

Bharthari Prasad Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Feb-15-2000

Reported in : 2000(2)AWC1606

Judge : Palok Basu and ;S.K. Jain, JJ.

Acts : Uttar Pradesh Fundamental (Financial Handbook, Volume 2, Parts II to IV) Rules - Rule 56; Uttar Pradesh Judicial Officer (Retirement on Superannuation) Rules, 1992 (J.O.R. Rules) - Rules 1, 2 and 3; [Constitution of India](#) - Articles 309, 310 and 311; Uttar Pradesh Fundamental Rules 56 (Amendment and Validation) Act, 1970; Civil Service Regulations - Articles 465 and 465A; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : C.M.W.P. No. 1312 of 1999

Appellant : Bharthari Prasad

Respondent : State of U.P. and Another

Advocate for Def. : Sunil Ambwani, ;R.K. Saxena, Advs. and ;S.C.

Advocate for Pet/Ap. : K.K. Roy, ;Ravi Kiran Jain, ;Ram Singh and ;Lokendra Kumar, Advs.

Judgement :

Palok Basu, J.

1. Shri Bharthari Prasad erstwhile member of the Higher Judicial Service of this State has challenged the order dated 27.11.98 passed by the State of U. P. compulsorily retiring him.

2. When the writ petition was filed, counter-affidavits were called, rejoinder-affidavits were also permitted to be filed, supplementary affidavits have also been filed and in the meantime some applications were also made for some interim relief. On the conclusion of the oral argument, written submissions have also been permitted to be filed and lastly a date--chart relating to the events which may have formed the basis of the compulsory retirement was permitted to be filed by the learned counsel for the parties.

3. Sri Ram Singh assisted by Sri Lokendra Kumar, learned counsel for petitioner has argued the matter with great ability and calmness. Sri Sunil Ambwani, learned counsel appearing for the High Court and Sri R.K. Saxena, for the State have argued for the respondents also with ability. As desired by the parties counsel, the writ petition is being finally heard at the admission stage.

4. Perhaps rightly Sri Ram Singh devoted most part of his argument to the legal question raised by him for consideration of the Court rather than the facts. It was vehemently argued with reference to the extracts from the celebrated quotations from Constitutional and Administrative Law by O. H. Phillips, Administrative Law by H. W. R. Wade, Principles of Legislation and Interpretation by Jagdish Swaroop and several others to superimpose the argument that the cadre of the Judicial Officers as State employees should be totally segregated as a distinct one from the other State employees. The argument, therefore, proceeded that when the Hon'ble Supreme Court in the decision of All India Judges Association v. Union of India, AIR 1992 SC 165 directed the State Government to treat the Judicial Officers in different category than the other employees of the State in pursuance whereof the Governor of Uttar Pradesh came out with the Uttar Pradesh Judicial Officers [Retirement on Superannuation) Rules, 1992, (for short J.O.R. Rules) other rules contained in Rule 56 of the Uttar Pradesh Fundamental Rule as it exists in the Financial Hand Book Vol. 11. Parts II to IV, should be taken to be completely substituted by the J.O.R. Rules. The argument proceeded that once

the language of the J.O.R. Rules make it prohibitive for the State to apply the Fundamental Rule 56 to a Judicial Officer, he shall have to be permitted to continue till the age of 60 years uninterrupted.

5. Sri Ram Singh extensively referred to the Fundamental Rule 56 and J.O.R. Rules. In order that his arguments are appreciated, the provisions contained in J.O.R. Rules, 2, 3 and 4 shall have to be quoted here, but Just before doing so, the preamble is also to be mentioned for the reason that some of the argument of Sri Ram Singh touched the language used therein also.

6. All this, therefore, is quoted below :

'In Exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules regulating the retirement on superannuation of the Judicial Officers :

THE UTTAR PRADESH JUDICIAL

OFFICERS (RETIREMENT ON

SUPERANNUATION) RULES, 1992

1. (1) These Rules may be called the Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992.

(2) They shall come into force with effect from the date of their publication in the Gazette.

2. The provisions of these rules shall have effect notwithstanding anything to the contrary contained in Rule 56 of the Uttar Pradesh Fundamental Rules contained in the Financial Handbook, Volume II Parts II to IV, or any other rules made by the Governor under the proviso to Article 309 of the Constitution or Orders, for the time being in force.

3. In these rules unless the context otherwise requires :

(a) 'Government' means the State Government of Uttar Pradesh ;

(b) 'Governor' means the Governor of Uttar Pradesh.

(c) 'Judicial Officers' means a member of the Uttar Pradesh Higher Judicial Service or the Uttar Pradesh Nyayik Sewa or the Uttar Pradesh Judicial Officers Service.

4. A Judicial Officer shall retire from service on superannuation in the afternoon of the last day of the month in which he attains the age of sixty years.'

7. It was argued that the words chosen for the perfactory notes indicate that the intention of the Governor in making the J.O.R. Rules for 'regulating the retirement of superannuation of the Judicial Officers.' The emphasis laid was that these rules were not directed to cover the situation as envisaged by provision of Rule 56 of Fundamental Rule. It was said that since the Governor placed the Judicial Officers in separate category in pursuance of the suggestion contained in the Supreme Court Judgment particularly with regard to paragraphs 21, 24 and 60, the only occasion for the Judicial Officers to get out of the Job will be attaining the age of 60 years. It was thus stated with all persuasiveness that this Court should interfere with the impugned order. For, against the Judicial Officers no order whereby they were compulsorily retired or prematurely retired or seeking voluntary retirement, could be passed as either of the two modes determines Judicial Officers Job under the State Government before the officer attains superannuation, age of 60 years. Great emphasis was laid by Sri Ram Singh on the use of the words 'provisions of these Rules shall have effect notwithstanding anything to the contrary contained in Rule 56.' He argued with immense sincerity that the expression 'anything to the contrary' in the aforesaid quotation should be confined to the other two modes of superannuation, i.e. voluntary retirement and compulsory retirement and, therefore, these two modes being permissible in case of other employees of the State Government those should not be made applicable in the case of the Judicial Officers who stand placed in a separate category than the other officers.

8. Sri Sunil Ambwani, appearing for the High Court also relied upon the language used in Rule 56 of the Fundamental Rules and the language adopted in the J.O.R. Rules, but the argument is entirely different than that of Sri Ram Singh. His emphasis was that the primary consideration in the J.O.R. Rules are the words

'anything to the contrary contained in Rule 56'. He proceeded to argue that Rule 56 in turn has three contingencies, when a Government servant would lose the Job, first is voluntary retirement, second compulsory retirement and third on attaining the age of superannuation and that since the J.O.R. Rules touches only the contingency of superannuation, i.e., the age of 60 years and not 58 years as is mentioned in the Fundamental Rules, therefore, the Court should accept only to the extent of that thing being contrary to the words contained in the J.O.R. Rules, no argument of ShriRam Singh should be accepted by the Court.

9. Sri R. K. Saxena, learned standing counsel argued that the choice of the Judicial Officers to seek the voluntary retirement remains untouched by J.O.R. Rules. He stated that the employer and employees both get an opportunity to do away with the employment by taking recourse to the voluntary retirement on the part of the employee and compulsory retirement on the part of the employer. If neither of these two is commenced, then and then only the Judicial Officers will continue till the age of 60 years.

10. After considering the entire argument in detail, the Court has to be reminded of some constitutional provisions, which regulate the employment under the State. Articles 309, 310 and 311 are those, which contain the relevant provisions in this regard. Needless to say that these Articles have already been referred to not only in the Judges case referred to above, but practically in all the decisions whether that be of Shamsher Singh or that of Nipendra Bagchi.

11. It may be pointed out that so far as the Fundamental Rule 56 is concerned, it not only has the characteristic of an order passed by the Governor envisaged by Article 309, but it also contains the intention of the Legislature of the State of U. P. inasmuch as on two previous occasions the U. P. Government came out with the Uttar Pradesh Fundamental Rules 56 (Amendment and Validation) Act, 1970. The first one was passed as U. P. Act No. 5 of 1970 which had to be legislated in order to explain the legal position and settling the controversy which was raised on account of the decision of a Full Bench of this Court. The object and reasons for the said Act No. 5 of 1970 are as follows :

'Prefatory note-statement of objects and reasons.--With effect from January 1, 1964 Fundamental Rule 56. Financial Handbook, Vol. II. Parts II to IV was so amended that the age of retirement for Government servants under the rule making control of the Governor was raised from 55 to 58 years and at the same time a proviso thereto was added to the effect that the appointing authority may, at any time, without assigning any reason require the Government servant to retire on three months notice after he attains the age of 55 years. Since in the amended rule. It was not expressly stated though it was always implied, that such retirement may be required only in public interest, a Full Bench of Allahabad High Court has by a majority of two to one declared the said proviso is violative of Articles 14 and 16 of the Constitution. In order to put the legal position beyond doubt. It has been decided to amend the Fundamental Rule 56 with retrospective effect and to validate action taken thereunder.

The bill is introduced accordingly.'

12. Those amendments brought about in Rule 56 have completely re-enacted the said Rule by substituting some of the clauses and it reads as under:

'Amendment of Fundamental Rule 56.--In clause (a) of Rule 56 of the Uttar Pradesh Fundamental Rules, published in the Financial Handbook. Volume II, Parts II to IV, hereinafter referred to as the said Rule 56(a) for the existing provisos, the following provisos and Explanation shall be substituted and be deemed to have been substituted with effect from January 1, 1964, namely :

'Provided that -

(i) the appointing authority may, at any time, without assigning any reason, require the Government servant to retire on three month's notice or pay in lieu of the whole or part thereof, after he attains the age of 55 years, or such lesser age as together with the period of notice in lieu of which the pay is substituted would aggregate to 55 years, so, however, that in the case of pay being given in lieu of the whole or part of such notice the said period shall stand added to the Government servant's qualifying service for the purposes of calculating the pension and the death-cum-retirement gratuity due to him and for no other

purpose ; or

(ii) the Government servant may after attaining the age of 55 years voluntarily retire after giving three months' notice to the appointing authority :

Provided further that-

(i) the notice of voluntary retirement given under the first proviso by a Government servant against whom a disciplinary proceeding is pending or contemplated shall be effective only if it is accepted by the appointing authority, subject to the condition that in case of a contemplated, disciplinary proceeding, the Government servant is so informed before the expiry of the notice ;

(ii) the notice once given by a Government servant under the first proviso shall not be withdrawn by him except with the permission of the appointing authority,

Explanation.--(1) The decision of the appointing authority under the first proviso to require the Government servant to retire as specified therein shall be taken if it appears to the said authority to be in the public interest and the State Government may, from time to time, issue executive instructions indicating guiding principles in that behalf but nothing herein contained shall be construed to require any recital, in the order, of such decision having been taken in the public interest or to require the publication of such instructions.

(2) Every such decision shall, unless the contrary is proved, be presumed to have been taken in the public interest.

(3) 'Appointing authority' means the authority which has the power to make substantive appointments to the post or service from which the Government servant is retired or wants to retire'.

3. Validation.---Notwithstanding any Judgment, decree or order of any Court, anything done or purporting to have been done, any action taken or purporting to have been taken under or in relation to the said Rule 56(a) before the commencement of this Act, including any decision or order made, executive instructions issued, or notice or pay in lieu of notice given or paid or ordered to be

paid, retirement required or effected, or pension sanctioned or paid, shall be deemed to be and always to have been done or taken under or in relation to the said Rule 56(a) as amended by this Act and to be and always to have been as valid as if the provisions of this Act were in force at all material times.

4. Repeal of Uttar Pradesh Ordinance No. VI of 1969. --The Uttar Pradesh Fundamental Rule 56 (Amendment and Validation) Ordinance. 1969, is hereby repealed.'

13. On second occasion the State Legislature came out with further amendment when it passed U. P. Act No. 24 of 1975. It was thought that some more amendments were necessary in Rule 56 and, therefore, the following amendment was brought about:

'2. Amendment of Fundamental Rule 56.--In Rule 56 of the Uttar Pradesh Fundamental Rules, published in the Financial Handbook, Volume II. Parts II to IV, as amended from time to time, hereinafter referred to as the said Rule 56,--

(i) the existing provisos to clause (a) and their Explanations shall be omitted ;

(ii) after clause (b) the following clauses shall be inserted, namely :

'(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of fifty years or after he has completed qualifying service for twenty years,

(d) The period of such notice shall be three months :

Provided that-

(i) any such Government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired -forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances. If any,

for the period by which such notice falls short of three months, at the same rates at which he was drawing immediately before his retirement :

(ii) it shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice :

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted :

Provided also that the notice once given by a Government servant under clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

(e) A retiring pension shall be payable and other retirement benefits. If any. shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule.

Explanation,--(1) The decision of the appointing authority under clause (c) to require the Government servant to retire as specified therein shall be taken if it appears to the said authority to be in the public interest, but nothing herein contained shall be construed to require any recital, in the order, of such decision having been taken in the public interest.

(2) Every such decision shall, unless the contrary is proved, be presumed to have been in the public interest.

(3) The expression 'appointing authority' means the authority which for the time being has the power to make substantive appointments to the post or service from which the Government servant is retired or wants to retire ; and the expression 'qualifying service' shall have the same meaning as the relevant rules relating to retiring person.

(4) Every order of the appointing authority requiring a Government servant to retire forthwith under the first proviso to clause (d) of this rule shall have effect from the afternoon of the date of its issue, provided that if after the date of its issue, the Government servant concerned, bona fide and in ignorance of that order, perform the duties of his office his acts shall be deemed to be valid notwithstanding the fact of his having earlier retired.'

4. Applicability to orders issued before the commencement of Act.-- [1] Where any order has been passed or purported to be passed on or after November 1, 1973 under the first proviso to clause (1) of the said Rule 56 or under Note 1 to Article 465 or under Note 1 to Article 465A of the Civil Service Regulations requiring a Government servant to retire either without notice or on a notice for a period shorter than three months, such Government servant, if not already paid his pay for the whole or part of the said period of three months, as the case may be, shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the whole period of three months or, as the case may be, for the period by which the notice fell short of three months, at the rate at which he was drawing immediately before the date of such order.

(2) For the removal of doubts, it is hereby declared that nothing in the said Rule 56 or in the said Regulations or in any orders or instructions in that behalf shall be deemed to have ever required the actual payment of the Government servant's pay for the whole or part of the period of notice before or simultaneously with the retirement required by the order, and the failure to make such payment shall not have or be deemed ever to have had any effect on the validity of the order, any Judgment, decree or order of any Court to the contrary notwithstanding, and it shall be open to the State Government to apply to any Court for review of any such judgment, decree or order within three months from the commencement of this Act.

(3) The Appointment (3) Department Government Order No. 5/2/1973, dated November 2, 1973, shall be deemed to have been rescinded with effect from the same date, and no order of compulsory retirement shall be deemed to be or ever to have been invalid on the ground of any inconsistency with the aforesaid

Government Order.'

14. At third time, the State Legislature stepped in vide Act No. 33 of 1976, but for discussions in the present case, all that is not necessary.

15. After the aforesaid two amendments were brought about, the position became very clear that three modes of ending the employment were all approved by the State Legislature. i.e. voluntary retirement, when the employee opted, the compulsory retirement, when the employer thought it necessary in the public interest, and, on attaining the age of superannuation.

16. Always Rule 56 has to be kept in mind when the Hon'ble Supreme Court's directions in the Judges case is referred to as contained in paragraph 60 which should be reproduced :

'We would now briefly indicate the directions we have given in the Judgment:

(i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.

(ii) Steps should be taken to bring about uniformity in designation of officers both in civil and the criminal side by 31.3.1993.

(iii) Retirement age of Judicial Officers be raised to 60 years and appropriate steps are to be taken by 31.12.1992.

(vi)

(v)

(vi)

(vii)

(viii)

17. It should not escape any one's attention that the direction of the Supreme Court was that 'appropriate steps are to be taken by 31.12.1992'. Therefore, the

age of 58 years which was fixed by the State Government had to be changed and in view of the directions of the Supreme Court, the aforesaid J.O.R. Rules were framed. It should go without saying that by bringing about the aforesaid Rule raising the age from 58 to 60 years was attempted. It passes one's comprehension that if and when an employee voluntarily seeks retirement, he should be denied the same on the strength of the language used in the J.O.R. Rules just because he happens to be Judicial Officer. Likewise, there is no reason to find that a Judicial Officer cannot be compulsory retired before he attains the age of 60 years, howsoever, justifiable the said action in public interest appears to be. Paramount interest of the State and public, therefore, must be kept in mind while interpreting the J.O.R. Rules.

18. Before closing this Chapter, the Court is required to deal with the argument regarding use of the non-obstante clause, which was so emphatically stated by Sri Ram Singh. The expression 'notwithstanding anything' is governed by the word 'contrary'. The only thing contrary is that while the other Government servants covered by Rule 56 of Fundamental Rule will retire at the age of 58 years, the Judicial Officers will retire at the age of 60 years. But for this distinction of the retirement of each of the two classes of officers, i.e., one, segregated class of the Judicial Officers and two, other class of officers, no other 'contrary' provision exists. The J.O.R. Rules require only the age of 58 years to be raised to 60 years in the case of the Judicial Officers and that alone is contrary provision as compared to the other provisions of 56 of Fundamental Rule when applied to other Government officers.

19. In view of the aforesaid discussion, the argument that the U. P. Judicial Officers (Retirement on Superannuation) Rules, 1992, should be read as complete embargo on the applicability of Rule 56 of Fundamental Rule to the case of the Judicial Officers, is not accepted. It does apply to Judicial Officers.

20. Having dealt with the legal argument, some questions of fact as raised through the writ petition have to be adjudicated. In order to appreciate those arguments, the order passed in the instant case has to be quoted here for ready reference.

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Similarly the English translation is given by the Court under Hindi quotation :

ORDER

In Exercise of the powers conferred by Fundamental Rule 56, as amended, of the Financial Hand Book Part-2 and in view of the Judgment passed on dated 24.8.93 by Hon'ble Supreme Court, New Delhi in Review Petition No. 249 of 1992 filed in Writ Petition No, 1022 of 1989, All India Judges Association and others v. Union of India and others ; Hon'ble the Governor has ordered, in public interest, that Sri Bharthari Prasad, Addl. District and Sessions Judge, Mainpuri (under suspension) shall be compulsorily retired on dated 17.12.98 and in lieu of three months notice Sri Bharthari Prasad shall be entitled to equal - amount of salary & allowances, if any, at the same rate which he was receiving immediately before retirement.

By order of Governor

Sd. Illegible

(Sudhir Narain)

Secretary'

21. Sri Ram Singh attacked on the aforesaid order on two fronts. First that the order suffers from the vice of non-application of mind as it has relied on the decision of the Supreme Court in the Judges Review case decided by it on 24.8.93 and yet added that it was being passed in 'public interest'. It was thus argued that once it was indicated that the order was being passed in consideration of Supreme Court's directions, nothing of public interest was to be added in the order. It was argued that such a combination was neither permissible nor necessary and the petitioner has been prejudiced for the J.O.R. Rule had come into being much before the order dated 27.11.98 was passed and no screening could, therefore, have been done.

22. Before taking up this argument, it may be pointed out that apart from the written argument filed by the petitioner, date chart has also been filed by the petitioner and all statements of facts and law made in the writ petition have been examined and thoroughly scrutinised by this Court and repeated opportunities have been provided to the learned counsel for the petitioner to prove any factual infirmity in the order, if he found any.

23. The record of the writ petition indicates that quite apart from some other factors, one glaring factor exists against the petitioner. Admittedly, the petitioner was transferred from Allahabad to Mainpuri on 2.7.98. The petitioner represented to the Court, which representation was dismissed. The petitioner did not hand over the charge and letters were issued by the District Judge. Knowing all these, the petitioner had delivered a Judgment in a case under Section 302, I.P.C. and acquitted the accused. To say the least, if the petitioner was thinking that his representation with regard to transfer was still to be considered, he was within his right to think that he may be retained himself in Allahabad, but was certainly not Justified in discharging judicial function in a session trial case involving a murder charge which is one of the biggest type of criminal cases. The session trial had to be dealt with only lawfully and could not be left to the choice that an acquittal or conviction order can be passed by the Judicial Officer at his own will though he knew that he ceased to be posted any longer as Addl. Sessions Judge in the territorial jurisdiction as he had been transferred by this Court, which controls the working of all the Judicial Officers including transfer and posting. The record

further indicates that several other comments have been made in the annual remark of the year 1998 against the petitioner by the then District Judge. Allahabad and the representation of the petitioner against those remarks has been rejected by this Court.

24. Before proceeding further, it may be pointed out that the learned counsel for the petitioner wanted to draw inspiration and strength from two decisions of Supreme Court. i.e., in *Rajat Baran Roy and another v. State of West Bengal and another*, 1994 (4) SCC 235, and *High Court of Judicature at Allahabad through Registrar v. Samara Singh and another*, JT 1999 (10) SC 99. It may be stated here that by adoption the provision applicable to members of the service governed by the All India Services Rules were applicable to the Judicial Officers of State of West Bengal. It was, therefore, held that since the age of the members of All India services was raised to sixty years, the members of the Judicial Service of the State of West Bengal would get automatic extension of their ages from 58 to 60 years and thus the Screening Committee could not stop Rajat Baran Roy from working till 60 years particularly because nothing appeared to have existed to Justify the order in public interest. Therefore, the said case of Rajat Baran Roy is distinguishable and the Ratio of the said case law is not attracted towards the officer governed by Higher Judicial Services Rules in the State of Uttar Pradesh. In so far as Sarnam Singh's case is concerned, the finding of the High Court in the writ petition challenging compulsory retirement that there was no material in support of the order of the compulsory retirement, was upheld. Thus the question of applicability of the concept of the public interest in that matter or non-applicability of Fundamental Rule 56 to the cases of Judicial Officers, as has been urged in the instant case and argued by Sri Ram Singh, was neither raised nor decided in Somam Singh's case.

25. The law on the point as to when compulsory retirement order is to be passed and when it will be in public interest stands by now fully covered by decisions of the Supreme Court in *Tulsi Ram Patel*, AIR 1985 SC 39 and in *Dharamveer Singh case*, 1998 (6) SCC 165 and the decisions of *Union of India v. J. N. Sinha*. 1970 (2) SCC 458. *Baikunth Nath Das v. Chief District Medical Officer*. 1992 (2) SCC299 and lastly in *State of Punjab v. Gurdas Singh*. 1998 (4) SCC 92.

26. All this apart, the conduct of the petitioner while posted as Addl. Sessions Judge in Hamirpur also came to be scrutinised by the Court in administrative side preceded by a stricture on the Judicial side. The order of the then Administrative Judge that the petitioner should be cautious in future appears to have fallen into the deaf ears because not only the petitioner did not work with the cautious approach expected from him, but he insisted on his post and delivered the Judgment of acquittal in the case under Section 302. I.P.C. at Allahabad when he knew that he has been transferred by the High Court and he should not have decided the case. Leaving aside the other adverse comments of the District Judge which have been made known through the counter-affidavit, it cannot be said that public interest is not involved in the action of the Governor to have passed the impugned order dated 27.11.1998.

27. The cumulative effect of all the judgments referred above and the discussion aforesaid leave no room for doubt that the petitioner's case was dealt with full application of mind and with meticulous care by the Screening Committee lawfully exercising the powers conferred by Rule 56 of Fundamental Rule and thus the action was and is well within the parameters of the J.O.R. Rules.

28. There is thus no force in the writ petition, which is accordingly dismissed. Parties will bear costs.