972 and two adverse entries dated January 11, 1972 and April 21, 1972, respectively as entered in the Confidential Character Roll of the Appellant were challenged. The appeal Court upheld the decision of the trial Judge setting aside the said impugned order of compulsory retirement and the said adverse entries. It was observed by the appeal Court that the impugned order was void as the adverse entries which were the alleged basis for the recommendation of the compulsory retirement of the Petitioner were not duly communicated to the Petitioner. The appeal Court further observed as follows:

The order in the instant case seems to be innocuous in its nature but from the attending circumstances it is clear and definite that the same was passed on consideration of certain materials alleged to be adverse against the Petitioner without any corresponding opportunity given to him either to rectify or contradict them. Such act which affects the case of an employee prejudicially cannot and should not be allowed to be taken in the manner as has been done. It was not the admitted position that the impugned action was taken behind the back of the Respondent-Petitioner and without any opportunity to him then the case would have been different. But when steps have admittedly been taken on consideration of adverse entries not communicated to the employee concerned, such steps cannot be sustained unless it can be assumed that he was given ample opportunity to make effective representation against them and such representation have been duly considered before the final order is passed.

It appears that the above decision was based on the peculiar facts of that case and as such it is clearly distinguishable.

20. In the case of State of Bihar v. Shiva Bhikshuk Mishra Supra, while dealing with the question whether a particular order of reversion of the Respondent contained stigma attributable to the conduct of the Government servant the Supreme Court observed that the entirety of circumstances proceeding and attendant on the impugned order must be examined and the overriding test will always be whether misconduct is a mere motive or is the very foundation of the order.

21. In the case of G.S. Sial v. Union of India Supra facts were that after the criminal prosecution on ground of corruption against the Petitioner had failed on account of lack of evidence the Central Government launched departmental proceedings against the Petitioner. Charges framed against the Petitioner contained serious allegations of misconduct and corruption, if proved, would normally lead to his dismissal or removal from service. The Petitioner had denied the charges. An Enquiry Officer was appointed and the proceedings were on the verge of conclusion when the impugned order under Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1956, was issued retiring the Petitioner compulsorily from service. On those facts it was held that the impugned order was

passed by way of punishment and it amounted to dismissal or removal from service.

22. In the said case on the question whether the Court can examine facts and circumstances to ascertain the true character of the order of compulsory retirement it was observed that:

The Bench further repelled the contention that the Court cannot examine facts and circumstances to ascertain the true character of the order of compulsory retirement. The Bench held that other circumstances which can lead to the conclusion that order has been passed by way of punishment can be examined by the Court. The Court can see whether the order is passed on the ground of misconduct on the part of the Government servant. This can be done only by going behind the order. The principle that the form of the order is not conclusive or decisive but it is really the substance of the order which would determine its true nature and character is well settled. This can be determined by going behind the order and examining the circumstances which may have preceded or followed the issue of the order. See S.R. Tewari Vs. District Board Agra and Another, ; State of Punjab and Another Vs. Shri Sukh Raj Bahadur, ; Samsher Singh Vs. State of Punjab and Another, ; The State of Bihar and Others Vs. Shiva Bhikshuk Mishra, .

23. From the observations made in the above judgment extracted below it appears that as it was not denied in the counter-affidavit filed on behalf of the Central Government that the facts and circumstances which were the subject-matter of the charge against the the Petitioner were not taken in forming the requisite opinion to retire the Petitioner the Court presumed that the appropriate authority was influenced by those facts.

There is however no averment in either of the two counter-affidavits filed on behalf of the Central Government and the State Government that the facts and circumstances which were the subject-matter of the charges against the Petitioner were not taken into account in forming the requisite opinion to retire the Petitioner in public interest. As already noticed the Central Government at first attempted to prosecute the Petitioner in a court of law. After the criminal prosecution failed on account of lack of evidence, the Central Government launched departmental proceedings against the Petitioner. In these circumstances, it is difficult to comprehend that the facts and charges which formed the basis of the departmental proceedings were not present on the service record of the Petitioner. Since the enquiry into those charges was pending at the time of the issue of the impugned order and that order was passed on an overall assessment of the Petitioner''s record of service, it is inherent that the allegations made against the Petitioner, must have been taken into account. In the absence of any express averment to the contrary, we are of the opinion that in the background of the circumstances of this case, the impugned order is based on the allegations of misconduct against the Petitioner and since Article 311(2) of the Constitution was not complied with the impugned order is rendered void and liable to be quashed.

24. The other cases cited on behalf of the Appellant do not appear to be relevant in the facts and circumstances of the instant case and hence, it is not necessary to deal with them.

25. It appears that in the case before us in the petition nothing was stated about the disciplinary proceedings and only in the affidavit-in-reply, in para. 12(j), facts regarding taking of the departmental proceedings against the Appellant and pendency of such proceedings are mentioned. As these facts were stated only in the reply the Respondent was unable to deal with the same. But in the instant case, for the purpose of considering the true character of the order of compulsory retirement the learned trial Judge went behind order. The entire record of the case was produced before the learned trial Judge and the learned trial Judge upon going through such record and examining the same which he was fully entitled to do in a writ application and also after considering the facts and circumstances of the case came to the conclusion that from the records it was abundantly clear that there were sufficient materials which could lead to the formation of the opinion that the retirement of the Appellant was in the public interest, the order in question could not be considered to be an order of punishment and it did not cast any stigma or any reflection on the Appellant. We respectfully agree with the reasoning and the conclusions of the learned trial Judge as recorded in his judgment. In our view, the learned trial Judge came to a correct finding and therefore, his judgment and order should be upheld.

26. In the above view of the matter this appeal fails and it is dismissed. In the facts and circumstances of this case we do not make any order as to costs.

S.C. Ghose, J.

27. I agree.