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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-602/87

Date: 22-05-1989.

Shri V. Krishnamurthi Applicant

Versus :

Union of India & Another Respondents

For the Applicant Ms. Shyamla Pappu, Advocate
with Shri A.K. Agarwal,
Counsel.

For the Respondents Shri J.K. Sibal, ^{Senior} Advocate
with Medha Mungee, Counsel.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri 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*

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

The question arising for consideration in the present application is whether it is open to the Government to invoke its power to compulsorily retire a Government servant under F.R.56(j) after he gives notice of voluntary retirement under F.R. 56(k) and during the period of such notice. There appears to be no authoritative judicial pronouncement directly on the point and this case is the first of its kind. If the answer to the above question is in the affirmative, the further question arises whether there is any legal infirmity in the impugned order of compulsory retirement dated 18.6.1986 passed by the respondents in the instant case.

2. The applicant, who filed this application under Section 19 of the Administrative Tribunals Act, 1985, began his career in the Income Tax Department as Income Tax

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Officer in 1957. Since then, he has worked in various capacities and earned several promotions, the last one being to the post of Commissioner, Income Tax Level I in March, 1985.

3. On 12.5.1986, he sent a notice to the competent authority under F.R. 56(k) seeking voluntary retirement. The said notice reads as follows:-

".....Sub:- Notice under Sec. 56(k) of Fundamental Rules, read with Rule 48-A of Central Government Service Pension Rules.

I joined the Government Service as Auditor in the office of the Accountant General Bangalore on 1.6.1955. On the basis of the Competitive Examination for Central Services held on 1955, I joined the Indian Revenue Service on 31.7.1957 (AN (Income Tax). At present I am working as Commissioner of Income Tax O.S. Dat Nagpur. I was born on 20.8.1931.

I have completed more than twenty years' service and also crossed 50 years in age. Of late, I have been keeping indifferent health. Hence I seek voluntary retirement from Government Service.

This letter may be treated as a notice of retirement under Rule 48-A of the C.C.S. Pension Rules and Rule 56(k) of Fundamental Rules, giving three months' notice. Benefit of Rule 48-B of C.C.S. Pension Rules may be given."

4. On 14.5.1986, the said notice was received by the respondents. On 21.6.1985, the applicant, along with a few others, was posted as Officer on Special Duty at the National Academy of Direct Taxes at Nagpur. While he was posted at Nagpur, the respondents issued the impugned order dated 18.6.1986 whereby he was compulsorily retired from service.

5. The impugned order dated 18th June, 1986 reads as follows:-

"ORDER"

WHEREAS the President is of the opinion that it is in the public interest to do so;

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NOW, THEREFORE, in exercise of the powers conferred by clause (j) of Rule 56 of the Fundamental Rules the President hereby retired Shri V. Krishnamurthy, CIT (OSD), NADT, Nagpur with immediate effect, he having already attained the age of 50 years on the 20.8.1981. The President also directs that Shri V. Krishnamurthy shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate of which he was drawing them immediately before his retirement."

6. The applicant has contended that the respondents had no right to invoke the power under F.R.56(j) as he had already sought voluntary retirement under F.R.56(k), that the invocation of that power by them was with a view to depriving him of substantial monetary benefits which would have otherwise accrued to him and that it amounted to casting a stigma on him.

7. No officer posted as O.S.D. at the Nagpur Academy was taken back as Commissioner of Income Tax. Some of them were compulsorily retired under F.R.56(j) while some others had to retire under F.R. 56(k). Their posting at Nagpur received wide ^{and a} adverse publicity in the national press.

8. The applicant has alleged that the impugned order of compulsory retirement is mala fide and that it is not based on any material or proven facts. He has further alleged that the impugned order had been passed without affording him reasonable opportunity to explain any possible conduct or behaviour of his on which the Govt. have come to this drastic conclusion. The suppression of the fact that ² he had opted for voluntary

retirement under F.R. 56(k) and instead the giving of notice under F.R. 56(j), is alleged to be an instance of mala fides.

9. The respondents have contended that the retirement of a Government servant under F.R.56(j) does not result in any civil consequences. Subsequent to the promotion of the applicant to the post of Commissioner of Income-Tax Level I, certain material came to the notice of the competent authorities which was not available earlier and which justified the inference that it would be in public interest to retire him from service under F.R. 56(j). The retirement was ordered on the basis of objective consideration of the records of the applicant by the procedure prescribed by the respondents.

10. We have carefully gone through the records of the case including the written submissions filed after the conclusion of the hearing and have heard the learned counsel for both the parties at length.

11. The first question is whether there is any legal infirmity in invoking the power under F.R.56(j) after the applicant had given his notice for voluntary retirement pursuant to the provisions of F.R.56(k) and during the pendency of the notice period. In the absence of any authoritative judicial pronouncement on this point, we have to consider it on first principles.

12. F.R.56(j), insofar as it is relevant for our present purpose, reads as follows:-

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

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity, or in a Group 'C' post or service in

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a substantive capacity, but officiating in a Group 'A' or Group 'B' post or service and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years."

13. F.R. 56(k), insofar as it is relevant in the present context, reads as follows:-

"(k) (1) Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is in Group 'A' or Group 'B' service or post (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years:

Provided that:

- (a) nothing in this clause shall apply to a Government servant referred to in clause (e) who entered Government service on or before 23rd July, 1966;
- (b) nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Cooperation (I.T.E.C.) Programme of the Ministry of External Affairs and other aid Programme, (ii) is posted abroad in a foreign based office of a Ministry/ Department and (iii) goes on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year; and

(c) it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause."

14. The Office Memorandum issued by the Department of Personnel on 5.1.1978, refers to the relevant rules regarding premature retirement of Government servants. It has been stated, inter alia, in para. I(5) of the said O.M. that the rules confer "reciprocal right" on the Government servant to seek voluntary retirement after he has attained the age of 50/55 years or has completed 30 years of service, as the case may be.

15. In our opinion, F.R. 56(j) and (k) do not operate in the same field and are not two sides of the same coin. The provisions of F.R. 56 (j) are invoked in "public interest" which expression is of a very wide amplitude. Not so in the case of F.R. 56 (k) which is invoked by a Government servant purely personal reasons.

16. From the strict legal angle, we are of the opinion that 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. The contention raised by the applicant in this regard is not, therefore, tenable.

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17. The question arises whether the impugned order issued under F.R. 56 (j) is vitiated by legal infirmities, as alleged by the applicant. In this context, it is necessary to examine the recommendations made by the Screening Committee, the Review Committee and the Senior Selection Board in the instant case.

18. In July, 1985, a Screening Committee consisting of senior officers of the respondents, examined his case along with the cases of other Commissioners of Income Tax Level I with a view to considering whether provisions of F.R. 56(j) were applicable in their cases. The Committee, while recommending immediate retirement of certain officers, further decided that the material available in the case of two officers - Shri A.K. Ghatak and the applicant - should

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be examined further before taking a decision.

19. The Screening Committee met again on 12th February, 1986. The salient points contained in the Committee's Report dated 12th February, 1986 are the following:-

(i) The Annual Confidential Reports of the applicant show that for 1982-83 his performance was rated as "Good" while for 1983-84, was rated as "Very Good". However, the same reporting officer who had rated his performance as very good for 1983-84 has rated his performance for 1984-85 as just good, with a further observation that "nothing more can be said about him". The reviewing Officer has added some observations of his own, but has not disagreed with the overall assessment made by the reporting officer for 1984-85. It would therefore, appear that there has been a deterioration in Shri Krishnamoorthi's performance during 1984-85, compared to that for 1983-84. A Commissioner of Income-tax who is just good is hardly in a position to discharge effectively the onerous responsibilities of his office.

(ii) An examination of several cases dealt with by Shri Krishnamoorthi as C.I.T. (Appeals) Bombay reveals enough material to cast a serious doubt on his integrity and also shows that the quality of his performance was poor, leading to the inference that he is ineffective as C.I.T. (Appeals). *Or*

(iii) The report refers to the hearing by the applicant in August, 1984 of Appeals in Income Tax cases of Shri Rasik Lal P. Garodia and five other members of Garodia family for the assessment year 1980-81 and passing of orders by him on the same day. The report also refers to three specific cases (M/s Sainath Metallic Yarn Industries, Bombay, P. Venkateshwara Rao, P. Suba Rao and Parasmal V. Jain) in which he is alleged to have disposed of appeals in his capacity as C.I.T. (Appeals) and conferred undue favours on the assessees concerned and that his performance was not up to the mark. The case of Sainath Metallic Yarn Industries was heard by the applicant in January, 1985, that of Venkateshwara Rao and P. Suba Rao in September, 1984 and Parasmal Jain in October, 1984.

(iv) The applicant was alleged to have demanded a bribe of Rs.10,000/- for allowing the appeal of one Shri A.S.D. Aguiar of Bombay against the order of the Assistant Controller of Estate Duty.

(v) On an examination of the above case, the Screening Committee came to the following conclusion:-

"The above discussion shows that several cases have been decided by Shri Krishnamoorthi as C.I.T. (Appeals) in which he has clearly conferred undue favours on the assessees concerned. In the case dealt with by him as Controller of Estate Duty (Appeals) he appears to have acted with a dishonest motive and has also revealed himself as incompetent in handling even simple cases of appeals. He has therefore been revealed as an officer of doubtful integrity. In addition, his handling of certain matters shows that he is an incompetent officer and has thus ceased to be effective. Taking the totality of the circumstances into account, the Committee is of the view that Shri Krishnamoorthi may be retired in the public interest, under the provisions of Fundamental Rule 56(j)."

20. During the final hearing of the case, the applicant produced before us the orders passed by the Income Tax Appellate Tribunal on the appeals preferred by the Department in three cases referred to by the Screening Committee so as to indicate that the Tribunal upheld the action taken by him as C.I.T. (Appeals). (Vide I.T.A.T.'s Order dated 10th November, 1988 in the case of M/s Sainath Metallic Yarn Industries; ITAT's order dated 14.7.1988 in the case of P. Venkateshwar Rao, P. Suba Rao; and ITAT's Order dated 21.4.1988 in the case of Parasnath V.S. Jain). He also gave his explanation in regard to all these alleged acts of misconduct. He had no occasion or opportunity to give his explanation earlier as he had not been shown the material placed before the Screening Committee earlier and he came to know about them only after the respondents gave him a copy of the report of the Committee pursuant to our directions after the application had been filed.

21. On 7.3.1986, a Review Committee consisting of senior officers, considered the case of the applicant and of Shri A.K. Ghatak. That Committee concurred in the recommendations of the Screening Committee with the

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following observations:-

"..... The Review Committee has carefully examined the minutes of the Screening Committee and the material in support of these recommendations including the ACRs of these officers. After a careful consideration of the whole matter the Review Committee concurs in the recommendations of the Screening Committee to the effect that -

- 1) Shri A.K. Ghatak, CIT, Level I, may be retired on ground of doubtful integrity, and
- 2) Shri V. Krishnamoorthi, CIT, Level I, may be retired on grounds of doubtful integrity and ineffectiveness."

22. The case was thereafter considered by the Senior Selection Board. The recommendations of the Selection Board, along with the recommendations of the Screening Committee and the Review Committee, were considered by the Appointments Committee of the Cabinet and approved by it.

23. We are conscious of the fact that the Tribunal cannot sit in appeal or review over the recommendations made by the Screening Committee, the Review Committee and the Senior Selection Board and decision taken by the Appointments Committee of the Cabinet. 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

* The learned counsel of respondents relied upon a large number of rulings of the Supreme Court : Col. J.N. Sinha's case, 1970 (2) SCC 450; Butail's case 1970 (2) SCC 876; M.R. Singh V. Chief Minister, Manipur, 1977 (1) SLR 234; Baldev Raj Chadda's case, 1980 (3) SLR 1, etc. The learned counsel of the applicant relied upon the judgement delivered by this Tribunal in A.K. Ghatak's case, OA-102/87 dated 19.1.89 wherein all the relevant rulings have been referred to and discussed.

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 Memoranda dated 5th January, 1978 and 7th August, 1985. The validity of the action taken is to be tested on the touchstone of these instructions and this belongs to the province of judicial review.

24. In our opinion, the impugned order is not legally sustainable due to the following infirmities:-

(i) The notice given by the applicant under F.R. 56(k) on 12th May, 1986 to the President through the Chairman, Central Board of Direct Taxes was acknowledged by Shri M.N. Tiwari, Secretary of the Board on 14th May, 1986. This was a relevant fact to be brought to the notice of the competent authority for consideration. There is nothing to indicate that the respondents brought it to the notice of the Appointments Committee of the Cabinet for its consideration, along with the other material placed before it. The respondents had ample time to do this before the impugned order dated 18th June, 1986 was passed invoking the power
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under F.R.56(j). This *✓* ~~✓~~ that all the
relevant facts were not placed before the
authority competent to take a decision.

(2) On the receipt of the impugned order dated
18th June, 1986, the applicant wrote to the
Chairman, C.B.D.T. on 24.6.1986 as follows:-

"Sub:- Retirement.

Ref.1. My letter addressed to the President
of India, dt. 12.5.1986 acknowledged
by Shri M.N. Tiwari, Secretary on
14.5.1986.

2. F. No. A-38012/31/ADVI A. GOVT.MOF
DOR Dt. 18.6.1986.

I invite your attention to both the references
cited above.

In the first reference I had myself sought
voluntary retirement, giving three months
notice, under rule 48A of CCS Pension Rules
and Rule 56 K of the Fundamental Rules, I
was, therefore, surprised and sad to receive
the second reference retiring me compulsorily
U/s 56 J of F.R. I presume there has been a
communication gap somewhere as a result of
which the order U/s 56(J) has been issued.

Since I have opted to voluntarily retire
U/s 56 (K) this order is a superfluous one.
I presume this is due to oversight.

I am eligible for a few pecuniary benefits
U/s 56 (k) which I have asked for in my letter
of voluntary retirement. I am sure it is not
the intention of the Government to deny such
a small thing to an officer who has served it
for well over thirty-one years.

I request you, therefore, to look into the
matter immediately and take necessary correct-
ive steps."

On 7th July, 1986, the applicant submitted his
representation to the President against the
impugned order. The President's Secretariat
informed the applicant on 17.7.1986 that they
have forwarded the representation to the Secy.,
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Ministry of Finance, Department of Revenue, for appropriate action. There is nothing to indicate that the respondents placed before the Senior Selection Board which met on 10.11.1986 and the Appointments Committee of the Cabinet the fact that the Applicant had submitted a notice under F.R.56(k) dated 12th May, 1986 and his subsequent letter dated 24.6.1986 addressed to the Chairman, CBDT, for their consideration before the representation was rejected on 11th February, 1987. Thus, all the relevant facts were not placed before the competent authority to take a decision on the representation.

(3) Para. 14 of O.M. dated 7th August, 1985 refers to para. II (5) (a) of O.M. dated 5th January, 1978 which lays down that "premature retirement should not be used to retire a government servant on grounds of specific acts of misconduct, as a short cut to initiating formal disciplinary proceedings". Whether criminal prosecution or disciplinary action may be taken or the power under F.R. 56(j) may be invoked in a particular case is for the authority concerned to decide, depending on the facts and circumstances of each case. Criminal prosecution or disciplinary action may be time consuming. The material may not be sufficient to sustain criminal or departmental action but may be indicative of suspected integrity of an officer. These and other like considerations should adequately be brought out in the proposals to be submitted to the competent authority (Appointments Committee of the Cabinet) so as to establish that there was no arbitrariness

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in the action proposed. Rule 16(3) of the All India Services (Death-cum-Retirement benefits) Rules, 1958 corresponds to F.R. 56(j). Para. 14 of O.M. dated 7.8.1985 refers to the following observations made by the Supreme Court in this regard in State of Uttar Pradesh Vs. Chandra Mohan Nigam:-

"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". (Emphasis supplied)

In cases where a choice has to be made between two alternatives, there should be cogent explanation why one alternative was preferred to the other. Such an explanation is necessary in order to show that the action taken was fair and not tainted with arbitrariness. In the instant case, the reports of the Screening Committee and the Review Committee do not give any explanation in this regard. A careful perusal of these reports indicates that these Committees proceeded with the examination of the applicant's case on the erroneous assumption that the only course open before them was to invoke the power under F.R. 56(j).

(4) The report of the Screening Committee deals with the manner in which the applicant dealt with the estate duty case of one Shri Augiar of Bombay in 1983 and with appeals in the income-tax of Shri Rasiklal P. Garodia and five others of Garodia

family, of P. Venkateshwar Rao, P. Suba Rao, of Parasmal V. Jain all in 1984 and of M/s Sainath Metallic Yarn Industries, Bombay in 1985. The allegation against him is that while his handling of some cases was ineffective or inefficient, some others indicated that he is a person of suspected doubtful integrity. The applicant has given his own explanation. He has produced copies of the orders passed by the Income Tax Appellate Tribunal in three cases upholding his findings as C.I.T. (Appeals). In our opinion, the alleged acts are in the nature of specific acts of misconduct, warranting regular disciplinary action in accordance with the C.C.S. (CCA) Rules, 1965.

In regard to the estate duty case of Shri Augiar, the applicant has produced before us documentary evidence of the respondents asking for his explanation and his reply (vide respondents' letter dated 18.10.1984 and his reply dated 14.12.1984). He was, thereafter, promoted as C.I.T. Level I, in March, 1985. The report of the Committee does not refer to these facts which are relevant and pertinent. Thus, the complete facts were not placed before the Screening Committee.

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Leaving aside the material pertaining to Shri Aguiar which is one-sided and incomplete and the three cases where the Income Tax Appellate Tribunal has upheld the findings of the applicant as C.I.T. (Appeals), there was hardly any relevant material before the Screening Committee to form the requisite opinion.

(5) The representation submitted by the applicant on 7.7.1986 was disposed of by a non-speaking order. In his representation, he has raised the following points:-

- (a) There has not been even a single instance of his having been admonished or warned for any lapse on his part in work or conduct throughout his career.
- (b) The procedure for review of cases of premature retirement envisaged in the O.M. dated 5.1.1978 was not followed.
- (c) The impugned order smacks of personal prejudice, bias and victimisation for reasons other than those contained in the rules and regulations.
- (d) The impugned action was unjust, uncalled for and one sided.

None of the above points had been dealt with in the order passed on 11th February, 1988 which reads as follows:-

"MEMORANDUM"

With reference to the representation dated 7.7.86 submitted by Shri V. Krishnamoorthy formerly Commissioner of Income-tax (Officer on Special Duty), National Academy of Direct Taxes, Nagpur against his premature retirement under F.R.56(j), vide Ministry's Order of

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even number dated 18.5.86, he is hereby informed that his representation has been considered by the competent authority but it has not been found possible to accede to the request made therein.

(By order and in the name of the President)

Sd/- K.V. Choudary
Under Secretary to the Govt. of India".

It is true that in case of compulsory retirement under F.R. 56(j) a Government servant is not entitled to a pre-decisional hearing. The administrative instructions contained in the Office Memorandum dated 5th January, 1978, however, provide for a post-decisional hearing which is not an empty formality. In the present case, the reply to the representation 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 had been considered by the Senior Selection Board before recommending ^{or} ~~the~~ the rejection of the same. ~~Similar~~ decision taken by the respondents on this 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 order dated 11.2.1988.

25. In the conspectus of facts and circumstances of the present case, we are of the opinion that the impugned order of compulsory retirement is not legally sustainable. In view of this finding, we do not consider it necessary to

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go into the various other contentions raised by the applicant during the final hearing of the case.

26. We may now come to the question of the reliefs to which the applicant would be entitled. The applicant would have retired from Government service on attaining the age of superannuation on 31st August, 1989, had not the impugned order been passed. No useful purpose would be served if we were to order his reinstatement in service at this stage. In the interest of justice, we, therefore, order and direct as follows:-

(a) The impugned order dated 18.6.1986 is quashed. The applicant should be deemed to have retired from Government service on 11.8.1986, 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 48-B(1) of Central Civil Services (Pension) Rules, 1972 and other benefits to which an officer retiring pursuant to the provisions of F.R.56(k) would be entitled to. His pension also should be recomputed accordingly.

(b) The respondents will be at liberty to take appropriate action for any alleged misconduct of the applicant in accordance with law, if so advised.

(c) The respondents should comply with the above directions within a period of three months from the date of communication of a copy of this judgement.

(d) The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

P. K. Kartha
22/7/89
(P. K. Kartha)
Vice-Chairman (Judl.)