REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2365 OF 2020
(Arising out of SLP (Civil) No. 2307 of 2019)

Nisha Priya Bhatia **...Appellant**

Versus

Union of India & Anr. **...Respondents**

WITH

CRIMINAL APPEAL NO. 413 OF 2020
(Arising out of SLP (Crl.) No. 10668 of 2015)

WRIT PETITION (CRIMINAL) NO. 24 OF 2012

WRIT PETITION (CRIMINAL) NO. 1 OF 2016

J U D G M E N T

A.M. Khanwilkar, J.

1. This lis throws up questions regarding striking a legal balance between the State-citizen intercourse in the context of relationship of an employer and employee. The nature of employment under the umbrella of the State is complex and is often determinative of the

nature of duty to be performed and the rights to be enjoyed by those must be correlated thereto. To wit, higher the position and responsibilities, the extent and quality of individual rights ought to be inversely proportional in the larger public interest. Thereby giving rise to situations like the present case wherein the ultimate balance between security of a State organisation dealing with sensitive matters of security of the nation and individual interest of a person employed thereat as an intelligence officer, is being put to a legal scrutiny in light of the fundamental constitutional values of justice, liberty, equality and fraternity.

2. This common judgment shall dispose of all the four cases pertaining to and emanating from the action of compulsory retirement of the appellant under Rule 135 of the Research and Analysis Wing (Recruitment, Cadre and Services) Rules, 1975 (for short, "the 1975 Rules") on the ground of "exposure". Civil Appeal No. 2365/2020 arising out of SLP(C) No. 2307/2019 has been dealt with as lead matter involving the main grievance of the appellant.

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3. Leave granted.

4. The primary challenge is to the judgment dated 7.1.2019 (for short, 'the impugned judgment') passed in W.P. (C) No. 2735 of 2010 filed by the respondents, whereby the High Court of Delhi at New Delhi (for short, 'the High Court') upheld the order of compulsory retirement of the appellant, thereby reversing the order dated 16.3.2010 passed by the Central Administrative Tribunal (for short, 'the Tribunal') in O.A. No. 50 of 2010 quashing the order of compulsory retirement and directing reinstatement of the appellant back in service.

5. Briefly stated, on 22.2.1988, the appellant joined the Research & Analysis Wing (for short "the Organisation" or "the Department") as "Directly Recruited" under the Research & Analysis Service (RAS). She was assigned various portfolios during the term of service including the post of Director, Training Institute (Gurgaon) where she remained posted from 2.7.2004 to August, 2007. On 3.8.2007, the appellant was posted as Director at Headquarters in New Delhi. Whilst posted at Gurgaon and Delhi, the appellant had to interact with Shri Ashok Chaturvedi and Shri Sunil Uke respectively, who were working in the Organisation in various capacities at that time.

6. On 7.8.2007, the appellant filed a complaint of sexual harassment against Shri Ashok Chaturvedi, working as Secretary (R)

- Incharge of the Organisation and Shri Sunil Uke, working as Joint Secretary in the Organisation at that time. The appellant alleged that the charged officers subjected her to harassment by asking her to join the sex racket running inside the Organisation for securing quicker promotions and upon refusal to oblige, she was subjected to persecution. Thus began the series of allegations regarding acts of commission and omission which culminated into litigation continuing upto the present batch of four cases.

7. The Organisation responded to the allegations of sexual harassment after a gap of almost three months by constituting a Complaints Committee in accordance with the guidelines laid down in ***Vishaka and Others vs. State of Rajasthan and Others***[1] and appointed Ms. Shashi Prabha, a female officer in the Organisation, as Chairperson of a three-member Complaints Committee. The Complaints Committee so constituted did not consist of a "third party as a representative of an NGO or other body who is familiar with the issue of sexual harassment", as predicated by the guidelines given in ***Vishaka*** (supra). Resultantly, the Committee was re-constituted on 1.11.2007 with the addition of Dr. Tara Kartha, Director, National Security Council Secretariat (NSCS).

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1 (1997) 6 SCC 241

8. It is noteworthy that, despite multiple reminders, the appellant refused to participate in the stated proceedings before the Committee and cited the following reasons for such refusal:

> (i) Need to constitute the Departmental Committee as per *Vishakha* guidelines; and,
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> (ii) The committee had no mandate to proceed against Shri Ashok Chaturvedi, as Chairperson of the committee was not senior enough to inquire into allegations against him.

9. The departmental Complaints Committee, in its *ex-parte* report, concluded that no allegations of sexual harassment could be proved against Shri Sunil Uke. This report was followed by a 'widely reported' incident at the Prime Minister's Office (for short, "the PMO") where the appellant reportedly attempted to commit suicide on 19.8.2008. We are not required to dilate on the factual aspect of this incident at the PMO, but for the purpose of present litigation, suffice it to mention that due to this incident, the name and designation of the appellant was widely reported in the media. Further, the criminal case against the appellant evolving out of this incident came to be dropped vide order dated 21.9.2013 passed by the Metropolitan Magistrate, Patiala House Courts, New Delhi.

10. It was in the aftermath of this incident that another committee was constituted by the then Prime Minister under the Chairmanship

of Ms. Rathi Vinay Jha, a retired officer of the Indian Administrative Service to look into the complaints against Shri Ashok Chaturvedi. The Committee dealt with two aspects of allegations against Shri Ashok Chaturvedi – firstly, allegation of not acting in accordance with the ***Vishaka*** (supra) Guidelines on receipt of the complaint of the appellant; secondly, allegations of actually indulging in acts falling within the ambit of sexual harassment. We, at this juncture, are concerned only with the former allegation, that is, the lapse committed by the Secretary (R) to act in accordance with the elaborate Guidelines passed by this Court in ***Vishaka*** (supra). For, Rathi Vinay Jha Committee concluded the enquiry with the finding that no case of sexual harassment of the appellant at the hands of her colleagues was made out on the basis of evidence on record. However, the Committee recorded a series of crucial observations. The same shall be adverted to at an appropriate stage in the later part of this judgment.

11. Furthermore, in the aftermath of the above-mentioned incident at PMO, the Cabinet Secretariat, through the Press Information Bureau, released a press note dated 19.8.2008 carrying the title "*Fact Sheet on Suicide Attempt by Ms. Nisha Priya Bhatia*". This press note carried information pertaining to the incident, her complaints against

her colleagues within the Department and the state of her mental health and psychological condition. It is pertinent to note that the observations regarding the disturbed mental state of the appellant were based on an 'informal opinion' sought by Secretary (R) from the Head of the Department of Psychiatry, All India Institute of Medical Sciences (AIIMS). Notably, this press note dated 19.8.2008 has been quashed by this Court in W.P. (Crl.) No. 24 of 2012, vide order dated 15.12.2014, as being in gross violation of human rights and individual dignity of the appellant. The relevant part of the order notes thus:

> "On proper appreciation of the aforesaid, it can definitely be stated that the foundation and the fulcrum on which the press note was issued has no basis. The press note, as we perceive, creates a concavity in the reputation of a citizen and indubitably against an officer whatever rank he/she holds. There was no reason to issue a press note. We can understand that the press note is issued that a crime has been registered against the person concerned as it is a cognizable crime but we cannot appreciate issuance of such a press note which affects the dignity, reputation and privacy of an officer.
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> In view of the aforesaid, we quash the press note dated 19.08.2008. Needless to emphasise, when we quash a press note or anything, it does not exist in the eye of law and it has to be understood that it had never existed for any purpose at any point of time."

12. The incident dated 19.8.2008 at the PMO had attracted immense media attention across national and international portals and culminated into a series of media reports whereby the appellant's identity, including her association with the Organisation, became a

subject of public discourse. This incident acted as the pivot around which subsequent events of exposure took shape, eventually leading to the 'exposure' of the appellant within the ambit of Rule 135. In light of aforementioned developments, the appellant was declared as "exposed". This exposure, furthermore, led the respondents to declare the appellant as unemployable, having regard to the nature of work of the Organisation of which confidentiality and secrecy are inalienable elements.

13. The declaration of unemployability of the appellant due to exposure as an intelligence officer was made by way of an order of compulsory retirement dated 18.12.2009 passed under Rule 135 of the 1975 Rules. The appellant took exception to this order before the Tribunal in O.A. No. 50/2010 on the grounds of *mala fides* and manifest arbitrariness in the actions of the respondents. The appellant's challenge to this order was upheld by the Tribunal and, vide order dated 16.3.2010, reinstatement of the appellant back in service was directed. The Tribunal had observed thus:

> "15. We had gone through the materials that had been placed by the parties. After hearing them, we are of the confirmed opinion that the applicant has been treated with a large doze of arbitrariness and her statutory as well as constitutional rights stand violated. Resort to Rule 135 (1)(a) could not have been supported. Resultantly, we are of the view that the applicant is entitled to the reliefs as might be admissible, namely, reinstatement. We may give below our reasons for coming to the said conclusion."

14. After the retirement of the appellant, the provisional pension of the appellant was fixed under Rule 69 of CCS (Pension) Rules,1972 (for short, 'the Pension Rules') vide order dated 10.5.2010 with effect from the date of retirement till regularization of her period of unauthorized absence from 29.8.2008 to 26.11.2009. The provisional pension was authorized on the last pay drawn by her on 28.8.2008. Thereafter, the period of unauthorized absence was regularized by the High Court vide order dated 21.10.2013 passed in W.P. (C) No. 3704 of 2012, as upheld by this Court in S.L.P. (Civil) C.C. No. 6762 of 2014, thereby entitling the appellant to complete pension benefits with effect from 19.12.2009.

15. Be that as it may, the Tribunal held that the order of compulsory retirement was violative of Articles 14 and 311 of the Constitution and fell short of declaring Rule 135 as unconstitutional. It was content with the following words:

> "20. .....A subsidiary rule, we feel, is insufficient to annihilate the guaranteed rights as are available to an officer, who had put in considerable years of service. As we have found that the applicant has been denied protection of law, which is a fundamental right under Article 14 of the Constitution, it may not be necessary for us to further deliberate on the constitutionality of Rule 135 (1)(a) of the R&AW (RCS) Rules or declare that the rule invoked is void, since it operates to contravene clause (2) of Article 311."

16. The aforementioned order of the Tribunal was impugned by the respondents in W.P. (C) 2735/2010 before the High Court, wherein the High Court, by an elaborate judgment, reversed the decision of the Tribunal vide impugned judgment dated 7.1.2019 and upheld the order of compulsory retirement issued under Rule 135. The challenge to the constitutional validity of Rule 135 of the 1975 Rules was also examined and negatived by the High Court. At the outset, we deem it apposite to deal with the issue whether Rule 135 of 1975 Rules could be assailed as unconstitutional.

Submissions re: Constitutionality of Rule 135

17. It has been contended by the appellant before us that Rule 135 is in direct contravention of Article 311 of the Constitution which deals with "*dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or the State*", as the stated Rule modifies that right to the detriment of the employee. In extension of the same argument, it has been contended that failure to follow the procedural safeguards prescribed under Article 311 amounts to a denial of equal protection of law to the appellant, thereby violating Article 14 of the Constitution. Furthermore, it has also been argued that Rule 135 cannot be saved by Article 309 of the Constitution, as Article 309 covers a separate field of recruitment and

conditions of service of public servants, whereas the legal procedure to be followed during the termination of service is exclusively covered by Article 311 of the Constitution. Additionally, the stated Rule 135 suffers from the vice of vagueness.

18. To buttress this submission, the appellant has placed reliance on the principles expounded by this Court on voidness of enactments in ***Kartar Singh vs. State of Punjab***[2] in the following terms:

> "130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasised that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to "steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked."

19. In further submissions, the appellant has also grounded her arguments against the constitutionality of the Rule on the basis of the Tribunal's observation that the Rule does not provide for its publication nor satisfies the cardinal requirement of fair play of prior notice about the existence of such Rules to the employees serving in the Organisation. It is urged that the appellant was not aware of the

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2 (1994) 3 SCC 569

existence of the rule and even after procuring the copy of the rule, she was required to keep it as a secret.

20. The respondents, on the other hand, have submitted that Article 311 of the Constitution has no application to a case of compulsory or premature retirement, as Article 311 is confined to cases involving dismissal, removal or reduction in rank. Stated in a nutshell, the respondents contend that Article 311 is attracted in cases involving termination as a punishment. Whereas, an order of compulsory retirement under Rule 135 of the 1975 Rules, *per se*, does not entail a punishment.

21. The respondents have also submitted that the power under Rule 135 to retire compulsorily flows from the proviso to Article 309 of the Constitution, dealing with the conditions of service; and Article 310, dealing with the doctrine of pleasure. It is further submitted that Rule 135, being a provision for compulsory retirement, does not involve any penal consequence as is the case of Fundamental Rule 56(j) (for short "FR 56(j)"). Additionally, reliance is placed on the exposition of this Court in ***Union of India vs. Col. J.N. Sinha & Anr.***[3] in the following terms:

> "9. Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute

3 1970 (2) SCC 458

> right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power 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. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision…….. One of the conditions of the 1st respondent's service is that the government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead wood, it is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

Analysis of submissions and conclusions in Impugned Judgment

22. In the impugned judgment, the argument against non-publication of Rule 135 of the 1975 Rules and subsequent inability of

the appellant to acquire notice thereof was rejected in the following words:

> "61. It is undoubtedly true that there are some authorities (B.K. Srinivasan & Another vs. State of Karnataka AIR 1987 SC 1054 being one such), which indicate that a norm should be published for it to operate. However, in the present case a peculiar situation has arisen, inasmuch as the organization-R&AW is involved in intelligence work; during arguments, its counsel preferred to refer it as a wing under the Cabinet Secretariat. Publication of the conditions of service, organizational structure and possibly letting out the work flow of different officers and employees, was perceived as a compromise of the confidentiality that the organization fights to maintain at all times. Given these compulsions, this court is of the opinion that the wide kind of publicity of R&AW's cadre structure was not in public interest. What is apparent from the record, however is that the applicant was aware of the rule and did not state in her application to CAT that she was kept in the dark; what is stated in the application made – challenging the rule is that for the first time, she became aware at the time of her compulsory retirement and that the rules were kept under lock and key. The UOI's response is that
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> > "Rules of 1975 are kept in all the offices of R&AW, all over the country and in different sections of the Head Quarters. All officials of R&AW have access to these Rules; however the same are not available to the public in general as they are secret."
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> 62. It seems from the above facts that the petitioner was aware of the Rules, especially Rule 135. She chose to challenge it in a separate writ petition, much after the order of compulsory retirement. Though estoppel on this score cannot be invoked, the court is of opinion that the lack of publicity to the rule cannot be a valid ground, given the character of R&AW and the compulsions that impelled it not to publish the said rule."

23. The challenge to the constitutional validity of Rule 135 is further based on an apprehension of abuse due to the usage of vague and open-ended terms like "exposed" and "security". The High Court,

relying upon ***Union of India & Anr. vs. Tulsiram Patel***[4], rejected the attribution of words like 'vague' and 'open-ended' to the term "security of the State". The High Court construed the meaning of this term, in reference to the following dictum in ***Tulsiram Patel*** (supra):

> "141 …The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine….."

24. The Court reiterated that R&AW is an organization engaged in intelligence activities that concern security interests of the nation and thus, the width of the expression "security of the State" ought to be perceived in light of the specific activities undertaken by the Organisation. In this context, the impugned judgment, in para 65, records thus:

> "65. The applicant's arguments are that the expression "security" is a vague term and does not have any meaning. It is argued by her that the use of the term without the use of any other expression renders it vague and capable of misuse. In this context, the court would reiterate that the R&AW is an organization concededly engaged in intelligence activities that concern security interests of the nation. In the absence of any other expression, the natural meaning of the expression "security" would be – in the context of Rule 135 if

4 (1985) 3 SCC 398

> the activities of the employee or the officer are such that it is considered reasonably as a threat to the security of the organization or the country, the Rule can apply. In this context, the above observations in Tulsi Ram Patel (supra) are relevant. The court had underlined that it is difficult to enumerate the various ways in which the security of the State can be affected. The court had also highlighted that security of the State included the security of part of the State. If one sees these observations in the context of the fact that members of the R&AW are covered by Article 33 of the Constitution (as amended by the 50th Amendment Act, 1984), it is obvious to the court that any act, to fall within the mischief of Rule 135, should be of such nature as to pose a threat to the security of the nation or security of R&AW. Furthermore, the organization comprises of its members and personnel. Therefore, if in a given case, any member of R&AW indulges in behaviour that is likely to prejudice its overall morale or lead to dissatisfaction, it may well constitute a threat to its security."

25. In order to further assail the constitutionality of Rule 135 of the 1975 Rules, a challenge was raised by the appellant against the term "exposure" on the ground of vagueness and open-endedness. While dealing with this objection, the High Court adopted a plain interpretation of the expression and rejected the objection in the following terms:

> "66. As regards, the applicant's objection to the term "exposure", here again upon a plain interpretation, it is evident that if the identity of any member of R&AW, which ought not to be known widely, is so made known or published, and that incident or rationale is a cause of threat – real or apprehended, to its security or the security of its personnel or the security of the state, the rule can be attracted. It is difficult to visualize the various situations in which exposure of R&AW personnel might lead to a security threat. For instance, identity of someone, who is known to head a senior position, per se, may not pose a threat to the security or to R&AW. However, the disclosure of identity through any incident, of its officers who are involved in sensitive functions or operations, in any manner whatsoever, can lead to compromise of the security of R&AW or the state.

> One of the ways this can happen is that if the truth of such an individual is known, he or she can be open to scrutiny by forces hostile and on occasions even subjected to threats which might lead to disclosures- voluntary or otherwise- with regard to the secrets of the organization which can be a threat to the security of the country. Therefore, the use of the expressions "security" and "exposure", are not vague or arbitrary but, having regard to the context and the underlying objectives of the R&AW, mean security of the State or security of R&AW and exposure of the identity of the concerned individual."

Determination of the challenge to constitutionality

26. Article 13 of the Constitution would get attracted if any law is inconsistent with or in derogation of the fundamental rights. In that case, such a law would be void to the extent of inconsistency. By virtue of clause (3), the word "law", used in Article 13, also encompasses a statutory "rule" and thus the constitutionality of Rule 135, as being violative of Article 14 read with Article 311, could legitimately be tested on the anvil of standard tenets for determining the constitutionality of statutes.

27. Article 311 of the Constitution is a manifestation of the essential principles of natural justice in matters of dismissal, removal or reduction in rank of public servants and imposes a duty upon the Government to ensure that any such decision against the public servant is preceded by an inquiry, coupled with an opportunity of being heard and making a representation against such decision. The

abovementioned principles of natural justice are also generally implicit under Article 14, as a denial of the same to the public servant in question would taint the decision with the vice of arbitrariness and deprive the public servant of equal protection of the law. Article 311 reads thus:

> **"Article 311 - Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-** (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
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> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:
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> Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:
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> Provided further that this clause shall not apply-
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> (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
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> (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
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> (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.
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> (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision

thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

28. For further analysis, it is also apposite to advert to the text of Rule 135 of the 1975 Rules, which reads as follows:

"**135. Terminal benefits on compulsory retirement**:

(1) Any officer of the Organization may be compulsorily retired on any of the following grounds namely

(a) his being exposed as an intelligence officer or his becoming unemployable in the Organization, for reasons of security, or

(b) disability or injuries received by him in the performance of his duties.

(2) On the retirement of an officer under sub-rule (1), he may be granted

(i) pension based on the emoluments which he would have drawn had he remained in service until the normal age of superannuation and earned promotion, other than promotion by selection, due to him under these rules or the maximum emoluments he would have drawn in the grade in which he was permanent or regularly appointed at the time of his retirement had he continued to serve in that grade till the age of superannuation, provided that in no case such pension shall be less than twelve hundred and seventy-five rupees.

(ii) Family pension and death-cum-retirement gratuity admissible under the rules for the time being in force.

(3) In addition to the pension, death-cum-retirement gratuity and family pension admissible under sub-Rule (2), the person concerned may also be paid a resettlement grant not exceeding twelve times the monthly pay drawn by him immediately before his compulsory retirement.

(4) The Head of Organization may at his discretion permit the officer concerned to exchange the entire pension due to him under sub-rule (2) for a lump-sum which shall be equal to the commuted value of that amount admissible to a person retiring on attaining the normal age of superannuation."

29. A perusal of the text of Article 311 reveals that this Article comes into operation when a public servant is being subjected to dismissal, removal or reduction in the rank. The usage of words "dismissal", "removal" or "reduction in rank" clearly points towards an intent to cover situations where a public servant is being subjected to a penal consequence. Thus, until and unless the action taken against a public servant is in the nature of punishment, the need for conducting an inquiry coupled with the grant of an opportunity of being heard, as envisaged under Article 311, does not arise at all. Succinctly put, the action contemplated against the public servant must assume the character of 'punishment' in order to attract the safeguards under Article 311. The policy, object and scope of Article 311 has been clarified by this Court in ***State of Bombay vs. Saubhagchand M. Doshi***[5], wherein the Court observed thus:

> "10. Now, the policy underlying Article 311(2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that consideration can have no application where the order is not one of punishment and results in no loss of benefits already accrued, and in such a case, there is no reason why the terms of employment and the rules of service should not be given effect to. Thus, the real criterion for deciding whether an order terminating the services of a servant is one of dismissal or removal is to ascertain whether it involves any loss of benefits previously earned. Applying this test, an order under Rule 165-A cannot be held to be one of

5 AIR 1957 SC 892

> dismissal or removal, as it does not entail forfeiture of the proportionate pension due for past services."

30. The question is: whether the action taken under Rule 135 of the 1975 Rules is in the nature of penalty or a dismissal clothed as compulsory retirement so as to attract the safeguards under Article 311 of the Constitution? The real test for this examination is to see whether the order of compulsory retirement is occasioned by the concern of unsuitability or as a punishment for misconduct. In the present case, the appellant has been subjected to the order of compulsory retirement simpliciter, and no action in the nature of dismissal, removal or reduction in rank, as envisaged under Article 311, has been taken against the appellant. In ***Saubhagchand M. Doshi*** (supra), the distinction between an order of dismissal and that of compulsory retirement was expounded in the following terms:

> "9. .....Under the rules, an order of dismissal is a punishment laid on a Government servant, when it is found that he has been guilty of misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the rules would have accrued in respect of the service already put in. An order of removal also stands on the same footing as an order of dismissal, and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment, one who is removed is. ***An order of retirement differs both from an order of dismissal and an order of removal, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit.***"

31. This Court, in ***State of U.P. vs. Sri Shyam Lal Sharma***[6], also laid down various propositions regarding the implication and effect of the orders of compulsory retirement in the following terms:

> "13. The following propositions can be extracted from these decisions. First, in ascertaining whether the order of compulsory retirement is one of punishment it has to be ascertained whether in the order of compulsory retirement there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned. Secondly, the order for compulsory retirement will be indicative of punishment or penalty if the order will involve loss of benefits already earned. Thirdly, an order for compulsory retirement on the completion of 25 years of service or an order of compulsory retirement made in the public interest to dispense with further service will not amount to an order for dismissal or removal as there is no element of punishment. Fourthly, an order of compulsory retirement will not be held to be an order in the nature of punishment or penalty on the ground that there is possibility of loss of future prospects, namely that the officer will not get his pay till he attains the age of superannuation, or will not get an enhanced pension for not being allowed to remain a few years in service and being compulsorily retired."

32. In the light of the settled legal position governing compulsory retirement referred to above, let us embark upon the width of Rule 135 in order to address the challenge against it under Article 311 read with Article 14. The fundamental source of compulsorily retiring an employee is derived from the "doctrine of pleasure", as accepted in India, which springs from Article 310 of the Constitution. Rule 135 merely sets out certain grounds to act as quintessence for taking

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6 (1971) 2 SCC 514

such decision and the source of power vests in Article 309 read with Article 310 of the Constitution. Rule 135 has been carved out as a special provision and is premised on the doctrine of necessity. This stand alone provision forms a small subset of the genus of Article 309 and deals strictly with cases of "exposure" of "intelligence officers" who become unemployable in the Organisation for reasons of security. Sub-rule (1) of Rule 135 indicates that an order of compulsory retirement could be passed only on the exhaustive grounds specified therein, that is – exposure as an intelligence officer or his becoming unemployable in the Organisation due to reasons of security or disability/injuries received by an officer in the performance of his duties. Thus understood, the stipulation is objective, well-articulated and intelligible. Moreover, the stated reason(s) make it amply clear that Rule 135 covers situations, the existence of which would have an adverse impact, direct or indirect, on the integrity of the Organisation if the officer is exposed as an intelligence officer and becomes unemployable in the Organisation for reasons of security. A priori, it would neither be a case of misconduct or inefficiency or the like so as to attract penal consequences. It is in no way a reflection on the employee regarding his conduct as such but solely on account of public interests in reference to the nature of

sensitivity of operations undertaken by the Organisation. Therefore, the order under Rule 135 falls in line with the first proposition expounded in ***Shyam Lal*** (supra) and does not entail any charge, stigma or imputation against the appellant.

33. To recapitulate, Rule 135 envisages a certain chronology and gets triggered when an intelligence officer stands exposed or is rendered unemployable for reasons of (individual, organisational or national) security. The expressions "exposure", "unemployability" and "security" constitute the key ingredients of this Rule and are to be understood in a chronological and natural order to discern their true essence and effect.

34. Further, it is pertinent to note that the grounds referred to in Rule 135 nowhere contemplate it as a consequence of any fault or wrongful action on the part of the officer and unlike penal actions, do not stigmatise the outgoing officer or involve loss of benefits already earned by him and there is no element of punishment. Sub-rules (2), (3) and (4) of Rule 135 reinforce this view as the same provide for appropriate benefits such as pension, gratuity, lump sum amount etc. for the public servant who has been subjected to compulsory retirement. Thus, the employee is not faced with any loss of benefits already earned. We say so because the examination of the

characteristics of such a rule is not focussed around the motive or underlying intent behind its enactment, rather, it lies in the consequence and effect of the operation of such a rule on the outgoing employee. The rule does not result into a deprivation of the retired employee of any benefit whatsoever in lieu of such order of compulsory retirement and thus, attracts no stigma or any civil consequence to the retired employee for his/her future. The invocation of this Rule, therefore, falls in sync with the second proposition in ***Shyam Lal*** (supra) which looks down upon any loss of profits in a non-stigmatic order of compulsory retirement. Succinctly put, a compulsory retirement without anything more does not attract Article 311(2). We may usefully refer to ***Dalip Singh vs. State of Punjab***[7] and ***Union of India and Others vs. Dulal Dutt***[8] to bring home the stated position of law.

35. To concretize further, we now advert to the third limb of the dictum in ***Shyam Lal*** (supra) that necessitates the absence of any element of punishment in a just order of compulsory retirement. In order to undertake this examination, we deem it crucial to expound the true scheme and effect of rules governing the employees of the Organisation by making a brief reference to the decision in ***Satyavir***

7 AIR 1960 SC 1305
8 (1993) 2 SCC 179

Singh and Others vs. Union of India and Others[9], wherein this Court upheld the dismissal of two employees of the Organisation on the grounds of misconduct, indiscipline, intimidation and insubordination under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short "CCS (CCA) Rules"), without holding any inquiry under Article 311 by virtue of the proviso attached to the Article. Thus, it becomes amply clear that, at par with other departments, in case of dismissal of an employee of this Organisation also, the CCS (CCA) Rules, coupled with the procedure under Article 311, could be and are expected to be ordinarily resorted to. Therefore, Rule 135 of the 1975 Rules has been enacted as a special provision dealing strictly with the non-penal domain of compulsory retirement and that too against intelligence officer under specific circumstances referred to in clauses (a) and (b) of sub-Rule (1) thereof. Whereas, the cases of dismissal/removal/reduction in rank or any other penal action of termination of service involving stigmatisation of the employee is separately covered by the CCS (CCA) Rules, as discussed above.

36. A priori, the irresistible conclusion is that the effect of any action taken under Rule 135 does not entail any penal consequence for the employee and, therefore, it cannot be put at the same pedestal as an

9 (1985) 4 SCC 252

action of dismissal or removal, and no inquiry or opportunity of hearing as envisaged under Article 311 is required while taking an action under this Rule. Equally, it holds merit to note that mere loss of some future career prospects *per se* is no ground for invalidating an order of compulsory retirement as it may be in a given case an inevitable consequence of any such order. What needs to be delineated to attract the vice of invalidity to a statutory order is illegality, at least of a minimum standard to trigger the conscience of the Court. The exposition in ***Shyam Lal*** (supra) and ***Saubhagchand M. Doshi*** (supra) would squarely apply.

37. To put it differently, the action under Rule 135 is not governed by Article 311 nor it offends the same - as these two provisions operate in separate spheres and thus an action taken under the impugned Rule (Rule 135 of the 1975 Rules) need not be preceded by the safeguards provided under Article 311 of the Constitution as such. Since the action under Rule 135 is exclusive and is invoked in the specified situations in public interest in reference to the Organization and at the highest level by the head of the Government, the question of violation of Article 14 on account of the denial of equal protection of law does not arise.

38. Assailing the constitutionality of this Rule, the appellant has also contended that the non-application of this Rule to deputationists is discriminatory and falls foul of Article 14. The impugned judgment rejected this submission and observed thus:

> "67. ....A deputationist's services stand on a footing unlike that of the official in a department, who is bound by its terms and conditions. In case a deputationist – hypothetically- is "exposed" or "exposes" himself and that constitutes a security threat, surely the Central Government can resort to other mechanisms: including compulsory retirement (provided the employee fulfils the conditions under Rule 56 (j); it may also resort- if the employee is culpable for the "incident" and the facts so warrant, invocation of Article 311 (2) (c) and summary dismissal or penalty of similar nature. The possibility of other officers not being governed by the rule, or that in other cases it was not invoked, therefore, cannot be a ground to hold it arbitrary or invalid."

39. A deputationist is an employee who has been assigned to another department from his/her parent department. The law regarding employees on deputation is well settled. As regards the matter of disciplinary control, this Court, in ***State of U.P. & Ors. vs. Ram Naresh Lal***[10] has observed that a deputationist continues to be governed by the rules of his/her parent department and is deemed to be under the disciplinary control of his/her parent department unless absorbed permanently in the transferee department. In ***Kunal***

10 (1970) 3 SCC 173

Nanda vs. Union of India & Anr.[11], it was further observed that the basic principle underlying deputation is that the person concerned can always and at any time be repatriated back to his parent department. By sending back the person to his parent department, any adverse effect on the Organisation (R&AW) including of reasons of security would be averted. Therefore, a deputationist stands on an altogether different footing than a direct recruit of the Organisation/Department who is exposed as an intelligence officer or his/her becoming unemployable in the Organisation for reasons of security. A deputationist can be repatriated back to his/her parent department and in cases of misconduct, necessary action can also be initiated against him/her as per the conditions of service governing his/her parent department. In that sense, a deputationist and a direct recruit are not *stricto sensu* similarly placed and thus the plea of differential treatment meted out to them is unavailable. It would not entail discrimination nor be violative of Article 14. Accordingly, we must negate the challenge to constitutional validity of Rule 135.

40. We also deem it necessary, at this juncture, to note that the mere fact of non-prescription of inquiry under Rule 135 of the 1975 Rules, before making the order of compulsory retirement, does not go

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11 (2000) 5 SCC 362

against the constitutionality of the Rule. Additionally, the rule does not prohibit any inquiry and is in general line with the orders of compulsory retirement wherein the right of outgoing employee to participate in the process of formation of such decision is not envisaged in law, as the underlying basis of such action is the larger public interest and security of the Organisation; and not any culpable conduct of the employee. Moreover, Rule 135 incorporates a language that is self-guiding in nature. The usage of words "exposure" and "unemployability for reasons of security" are not insignificant, rather, they act as quintessential stimulants for the competent authority in passing such order. The mandatory determination of what amounts to an exposure or what renders an employee unemployable due to reasons of security under Rule 135, is both a pre-condition and safeguard, and incorporates within its fold the subjective satisfaction of the competent authority in that regard. In order to reach its own satisfaction, the authority is free to seek information from its own sources. Thus, in cases when the ingredients of Rule 135 stand satisfied in light of the prevalent circumstances, the need for giving opportunity to the officer concerned by way of an inquiry is done away with because the underlying purpose of such inquiry is not the

satisfaction of the principles of natural justice or of the concerned officer, rather, it is to enable the competent authority of the Organisation to satisfy itself in a subjective manner as regards the fitness of the case to invoke the rule. Therefore, the procedure underlying Rule 135 cannot be shackled by the rigidity of the principles of natural justice in larger public interest in reference to the structure of the Organisation in question, being a special Rule dealing with specified cases.

41. Reverting to the challenge in reference to Article 309, suffice it to observe that the 1975 Rules fall under the "conditions of service" governing the appellant and have been framed under the proviso to Article 309 of the Constitution. The phrase "conditions of service" is not a phrase of mathematical precision and is to be understood with its wide import. The natural, logical and grammatical meaning of the phrase "conditions of service" would encompass wide range of conditions relating to salary, time period of payment, pay scales, dearness allowance, suspension and even termination of service. The appellant's argument that since Article 311 covers the field of dismissal, removal and reduction in rank of an employee, it automatically implies the exclusion of these matters from Article 309, does not commend us.

42. A conjoint reading of Articles 309 and 311 reveals that Article 311 is confined to the cases wherein an inquiry has been commenced against an employee and an action of penal nature is sought to be taken. Whereas, Article 309 covers the broad spectrum of conditions of service and holds a wider ground as compared to Article 311. That would also include conditions of service beyond mere dismissal, removal or reduction in rank. It holds merit to state that this wide ground contemplated under Article 309 also takes in its sweep the conditions regarding termination of service including compulsory retirement. In ***Pradyat Kumar Bose vs. The Hon'ble The Chief Justice of Calcutta High Court***[12], this Court touched upon the ambit and scope of Article 309 of the Constitution and expounded that the expression "conditions of service" takes within its sweep the cases of dismissal or removal from service.

43. We further note that generally it is correct to say that the rules governing conditions of service, framed under Article 309, are subject to other provisions of the Constitution, including Article 311. The opening words of Article 309 - "Subject to the provisions of this Constitution" - point towards the same analogy. However, this subjection clause shall not operate upon the rules governing

12 AIR 1956 SC 285

compulsory retirement. For, the legal concept of compulsory retirement, as discussed above, is a non-penal measure of the government and steers clear from the operation of Article 311, unless it is a case of removal or dismissal clothed as compulsory retirement. Had there been a rule providing for removal, dismissal or reduction in rank, it would have been controlled by the safeguards under Article 311. It has also been observed in ***State of U.P. & Ors. vs. Babu Ram Upadhya***[13] that the validity of a rule shall be hit by Article 311 only if it seeks to affect the protection offered by Article 311, and not otherwise as in the present case.

44. Let us now address the next ground of challenge against Rule 135 of the 1975 Rules, that is - the expressions "security" and "exposure" used in Rule 135 are of wide import and their usage attracts the vice of vagueness and arbitrariness to the Rule. The appellant has relied upon the prior-quoted extract of ***Kartar Singh*** (supra) to set up this challenge on the ground of vagueness.

45. It is a settled principle of interpretation of statutes that the words used in a statute are to be understood in the light of that particular statute and not in isolation thereto. The expression used in Rule 135 is "security", as distinguished from the more commonly

13 AIR 1961 SC 751

used expression "security of the State" used in Article 311. This deliberate widening of the expression by the enacting body points towards the inclusive intent behind the expression. The word "security" emanates from the word "secure" which, as per the Law Lexicon, means to put something beyond hazard. It is understood that the exposure of an intelligence officer could be hazardous not only for the Organisation but also for the officer concerned and the expression "security", therefore, is to be understood as securing the Organisational and individual interests beyond hazard and squarely covers the security of the Organisation as well as the security of the State. Similarly, the expression "exposure" refers to the revelation of the identity of an intelligence officer as such to the public, in a manner that renders such officer unemployable for the Organisation for reasons of security.

46. It is noteworthy that in Indian constitutional jurisprudence, a duly enacted law cannot be struck down on the mere ground of vagueness unless such vagueness transcends in the realm of arbitrariness. We may usefully refer to the exposition of this court in ***Municipal Committee, Amritsar & Ors. vs. State of Punjab & Ors.***[14] However, challenge to Rule 135 on the ground of vagueness,

14 (1969) 1 SCC 475

could only be sustained if the Rule does not provide a person of ordinary intelligence with a reasonable opportunity to know the scope of the sphere in which the Rule would operate. In the present case, the test of reasonable man is to be applied from the point of view of a member working in the Organisation as an intelligence officer. The members working in the Organisation, more particularly a Class-I Intelligence Officer, ought to know the scope, specific context and import of the expressions – "exposed as an intelligence officer", "becoming unemployable in the Organisation" or "reason of security", as the case may be. A member working in the Organisation would certainly be aware of the transnational repercussions emerging from the exposure of the identity of an intelligence officer. Thus, there is no inherent vagueness or arbitrariness in the usage of above expressions so as to attach the vice of unconstitutionality to the Rule. However, whether or not an executive act of exercising the power under the Rule reeks of arbitrariness is a matter of separate examination, to be conducted on a case to case basis and does not call for a general declaration by the Court. To conclude, the challenge on this ground is rejected and the impugned judgment is, therefore, held to have answered this challenge correctly. However, despite upholding the order of the High Court as regards the constitutionality

of Rule 135, we are of the view that the meaning placed by the High Court on the expression "security", in the impugned judgment, is of a wide import. As regards what would constitute a threat to security, so as to invoke Rule 135, the impugned judgment, in para 65, notes thus:

> "….. Therefore, if in a given case, any member of R&AW indulges in behaviour that is likely to prejudice its overall morale or lead to dissatisfaction, it may well constitute a threat to its security."

47. We hold that this observation does not guide us towards the true scope of the usage of the expression "reasons of security" or what would constitute a security threat and opens the contours of Rule 135 to uncontemplated areas. Thus, this observation shall stand effaced in light of the interpretation of Rule 135 by us hitherto and shall not be operative for any precedentiary purpose, or otherwise.

Legality of the order of compulsory retirement

48. Having answered the challenge to the constitutional validity of Rule 135 in negative and settling the question of existence of power to retire compulsorily, we embark upon the determination of the next issue, whether the power of compulsory retirement exercised by the respondents in the fact situation of the present case is just and legal. According to the appellant, the respondents have acted in a *mala fide* manner and the invocation of Rule 135 is an act of victimisation of

the appellant due to her refusal to accede to the illegitimate demands of her superiors. The appellant has also contended that the power to retire compulsorily could be exercised in accordance with the FR 56(j) only.

49. The contentions of the appellant find an answer in the impugned judgment in the following terms: -

> "78. Therefore, as long as a public employee's services are dispensed with prematurely for reasons which are germane to the concerned body's service rules and terms and conditions, and are not mala fide or do not suffer from any grave procedural impropriety, the courts would not interfere with the decision. Considering the circumstances of this case from this perspective, it is evident that at the higher levels of the UOI i.e. at the stage of Cabinet Secretary, the PMO and the Ministry of Law and Justice, various options were explored. It is not as if the option to invoke Rule 135 was the only choice pursued at the highest echelons of the government. The notings disclose that the Prime Minister had desired to consider the impact of the decision from all perspectives. Evidently, the concern was not only with respect to the impact upon the employee/officer i.e. the applicant but also upon the service as a whole. Significantly, the Prime Minister also desired – after the adverse remarks were noticed, in the Shashi Prabha Committee's recommendations, that prompt triggering of complaint mechanisms should be ensured at all government levels. One of the notings of the Cabinet Secretary suggested the option of pursuing disciplinary proceedings under Rule 9 of the Central Civil Services (Pension) Rules, 1972 against the retired Secretary level R&AW Head, Mr. Tripathi. Given all these facts and materials on record, it cannot be held that the government acted in a mala fide manner, in choosing what it considered to be inevitable option i.e. invoking Rule 135."

On mala fide exercise of power

50. Reliance has also been placed upon ***Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripada & Anr.***[15] in order to support the claim of *mala fides* by asserting that a decision of compulsory retirement has to be made under a detailed formal procedure and in light of the past performance records.

51. Indubitably, in a society governed by Rule of Law, the presence of *mala fides* or arbitrariness in the system of governance strikes at the foundational values of the social order. Every public functionary, including the three organs of government, are bound to discharge their functions in a *bona fide*, unvitiated and reasonable manner. A *mala fide* exercise of power is essentially a fraud on the power. The law regarding *mala fide* exercise of power, running across a catena of cases, is well settled. For an exercise of power to steer away from the taint of *mala fides*, such power ought to be exercised within the contours of the statute/law bestowing such power. Any exercise which exceeds the limits laid down by law; or is driven by factors extraneous or irrelevant to such exercise; or guided by malicious intent or personal animosity; or reeks of arbitrariness must fall foul in

15 1992 (2) SCC 299

the eyes of law. This legal position is consistently expounded by this Court in ***S. Partap Singh vs. State of Punjab***[16], ***Express Newspapers Pvt. Ltd. & Ors. vs. Union of India & Ors.***[17], ***J.D. Srivastava vs. State of M.P. and Others***[18] and ***Jaichand Lal Sethia vs. State of West Bengal***[19]. The fact situation in the present case does not attract any of the above stated factors.

52. Notably, the appellant has not impleaded the concerned persons against whom allegations of *mala fides* are made, as party respondent. Hence, those allegations cannot be taken forward. We may usefully advert to the exposition in ***Purushottam Kumar Jha vs. State of Jharkhand & Ors.***[20] which records the above-stated position of law, while addressing the allegations of *mala fide* exercise of power, in the following words: -

> "22. As to mala fide exercise of power, the High Court held that neither sufficient particulars were placed on record nor the officers were joined as party respondents so as to enable them to make the position clear by filing a counter affidavit. In the absence of specific materials and in the absence of officers, the Court was right in not upholding the contention that the action was mala fide."

16 AIR 1964 SC 72
17 (1986) 1 SCC 133
18 (1984) 2 SCC 8
19 AIR 1967 SC 483
20 (2006) 9 SCC 458

Resultantly, the ground of *mala fide* action in fact does not survive for consideration.

On non-application of mind

53. In order to analyse the challenge of non-application of mind, we deem it worthwhile to trace the timeline of relevant events to understand the chain of proceedings.

DATE	EVENT
01.02.2007-31.01.2009	Shri Ashok Chaturvedi became the Secretary (R), Cabinet Secretariat, Government of India and held this post till 31.01.2009.
03.08.2007	Appellant posted as Director at the Headquarters, New Delhi.
07.08.2007	Appellant filed complaint of sexual harassment.
26.10.2007	Appellant filed a written complaint to PMO against Shri Ashok Chaturvedi, Secretary (R).
12.11.2007	Appellant joined as Director, Training Institute, Gurgaon.
08.08.2008	Number of complaints received by Organisation regarding appellant's uncalled for behaviour, unauthorized communications, objectionable messages, contact with media etc. and 'Preliminary Inquiry' was ordered by Secretary (R). The inquiry was conducted by Shri A.K Arni and appellant refused to participate in the inquiry upon intimation.
19.08.2008*	Information of Preliminary Inquiry conveyed to appellant, thereby leading to the incident at PMO which led to wide coverage in national and international media.

10.09.2008-11.09.2008	Preliminary Inquiry report concluded that most of the charges against the appellant appear to be substantiated and report was submitted J.S. (SA) on 10.09.2008, who further submitted it to Secretary (R) on 11.09.2008.
22.09.2008**	Proposal for compulsory retirement of appellant made by Secretary (R).
04.04.2009	Appellant wrote letter to Shri Ajit Seth, Secretary (PG & Coord) regarding her apprehension to be retired without inquiry under Article 311.
17.04.2009*	Incident of shouting, removal of clothes etc. at the office of Jt. Secretary (Trg.).
18.04.2009**	Proposal for invoking Rule 135 against appellant by Shri K.S. Achar, Director in PMO.
05.05.2009**	Meeting to check the possibility of any other action against appellant, presided over by NSA and Principal Secretary to Prime Minister. Meeting reached the conclusion that Rule 135 was the most appropriate option.
11.05.2009**	Request by Secretary (R) to Cabinet Secretary for expeditious decision on the proposal of compulsory retirement.
13.05.2009**	Secret Note sent to PMO by Cabinet Secretariat suggesting compulsory retirement under Rule 135.
27.07.2009*	Incident of tearing off clothes by appellant in the Supreme Court premises.
03.10.2009 & 13.10.2009**	Request made by Secretary (R) to Cabinet Secretary for early decision on proposal of compulsory retirement of appellant on account of continued erratic behaviour.
13.11.2009**	Communication by Secretary (R) to Cabinet Secretary informing about the act of trespass by appellant in a

	Director's house in Training Campus.
26.11.2009*	Appellant tried to commit suicide at Central Administrative Tribunal.
07.12.2009**	Another request by Secretary (R) for early decision on the proposal.
16.12.2009	PMO communication conveying approval of the Prime Minister to the recommendation of compulsory retirement.
18.12.2009	Order of compulsory retirement issued by Cabinet Secretariat in the name of the President of India.

* - Incidents of *Exposure* ** - *Procedural steps*

54. Given the factual matrix of the present case, we deem it proper to carve out some important events from the aforementioned chain. The aforementioned sequence of events reveals the chain of internal communications in the aftermath of which the order dated 18.12.2009 was eventually passed. The secret note sent by Secretary (R) to P.M.O., dated 11.5.2009, opinion of the then Solicitor General of India by letter dated 21.7.2009, opinion of the Department of Legal Affairs, Union Ministry of Law and Justice and the PMO note in which the invocation of Rule 135 was determined as the only viable option, constitute together a complete chain of inquiry revealing due application of mind by the respondents into the question of compulsory retirement. It is settled law that the scope of judicial review is very limited in cases of compulsory retirement and is

permissible on the limited grounds such as non-application of mind or *mala fides*. Regard can be had to ***Pyare Mohan Lal vs. State of Jharkhand and Others***[21]. The above-quoted set of events are so eloquent that it leaves us with no other conclusion but to hold that the action of compulsory retirement was the just option. Assuming that some other option was also possible, it would not follow that the decision of the competent authority to compulsorily retire the appellant was driven by extraneous, malicious, perverse, unreasonable or arbitrary considerations. The pre-requisite of due application of mind seems to be fulfilled as the decision has been reached in the aftermath of a series of discussions, exchanges and consultations between the Organisation and the PMO over the course of 15 months from 22.9.2008 to 18.12.2009.

55. Moreover, the preliminary inquiry conducted against the appellant, commencing 8.8.2008, forms a crucial building block in the chain of events and calls for our attention. This inquiry was ordered in the aftermath of a series of complaints made against the appellant by the fellow officers. Such complaints pertained to misbehaviour, unauthorised communication, vulgar SMSes, media contact etc. A notice of this inquiry was communicated to the

21 (2010) 10 SCC 693

appellant on 19.8.2008 (the day of the PMO incident), seeking her participation in the inquiry. However, the appellant refused to participate, thereby leading to an *ex-parte* report of the inquiry, which concluded that most of the allegations against the appellant stood substantiated. This report was submitted to Secretary (R) on 11.9.2008 and the first proposal for invocation of Rule 135 against the appellant was made on 22.9.2008 by Secretary (R) i.e. 11 (eleven) days after the receipt of the report. The continuity of the above transactions belies the allegation of non-application of mind, as the proposal seems to have been made strictly in light of the materials on record.

56. Thus, in the present case, the appellant has not been able to establish the factum of non-application of mind in material terms and especially because the final decision has been taken at the highest level by the head of the Government in the aftermath of unfurling of successive events of exposure of appellant to the public and media in particular. In other words, even if we were to accept the argument of personal animosity between the appellant and the then Secretary (R), Shri Ashok Chaturvedi, it does not help the appellant's case as the final authority on the decision of compulsory retirement was vested in the PMO and there is no tittle of evidence regarding exercise of

influence by the then Secretary (R) in the PMO. In an allegation of this nature, *de-facto* prejudice needs to be proved by evidence and this requirement of law fails to garner support from the factual position emanating in this case.

57. Having said thus, we deem it essential to emphasize upon the approach of the court in scrutinising the decisions taken at the highest levels and constitutional challenge thereto. Indeed, there can be no *ipso facto* presumption of validity in favour of actions taken at higher pedestals of the dispensation. However, constitutional offices, like that of the PMO, are entrusted with a constitutional trust by the people of India through the holy Constitution. Such constitutional trust absorbs within itself an inherent expectation that actions emerging out of such functionaries are driven by *bona fide* considerations of public interest and constitutional propriety. Constitutional trust, as a concept of constitutional application, has been duly accepted by this Court in a string of judgments. In ***Manoj Narula v. Union of India***[22], a five-Judge bench of this Court observed thus: -

> "92. Centuries back what Edmund Burke had said needs to be recapitulated:
>
> > "All persons possessing a position of power ought to be strongly and awfully impressed with an idea that they act in trust and are to account for their conduct in

22 (2014) 9 SCC 1

> that trust to the one great Master, Author and Founder of Society."
>
> 93. This Court, in *Delhi Laws Act, 1912, In re,* AIR 1951 SC 332, opined that the doctrine of constitutional trust is applicable to our Constitution since it lays the foundation of representative democracy. The Court further ruled that accordingly, the Legislature cannot be permitted to abdicate its primary duty, viz. to determine what the law shall be. Though it was stated in the context of exercise of legislative power, yet the same has signification in the present context, for in a representative democracy, **the doctrine of constitutional trust has to be envisaged in every high constitutional functionary**."
>
> (emphasis supplied)

The constitutional faith invested in such functionaries has also been reverberated in ***Govt. Of NCT of Delhi v. Union of India***[23] and ***Kihota Hollohon v. Zachilhu and Others***[24] wherein this Court, in reference to the constitutional trust imposed in the office of Speaker/Chairmen of the Houses of Parliament while exercising powers under the Tenth schedule, observed thus:

> "J] That contention that the investiture of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such a constitutional functionary should not be considered exceptionable."

<u>On Fundamental Rule 56(j) and Rule 9 of the Pension Rules</u>

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23 2019 (3) SCALE 107

24 (1992) 1 SCC 309

58. The next examination relates to the allegation of failure to proceed in accordance with FR 56(j). In normal parlance, compulsory retirement of a public servant is governed by the procedure laid down in FR 56(j) as Fundamental Rule - 2 provides that "the Fundamental Rules apply to all Government servants whose pay is debitable to Civil Estimates and to any other class of Government servants to which the President may, by general or special order, declare them to be applicable". Thus, FR 56(j) is a rule of general application. To analyse this contention, it is imperative to reproduce the relevant portion of this rule, which reads thus:

> "**F.R. 56(j).** Notwithstanding anything contained in this Rule, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant after he has attained the age of fifty-five years by giving him notice of not less than three months in writing...."

59. It is clear that FR 56(j) incorporates twin elements- first, the absolute right of the Government to retire an employee and second, the specific circumstance in which such right could be exercised i.e., the necessity of public interest. The rule also provides for a prior notice of at least three months to the outgoing employee. Rule 135 of the 1975 Rules, on the other hand, deviates from this dispensation. It is a special provision dealing with clan of intelligence officers in the Organisation in question. The fundamental distinction between FR

56(j) and Rule 135 lies in the usage of expressions "public interest" and "security" respectively. The concern of security finds special place in an exclusive provision that gets triggered for reasons of security. On the other hand, FR 56(j) is in reference to public interest generally. Framed in 1975, during the existence of FR 56(j), Rule 135 was carved out as a special provision. It is pertinent to note that Rule 135 recognises the presence of a vested and inherent right in the government to compulsorily retire an employee and explicitly specifies certain exclusive grounds for taking such action. Therefore, Rule 135 presents a deliberate deviation from FR 56(j) and covers special circumstances of 'exposure' or 'unemployability for reasons of security' as pre-requisites for its invocation. Indubitably, Rule 135 is not exhaustive of all circumstances and matters of compulsory retirement of intelligence officer of the Organisation. For, it holds no operatibility beyond the specified situations therein. All other situations (not covered by Rule 135) warranting compulsory retirement would, therefore, continue to be governed by FR 56(j) in reference to public interest. Thus, Rule 135 is a special provision and operates independent of the grounds and procedure laid down in FR 56(j). In other words, once the ingredients of Rule 135 are satisfied, then, within the meaning of Article 309, Rule 135 will get activated as

a 'condition of service' of the intelligence officer of the Organisation and FR 56(j), being a general provision, could be invoked on the grounds transcending beyond the stipulation in Rule 135 in public interest. Thus, the general provision such as FR 56(j) must give way to the special provision (Rule 135) as predicated in ***S.C. Jain vs. State of Haryana and Another***[25].

60. Taking cue from the procedural standards prescribed in FR 56(j), the appellant would urge that non-observance of the principles of natural justice in invoking Rule 135 had rendered the final order dated 18.12.2009 arbitrary. Though we have already stated in clear terms that Rule 135 of the 1975 Rules is not bound by the rigidity of the principles of natural justice, we deem it necessary to add that natural justice is not an all-pervasive pre-condition in all the executive decisions and its extent of applicability varies in myriad set of situations. This Court, in ***New Prakash Transport Co. Limited vs. New Suwarna Transport Co. Limited***[26], succinctly observed against the absoluteness of the rules of natural justice and stated that such rules vary with varying statutory rules governing the facts of the case. Speaking on the exclusion of such principles in the light of specific statutory rules, this Court, in ***Union of India vs. Col. J.N.***

25 (1985) 4 SCC 645
26 AIR 1957 SC 232

Sinha and Another[27], quoted ***A.K. Kraipak & Ors. vs. Union of India & Ors.***[28] with approval, and observed thus: -

> "8. ...It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

A priori, a mechanical extension of the principles of natural justice would be against the proprieties of justice. This has been restated in the post ***Maneka Gandhi vs. Union of India & Anr.***[29] era in a series of judgments. This Court, in ***Managing Director, ECIL, Hyderabad and Others v. B. Karunakar and Others***[30], summarised the post ***Maneka*** (supra) position thus: -

> "20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In *A.K Kraipak v. Union of India, (1969) 2 SCC 262*, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of

27 (1970) 2 SCC 458
28 (1969) 2 SCC 262
29 (1978) 1 SCC 248
30 (1993) 4 SCC 727

justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi- judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the Constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In *Chairman, Board of Mining Examination v. Ramjee, (1977) 2 SCC 256*, the Court has observed that natural justice is not an unruly horse, no lurking land-mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. **Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures**.

22. In *Institute of Chartered Accountants of India v. L.K. Ratna, (1986) 4 SCC 537*, *Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 (Bhopal Gas Leak Disaster Case)* and *C.B. Gautam v. Union of India, (1993) 1 SCC 78*, the doctrine that

> the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated."
>
> (emphasis supplied)

61. Rule 135 of the 1975 Rules operates in situations of exposure of an intelligence officer and the revelation of identity of such intelligence officer attracts immense adverse exposure to the Organisation and could legitimately result into an embarrassing security breach with long lasting impacts on the integrity of the Organisation in question, if not the country. The circumstances in which Rule 135 operates incorporate a sense of urgency. Indisputably, a continued presence of an exposed officer in the Organisation in the name of participation in inquiry could seriously jeopardize the institutional and national security interests. We deem it essential to highlight that such a consequence could ensue even without the knowledge or connivance of the exposed officer. Further, no stigma or fault is imputed upon such officer in any manner by the mere factum of such exposure. Therefore, Rule 135 clearly excludes the observance of these principles by necessary implication. In other words, rigid adherence to the principles of natural justice could defeat the very object of carving out this special provision. We may usefully refer to the exposition in ***Ex-Armymen's Protection Services Private***

Limited vs. Union of India and Others[31], wherein it is observed thus:

> "16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of State or not. It should be left to the Executive. To quote Lord Hoffman in *Secy. of State for Home Deptt. vs. Rehman, (2003) 1 AC 153*:
>
> > "...in the matter of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive."
>
> 17. **Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases it is the duty of the Court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field**. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."
>
> (emphasis supplied)

62. Be it noted that the order of compulsory retirement in the present case was preceded by a chain of preliminary inquiry, commencing from 8.8.2008, in the highest echelons of the government (as indicated above) and such preliminary inquiry, in our view, is advisable. For, it is only after a preliminary inquiry that the competent authority can satisfy itself about the existence of the prescribed ground in a particular case. However, we reiterate that the

31 (2014) 5 SCC 409

participation of the concerned officer in such inquiry is neither mandated by the jurisprudential essence of compulsory retirement or the rigid observance of the principles of natural justice. Such principles cannot be offered a free ride at the peril of larger public interests bordering on reasons of security of the Organisation or the State. Despite being harsh at times, unambiguous provisions of the Rule under consideration offer no space for infusing any element of judicial creativity against the legislative intent [see ***State of Rajasthan vs. Leela Jain & Ors.***[32] and ***Sri Nasiruddin vs. State Transport Appellate Tribunal***[33]]. We hold that Rule 135 of the 1975 Rules, excludes any requirement of prior notice or abiding by principles of natural justice.

Re: Pension claim

63. The appellant had assailed the retirement order before the High Court in reference to the Pension Rules, on diverse counts. However, by this appeal, the appellant has raised the following question only:

> "(b) Whether the President of India can delegate his power, under Rule 9(1) of the CCS (Pension) Rules, 1972, to modify pension of an employee to any other authority? It is evident that the President of India cannot delegate this power. It means that where an employee's pension is to be modified, the decision is to be taken by the President on case to case

32 AIR 1965 SC 1296
33 AIR 1976 SC 331

> basis. There cannot possibly be a generic rule like Rule 135 which can govern pension of a certain set of employees overlooking the CCS (Pension) Rules, 1972. Existence of Rule 135 is, in fact, a case where a few officers of R&AW got together to bestow on their own selves the power to remove R&AW officers at their whims and fancies."

64. This question emanates from the order dated 10.5.2010, whereby the respondents granted provisional pension to the appellant instead of full pension. The appellant contends that this order amounted to withholding of the appellant's final pension and part of her provisional pension, without adopting the route prescribed by Rule 9 of the Pension Rules. It is further submitted that clauses (2)-(4) of Rule 135 deviate from the pension provisions of the retired officer and are in derogation to Rule 9(1) of the Pension Rules whereunder only the President of India can exercise such power on a case to case basis. Therefore, Rule 135 of the 1975 Rules is bad and cannot be sustained.

65. The respondents would contend that Rule 9 of the Pension Rules does not apply to the case of appellant and that provision would apply only to an employee who has been found guilty of misconduct or negligence during the period of service in any departmental or judicial proceeding. Thus, contend respondents that grant of pension was justly made in terms of provisions of Rule 135 of the 1975 Rules.

66. In order to examine the rival contentions, we deem it apposite to first advert to Rule 9(1), which reads thus:

> ***"9. Right of President to withhold or withdraw pension.***
>
> (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :
>
> .....
>
> ....."

67. The appellant may be right in contending that the power to withhold or withdraw pension of an officer is circumscribed by Rule 9. Indeed, it is settled law that the exercise of power of modification of pension under Rule 9 is subject to the finding of misconduct or negligence against the employee, reached after conducting departmental or judicial proceedings. This Court in ***D.V. Kapoor vs. Union of India and Others***[34], had observed thus: -

> "8. It is seen that the President has reserved to himself the right to withhold pension in whole or in part therefore whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-

34 (1990) 4 SCC 314

> employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), explanation (b) which is an inclusive definition, i.e. the scope is wide of mark dependent on the facts and circumstances in a given case. Myriad situation may arise depending on the ingenuity with which misconduct or irregularity is committed. It is not necessary to further probe into the scope and meaning of the words 'grave misconduct or negligence' and under what circumstances the findings in this regard are held proved. It is suffice that charges in this case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the Office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it was not wilful for the reason that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.
>
> 9. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs.60."

68. The *raison d'etre* of Rule 9 is to provide for an additional safeguard on the pensionary right of an employee by vesting the power of reduction/modification in the President of India. However, it is a general rule and not an overarching provision of pervasive application. Framed under Article 309 of the Constitution, this rule operates in the area specified for it and cannot override other special

rules such as Rule 135. Succinctly put, this rule (Rule 9) does not and cannot control Rule 135 of the 1975 Rules, which derives its own independent authority from Article 309. As both the rules emanate from Article 309, the question of illegality of one rule cannot be premised on the argument that it acts in deviation from another rule albeit concerning the same subject of pension. As aforementioned, in cases where the action taken is of compulsory retirement, in exercise of power under Rule 135, there is no contemplation of any finding of misconduct or negligence against the employee as such. It is not preceded by departmental or judicial proceedings. Rule 135 operates as a self-contained code covering certain aspects of termination and post-termination benefits in an exclusive manner as a special dispensation and is not controlled by any other rule much less general provisions. There is no overlapping between Rule 135 and Rule 9.

69. As regards the grant of pension to appellant, the appellant shall be entitled to all the benefits under clauses (2)-(4) of Rule 135 in their true letter and spirit. The impugned judgment has directed the respondents to secure various benefits to the appellant, including the benefit of promotion and fixation of date of pension as per the date of notional superannuation in 2023. That direction has not been

challenged before us by the respondents. The pension of an employee retired under Rule 135 is to be determined in accordance with the date of notional superannuation and not in accordance with the date of actual retirement. This, in our view, reflects the beneficial, balancing and protective outlook of the Rule as it seeks to deal with the competing considerations of public interest including security (of the Organisation or the State) and individual interest of the outgoing employee. Thus, we direct the respondents to abide by the stipulations contained in clauses (2)-(4), and in particular the benefit extended to the appellant by the High Court referred to above, in their true letter and spirit and in right earnest, if already not done.

70. Our attention has been drawn to the order of postponement of the date of retirement of the appellant from 18.12.2009 to 31.12.2012, by the High Court vide impugned judgment. The order has been passed presumably in the interest of justice, as is evident from paragraph 79 of the impugned judgment wherein the High Court records thus:

> "79. …At the same time, the peculiarities and circumstances of this case, warrant a measure of relief to the applicant, Ms. Bhatia as well…."

The impugned judgment records no other reasoning for ordering such postponement. We are mindful of the peculiar circumstances of the

case, however, we take exception to the measure adopted by the High Court as the same goes beyond the scope of Rule 135. The order of compulsory retirement was passed in the name of the President of India, the relevant part of which read thus: -

> "... Therefore, as per provisions contained in Rule 135 of the R&AW (RC&S) Rules, 1975, Ms. Nisha Priya Bhatia is hereby compulsorily retired from Government service **with immediate effect**."
>
> (emphasis supplied)

71. The decision to retire an officer compulsorily is purely an executive function exercised in light of the prevailing circumstances. The scrutiny by the Court is restricted to an examination of whether such order is smitten by *mala fides* or extraneous considerations. Once such order is upheld in a Court of law in its entirety, as the High Court rightly did, there is no question of altering or modifying the technical aspects of such order, including the date from which it should be given effect. The usage of words "immediate effect" makes it amply clear that the order of compulsory retirement was meant to take effect immediately and the date of such order could not have been postponed by a Court of law in the garb of exercising power of judicial review. To do so without any legal basis, could lead to abhorrent consequences and result into a spiral of issues, including putting to jeopardy the principle of conclusivity of the decision. Even

if we assume that the Court intended it as an equitable measure, we are of the view that the same could have been achieved without postponing the date of retirement. Sub-rule (2) of Rule 135 of the 1975 Rules categorically provides for the calculation of pension as per the date of notional superannuation as well as for the earned promotions. However, despite our disapproval for this approach, in the peculiar facts of this case, we stop short of modifying the High Court's order as regards postponement of date of retirement as the same has not been assailed by the respondents and instead has been complied with sans any demur.

72. We have been informed by the respondents that in lieu of the order of postponement of retirement, consequential benefits have already been transferred to the appellant. We, therefore, make it clear that our observations as regards the order of postponement shall not affect the benefits already transferred to the appellant in terms of the High Court's order, and no recovery be effected from the appellant of the excess payment in that regard. Being mindful of the peculiar circumstances of the case, we are not inclined to order any restitution of the same.

73. The appellant has placed reliance on decisions relating to the applicability of pension rules vis-a-vis the officers serving in the

Organisation. This contention of the appellant overlooks the scope of applicability of Rule 135 of the 1975 Rules vis-a-vis the Pension Rules. Rule 2(h) of the Pension Rules explicitly predicates that the said rules (Pension Rules) shall not apply to persons whose terms and conditions of service are regulated by or under any other law for the time being in force. Rule 135, as noted earlier, forms part of the 'conditions of service' governing the officers serving in the Organisation and thus, in the field covered by Rule 135, the Pension Rules would be inapplicable. However, the areas that fall outside the purview of Rule 135 would and must be governed as per the CCS Rules, as is restated in the departmental order dated 10.5.2010 sanctioning the provisional pension of the appellant under Rule 69 of the Pension Rules. Thus, there is no conflict between the two.

74. Before we part with this issue, we deem it incumbent upon us to address two concerns with regard to clauses (2)-(4) of Rule 135. First, the import of the usage of expression "may" in clauses (2)-(4) and second, the non-availability of the copy of the rule to compulsorily retired officers.

75. It is cardinal that pension is a valuable statutory right of an employee and is not controlled by the sweet will or pleasure of the Government. In the absence of express exceptions to the same, any

provision resulting in denial thereof ought to be subjected to strict judicial scrutiny. This position of law has been succinctly exposited by this Court in ***D.S. Nakara and Others vs. Union of India***[35], which reads thus:

> "20. The antequated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deoki Nandan Prasad vs. State of Bihar, (1971) 2 SCC 330* wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab vs. Iqbal Singh, (1976) 2 SCC 1*."

76. Indeed, clauses (2) and (3) of Rule 135 of the 1975 Rules, posit that the grant of pension to a compulsorily retired employee under this rule is preceded by expression "may". That gives an impression that the grant of pension to the outgoing employee is subject to the discretion of the competent authority. The setting in which expression "may" has been placed in this provision, it must be read as "shall". Lest, it could be argued that a compulsorily retired officer under Rule 135 can be denuded of pensionary benefits. That would

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35 (1983) 1 SCC 305

result in not only loss of job for the employee concerned due to fortuitous situation referred to in Rule 135, but also deprive him/her of the source of his livelihood (even though the action against him/her is not to inflict civil consequences). In fact, Rule 135 is cast in the form of a beneficial, balancing and protective provision for the nature of action against the employee concerned. We find it highly incongruous to permit the rule to operate in a manner so as to leave the scope for denial of pensionary benefits to an officer who has been retired without his/her volition for the sake of meeting organisational exigencies. Notably, the rule, being a special provision, does not prescribe for any minimum age or length of service of the officer concerned and the necessities of the situation may demand the invocation of this rule even within short period of service. In such circumstances, subjugating the statutory right of pension of such officer, who is being ousted without his/her fault because of public interest in reference to the integrity of the Organisation, would be preposterous and in fact, violative of fundamental rights under the Constitution.

77. We are mindful of the fact that Intelligence Organisations (Restriction of Rights) Act, 1985, enacted by the Parliament under Article 33, provides for restriction of certain rights conferred by Part

III in their application to intelligence officers. However, the same is confined to restrictions respecting right to form associations, freedom of speech etc. and does not stretch its sweep to curb the right to livelihood of an officer, that too when the officer is being compulsorily retired under Rule 135. This could not have been the object and intent of the stated legislation. Even in the Pension Rules, Rule 40 is the only provision which subjects the pension of a compulsorily retired officer to a discretionary "may" provision. However, this rule comes into play when the said retirement is ordered as a penalty and thus, it stands on a different footing than Rule 135 of the 1975 Rules which is not linked to the conduct of the officer nor does it entail any consequence, either civil or penal.

78. By now it is well established that it is the duty of the Court to give effect to the object sought to be achieved by the legislature through the enacted provision and to prevent its defeat. In order to fulfil this duty, the settled canons of interpretation enable this Court to scrutinise the true import of the usage of "may" and "shall" provisions, as reiterated by this Court in ***D.K. Basu vs. State of West Bengal & Ors.***[36]

> "13. A long line of decisions of this Court starting with *Sardar Govind Rao vs. State of Madhya Pradesh, AIR 1965 SC 1222* have followed the above line of reasoning and

36 (2015) 8 SCC 744

authoritatively held that the use of the words 'may' or 'shall' by themselves does not necessarily suggest that one is directory and the other mandatory, but, the context in which the said expressions have been used as also the scheme and the purpose underlying the legislation will determine whether the legislative intent really was to simply confer the power or such conferment was accompanied by the duty to exercise the same.

14. In *The Official Liquidator vs. Dharti Dhan (P) Ltd., (1977) 2 SCC 166*, this Court summed up the legal position thus:

> "7. In fact, it is quite accurate to say that the word 'may' by itself, acquires the meaning' of 'must' or 'shall' sometimes. This word however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness.
>
> 8. Thus, the question to be determined in such cases always is, whether the power conferred by the use of the word 'may' has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the Court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word 'may' indicates that annexes any obligation to its exercise but the legal and factual context of it.""

79. In the present case, as discussed above, the usage of "may" provision in a discretionary manner could lead to highly iniquitous results and leave scope for arbitrary exercise of discretion. Thus,

keeping in mind the context, object, legislative intent and the general policy of resolving ambiguities of beneficial provisions in favour of the employees, we hold that the expression "may" occurring in Rule 135 needs to be construed as "shall" and to make it mandatory upon the competent authority to grant specified pension benefits, in line with the spirit of the rule, to the compulsorily retired officer without exception. While doing so, we are not substituting our notion of legislative intent, rather, we are merely exercising the power to choose between two differing constructions in order to further the intent of the legislature, in line with the dictum in ***Kehar Singh & Ors. vs. State (Delhi Administration)***[37].

80. Reverting to the next aspect as to whether the officers compulsorily retired under Rule 135 must be furnished with the copy of the stated Rules, we are of the considered view that the officers, whose services are being terminated under Rule 135, ought to be provided with at least the extract of relevant applicable rules alongwith the order of compulsory retirement so that the concerned employee would know about the entitlement and benefits under the governing Rule for pursuing claim thereunder in accordance with the law.

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37 (1988) 3 SCC 609

Criminal Appeal No. 413/2020 @ SLP (Crl.) No. 10668 of 2015

81. Leave granted.

82. By this appeal, the appellant has assailed the final judgment and order dated 2.11.2015 passed by the High Court in Crl.M.C. No. 4497 of 2015, whereby the order dated 10.9.2015 passed by the Additional Sessions Judge, Patiala House Courts, New Delhi in C.R. No. 18/2015 and order dated 28.4.2015 passed by Metropolitan Magistrate, Patiala House Courts, New Delhi in C.C. No. 475/1/13, refusing to summon the respondents as accused in the absence of sanction under Section 197 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), came to be upheld by the High Court. The short question for consideration before us is whether the refusal to issue summons to the respondents without prior sanction under Section 197 of the Cr.P.C. is just and proper.

83. The appellant has alleged that the recording of observations on her psychological state of mind by the respondents was an act of fabrication and not within their official duties as Committee members, so as to grant them the protection under Section 197 of the Cr.P.C. It is further alleged that the act of constitution of another committee, headed by Ms. Rathi Vinay Jha, acted as a proof that the first Committee constituted by the respondents was without a legal

mandate and thus, members of such Committee could not be said to have acted within their official duties. It is also urged that the sanction was deemed to be granted as it was not refused within three months of the proposal by virtue of Rule 19 of CCS (Conduct) Rules, 1964 (for short, 'the Conduct Rules') and the dictum in ***Vineet Narain & Ors. vs. Union of India & Anr.***[38]. The appellant, in her complaint, had levelled allegations against the private respondents of having committed offences under Section 167 of the Indian Penal Code, 1860 (for short "the IPC") by forging the report of the Committee constituted to inquire into the appellant's complaint of sexual harassment. The trial court refused to issue summons to the private respondents for the lack of sanction under Section 197 of the Cr.P.C. and the High Court upheld the order of trial court.

84. Before we go into the merits of the contentions, we note that the Department had already ruled on the appellant's request for sanction vide a detailed order dated 10.2.2012. That order has been brought on record by the respondents and we deem it necessary to reproduce the relevant extract thereof, which reads thus:

> "13. WHEREAS, in so far as the allegations made against Smt. Shashi Prabha and Smt. Anjali Pandey, who were members of the Committee, regarding the finding recorded by them at Sl. No. 3 of the CONCLUSIONS, which reads as under: -

38 (1998) 1 SCC 226

> "3. Ms. Bhatia's threat to take her own life, allegation of threats to her from other quarters and her behaviour on subsequent occasions (Annexure-C) appear to indicate a disturbed state of mind. As such counselling may benefit her."
>
> 14. WHEREAS, apparently, these observations were made by the Committee, in view of the fact, that the Applicant – Ms. Nisha Priya Bhatia had threatened to take her life. It was in this background, that all the seven members of the Committee had unanimously observed, that her behaviour indicates a disturbed state of mind and as such counselling may benefit her. Therefore, no malafides can be attributed to Smt. Shashi
>
> Prabha and Smt. Anjali Pandey, who were the two signatories along with five other members of the Committee, who had signed the report dated 19th May, 2008. In view of this, no case under Section 167 or Section 44 of IPC is made out against Smt. Shashi Prabha and Smt. Anjali Pandey.
>
> xxx xxx xxx
>
> 19. NOW, THEREFORE the Competent Authority after thoroughly examining the relevant record and perusal of the complaint dated 10.02.2010 and also Criminal Complaint alongwith the annexures filed in the Court of Chief Metropolitan Magistrate, District Courts, Dwarka, under Section 200 Cr.P.C. and Sections 167 & 44 IPC, is satisfied that no case is made out to accord sanction under Section 197 Cr.P.C. to prosecute Smt. Shashi Prabha, Joint Secretary and Smt. Anjali Pandey, Director (now Joint Secretary), u/s 167 and 44 of IPC as requested by Ms. Nisha Priya Bhatia. Therefore, the request made by Ms. Nisha Priya Bhatia in her complaint dated 10.02.2010 is hereby declined."

85. The position of law regarding the grant of sanction under Section 197 is well settled. The provision is crafted to protect the public servants from the vice of frivolous complaints against the acts done by them in the course of their official duties. Sanction under Section 197 of the Cr.P.C. is a pre-requisite, in law, for taking cognizance

against public servants. Nevertheless, we do not wish to dilate on the merits of the question of sanction as the order dated 10.2.2012 refusing to accord sanction against the private respondents has not been assailed by the appellant and absent any challenge thereto, it continues to operate in law.

86. Additionally, the appellant has contended that the order of this Court dated 15.12.2014 in W.P. (Crl.) No. 24 of 2012 quashing the press note dated 19.8.2008 adds weight to her case against the respondents. Even this submission cannot be taken forward so long as the order dated 10.2.2012 is in force.

87. Similarly, the exposition in ***Inspector of Police and Another vs. Battenapatla Venkata Ratnam and Another***[39] that no sanction is necessary in cases involving allegations under Section 167 of the IPC will be of no avail because the appellant has allowed the decision of the competent authority dated 10.2.2012, refusing to grant sanction against the private respondents to become final. Therefore, we need not dilate on the grounds urged in this appeal any further. Hence, this appeal is dismissed.

Writ Petition (Criminal) No. 24 of 2012

39 (2015) 13 SCC 87

88. In this writ petition, the petitioner seeks to invoke the jurisdiction of this Court under Article 32 of the Constitution and prays for issuance of appropriate directions to the respondents for bringing about necessary modifications in the CCS (CCA) Rules in tune with the guidelines laid down by this Court in ***Vishaka*** (supra). Primarily, the attempt of the petitioner is to put to scrutiny the procedure laid down in the CCS (CCA) Rules with respect to the complaints of sexual harassment.

89. The petitioner contends that these rules do not provide for sufficient participation to the victim of sexual harassment during the inquiry into her complaint. It is further contended that the charged officer has wide rights of participation in the inquiry process, whereas the victim/complainant has no such corresponding rights. It is urged that these rules do not oblige the Complaints Committee to take into account her documents, her witnesses or her objections against the composition of the Committee, thereby leading to unfairness and denial of natural justice.

90. It is further contended by the petitioner that the rules do not provide for the supply of the report of Complaints Committee to the victim/complainant and O.M. dated 2.8.2016 also falls short of remedying this lacunae as it comes into operation only if the

Complaints Committee does not recommend any action against the charged officer, thereby leaving out situations in which an action has been recommended and is found to be inadequate. Furthermore, it is averred that as per O.M. dated 2.8.2016, the victim/complainant is entitled to such report only after it has been placed before the Disciplinary Authority and the authority has reached the decision of not recommending any action. The specific prayer made by the petitioner reads thus: -

> "1. Issue a writ or any other order directing the Respondent No. 1 to amend the Central Civil Services (Classification, Control & Appeal) [CCS (CCA)] Rules, 1965 – under which enquiries are conducted against employees of the Central Government – so as to give a victim of sexual harassment her due representation in the process of enquiry initiated into her complaint – thereby complying with the Vishakha Guidelines, 1997 of this Hon'ble Court."

91. The respondents, on the other hand, have submitted that the provisions of O.M. dated 16.7.2015 clearly lay down the procedure to be followed by the Complaints Committee and the victim/complainant is sufficiently involved in the process. Further, the Complaints Committee has been granted the status of an inquiring authority and the procedure operates as provided in Rule 14 of CCS (CCA) Rules. Further, it is submitted that O.M. dated 16.7.2015 vindicates the apprehension of bias as regards the composition of the Complaints Committee, vide paragraph 10 of the O.M., which reads thus: -

> "10. As the Complaints Committee also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry."

92. As regards the supply of the report of Complaints Committee to the petitioner, the respondents submit that as per O.M. dated 2.8.2016, where a Complaints Committee has not recommended any action against the charged officer, the Disciplinary Authority shall supply a copy of the report of the Complaints Committee to the victim/complainant and shall consider her representation before coming to a final conclusion. Notably, this submission is in line with the contention raised by the petitioner and needs to be examined as such.

93. The inquiry procedure adopted to deal with the complaints of sexual harassment at workplace has assumed a sacrosanct position in law and cannot be undermined under any pretext whatsoever. This Court, in a catena of pronouncements, has made it clear that fairness and reasonableness are inalienable parts of any procedure

established by law. In the present case, however, we are inclined to observe that the relief claimed by the petitioner is ill advised.

94. The petitioner has called upon us to issue directions to the respondents (Department of Personnel and Training) for making additions in the CCS (CCA) Rules on certain counts. Strictly speaking, the law as regards the contours of powers to be exercised by the Court *vis-a-vis* the law/rule making authorities, is well settled and is premised on the tenets of judicial restraint and separation of powers. In other words, the Court should be loath to issue direction to the law/rule making bodies to enact a particular rule, more so when the alleged shortcomings in the rules are not even a part of the subject matter at hand. In ***Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr.***[40], this Court expounded the essence of judicial powers of this Court by relying upon Montesquieu's *The Spirit of Laws* and noted thus: -

> "21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book `The Spirit of Laws') broadly holds the field in India too. In chapter XI of his book `The Spirit of Laws' Montesquieu writes:
>
> > "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."

40 (2008) 1 SCC 683

> **Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.**
>
> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."
>
> (emphasis supplied)

In ***Social Action Forum for Manav Adhikar and Another vs. Union of India, Ministry of Law and Justice & Ors.***[41], this Court had the occasion to delve into the same aspect again and observed thus: -

> "40. We have earlier stated that some of the directions issued in *Rajesh Sharma vs. State of U.P., (2018) 10 SCC 472* have the potential to enter into the legislative field. A three-Judge Bench in *Suresh Seth v. Indore Municipal Corporation, (2005) 13 SCC 287* ruled thus: *(Suresh Seth case, SCC pp. 288-89, para 5)*
>
> > 5. ... In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187* it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked

41 (2018) 10 SCC 443

> to enact a law which it has been empowered to do under the delegated legislative authority. ...."

95. Be that as it may, in our opinion, the petitioner seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. The legal machinery to deal with the complaints of sexual harassment at workplace is well delineated by the enactment of The Sexual Harassment of Women at Workplace Act, 2013 (hereinafter "2013 Act") and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the 2013 Act and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short, "the 2013 Rules"), either in matters of complaint or of inquiry thereunder. The sanctity of such procedure stands undisputed. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding inquiry under the 2013 Act, the matter goes before the department for a departmental inquiry under the relevant departmental rules [CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental inquiry is in the nature of an in-house mechanism wherein the participants are restricted and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the concerned department

having due regard to confidentiality of the procedure. The two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. In matters of departmental inquiries, prosecution, penalties, proceedings, action on inquiry report, appeals etc. in connection with the conduct of the government servants, the CCS (CCA) Rules operate as a self-contained code for any departmental action and unless an existing rule is challenged before this Court on permissible grounds, we think, it is unnecessary for this Court to dilate any further.

96. The notifications issued by the respondent in the form of O.Ms. are in the nature of departmental instructions and are intended to supplement the 2013 Act and Rules framed thereunder. Such notifications do not operate in derogation of the 2013 Act, rather, they act in furtherance of the same. The O.M. dated 02.08.2016, for instance, reads thus: -

> "3. In accordance with Section 18(1) of the SHWW (PPR) Act, 2013, it has been decided that in all cases of allegation of sexual harassment, the following procedure may be adopted..."

97. A bare perusal of the aforequoted O.M. makes it amply clear that the said notification furthers the procedure predicated under the 2013 Act and do not, in any manner, reduce the vigour thereof. It is not the petitioner's case that the 2013 Act itself is plagued with

procedural drawbacks. Furthermore, if the present procedural scheme falls short of just, fair, equitable and reasonable procedural standards as envisaged in our constitutional jurisprudence, it may warrant intervention by the Court. Be it noted, the factual matrix in this case relates to the pre 2013 Act era and was solely governed by the guidelines issued by this Court in ***Vishaka*** (supra). To put it differently, the subject matter or issues raised by the petitioner in this petition have no bearing on the case in hand. Hence, the examination of the argument under consideration at the instance of the petitioner would be nothing but a hypothetical or an academic exercise in futility.

98. In light of the above, the stated relief claimed in this writ petition, we hold is devoid of merit.

Constitutional compensation for violation of right to life

99. We shall now consider the prayer for grant of compensation for the violation of petitioner's fundamental rights, in light of the factual matrix of the case. Indeed, diverse allegations and counter-allegations have been made in the course of submissions from both the sides, we shall restrict ourselves to the established set of facts for consideration of this prayer. Admittedly, the petitioner filed the

complaint of sexual harassment on 7.8.2007. After entrusting the inquiry of the complaint to the Committee headed by Ms. Shashi Prabha, the Committee was found to be incompetent to enquire against one of the charged officers and the inquiry against that officer was finally entrusted to the Committee headed by Ms. Rathi Vinay Jha. Be it noted that this was done only after the incident at the PMO dated 19.8.2008 and the wide media coverage thereof. Furthermore, the complaint made in August 2007 was not referred to the Committee on Sexual Harassment before a delay of over three months. The referral was made in December, 2007, after a written complaint to the PMO on 26.10.2007 regarding the inaction of respondents. This delay was further accentuated by the improper constitution of the Departmental Committee. In this regard, the enquiry report submitted by Ms. Rathi Vinay Jha Committee notes thus:

> "(iii) The Departmental Committee on Sexual Harassment was also not properly constituted as per the Vishakha guidelines. As per this requirement, the Complaints Committee should "have had a third party as a representative of an NGO or other body who is familiar with the issue of sexual harassment." While the Committee on Sexual Harassment was re-constituted on 1.11.2007. Ms. Tara Kartha, Director, National Security Council Secretariat, was appointed as a Member of this Committee only in April 2008. It is not clear in what manner Ms. Tara Kartha qualified to represent an NGO or anybody familiar with the issue of sexual harassment. So even at this stage, it was not a Committee constituted in accordance with the Vishakha guidelines."

100. The improper handling of the complaint of sexual harassment is also manifested in subsequent findings of the enquiry report as produced thus:

> "An examination of the Report of the Departmental Committee on Sexual Harassment submitted in May 2008 established that the complaint by Ms. Nisha Priya Bhatia was not given timely attention or proper enquiry and redressal.
>
> The written comments by Shri Ashok Chaturvedi on file reflect his lack of concern or respect for ensuring immediate attention to the complaint. It also reflects Shri Ashok Chaturvedi's lack of knowledge of the requirements in the Vishakha guidelines.
>
> Further even when the complaint was referred to the Departmental Committee on Sexual Harassment, the Secretary (R) did not pay heed to the constitution of the committee as required in the Vishakha guidelines. The act was, therefore, in gross violation of the Vishakha guidelines."

101. It is, therefore, not in dispute that the petitioner's complaints of sexual harassment were met with incidents showcasing procedural ignorance and casual attitude of her seniors in the department. We also note that, as regards the press note dated 19.8.2008, this Court had taken strong exception to the unwarranted attacks on her psychological status and quashed the note in its entirety vide order dated 15.12.2014 for being violative of the petitioner's dignity, reputation and privacy. Despite such terse finding regarding violation of fundamental rights, no relief of compensation was given to the petitioner and presumably not pursued by her at that time.

102. The scheme of the 2013 Act, Vishaka Guidelines and Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) predicates that a non-hostile working environment is the basic limb of a dignified employment. The approach of law as regards the cases of sexual harassment at workplace is not confined to cases of actual commission of acts of harassment, but also covers situations wherein the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in day to day functioning at the workplace. Taking any other view would defeat the purpose of the law. A priori, when inaction or procrastination (intentionally or otherwise) is meted out in response to the attempt of setting the legal machinery in motion, what is put to peril is not just the individual cries for the assistance of law but also the foundational tenets of a society governed by the rule of law, thereby threatening the larger public interests. The denial of timely inquiry and by a competent forum, inevitably results in denial of justice and violation of fundamental right. The factual matrix of the present case is replete with lack of sensitivity on the part of Secretary (R) qua the complaint of sexual harassment. To wit, time taken to process the stated complaint and improper constitution of the first Complaints Committee (intended or unintended) in violation of the Vishaka

Guidelines, constitute an appalling conglomeration of undignified treatment and violation of the fundamental rights of the petitioner, more particularly Articles 14 and 21 of the Constitution.

103. This Court has, over the course of time, evolved the judicial policy of remedying grave violations of the right to life by providing compensation in monetary terms, apart from other reliefs. In ***S. Nambi Narayanan vs. Siby Mathews & Ors.***[42], this Court exercised its power to invoke the public law remedy for grant of compensation for the violation of the right to life by observing that life itself commands self-respect. It observed thus: -

> "40. ..... The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy....."

Regard may also be had to ***Nilabati Behera (Smt) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs. State of Orissa & Ors.***[43] and ***Rudul Sah vs. State of Bihar & Anr.***[44].

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42 (2018) 10 SCC 804
43 (1993) 2 SCC 746
44 (1983) 4 SCC 141

104. In the present case, the petitioner had faced exceedingly insensitive and undignified circumstances due to improper handling of her complaint of sexual harassment. Regardless of the outcome of the inquiry into the stated complaint, the fundamental rights of the petitioner had been clearly impinged. Taking overall view of the circumstances, we consider this to be a fit case to award compensation to the petitioner for the stated violation of her right to life and dignity, quantified at Rs.1,00,000/- (Rupees one lakh only). Had it been a case of allegations in the stated complaint of the petitioner been substantiated in the duly conducted inquiry (which the petitioner had failed to do), it would have been still worst and accentuated violation of her fundamental rights warranting suitable (higher) compensation amount. Be that as it may, the compensation amount specified hereinabove be paid to the petitioner directly or be deposited in the Registry of this Court and in either case, within six weeks from today.

Writ Petition (Criminal) No. 1 of 2016

105. The petitioner has filed this writ petition praying for the issuance of a writ of mandamus directing the respondents to pay for the higher education of her daughter as a measure of compensation for the petitioner's sexual harassment, various criminal offences under the IPC committed against her and consequent violation of her fundamental rights under Articles 14, 15, 21 and 22 of the Constitution. The main prayer in the petition before us reads thus:

> "Issue a writ of mandamus/or any other appropriate writ/order/directions that the Respondents respond to petitioner's letter dtd. 11.08.15 and pay for higher education of Petitioner's younger daughter as compensation for Petitioner's acute sexual harassment and for criminal offences committed against her by their officers u/s 499, 500, 503, 506, 186, 339 & 341 IPC – as proved by various court orders on record."

106. The petitioner has brought on record a number of proceedings before various fora to support her submission that the private respondents have committed acts of criminal intimidation, defamation and wrongful restraint against her. She has also urged that her arrest dated 8.12.2009 led to the violation of her fundamental right under Article 22 of the Constitution, as the arrest was illegally orchestrated by the respondents.

107. The respondents, on the other hand, have contended that the petitioner is not entitled to any such compensation. In support of this contention, the respondents have advanced the following submission:-

> "3. That the Petitioner had made a representation on 11.08.2015 to the Hon'ble Prime Minister of India regarding financial assistance of Rs. 26,00,000/- (Rupees Twenty Six Lakhs Only), which she required towards the payment of fee of her daughter in MBA Course at Indian School of Business, Hyderabad (Course of 2016-17). As per the records available, PMO had forwarded her representation dated 11.08.2015 to Department of Higher Education, Ministry of Human Resource Development vide letter dated 18.08.2015. Thereafter, the Department of Higher Education examined the matter in consultation with the University Grants Commission. UGC had informed that Indian School of Business, Hyderabad is not in the list maintained by it and not under the purview of UGC. Further, Department of Higher Education had informed that Indian School of Business, Hyderabad is a private business school and there is no scheme of that Ministry to finance for admission in Indian School of Business."

108. Being a compulsorily retired government servant, the entitlement of the petitioner to post-retirement benefits must be confined to the provisions under the service rules applicable to her. The petitioner has been paid various post-retirement benefits including pension on the basis of the date of notional superannuation in accordance with the letter and spirit of Rule 135 of the 1975 Rules. As regards the violation of the fundamental rights of the petitioner, we have already considered that aspect in W.P. (Criminal) No. 24 of 2012

and have provided for compensation in that regard. However, no compensation can be given to the petitioner in reference to the cause stated in the writ petition under consideration.

109. The petitioner, relying upon the order of the High Court in W.P. (C) 3704 of 2012, has contended that various Court orders on record prove the commission of criminal intimidation and wrongful restraint against the petitioner by the officers of the respondents. We outrightly reject this inference purportedly deduced from the stated order. The scope of adjudication before the High Court in the aforementioned writ petition was limited to the regularisation of the period of absence and grant of consequent benefits. Mere recording of observations revolving around procedural improprieties in following ***Vishaka*** (supra) Guidelines, consequent transfer of the petitioner and various cross allegations between the parties, in no manner is an adjudication on the criminal liability of the officers. In fact, the question of criminal liability of the officers has not been adjudicated in any preceding case so far. Thus, no additional compensation under the pretext of the allegations under consideration can be granted to the petitioner. Therefore, this petition must fail and is disposed of in the aforementioned terms.

110. In reference to I.A. No. 79011 of 2019 filed in S.L.P. (Civil) No. 2307 of 2019, having regard to the peculiar circumstances of the case, it is ordered that no liability as to the payment of penal house rent charges upto next three months from today shall be recovered from the petitioner. However, with the order of compulsory retirement becoming final consequent to this order, the respondents are free to get the government accommodation vacated in accordance with the extant rules and follow due process of law after expiry of three months period from today.

111. While parting, we need to observe that the petitioner/appellant herein appeared and argued in person and presented herself with utmost dignity and displayed dignified demeanour towards the Court. Despite the underlying emotional appeal connected with this case, the petitioner/appellant presented her case like any other accomplished lawyer in reference to the legal principles.

112. Accordingly, we dispose of the batch of four cases before us in the following terms and directions: -

(i) We hold that Rule 135 of the 1975 Rules is valid and does not suffer from the vice of unconstitutionality. Further, the expression "may" occurring in sub-Rule (2) of Rule 135 must be

read as "shall", for giving true effect to the object of the provision.

(ii) The impugned order of compulsory retirement passed under Rule 135 against the appellant/petitioner is valid and legal and the decision of the High Court in this regard stands confirmed subject, however, to modification thereof to the extent indicated in the present judgment.

(iii) The grant of pension to the appellant/petitioner herein shall be computed in accordance with the date of notional superannuation as directed by the High Court and not from the date of actual compulsory retirement and additional sum in that regard, if any, be paid to her within six weeks from today.

(iv) The respondent(s) (Union of India) is directed to pay compensation quantified at Rs.1,00,000/- (Rupees one lakh only) to the appellant/petitioner herein for violation of her fundamental rights to life and dignity - as a result of the improper handling of her complaint of sexual harassment. The compensation amount be paid to the appellant/petitioner by way of direct transfer in her bank account or be deposited in this Court and in either case, within six weeks from today.

(v) The appellant/petitioner is granted time to vacate and hand over peaceful possession of her official quarter for a period of three months from today. Further, no penal house rent charges be levied or recovered from the petitioner upto next three months from today.

113. Accordingly, the appeals, writ petitions and pending interlocutory applications shall stand disposed of in the above terms.

.....J.
(A.M. Khanwilkar)

.....J.
(Dinesh Maheshwari)

New Delhi;
April 24, 2020.