IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

1. O.A. No. 814/89
2. O.T.A. No. 915/89
3. O.A. 1531/89

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DATE OF DECISION 9.8.1990.

Shri Jagdish Chander Chug ~~Petitioner~~ Applicant

Applicant in person Advocate for the Petitioner(s)

Versus

Secretary, Ministry/Deptt. of ~~Science & Others~~ Respondent

Shri A.S. Dhupia Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicant, while working as Scientist E-I in Central Mining Research Station, Dhanbad, was retired from service w.e.f. 1.5.1986 on attaining the age of 50 years under the provisions of F.R.56(j). In OA-814/89, he has prayed for expunging the adverse remarks in his confidential report for the period ending 31.3.1981. In OA-915/89, he has challenged the validity of the order of compulsory retirement. He has not mentioned any particular order issued by the respondents against which OA-1531/89 has been filed; it is an amalgam of the grievances set out in his earlier applications.

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2. The applicant had filed OA-1957/88 praying for grant of all retirement dues such as pension and D.C.R.G., for declaring his compulsory retirement as illegal and for taking him back to service and for giving him promotion to higher posts, revision of pay, etc., as if he had not been compulsorily retired. The Tribunal disposed of the said application by judgement dated 16.11.1988 with the following orders:-

"a) The applicant is directed to sign the papers now made available to him by Shri H.C. Singh.

b) On his doing so, Shri H.C. Singh representing respondent No.3 will hand over the cheques of arrears to the applicant.

c) If the applicant is not satisfied with the calculation of the amounts due to him or of the deduction made therefrom, he is at liberty to move a fresh application before this Tribunal.

d) The respondents will fix the applicant's pay in the revised pay scale from 1.4.1986 as expeditiously as possible but not later than three months from today and to pay the arrears due to the applicant thereupon within one month thereafter.

e) We leave the question of legality of the applicant's compulsory retirement open since it has not been pressed before us.

f) Respondents will pay simple interest at 10% for one year on the net amount of gratuity payable to the applicant after deductions. Interest on the outstanding balance in the applicant's Provident Fund account should be paid at 12% per annum compounded with yearly rests."

3. As the issues raised in these three applications are interconnected and the parties are the same, it is proposed to deal with them in a common judgement.

4. Before considering the merits of the claims put forward in these applications, it may be stated, at the outset, that there is avoidable prolixity in the

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pleadings, partly due to the fact that the applicant did not have the benefit of a counsel. However, when the applications were finally heard on 18.7.1990, both parties pinpointed on the main issues only.

OA-814/89

5. The applicant joined the Central Mining Research Station, Dhanbad, in 1963 as Senior Scientific Officer (now known as Scientist B). He was promoted/appointed on 1.12.1965 as Scientist C. He was promoted as Scientist E w.e.f. 1.12.1977, after having put in about 17 years' service. His field of specialisation is degasification of coal seams. In September, 1980, he wrote to the D.G., C.S.I.R. stating that he was being kept idle because Dr. B. Singh, the Director of C.M.R.S. did not provide him work facilities. He had alleged bias on the part of Dr. Singh. On 7.8.1981, Shri Singh conveyed to the applicant the following remarks mentioned in his confidential report for the period ending 31.3.1981:-

"

Item No. of the C.R.		Remarks
11. Has he a sense of responsibility?	...	His sense of responsibility has declined during the year.
12. Is he suitable by character and ability to be placed in charge of (Junior) members of the staff?		Not at this present state of mind.
18. Has he made successful efforts to remedy and defects previously pointed out to him?	...	No.
20. Comment generally on the way in which he has carried out his various duties and a general appreciation in his work during the year. (This should include an estimate of his personality, character and abilities, his relations with his fellow officers and the general public and an opinion on any point specially required at any particular time e.g. fitness to pass efficiency bar).		After I signed the two new Projects for sanction on 20.5.80, I had explored tried and tried all avenues to cooperate with and assist him. I lost communication with him because he suddenly discovered that I was not his Controlling Officer and refused to discuss with me verbally or reply to my letters. I presume certain

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situation in which he has not used his discretion well upset him. I leave the matter to the Reviewing Officer to comment upon, since he has not carried out any work in my Discipline & as I am not aware of any other work, he might have carried out on his own add on which he never communicated to me, it is not possible for me to comment on his work. He had not only refused to work on the Project in which his name was included but also refused to receive any letter from me in this connection.

I wish I had known any method by which his cooperation, collaboration or participation could be won or effected.

The Observations of: Reviewing Officer.

Mr. J.C. Chugh should have shown more tact and responsibility before directly writing a controversial letter to an outside party (Letter No.V/77/JCC/1095 dt. 15th June 1980 written by Shri J.C. Chugh to Sri S.P. Verma, General Manager, Kathara Area, Central Coalfields Ltd. P.O. Kathara, Giridih.

It is made clear to Shri J.C. Chugh that the object of communicating such remarks to him is to indicate to him the areas in which his work and conduct need improvement so that he may make efforts to rectify the same in future."

6. The applicant submitted representations for expunging the above adverse remarks. The matter was considered by the Director and it was decided not to expunge the same. The Director informed the applicant accordingly, vide his letter dated 27.8.1981 at page 30 of the paper-book in OA-814/89. The said OA was filed on 23.3.1989.

7. The applicant has not filed an application for condoning the delay in filing the application. Nor has he otherwise explained the said delay. In view of this, the respondents have contended that the application is barred by limitation under the provisions of Section 21 of the Administrative Tribunals Act, 1985.

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8. We see force and merit in the contention of the respondents. The grievance of the applicant in OA-814/89 relates to the period prior to 1.11.1982. In view of this, the application is barred by limitation under the provisions of Section 21 of the Administrative Tribunals Act, 1985. On merits also, the applicant has not established a prima facie case. The correspondence exchanged between the applicant and the respondents during the relevant period indicates that he was unwilling to accept Dr. Ghosh as his Controlling Officer. He has not produced any evidence of having done any research or R & D work since 1980. He has also not substantiated the allegation of mala fides against the Director of C.M.R.S.

9. On 23/28.10.1985, the Director informed the applicant that in case he was not interested to take up any assignment in C.M.R.S.unconditionally, he was requested to apply for voluntary retirement.

10. In view of the foregoing, we see no merit in OA-814/89.

OA-915/89

11. In this application, the applicant has challenged the validity of his retirement under F.R.56(j) with effect from 1.5.1986, vide impugned orders dated 1.11.85 and 21.4.86. The aforesaid orders were issued by the Director of C.M.R.S. The applicant had submitted an application on 21.1.1986 seeking permission for his voluntary retirement under F.R.56(k),which was rejected on 22.1.1986 as it contained certain allegations against C.M.R.S. authorities.

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12. The respondents have raised the preliminary objection that OA-915/89 is barred by limitation. The applicant filed representations on 11.4.1986 and 10.5.1986, which were rejected by letter dated 6.8.1986. The application was filed on 20.2.1989.

13. While the applicant has alleged that the imougned orders of compulsory retirement are arbitrary and tainted by mala fides, the respondents have denied the same and have contended that they have been passed after taking into account his overall performance and his confidential reports upto the year ending 31.3.1985. The respondents have also stated that they have followed the proper procedure laid down on the subject.

14. We have gone through the records, including the confidential reports of the applicant which were made available to us during the hearing, and have heard the applicant and the learned counsel for the respondents. At the outset, we reject the preliminary objection raised by the respondents as, in our opinion, the claims relating to pension and retirement benefits are continuing in nature.

15. In the note of the Director, C.M.R.S. dated 1.11.1985, the following assessment has been made about the applicant:-

> "Further, I find that quite a number of his representations filed at CMRS, are still awaiting disposal either at my table or at your end. It is, indeed, very difficult to deal with the volume of representations and wasteful correspondence. Sri Chugh has fallen into habit of filing on baseless, false, frivolous and imaginary grounds just to hide his own weakness on account of his incapability and inefficiency to do any R/D work either on his own initiative or on being assigned by me/his Discipline Head. All of my efforts to make him work have failed and I am now fed up with his representations/wasteful correspondence which carry no sense at all. I am unable to spare any more time to mend him and also to deal with the

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volume of representations being filed, frequently, by him. I find him incorrigible and it is of no use to waste any more time to make him work. He is a gone case and it is of no use to carry this dead load at the Public expense. Public interest and Public good are of supreme importance and I shall be failing in my duty to the Public if I allow continuance of Sri Chugh in CMRS service any more merely on sentimental feelings of the likely hardship which might be caused to his family by effecting his retirement from CMRS service in the Public interest. But individual interests of a dead load like Sri Chugh cannot outweigh the public interest."

16. The undisputed factual position is that since 1980, the applicant has not done any R&D work, for some reason or the other. In a sense, he had outlived his utility in the C.M.R.S.

17. As already stated above in paras 9 and 11, the Director, C.M.R.S. had informed the applicant that in case he was not interested to take up any assignment in C.M.R.S., he might apply for voluntary retirement. Soon thereafter, on 21.1.1986, he submitted an application seeking permission for his voluntary retirement under F.R. 56 (k), but the same was rejected, as it contained certain allegations against C.M.R.S. authorities. In the meanwhile, the respondents also initiated action to retire him under F.R.56(j), as is borne out from the note of the Director, C.M.R.S. dated 1.11.1985.

18. The notice submitted by the applicant on 21.1.1986 seeking permission to voluntarily retire from service under F.R.56(k), is not on record. It was, however, submitted pursuant to the remarks made by the Director, C.M.R.S. in his letter dated 23/28.10.1985 that "In case you are not interested to take up any assignment in C.M.R.S. unconditionally, you are hereby requested to apply for voluntary retirement" (vide enclosure at p.27 of the paper-book in OA-814/89). In view of this, the

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question arises whether the action taken by the respondents to compulsorily retire him under F.R.56(j) on the ground that the notice given by him was not in proper form, is legally sustainable.

19. The question whether it is open to the Government to invoke its power to compulsorily retire a government servant under F.R.56(j) after he has given notice of voluntary retirement under F.R.56(k) and during the period of such notice has been considered by this Tribunal in V. Krishnamurthi Vs. Union of India & Others, 1983(3) SLJ (CAT)1, to which both of us are parties. The Tribunal observed that from the strict legal angle, there is no bar to the appropriate authority invoking the power under F.R. 56(j) even in a case where the Government servant has given notice under F.R.56(k), provided that the order passed thereunder could otherwise be sustained on valid grounds.

20. According to the well-settled legal position, the power of judicial review in cases of compulsory retirement under F.R.56(j) is limited to examining whether the authorities concerned proceeded in the matter not only bona fide and in a fair manner but also in accordance with the guidelines laid down by the Government in this regard. As the right conferred by F.R. 56(j) is termed as "absolute" and is to be exercised "in the public interest", the Government have laid down certain guidelines and procedures in this regard in Office Memorandum dated 5.1.1978 and 7.8.1985. The validity of the action taken is to be tested on the touchstone of these instructions.

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21. In the instant case, the applicant had submitted representations dated 11.4.1986 and 10.5.1986 against the impugned orders passed by the respondents. There is nothing on record to indicate that the respondents brought to the notice of the Representation Committee about the service of notice under F.R.56(k) by the applicant and its rejection, mentioned above. This leads to the inference that all relevant facts were not placed before the authority competent to take a decision on his representation.

22. The representations submitted by the applicant were disposed of by a non-speaking order. The order dated 6.8.1986 reads as follows:-

> "Subject:- Representation against the orders of the Director, CMRS, Dhanbad regarding your premature retirement under FR-56(j).
>
> Sir,
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> With reference to your representations dated 11.4.1986 and 10.5.1986 on the above subject, I am directed to inform you that your representations dated 11.4.86 and 10.5.1986 against the decision of the Director, CMRS, Dhabbad regarding your premature retirement w.e.f. 1.5.1986 F.N. under F.R.56(j) have been considered by the appropriate Representation Committee and on the recommendations of the Representation Committee, the DGSIR has upheld the decision taken by the Director, CMRS as communicated to you vide CMRS OM No.3(22)/64-Est/1152 dated 1.11.1985 and No.3(22)/64-Est/102 dated 21.4.1986."

23. The administrative instructions contained in O.M. dated 5.1.1978 provide for a post-decisional hearing which is not an empty formality. The aforesaid order is not a speaking order. The respondents did not place before us the relevant records to show that the various contentions raised by the applicant in his representation

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had been considered by the Representation Committee. Since decision taken by the respondents on the representation is also subject to judicial review, the contemporary records dealing with the representation are necessary in the absence of a speaking order. Failure to produce the same, vitiates the impugned orders of compulsory retirement.

24. We are, therefore, of the opinion that the impugned orders of compulsory retirement in the instant case are not legally sustainable. At the same time, we are also of the view that no useful purpose would be served if we were to order his reinstatement in service at this stage. The interests of justice and fairplay will be met if the applicant were to be deemed to have retired from service of C.M.R.S. on 21.4.1986, i.e., after the expiry of three months from the date of his notice for voluntary retirement under F.R.56(k). He would be entitled to the benefit of addition to the qualifying years of service in accordance with the provisions of Rule 488(1) of the Central Civil Services (Pension) Rules, 1972 and other benefits to which an officer retiring pursuant to the provisions of FR56(k) would be entitled. His pension and other retirement benefits also should be recomputed on that basis. We order and direct accordingly.

OA-1531/89

25. As the applicant has not impugned any specific orders in this application, it is not necessary to pass any orders thereon.

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Conclusion

26. During the hearing of these applications, the applicant submitted that his pension has not been correctly computed, that the respondents have not released to him all the outstanding dues,and that they have wrongly withheld amounts towards House Rent, Stores which have not been handed over and books which have not been returned by him.

27. The applicant has not handed over charge. He stated during the course of arguments that he has been staying in Gurgaon, Haryana since the impugned orders of compulsory retirement were issued, that he is leading a retired life and not pursuing any gainful pursuits, that he has not taken away with him any office stores or equipment , or books,and that withholding of amounts due to him has caused hardship and harassment to him. The counsel for the respondents stated that the applicant will be given the necessary T.A., etc. to visit Dhanbad for settling all outstanding matters and that they are willing to sort them out with him during such visit. We commend the positive response of the respondents in this regard. In this context, we would, however, like to observe that, in the interest of justice and fairplay, the applicant should be absolved of liabilities in respect of the Stores and equipment if they are handed over to the respondents, in "as is where is" condition,and that the respondents shall write off the amounts towards the books not accounted for by the applicant. This practice is being followed in similar cases, despite the archaic

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rules to the contrary in the Statute Book. The applicant should also be charged the normal licence fee for the accommodation provided to him for the period of his stay at such accommodation.

28. The applications are, therefore, disposed of with the following orders and directions:-

I. OA-814/89 and OA-1531/89

(a) We hold that OA-814/89 is not maintainable as the same is barred by limitation in view of the provisions of Section 21 of the Administrative Tribunals Act,1985.

(b) No orders are passed on OA-1531/89 wherein the applicant has not impugned any specific orders passed by the respondents.

II. OA-915/89

(a) We set aside and quash the impugned orders dated 1.11.1985 and 21.4.1986 and direct that the applicant shall be deemed to have retired under FR 56(k) from the service as Scientist E-I in C.M.R.S. on 21.4.1986. He would be entitled to the benefit of addition to the qualifying years of service in accordance with the provisions of Rule 48(1) of the Central Civil Service (Pension) Rules, 1972 and all other benefits to which an officer retiring pursuant to the provisions of FR 56(k) would be entitled as on 21.4.1986. We further hold that he would be entitled to all the benefits given to employees retiring after 1.1.1986, including the allowances for terminal journey from Dhanbad to his home town. His pension and other retirement benefits should be recomputed on that basis and released to him.

(b) The applicant shall hand over charge of the Stores and equipment standing in his name on "as is, where is" basis. He will not be liable for damage, deterioration or loss of such stores and equipment. The

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respondents shall write off the amounts towards the library books not accounted for by him. The respondents shall give a reasonable amount to the applicant as advance towards T.A. for visiting Dhanbad for this purpose.

(c) The respondents shall charge only normal licence fee from the applicant for the accommodation given to him for the period of his stay in that accommodation.

(d) The respondents shall comply with the aforesaid directions within a period of three months from the date of communication of this order. The outstanding amounts due to the applicant should be released by cheque without insisting on any unnecessary formalities. The applicant is also directed to visit Dhanbad on a mutually convenient date within one month from the date of communication of this order.

(e) The parties will bear their own costs.

Let a copy of this order be placed in all the three case files.

9/8/90
(D.K. Chakravorty)
Administrative Member

9/8/90
(P.K. Kartha)
Vice-Chairman(Judl.)