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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1199/89

New Delhi this the 24th December, 1993.

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman
The Hon'ble Mr. B.S. Hegde, Member (J)

Mohd. Saghir,
S/o Late Shri Abdul Latif,
R/O 25/73, Lane No.15,
Vishwas Nagar, Shahdara,
Delhi-110 032. ...Applicant

(By Advocate Shri G.D. Gupta)

Versus

1. Union of India through
the Secretary to the
Government of India,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi.

2. The Director General Telecom,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi.

3. The Chief General Manager (Telephones),
Mahanagar Telephone Nigam Ltd.
K.L. Bhawan,
New Delhi-110 050. ...Respondents

(By Advocate Shri P.P. Khurana)

1. Whether Reporter of local papers may be allowed to see the Judgement? ✓

2. To be referred to the Reporter or not? yes

3. Whether their Lordships wish to see the fair copy of the Judgement? – yes

(N.V. Krishnan)
Vice-Chairman(A)

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ORDER

(Hon'ble Mr. N.V. Krishnan)

The applicant who was an Accounts Officer under the third respondent was retired by the second respondent - the Director General Telecom - vide order dated 27.5.1988 (Annexure A-1), under sub clause (i) of clause (j) of Rule 56 of the Fundamental Rules in public interest, as he had attained the age of 50 years on 15.5.1985. He filed a representation dated 29.6.1988 seeking revocation of the Annexure A-1 order and reinstating him with all consequential benefits. This was enclosed to the subsequent letter dated 29.6.1988 (Annexure A-2), addressed to the second respondent. As no reply was received, he has filed this O.A for quashing the impugned Annexure A-1 order dated 27.5.1988 and to declare that the applicant was entitled to continue in service till he attained the age of superannuation, with all consequential benefits.

2. The applicant states in the O.A. that he had a clean record during his service, without any adverse remark being communicated to him. He, however, admits that a criminal case was launched against him in February, 1982, while posted as Accounts Officer in the office of the District Manager (Telephones), Jaipur in respect of a false T.A. bill to the extent of Rs.65/- in respect of the journey by taxi which, it was alleged, was not performed by him. In this criminal case he was found guilty by the judgement dated 6.5.1988 under Sections 468 and 471 I.P.C. but he was let off on probation. An appeal against this judgement filed on 20.5.1988 is pending. He also admits that he was served with a memorandum of charges in June, 1984 while working in the office of the District Manager (Telephones), Jaipur alleging that during 1981 he had claimed and received Rs.275/- for a journey performed on L.T.C. from Hyderabad to Mehmood Nagar and back on the basis of an alleged false taxi fare receipt. He was found guilty in the D.E. by the order dated 19.9.1985 (Annexure A-5) and besides directing recovery of a sum of Rs.275/-, his pay was reduced by one stage for a period of two years without

cumulative effect. The appeal filed by him was dismissed on 27.5.1988 (Annexure A-6).

3. He contends that, obviously, a review of his case must have been conducted and that at that time, the appeal against the disciplinary order was pending and perhaps, the criminal case itself would have remained pending. In the circumstance, he alleges that he has been retired without any basis to justify such retirement. In this connection he refers to the Government of India's instructions dated 5.1.1978 (Annexure A-7) which lay down that the power of pre-mature retirement under F.R. 56 (j) cannot be used as a short cut to hold a departmental enquiry. He further submits that if the impugned order is based on the disciplinary proceedings in regard to which he has already suffered penalty, it would be vitiated because it would amount to punishment which is inflicted on him in violation of Article 311 (2) of the Constitution and is bad in law, being the imposition of a second penalty for the same delinquency.

4. The respondents have filed a reply, contesting the claims made by the applicant. It is stated that the applicant has been pre-maturely retired in public interest under F.R. 56 (j) after following the procedure laid down in the instructions of the Government of India. In so far as the impugned order is concerned, it is stated that the cases of 67 officers who had completed 50 years' of age or completed 30 years' of service were reviewed by the Review Committee which held the applicant to be unsuitable for further retention in Government

Service. The applicant has already admitted his conviction in a criminal case for claiming false T.A. bill. The subsequent D.E. was also in respect of a similar charge where the penalty imposed has been sustained by the appellate order of the President after consultation with the U.P.S.C. A third charge-sheet was also issued with a view to imposing a minor penalty on the applicant on 23.5.1988. But, before the proceedings could be concluded, the applicant was retired from service prematurely on 27.5.1988 and, therefore, the chargesheet was withdrawn.

5. On our directions the respondents produced the original records of the case. It is noticed therefrom that the Review Committee consisting of the Secretary, Department of Telecommunications and Joint Secretary (P&C), Ministry of Defence recorded the following findings after a review of the applicant's case on 23.5.1988:-

> "2. The Committee went through the CRs of the officer and report submitted by the CBI in case No.RC 37/85 LKO. Earlier, the officer was punished with the major penalty, namely, reduction by one stage for a period of two years without cumulative effect, vide punishment order dated 19.9.1985 for the charge of claiming and receiving payment of TA for journey performed on LTC on the basis of false taxi fare. In the ACR for the period 1984-85, the Reporting Officer has, against the column on integrity, attached a separate sheet, stating that there is suspicion that the officer was involved in a racket of fraudulent cash receipts in TRA Cash Counter, etc. The case was under investigation by the CBI. The report of the CBI in the case referred to earlier finds that there was indeed misappropriation of funds, but finds Shri Mohd. Sagir guilty only of failure to check the receipts properly, enabling the dealing clerk to misappropriate funds. Although the CBI report does not indict Shri Mohd. Sagir directly the doubt cast

"on his integrity by the Reporting Officer is further strengthened by the establishment of the commission of fraud by officials working under him.

3. Shri Sagir had earlier been punished for an action which clearly established lack of integrity, there are subsequent cases in his office leading to doubts on his integrity. The Reporting Officer has made such an entry in his report of 1984-85. Considering all these factors, the Committee, therefore, came to the conclusion that the officer's integrity is in doubt and he is not a fit person to be retained in Government service.

4. The Committee, therefore, recommends that Shri Mohd. Sagir is not suitable for retention in Government service under the provisions of F.R. 56(j) in the public interest."

This note was made available for the perusal of the learned counsel for the applicant, who then submitted detailed arguments raising a number of grounds, challenging the impugned order. The learned counsel for the respondents was also heard on these issues.

6. We find that it would be proper if these arguments are taken up for consideration serially.

7. The learned counsel for the applicant pointed out that the Review Committee's report confirms that nothing adverse has been recorded in the character roll of the applicant except for an entry for the period 1984-85 when the reporting officer attached a separate sheet stating that there is suspicion that the officer was involved in a racket of fraudulent cash receipts in TRA cash counter etc. It now transpires from the Review Committee's report that the CBI found that there was, indeed, misappropriation of funds but it found

the applicant guilty only of failure to check the receipts properly, enabling the dealing clerk to misappropriate funds. The learned counsel, therefore, contended that the Review Committee should have held that the CBI's report does not establish any charge of lack of integrity on the applicant's part. Instead, the Review Committee has wrongly come to the conclusion that the doubt cast on his integrity by the reporting officer is further strengthened by the commission of fraud by officials working under him. The only other matter relied upon by the Review Committee was the earlier punishment in the D.E. by the order dated 19.9.1985 for the charge of claiming and receiving T.A. for journey performed by LTC on the basis of false taxi fare, which clearly established lack of integrity. In other words, in respect of lack of integrity, the only ground that could possibly be taken was the punishment in the earlier D.E. The CBI's report in respect of which an entry has been made in the character roll of 1984-85 does not reflect on his integrity.

8. The learned counsel for the respondents contended that though the CBI might have come to the conclusion it did, the respondents suspected that the applicant could not be blameless, when large amounts were misappropriated under his supervision and, therefore, they rightly suspected his integrity. However, when his attention was drawn to the chargesheet dated 23.5.1988 issued under Rule 16 of the CCS (CCA) Rules, 1965 (Annexure

A-8) which appears to flow out of the CBI's report, wherein only the charge of negligence has been made against the applicant, the learned counsel readily agreed that the Review Committee was not justified in drawing such a conclusion about the integrity of the applicant on the basis of the CBI's report.

9. The learned counsel for the applicant, therefore, contended that the only ground on which the applicant has been prematurely retired is the circumstance that a penalty was imposed on him in 1985 by the Annexure A-5 order which was also upheld in the appeal. In the circumstances, a number of issues were raised by the learned counsel for the applicant to contend that the impugned order is wholly illegal and bad.

10. In the first instance, it was contended that the applicant had already attained the age of 50 years in 1985, his date of birth being 15.5.35. Therefore, he has been retired by the impugned order when he was already 53 years old. It is contended that this is in gross violation of the Government of India's instructions dated 5.1.1978 (Annexure A-7). It is provided under the heading "II. Criteria Procedure and Guidelines" in that circular that the cases of Government servants for the purpose of taking action under F.R. 56 (j) should be reviewed six months before they attain the age of 50/58 years or complete 30 years' qualifying service. A schedule has been laid down for such review indicating in which quarter the 50 years' of age is being attained or 30 years' of service is being completed. As the review took

place only in May, 1988, i.e., long after the applicant attained the age of 50 years, the entrie proceedings require to be quashed. The learned counsel for the applicant relied on the following decisions in support of his contention:-

i) Decision of the calcutta Bench of the Tribunal in Ashendu Bikash Sen Vs. Union of India (1989 (9) ATC 202). That was a case where the applicant attained the age of 50 years on 19.5.86. However, his case was reviewed only on 15.1.87 and it was decided that he should be prematurely retired. The respondents had not explained why the case of that applicant was not taken up by the Review Committee as per the directions contained in the memorandum dated 5.1.1978. The Bench further found that the respondents had retired the employee as a short cut without initiating disciplinary proceedings. It also held that the memorandum dated 5.1.78 was violated on other grounds such as not considering whether the applicant should be continued in service on the lower post. For all these reasons, including the fact that the review was done more than $1\frac{1}{2}$ years after the age of 50 years was attained, the order was quashed.

ii) A reference was also made to the another judgement of the Principal Bench of the Tribunal in S.R. Sant Vs. Union of India (1990 (12) ATC 851) wherein also it was held that the delay in holding the review vitiates the order under F.R. 56(j). The observations of the Bench are contained in paragraphs 19 and 20 of their order which read as follows:-

> "19. This makes it clear that where an employee is to be prematurely retired, the Review Committee should meet at least six months before he attains the age of 50/55 years or completes 30 years service/or 30 years qualifying service. Secondly, the quarter in which the review is to be made is related to his completion of either 30 years of service/30 years of qualifying service or on attaining the age of 50/55 years. In the present case, the applicant completed 30 years of service on November 6, 1986. Consequently, the case will come under Item No.2 'October to December of the same year'. The quarter in which the review is to be made is indicated against the above item in column No.2, i.e, 1986.
>
> 20. In view of the above, since the applicant had completed 30 years of service on November 6, 1986, the Reviewing Committee should have met some time in April to June, 1986. This was not done in the present case. The Reviewing Committee met on February 9, 1987, i.e., after 3 months of completing 30 years' service. We are of the view that the respondents followed an erroneous procedure in the present case, which also impinges the order of compulsory retirement from service."

11. The learned counsel for the respondents, however, submitted that these instructions are directory and give a guideline only to the officials who are charged with the duty of processing cases under F.R 56(j). They do not confer any right on the Government employee.

12. We have carefully considered this matter. The question about the extent to which these instructions are binding and mandatory has been considered by the Supreme Court in the case of <u>State of U.P. Vs. Chandra Mohan Nigam & Others (AIR 1978 SC 2411)</u>. This judgement has not been referred to in either of the decisions referred

to above. In that case, the premature retirement was made under rule 16(3) of the All India Death-cum-Retirement Benefits Rules, 1958 which corresponds to FR 56(j). The executive instructions issued in the context of the aforesaid rule correspond to those issued in Annexure A-7. The observations of the Supreme Court in that case are as follows:-

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

If this was the only conclusion of the Apex Court, it could have been held that the instructions are fully binding on Government. This is not the case. For, the Apex Court made the following significant observations which immediately follow the above declaration.

> "Whether all the aforesaid instructions issued by the Government are mandatory or not do not call for a decision in these appeals. Some of them may not be mandatory. Not that every syllable in the instructions is material. Some of them may be described as prefatory and clarificatory. However, one condition is absolutely imperative in the instructions, namely, that once a Review Committee has considered the case of an employee and the Central Government does not decide on the report of the Committee endorsed by the State Government to take any prejudicial action against an officer, after receipt of the report of the committee endorsed by the State Government, there is no warrant for a second Review Committee under the scheme of rule 16(3) read with the instructions to reassess his case on the same materials unless exceptional circumstances emerge in the meantime or when the next stage arrives. We should hasten to add that when integrity of an officer is in question that will be an exceptional circumstance for which orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government. Although a faint attempt was made before the learned single Judge that fresh facts were available for the purpose of the second Review Committee, the High Court did not accept the position nor do we find any reason to differ from that opinion. It is, therefore, clear that the respondent's order of termination was made not as a result of the report of the first Review Committee in accordance with the instructions but on the recommendation of the second Review Committee which could not have taken up his case, as it was, on the self-same materials prior to his reaching the age of 55 years." (emphasis added)

The extracts from this judgement reproduced above show that the Supreme Court has held that only a second review on the same facts is violative of rule 16(3) and the instructions issued thereunder. While observing that the question whether the instructions issued by the Government are mandatory or not, did not call for a decison, the Court, nevertheless, observed that some of the instructions may not be mandatory.

13. For example, a question can arise whether a delay of only one day in holding the Review Committee meeting would vitiate proceedings. Obviously, that cannot be the case. The instructions do not spell out that if the Review Committee Meeting is not held according to the schedule, no meeting may be held at all and the Government forfeits its right to take action under F.R. 56(j).

14. The applicant has no case that he has been singled out for discriminatory treatment. A perusal of the original record produced before us shows that such is not the case. The file No.A-13015/7/86-CC(Admn.III) deals with the review of officers of P&T Accounts and Finance Group 'B' under F.R. 56(j). Prior to the review conducted in the case of the applicant, the Review Committee held a review on 17.2.1987 reviewing the cases of 88 officers. Subsequently, review of 78 officers was initiated on 1.10.1987. This included the name of the applicant also. Shri Dhirendera Singh, Joint Secretary, Ministry of Defence who was the other member of the Review Committee, perused the records of the officers on 31.10.1987 and observed that the applicant was punished during 1981 on a charge of presentation of false TA claims in respect of LTC, which was a serious matter. As the record was not complete, he asked it to be put up to him again after doing the needful. He then opined on 19.4.1988 that but for the charge of claiming false TA for which he was punished and the remark in the 1984 report about doubts on his integrity,

he should be graded 'good' and he could clearly have been allowed to continue. He, therefore, suggested that the case be discussed and also wanted the result of the CBI investigation to be obtained. It is subsequent to this note that the Review Committee met on 20.5.1988, as mentioned above. Thus, it is clear that this was the first review of the applicant's case and that it was not taken in isolation and there was no hostile discrimination. His case was taken up alongwith a large number of persons, many of whom had dates of birth earlier than that of the applicant, i.e., 15.5.1935, meaning thereby that they were still older than the applicant. Therefore, in the absence of hostile discrimination against the applicant, the mere fact that the Review Committee met about three years later than due cannot vitiate their proceedings. No prejudice has been caused to the applicant. As a matter of fact, he has been allowed to continue three years more than if the same decision had been taken in 1985 itself when he attained the age of 50 years. We, therefore, do not find any merit in this claim.

15. It was then contended by the learned counsel for the applicant that as the review has taken place at the age of 53, it should be presumed that he was allowed to continue in service when his case was considered at the age of 50 and that, therefore, the Review Committee should not have relied on any matter or event which had taken place before 15.5.1985 when he became 50 years old and

that the review should have been based only on the reports of the three years subsequent to 1985.

16. We are unable to agree. Such a prayer would be legitimate if the review conducted on 23.5.1988 was a second review. This is not the case, as is borne out by the perusal of the record. It is the first review and, therefore, the respondents were entitled to peruse the entire record of the applicant.

17. The other important plea taken by the learned counsel for the applicant is that in the circumstances of this case, the order under F.R. 56 (j) visits the applicant with a double punishment on the same ground viz. the presentation of false TA claims, and, that, therefore, the order should be quashed. It is also contended that the action taken amounts to a punishment and not having been inflicted in accordance with the provisions of Article 311 (2), it is necessary to strike it down.

18. In reply, the learned counsel for the respondents contended that any order passed under F.R. 56 (j) cannot be construed to be a punishment and, therefore, neither the question of double jeopardy nor violation of Article 311 (2) arises. He relied on the judgement of the Supreme Court in the case of <u>Baikuntha Nath Dass (AIR 1992 SC 1021)</u> for this proposition.

19. The learned counsel for the applicant, however, strongly rebutted this contention. He submitted that it is not universally true that action taken under F.R. 56(j) cannot be construed as a punishment. It depends on the circumstances

of each case. He has drawn our attention to the decision of the Supreme Court in Union of India Vs. Shaikh Ali (ATR 1989 (12) SC 655). That was a case where the order under F.R. 56(j) was set aside holding that the order of pre-mature retirement was punitive in nature, having been passed in flagrant violation of the principles of natural justice. He also points out that the judgement in Baikuntha Nath Dass (supra) does not refer to this important decision.

20. We have carefully considered this submission. Shaikh Ali joined the Nizam State Railway Service in 1953 and ultimately, he secured a promotion as an Assistant Yard Master by the order datd 22.8.84 and was further promoted as Yard master by the order dated 31.1.1986. He permitted the staff, late in the night i.e. of 23-2.86 to have their meals and then return for duty. As they did not return in time, he went towards their cabin when he was accosted by the Divisional Safety Officer A. Bharat Bhushan, who enquired of his identity. As Shaikh Ali did not know this officer, he asked him about his identity before disclosing his own identity. The Divisional Safety Officer was annoyed at this behaviour of Shaikh Ali and threatened him with dire consequences. Immediately thereafter, on 19.3.1986, Shaikh Ali was suspended from 4.3.1986. He was not chargesheeted and no enquiry was held against him, but he was prematurely retired on 25.4.1986. It is in these circumstances that the Supreme Court held that the immediate and proximate reason for the order

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of compulsory retirement was the incident of 23.2.86. But for that incident, the Review Committee would not have examined the case of Shaikh Ali at all. The Court further observed that if the record of Shaikh Ali was so bad, he would not have promoted as Assistant Yard Master on 22.8.1984 and as Yard Master on 31.1.1986. Hence, it was held that the impugned order was punitive in nature and was set aside. Obviously, the judgement is distinguishable. That was a case where F.R. 56(j) was resorted to as a short cut to holding a D.E. on a specific act of misconduct. In the present case, admittedly, the decision of the Review Committee is based on the fact that the applicant was penalised in 1985 in respect of a charge alleging lack of integrity. There was, therefore, no question of holding any further D.E. on that account and the order under F.R. 56(j) cannot be treated as punishment. Therefore, Shaikh Ali's case does not help the applicant.

21. The other limb of the argument that reliance on the same ground as in the D.E. for the alleged lack of integrity, would amount to double punishment does not have any substance in view of what we have observed above. Therefore, violation of Article 311 (2) does not arise.

22. The learned counsel for the applicant attacks the impugned order on another ground viz. that it violates the basic instructions contained in Annexure-7 OM dated 1.4.1978. Paragraph-5 under the Heading "II. Criteria, Procedure and Guidelines" mandates that the rules relating to premature

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retirement should not be used to retire a Government servant on grounds of specific acts of misconduct as a short cut to initiate formal disciplinary proceedings. He contends that by relying on the circumstances relating to the claiming of false T.A., the respondents have indeed violated this mandate. In other words, his submission is that a charge should have been framed that in the light of the penalty imposed in 1985, he is found to be lacking in integrity and, therefore, a disciplinary proceeding should have been held. It is only in that proceedings that the penalty of compulsory retirement could have been awarded to him. Instead, F.R. 56(j) has been invoked as a short cut. He further contends that when the Annexure A-5 order dated 19.9.1985 imposing penalty was issued, the applicant had already attained the age of 50 years. It was then open to the disciplinary authority to impose either the punishment of compulsory retirement in respect of the charges or having found him guilty of lacking in integrity, the disciplinary authority could, in addition, have initiated steps to review his case in time and retire him compulsorily. Not having done so, it is contended that the decision now taken is in violation of the aforesaid instructions.

23. We have carefully considered this matter. The initiation of any further disciplinary proceedings on the basis of charges in respect of which penalty has already been imposed would be thoroughly illegal. In our view, the learned counsel for the applicant has misconstrued the instructions of the Government

of India in the Annexure A-7 OM referred to by him. Those instructions would apply squarely to the case of Shaikh Ali (supra) as observed by the Supreme Court. In that case the respondents were trying to short cut a disciplinary proceedings by resorting to F.R. 56(j).

24. There is one more consideration. As far as the disciplinary authority is concerned, he was considering the matter purely in the light of the CCS (CCA) Rules, 1965. The question before him was not whether the applicant should be retained in service beyond the age of 50 years or he should be prematurely retired under FR 56(j). The question before him was only that what penalty should be imposed in the D.E. where the charge of misconduct and failing to maintain absolute integrity had been proved. That apart, a totally different procedure is prescribed for premature retirement under F.R. 56(j). Merely because a person is punished, his case cannot be taken up for consideration in isolation. It is to be taken up for consideration alongwith all other similar cases, as has been done in the present case. Therefore, the mere fact that the disciplinary authority did not consider the question will not vitiate the impugned order which has been passed under F.R. 56(j).

25. Another point raised by the learned counsel is that, in any case, as nothing adverse has been found in his character roll, the respondents were not correct in relying on the penalty imposed in 1985 to take action under F.R. 56(j). It is contended

that the character roll is the most imprtant document for an assessment of the service record of a Government employee for taking action under F.R. 56(j). The only remark in his character roll is for the period from 1.4.1984 to 17.11.1984 when against the column 2(6) relating to integrity the reporting officer observed that a separate sheet was attached. The separate sheet contained the following note:-

> "Regarding integrity it is pointed out that lot of fraudulent cash receipts in TRA cash counter as well as fraudulent in PRA sub ledger/kalamzoo pertaining to his period have been detected and still under investigation. The case has been reported to CO, who in turn has reported to CBI and the case is under investigation. It is suspected that the officer was involved in the racket."

26. In our view, this submission is without any foundation. No doubt, the character roll of an official is the most important record which contains in a nut-shell an assessment about his worth. That does not mean that there are no other records which reflect on the traits of an officer. The records relating to disciplinary proceedings are thus relevant because they establish what kind of charge was successfully proved against the official. In the present case, the charge proved in 1985 related to lack of integrity. It is not for this Bench to consider whether this was a sufficient ground to take action under F.R. 56(j). In other words, it is not for us to consider whether the applicant should have branded as a person lacking in integrity by the Review Committee on the basis of this antecedent. That is a matter which is to be left to the judgement of the executive.

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27. One point raised by the learned counsel for the applicant is that it was improper for the Review Committee to take into account the penalty imposed in 1985 when an appeal against the order of the disciplinary authority was still pending. Admittedly, the order on appeal was passed only on 27.5.1988 (Annexure A-6), i.e., a few days after the Review Committee met on 23.5.1988. He also raised the similar issue in regard to the criminal case which was decided on 6.5.1988 but the appeal against which judgement was pending. In so far as the judgement in the criminal case is concerned, it was not considered by the Review Committee. Therefore, the only question relates to the pendency of the appeal in the D.E. case. This plea of the applicant has to be negated on the basis of the findings of the Supreme Court in paragraphs 29 and 31 of their judgement in Baikuntha Nath Dass's (supra) case. It is clearly held that action under F.R. 56(j) need not wait the disposal or final disposal of representations against adverse remarks. That would also apply to an appeal against an order of penalty in a D.E. case. In fact, even earlier, a Constitution Bench of the Supreme Court has held so in U.P. State Vs. Mohd. Nooh (AIR 1958 SC 86). It was held that there was nothing in Indian law to warrant a suggestion that the decree or the order of the Court or Tribunal of the first instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy, but, until it is reversed or modified,

it remains effective. If the appeal preferred by the applicant against the order in DE had been allowed, that would have been an adequate ground to quash the impugned order in the present case. However, the mere pendency of the appeal does not prevent the Review Committee or the Government from taking action ~~action~~ based on the penalty imposed in the D.E.

28. The next question relates to the disposal of the applicant's representation. It is contended by the respondents that the representation for review dated 29.6.1988 was not received by them. Even otherwise, that representation has been filed much beyond time. It is pointed out that under the scheme, a representation may be made within three weeks from the date of service of the order of premature retirement. It is stated that the applicant has been served with this order on 28.5.1985 itself and his representation is belated. We are of the view that in so far as the representation is concerned, it is clear that the applicant had made a belated representation dated 29.6.1988. It was open to the respondents to consider the representation, but, they have not done so on the ground of the representation being belated. This will not render the impugned order invalid.

29. For the aforesaid reasons, we find no merit in this application. It is accordingly dismissed.

30. There shall be no order as to costs.

(B.S. HEGDE) 24/12/93
Member(J)

(N.V. KRISHNAN)
Vice-Chairman(A)

San.