

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-1013/87

Date: 31st March 1989

Shri Ajit Singh Bhatia Applicant

Versus

Union of India & Respondents
Another

For the Applicant Shri S.C. Gupta with
Shri Arvind Gupta, and
Shri N.L. Duggal, Advocates.

For the Respondents Shri P.P. Rao, Advocate
with Shri M.K. Gupta and
Shri S.K. Mehta, Advocates.

CORAM: Hon'ble Shri B.N. Jayasimha, Vice-Chairman (Admn.)
Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.).

1. Whether reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?

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

The applicant, who belonged to the Indian Revenue Service, filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the Union of India represented by the Secretary, Ministry of Finance, Department of Revenue (Respondent No.1), and the Chairman, Central Board of Direct Taxes (Respondent No.2), praying for quashing the impugned order dated 11.9.1986 issued by the respondents whereby he was compulsorily retired in exercise of the powers conferred by clause (j) of Rule 56 of the Fundamental Rules.

2. The impugned order reads as follows:-

"O R D E R

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

NOW, THEREFORE, in exercise of the powers conferred by clause (j) of Rule 56 of the Fundamental Rules the President hereby retires Shri A.S. Bhatia, Officer on Special Duty, National Academy of Direct Taxes, Nagpur with immediate effect, he having already attained

the age of 50 years on the 1st May, 1982. The President also directs that Shri A.S. Bhatia 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." (Vide p.51 of the paper-book).

3. The applicant made a representation against the aforesaid order on 8th October, 1986 (vide pp.52 to 59 of the paper-book) raising numerous points.

4. The aforesaid representation was rejected vide Memorandum dated 14th April, 1987 which reads as follows:-

"MEMORANDUM"

With reference to the representation dated 8.10.1986 submitted by Shri A.S. Bhatia, formerly Officer on Special Duty, National Academy of Direct Taxes, Nagpur against his premature retirement under F.R.56(j) vide Ministry's Order of even number dated 11.9.1986, Shri Bhatia is hereby informed that his aforesaid representation has been carefully considered but the same has been rejected by the President."

(By order and in the name of the President)."

5. The main grounds of attack raised in the application are that the respondents proceeded in the matter in disregard of the procedure prescribed under the relevant administrative instructions, that the action was arbitrary and mala fide, and that it amounted to imposition of punishment without following the procedure prescribed for imposition of such punishment.

6. The respondents have contended in their counter-affidavit that the action taken was bona fide and in accordance with the relevant administrative instructions and that it did not amount to the imposition of punishment.

7. We have gone through the elaborate pleadings in this case and have heard Shri S.C. Gupta, the learned counsel for the applicant and Shri P.P. Rao, the learned counsel for the respondents, at length. The learned counsel

have cited a catena of decisions of the Supreme Court and the judgements delivered by the Tribunal.* The legal position in regard to compulsory retirement under FR-56(j) is well settled. The appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. That authority should form the opinion bona fide. The opinion should not be formed or the decision should not be based on collateral grounds. It should not be an arbitrary decision.

8. The undisputed facts of the case are as follows. After joining the Indian Revenue Service, the applicant has worked as Income Tax Officer, Assistant Commissioner, Income Tax, Commissioner of Income Tax Level II, and Commissioner of Income Tax Level I, during the period from January, 1955 to February, 1984. He took over as

* Cases relied upon by the learned counsel for the Applicant:-

1. A.K. Ghatak's case dated 19.1.1989; (2) M.T. Keshava Iyenger Vs. Govt. of India, Miny. of Finance (Dept. of Revenue, A.T.R. 1988(2) CAT 560; (3) Brij Mohan Singh Chopra's case, 1987 (3) A.T.C. 496; (4) Kuldip Puri Vs. U.O.I., 1987(4) A.T.C. 240; (5) Dr. Pankaj Sharma's case, 1987 (4) A.T.C. 2; (6) Mohd. Islam Khan Vs. Military Secy. to the President, 1987 (2) A.T.C. 424; (7) Rangwani's case, 1988 (7) A.T.C. 419; (8) H.K. Mittal Vs. U.O.I., 1987(2) A.T.C. 678; (9) S.P. Francis Nathan Vs. Govt. of Pondicherry, 1987 (6) A.T.C. 729; (10) H.C. Gargi Vs. State of Haryana, 1986 A.T.C. 356; (11) A.K. Saxena Vs. Chief Commissioner, 1988 (6) A.T.C. 320; (12) Tejinder Singh Vs. U.O.I. 1988(6) A.T.C. 666; (13) J.H. Athar Vs. U.O.I., 1987 (4) A.T.C. 310; (14) D.G. Mane Vs. U.O.I., 1987 (4) A.T.C. 444; and (15) A.P. Jain Vs. U.O.I., 1986 ATC 260.

Cases relied upon by the learned counsel for the respondents:-

1. Col. J.N. Sinha's case, 1970 SLR 748;
2. B.M. Chopra's case;
3. Gargi's case; and
4. O.P. Bhandari's case, 1986 (4) SCC 337.

Commissioner of Income Tax, Bombay City IV on 31.5.1985 and he was given charge of Commissioner of Income Tax, Bombay City VIII on 24.6.1985. Two days after that, i.e., on 26th May, 1985, the respondents posted him as Officer on Special Duty in the rank of Commissioner of Income Tax, Level I at the National Academy of Direct Taxes, Nagpur.

9. Eight Commissioners of Income Tax, including the applicant, were transferred more or less at the same time to the Academy at Nagpur. They were transferred to the said Academy purportedly to help, guide and coordinate the conduct of research activities in connection with the rationalisation and simplification of direct tax laws.

10. Out of the officers so transferred to Nagpur, four sought voluntary retirement under F.R.56(k) and four others (S/Shri A.K. Ghatak, Chunni Lal, V. Krishnamurthy, and the applicant) were compulsorily retired under F.R.56(j). Apart from them, many other Commissioners of Income Tax like S/Shri B.G. Gupta, B.K. Kanodia, R.K. Tandon, V.K. Jayaraman and P.P. Singh were also transferred and later retired under F.R.56(j) or F.R.56(k). None was posted back as Commissioner of Income Tax (vide Rejoinder-affidavit, pages 301-302 of the paper-book).

11. According to the applicant, the transfers and postings at the Academy in Nagpur and the subsequent retirement of these officers received wide publicity in the news media. Shri Gupta contended that in the face of these facts, there is a stigma attached to the order of compulsory retirement. He stated that stigma is a question of fact and the effect of it is a question of law.

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(ii) There have been "complaints" to the effect that he had been granting undue favours to assessee in return for monetary and other considerations. On an examination of these matters, the Committee expressed the view that he "is an officer of highly doubtful integrity". Para.5 of the report of the Screening Committee which is relevant, reads as follows:-

"5. There have, however, been complaints from time to time that Shri Bhatia has been granting undue favours to assessee in return for monetary and other considerations. From December, 1981 to November 1982 Shri Bhatia worked as Commissioner of Income Tax (Investigation) Gujarat, Ahmedabad and from November 1982 to July 1984 he worked as Commissioner of Income Tax (Central) Gujarat, Ahmedabad. From August 1984 to July 1985 he worked as Commissioner of Income Tax (Recovery) Bombay City. Thereafter, he was transferred and posted as Officer on Special Duty in the National Academy of Direct Taxes, Nagpur where he continues to be posted till date. An examination of certain important matters dealt with by Shri Bhatia as CIT (Investigation) Ahmedabad, as CIT (Central), Ahmedabad and as CIT (Recovery), Bombay, shows that he is an officer of highly doubtful integrity."

(iii) In three specific instances, he conferred undue favours on assessee. These pertain to two assessee belonging to Ahmedabad (S/Shri N.A. Patel and J.M. Soni) and one belonging to Bombay (Shri Yusuf A. Patel). The Committee has concluded as follows:-

"10. The detailed examination of the matters referred to above, as contained in the Annexures can possibly leave one in no doubt that the entire approach of Shri Bhatia in settling the cases or accommodating a party in the matter of recovery of the tax dues was with a view to favouring the parties concerned. Substantial loss of revenue also appears to have been caused by him in the two cases settled by him and the parties concerned were saved from penalty and

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prosecution for concealment of income. Thereby Shri Bhatia has emerged as an officer of highly doubtful integrity. The matter relating to the settlements effected by Shri Bhatia in the cases of assessee of Ahmedabad came to the Department's notice after his promotion as CIT Level I and the matter regarding recovery (or rather non-recovery) of taxes in the case of Shri Yusuf Patel was dealt with by him after his promotion as CIT Level I. Clearly all these matters, whether dealt with by him before or after his promotion as CIT Level I, are relevant for judging Shri Bhatia's integrity even today.

11. After considering the totality of circumstances, the Screening Committee is of the view that Shri Bhatia may be retired on ground of doubtful integrity, in the public interest."

15. On 15.5.1986, an Internal Review Committee consisting of Shri V.C. Pande, the then Revenue Secretary, and Shri R.K. Tikku, the then Additional Secretary and Establishment Officer, Department of Personnel, considered the case of the applicant. That Committee concurred in the recommendation of the Screening Committee with the following observations:-

"4. The Review Committee has carefully examined the minutes of the Screening Committee recommending retirement of Shri Bhatia and the material in support of the recommendation. After a careful consideration of the whole matter, the Review Committee concurs in the recommendation of the Screening Committee that Shri A.S. Bhatia, CIT Level I may be retired on ground of doubtful integrity."

16. On 18.7.1986, the Senior Selection Board consisting of Shri P.K. Kaul as Chairman (Cabinet Secretary) and Smt. P.P. Trivedi (Secretary), Shri M.M. Kohli (Secretary), Shri Ramaswami R. Iyer (Secretary) as Members and Shri N. Raghunathan, Establishment Officer as Member-Secretary of the Board, considered the case of the applicant (one of the 68 items on its agenda) and recommended that he may be retired prematurely under F.R.56(j). The Senior Selection Board was constituted in accordance with the provisions of

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O.M. No.33(A)-EO/70 dated 23.12.1972 of the Department of Personnel & Administrative Reforms which amended the earlier O.M. No.33(1)-EO/70 dated 27.10.1970. The Senior Selection Board observed as follows:-

"2. After taking into account the recommendation of the Department of Revenue, the Screening Committee as well as Review Committee and on an overall evaluation of the service records of Shri A.S. Bhatia, Indian Revenue Service (IT), the Board recommended that the Officer may be retired prematurely under F.R.56(j), after giving him three months pay and allowances in lieu of notice."

17. The recommendations of the Senior Selection Board, along with the recommendations of the Screening Committee and Review Committee, were placed before the A.C.C. for approval. After the A.C.C. gave its approval, the impugned order was passed on 11.9.1986.

18. The representation submitted by the applicant on 8.10.1986 against the impugned order was placed before the Senior Selection Board at its meeting held on 20.2.87. The Board recommended that the representation be rejected.

19. The Supreme Court has held that in order to pass the test of constitutionality, the rule providing for compulsory retirement "must needs be safeguarded by reasonable procedural guidelines in order that there may be no scope for arbitrariness or discrimination." Further, the rule being silent, "instructions speak and do vitalise service in a vacuous field." (Vide State of U.P. Vs. Chandra Mohan Nigam & Others, 1977 S.L.J 633).

20. The question arises whether the respondents proceeded in the matter in accordance with the letter and spirit of the Office Memoranda issued by the Department of Personnel & Administrative Reforms dated 5.1.1978 and 7.8.1985.

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21. The Office Memorandum dated 5th January, 1978 stipulates that the power conferred on the authorities to retire a Government servant prematurely should be exercised "fairly and impartially and not arbitrarily" and for this purpose, the criteria and procedure laid down therein should be adhered to, and that the Government servant concerned should be given an opportunity to submit a representation against the impugned order which should be considered by the authorities concerned and suitable final orders passed thereon. In the Office Memorandum issued on 7th August, 1985, the need to have due regard to the appropriate procedure has been reiterated.

22. According to the guidelines issued by the Government, 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 Proceeding" (vide para. II(5) (a) of O.M. dated 5.1.1978 and reiterated in para. 14 of O.M. dated 7.1.1985). F.R.56(j) corresponds to Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. Referring to the provisions of the said Rule 16(3), the Supreme Court in State of U.P. Vs. Chandra Mohan Nigam and Others, 1978 (1) SLR 12 has observed as follows:-

" We should hasten to add that when the 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." (Vide para. 14 of O.M. dated 7.4.1985).

23. The learned counsel for the respondents contended that in a case of this kind before us, no choice was required to be made, that there were no specific acts of

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misconduct and that the action was taken after making a performance appraisal of the applicant in the context of F.R.56(j). There was only room to doubt the integrity of the applicant and in such a case, it was contended that the only course open to the respondents was to invoke the power under F.R.56(j). On the other hand, the learned counsel for the applicant contended that the report of the Screening Committee disclosed three specific acts of misconduct for each of which the applicant has valid explanation, that the power under F.R.56(j) was invoked as a short cut to initiating formal disciplinary proceedings and that it was a colourable exercise of power.

24. We see considerable force in the above argument of the learned counsel for the applicant. The Screening Committee examined three specific instances in which he is alleged to have conferred undue favours on the assesses concerned and caused substantial loss of revenue. Except for these three instances and for some undisclosed "complaints from time to time", there was no material before the Screening Committee. The Committee has stated in para.4 of its report that his performance for the last five years (1980-81 to 1984-85) has been rated as "all right". There is a reference in that para to major penalty proceedings initiated against him in April, 1979 which were dropped in September, 1979 and thereafter he got promotions as C.I.T. Level II and as C.I.T. Level I. According to the learned counsel for the respondents, the incident of 1979 was referred to by the Screening Committee only in the context of the overall performance appraisal of the applicant while the learned counsel for the applicant contended that it was included in the report

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of the Committee to prejudice the minds of the authorities concerned while taking a decision. The learned counsel of the applicant referred to the report of the Enquiry Officer in that case and submitted that it amply demonstrates the honesty and uprightness of the applicant.

The Enquiry Officer has observed, inter alia, as follows:-

"Shri Karanjia very well knew that Shri Bhatia never demanded anything and he was not going to accept anything either and therefore, he never allowed the Pancha witnesses to know what he was really upto".

25. The alleged acts of misconduct referred to in the report of the Screening Committee came to the knowledge of the applicant for the first time when reference was made to the same in the counter-affidavit filed by the respondents. The applicant has given his explanation in this regard in the rejoinder affidavit filed by him. The Senior Selection Board or the A.C.C. had no opportunity of applying its mind in all its aspects in the absence of any explanation of the applicant being placed before it...

26. We do not propose to examine which of the two versions is correct. In this context, the learned counsel referred to the material placed before the Screening Committee relating to certain matters dealt with by the applicant as CIT (Investigation) Ahmedabad, as CIT (Central), Ahmedabad and as CIT (Recovery), Bombay. In the case of one N.A. Patel of Ahmedabad belonging to so-called Noble Group, the applicant accepted an arrangement by the assessees by which tax was realised from ADPs/Firms treating them as independent entities. This resulted in a loss of revenue of about Rs.14 lakhs. Penalty proceedings and prosecution for concealment of income could not also be initiated. The

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approach adopted by the applicant indicated that he conferred undue favours on the assessee concerned. In the case of J.M. Soni of Ahmedabad, the applicant affected a settlement which was prejudicial to the revenue. The applicant also conferred undue favours on the assessee in the case of Yusuf A. Patel of Bombay. The applicant did not take effective action to recover taxes during the period from November, 1984 to July, 1985, indicating that he had dishonest motive in accommodating the assessee. In the rejoinder-affidavit filed by the applicant, it has been contended that the aforesaid allegations are absolutely baseless and untrue. It is further contended that if an opportunity to show cause had been given, he would have been able to explain/justify the action taken in each of these cases and prove his innocence. Shri Gupta, therefore, contends that since these are specific acts of alleged misconduct and the applicant has been denied an opportunity to explain the same, action taken to retire him based principally on these alleged acts is nothing but a short-cut to compulsory retirement instead of initiating disciplinary action. He further contended that these instances do not all by themselves form material for coming to the conclusion that the integrity of the applicant is doubtful. In a department like the Department of Revenue, it is easy to make wild allegations against any assessing officer and orders passed in good faith can be made to appear suspicious. Suspicion alone cannot form the basis for condemning an officer. Shri Gupta also referred to the Report of the Joint Director (Revenue Audit) which conducted a study at the instance of the Public Accounts Committee of

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Parliament. In that Report, the effectiveness of the applicant's recovery organisation has been stated to be commendable and observation has been made that the applicant had excelled in the performance of the duties and assignments given to him. These facts of applicant's record of service have been shut out before the Senior Selection Board (Review Committee) and the Committee has proceeded to arrive at its conclusion solely on the basis of incomplete and one-sided material placed before it.

27. On a consideration of the aforesaid submissions, we are of the opinion that all that we have to see is whether the Review Committee (Senior Selection Board) applied its mind and came to the conclusion whether in the facts and circumstances of the case, it need not recommend to the A.C.C, disciplinary action against the applicant for these specific cases of alleged irregularities and that having regard to the past service and service record of the applicant, and the cases which have been brought to their notice by the Screening Committee, the material was sufficient to draw an inference that the applicant is of doubtful integrity and proceed to take action under F.R.56(j) for premature retirement of the applicant. The affidavit dated 15.2.1989 filed on behalf of respondents pursuant to the directions contained in our order dated 10.2.1989 does not give any indication in this regard. The respondents have also not produced the relevant records to show that this has been done. As has already been pointed out, all that the affidavit says is that "Shri V.C. Pande, Secretary, Department of Revenue, was present and explained the case. After taking into account the recommendations of the Department of Revenue, the

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Screening Committee as well as the Review Committee and on an overall evaluation of the service record of Shri A.S. Bhatia, the Board recommended that the officer may be retired prematurely under F.R.56(j)."

28. In the instant case, a perusal of the Report of the Screening Committee will show that it proceeded on the erroneous assumption that the only course open before the Government was to compulsorily retire the applicant under F.R. 56(j). When the authority concerned has to choose between two alternatives - compulsory retirement and disciplinary action - the reason why one alternative was chosen in preference to other, should be stated by the authority concerned. This is particularly relevant in a case where the bona fides and fairness of the action taken is open to judicial scrutiny. Neither the Report of the Screening Committee nor the Report of the Review Committee in the instant case gives an indication as to why they recommended, resort to F.R.56(j) and not initiation of disciplinary action against the applicant. In this respect the impugned order suffers from the vice of non-application of mind on the part of the authorities concerned.

29. Another infirmity in the impugned order of compulsory retirement is that the representation of the applicant was not disposed of by passing a speaking order and with due application of mind. It is true that in cases of compulsory retirement under F.R.56(j) a Government servant is not entitled to a pre-decisional hearing. That could be said

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to frustrate the very object underlying F.R.56(j). However, the Office Memorandum issued on 5th January, 1978 provides for post-decisional hearing in the form of submission of a representation, consideration of the same by the authorities concerned and passing final order. The post-decisional hearing is a salutary provision and is not a mere formality. Such an opportunity is given to the Government servant in order to ensure that there is no arbitrariness in the action taken. Quite often, the Government servant concerned is given appropriate reliefs, including reinstatement in service, after due consideration of the points raised in the representation. It is, therefore, incumbent on the part of the authorities concerned to consider the various points raised by the representations and to pass a speaking order thereafter. The reply to the representation in the instant case does not do so.

30. In the representation submitted by the applicant on 8.10.1986, he had raised several points, including the following:-

- (i) There had been departmental prejudices and conspiracies. Some officers posted at Delhi had been prejudicing his career in one way or the other to further their career prospects and it is at their behest that the impugned order was passed.
- (ii) At Nagpur he, along with others, was made to look "worse than criminals" with the sole avowed objective of compelling him to seek retirement.
- (iii) He had incurred the displeasure of some influential assesses who may have levelled unfounded charges against him.

31. The order passed by the authorities concerned on 14th April, 1987 disposing of the representation which has been reproduced in para.4 herein above, does not deal with the various points referred to in the representation. It is not a speaking order.

32. The respondents also did not place before us the relevant records to show that the various contentions raised by the applicant in his representation dated 8th October, 1986 had been considered by the Senior Selection Board before recommending the rejection of the same. Since the 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 relevant records in the instant case also vitiates the impugned order dated 11.9.1986.

33. In the conspectus of the facts and circumstances of the case, we are of the opinion that the impugned order of compulsory retirement is not legally sustainable. In view of the conclusion reached by us, it is unnecessary to consider the rest of the contentions raised by the applicant that review of the case was not taken up at the relevant time as envisaged in the guidelines contained in the O.M. dated 5th January, 1978, that the Screening Committee and the Review Committee were not duly constituted in accordance with the guidelines and that the authorities concerned proceeded in the matter with mala fides or ulterior motives.

34. We may now come to the question of the reliefs to which the applicant would be entitled.

35. In the last paragraph of representation dated 8th October, 1986, the applicant has stated that "it is no pleasure to seek an appointment in the department, parti-

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cularly after the mal-treatment given to me....." A good part of the present application has been devoted to the meritorious work done by him during his long service in the Department of Revenue which was ignored by the authorities concerned and to his numerous grievances in regard to denial of promotion, due seniority, arbitrary transfer, etc., which remain unredressed. All these indicate that it may be difficult for him to forget the past and start work with a clean slate at this stage as if nothing had happened to him. Shri P.P. Rao also submitted that as the impugned order of compulsory retirement was passed on the ground of suspected doubtful integrity, we should not issue a direction to the respondents to reinstate the applicant, in case we were to come to the conclusion that the said order is not legally sustainable. In the event of reinstatement, the applicant will have only about one year and a few months of service left before superannuation on attaining the age of 58 years, and during this short period, it is unlikely that he will be in a position to make any real contribution to the tasks assigned to him. Keeping all these factors in view and in the interest of justice, we order and direct as follows:-

- (i) The impugned order of compulsory retirement dated 11.9.1986 is quashed.
- (ii) The respondents are directed to consider and take a decision whether or not the applicant may be reinstated in service. In case the respondents decide to reinstate him, they will be at liberty to take appropriate action against him for any specific act of misconduct in accordance with law, if so advised. The applicant will be entitled to full salary and

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allowances less pension from the date of his compulsory retirement to the date of his reinstatement.

(iii) In case the respondents decide not to reinstate the applicant in service, he shall be deemed to be in service until he attains the age of superannuation, i.e., 58 years. He shall be entitled to full pay and allowances from 11.9.1986 to the date when he would superannuate on attaining the age of 58 years. He would also be entitled to other consequential benefits, such as notional promotion, if found eligible, in accordance with the rules and for pay and allowances admissible on such notional promotion, until he attains the age of superannuation. Thereafter, he will be entitled to gratuity/pension, etc. determined according to the salary drawn by him on the day he attains the age of superannuation.

(iv) The respondents shall comply with the above directions within three months from the date of receipt of a copy of this order.

(v) The parties will bear their own costs.

P.K. Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)

B.N. Jayasimha
(B.N. Jayasimha)
Vice-Chairman (Admn.)