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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.A./T.A. No. 1876 of 91 /19 Decided on: 11.4.1997

M.S. KWATRA

..... APPLICANT(S)

(By Shri G.D. Gupta Advocate)

VERSUS

U.O.I. & Anr.

..... RESPONDENTS

(By Shri P.H. Ramchandani Advocate)

DR RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE SHRI/SMT./DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

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(S.R. ADIGE)

Member (A)

/GK/

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.1876/91

New Delhi: this the 11th day of APRIL, 1997.

HON'BLE MR.S.R.ADIGE, MEMBER(A).

HON'BLE DR.A.VEDAWALI, MEMBER(J).

Shri M.S.Kwatra,
s/o Shri G.S.Kwatra,
R/o 23, Model Town,
Ambala City (Haryana)

.....Applicant.

(By Advocate: Shri G.D.Gupta)

Versus

1. Union of India
through the Secretary to the Govt. of India,
Ministry of Defence,
South Block,
New Delhi - 110 011.

2. The Director General,

Research and Development Organisation,
Directorate of Personnel,
Ministry of Defence,

B-Block, Sena Bhawan, DHQ P.O.
New Delhi - 110 011.

.... Respondents.

(By Advocate: Shri P.H.Ramchandani).

JUDGMENT

BY HON'BLE MR.S.R.ADIGE, MEMBER(A).

Applicant has impugned the order dated 19.2.91 (Annexure-A1) prematurely retiring him from service under Article 459(h) Civil Service Regulations, on having attained 50 years of age on 15.7.89, and the order dated 6.6.91 (Annexure-A6) rejecting his appeal.

2. Applicant who holds a B.Sc(Engineering) (Aeronautical) from Punjab Engineering College, Chandigarh with a Postgraduate Diploma in Rockets & Missiles from BIT Ranchi, with specialisation in Aerodynamics, was initially appointed as Senior Scientific Asstt. in Defence Research & Development

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(DRDO) Laboratory, Hyderabad under Defence Ministry in March, 1972 where he was engaged in Design, Development & Testing of Supersonic Pitotstatic tube and in the design of nose cone of the missile under development at the Laboratory which was successfully tested in October, 1994. In 1975 he was posted to Directorate of Rockets & Missiles, R & D Organisation Headquarters, New Delhi where he was engaged with study of missile application, types of guidance system used and special design features in addition to being engaged with comparative performance evaluation of the missile under development. In 1976 he was sponsored by Defence Ministry for aforementioned one year P.G. Diploma Course in Rockets & Missiles at BIT Ranchi (with specialisation in Aerodynamics) which he passed in 1st Division. In November, 1977, he was posted to Directorate of Aeronautics, R & D Organisation H.Q. New Delhi where he was engaged in analysis of Performance and Design Data on Contemporary Military Aircraft in relation to work relating to development, clearance and defect investigation of light weight Aircraft Projects progress at HAL, Bangalore. In 1979 he was promoted as JSO and later was selected and appointed as Scientist 'B' (Rs.2200-4000) through UPSC and posted to GTRE Bangalore, where he was engaged in work relating to performance evaluation of GTX-37-14(U) Engine and its reheat system, and in addition worked on feasibility study and preliminary design of non-axisymmetric Nozzles for futuristic Combat Aircraft. In February, 1986, he was posted to Ote. Armaments R & D. Organisation H.Q. New Delhi where he was engaged in coordinating work relating to design, development and testing of indigenously developed Naval and Air Force Stores and sat in on important meetings and conference in connection with Air Force & Naval Projects. In

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January, 1987 he was promoted as Scientist 'C' (Rs.3000-4500) through DRDO Assessment Board.

3. While working as Scientist 'C', he was served with Memo dated 3.1.91 (Annexure-A3) said to contain the gist of applicant's ACR, 1989 and remarks contained therein which is reproduced below:

"Gist of the ACR:

He is simple and honest. He is punctual in his duties and prefers the same from the subordinates. On the whole he is found to be a good officer.

Adverse Remarks

(i) On technical stores discussions, he not impress either with respect to his professional knowledge nor he has been able to impress on maintaining PDC for stall work. He requires frequent prodding/ reminders.

(ii) Willing to undertake tasks assigned to him, but under the guidance of his superiors.

(iii) He is hesitant in taking action in absence of proper instructions and precedents."

4. Applicant represented against the aforesaid adverse remarks within the prescribed period of one month, vide representation dated 21.1.91 (Annexure-A4).

5. He was communicated rejection of that representation on 28.2.91 (Annexure-A2), but meanwhile, even before rejecting that representation, respondents prematurely retired the applicant under Article 459 (h) C.S. Regulations vide

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impugned order dated 19.2.91 and rejected his appeal dated 7.3.91 (Annexure-A5) vide impugned order dated 6.6.91.

6. Applicant has assailed the impugned orders on various grounds. He has stated that throughout his service career he has performed his assigned task to the best of his ability, and to the entire satisfaction of his superiors, and was never reprimanded even once for misconduct, inefficiency or ineffectiveness, and was never communicated any adverse remarks except those relating to 1989 cited above. He has contended that in the light of his past record which has been entirely satisfactory, those adverse remarks for a single year do not reflect his actual performance and cannot be made the basis for compulsorily retiring him, more particularly when his representation against those adverse remarks was still under the consideration, in view of Home Ministry's O.M. dated 30.1.78 (Annexure-A7) and various Hon'ble Supreme Court decisions. Applicant has contended that if it is respondents' stand that those 1989 adverse remarks were not taken into account, while deciding to retire him compulsorily, then there are no adverse remarks against him on which respondents could have based their decision because no other adverse remarks were ever communicated to him, and if respondents did base their decision on any uncommunicated adverse remarks, they stood wiped out, if they happened to be prior to January, 1987, when he was promoted to Scientist 'C' grade. Applicant has also pointed out that if his integrity was in doubt it was liable to have been communicated to him before respondents could act on the same, vide Home Ministry's O.M. dated 20.5.72 (Annexure-A9)

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supplemented by O.M. dated 30.1.78 and even if he was considered unsuitable in Scientist 'C' Grade, respondents ought to have reverted him to Scientist 'B' Grade instead of compulsorily retiring him.

7. Respondents in their reply have contested the OA. They state that Article 459(h) CSR corresponding to Rule 56(j) gives the appropriate authority, if it is of opinion that it is in the public interest to do so, the absolute right to retire a Govt. servant by giving him notice of not less than 3 months, or pay and allowances in lieu of such notice,

a) If he is in Group A or Group B service or post (admittedly applicant was in Group A service) and had entered Govt. service before attaining the age of 35 years after he has attained the age of 50 years.

b) In any other case, after he has attained age of 56 years.

They contend that in accordance with the above mentioned regulations, the case of all Group A and Group B Officers of DRDO were reviewed to determine their suitability for retention beyond 50/55 years, with the objective of weeding out those who were inefficient or were of doubtful integrity. They state that applicant's case was placed before the review Committee headed by Secretary, DRD, Ministry of Defence which after careful consideration of his overall service record, recommended his compulsorily retirement in public interest which was accepted by the competent authority. It is stated that applicant's representation was placed before the Representation

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Committee and after careful consideration the competent authority rejected the representation as recommended by the Representation Committee. It is contended that the decision of the appropriate authority to retire the applicant was taken bonafide, in public interest, and in conformity with existing rules and regulations, which nowhere prescribe that a person can be adjudged as a deadwood, only if he has adverse remarks. It is contended that a plodder, a do nothing, a drone, an incompetent, unwilling and colourless performer is also liable to be considered for premature retirement in the public interest, and so long as the Review Committee has come to the bonafide conclusion on basis of ACRs that the applicant has ceased to be useful, it can justifiably recommend his retirement. In this connection respondents aver that applicant was not retired by way of punishment or for lack of integrity, but because he has ceased to be useful and effective in performance of duties.

8. Applicant has filed rejoinder in which he has broadly challenged respondents' contention and reiterated the contents of his OA.

9. We have heard applicant's counsel Shri G. D. Gupta and respondents' counsel Shri Ramchandani. We have perused the materials on record and given the matter our careful consideration.

10. The consolidated instructions governing premature retirement of Govt. servants in the public interest by the administration, in accordance with FR 56(j), to which Art. 459(h) CSR admittedly corresponds, are contained in GOI's O.M. dated 5.1.78 (Annexure-A9). This O.M. after referring to the rule position already cited in para 7 above,

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lays down the criteria, the procedure, and guidelines to be followed in dealing with all such cases.

While laying down the criteria this OM provides that

(i) Govt. servants whose integrity is doubtful will be retired, and (ii) Govt. servants who ^{are} found to be ineffective shall also be retired, the basic consideration being the fitness/competence of the employee to continue in the post which he is holding. It is specifically laid down that if the employee is not found fit to continue in his present post, his fitness/ competence to continue in the lower post from where he had been previously promoted should be considered. It is also laid down that while the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on ground of ineffectiveness if his service during the past 5 years, or when he has been promoted to a higher post during that 5 years period, his service in that higher post has been satisfactory. The appropriate authority is specifically enjoined upon to form a bonafide opinion that it is in the public interest to retire the officer in exercise of ⁷ ~~the~~ provisions, and this decision should not be arbitrary or based on collateral grounds, such as using it as a shortcut to initiate disciplinary proceedings or for reduction of surplus staff. This OM provides for Review Committee in each Ministry/ office to which all such cases are to be referred for recommendation as to whether the officer should be retired from service in the public interest or retained, and for Representation Committee to consider representations against the decision of the appropriate

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authority to retire an officer prematurely.

11. We have perused the entire service record of the applicant as contained in his ACR. For the year ending on 31.3.73 he is spoken of as a Good Officer. For the period 1.1.73 to 31.12.73 he is graded as Very Good. For 1974 (1.1.74 to 31.12.74) he is graded as Good. For the year 1975 he is also graded as Good. For 1976 he is graded as Very Good. For 1977, he is graded as Very Good. Similarly for 1978 he is graded as Very Good. For 1979 he is also graded as Very Good. For 1980, 1981, 1982, 1983, 1984 and 1985 he is graded as Good. For the year 1985, there is also a general remark by the accepting authority (Director of the Establishment) who has graded him Good that applicant is an officer of average abilities, suitable for routine which echoes the remarks of the reviewing authority, but as against that the initiating officer has held applicant to be a cheerful person who willingly accepts the job assigned to him, is dependable , accurate and well disciplined. For the year 1986 applicant has been graded as Very Good, while for 1987 he has been graded as Good. Again for the year 1988 he is graded as Good but requiring some guidance. For the year 1989, the remarks of which weighed heavily with the reviewing Committee in recommending applicant's premature retirement, the initiating officer has rated applicant as Very Good or Good under the various qualities of which he has first hand knowledge e.g. intellect; professional ability; administrative ability; personal qualities etc. Overall he has said that applicant is hardworking, sincere and honest and is always willing to undertake tasks

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assigned to him under the guidance of his superior. He is described as punctual in his duties and prefers the same from his subordinates, ~~whose~~ ^{and his,} performance has been satisfactory throughout. The Reviewing Officer has modified those remarks by stating that applicant who had been interacting with him 3-4 times in a week had not impressed him with respect to his professional knowledge, nor had he been able to impress on maintaining PDC for staff work. He needed frequent prodding/reminders and his performance was at best average. He was hesitant in taking action in absence of proper instructions and precedents. On the other the Accepting Authority has graded him as Good, on a 6 point rating of Exceptionally Brilliant; Outstanding; Very Good; Good; Average; and Poor.

12. We have also perused the minutes of the review committee dated 4.1.91 in which it recommended premature retirement of applicant and some others. It bears notice that this review committee met the day after the issue of letter dated 3.1.91 communicating the 1989 adverse remarks to applicant without giving him any time even to represent against those remarks, let alone disposing of his representation.

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In so far as it relates to applicant those remarks are extracted below:

" (c) Shri MS KWATRA, Sc. C In the ACR 1989, it has been reported that on technical stores discussion, he did not impress either with respect to his professional knowledge nor was able to impress on maintaining PDC for staff work. He is found to be requiring frequent prodding/reminders and willing to undertake tasks only under the guidance of his superiors. He is also found to be hesitant in taking action in the absence of proper instructions and precedents.

In the year 1988 also, he has been reported as 'needing guidance from his superiors'. In the year 1987, his work output and originality were assessed as 'average'. His competence in the field of armament was found to be needing improvement. He needed time to appreciate and master the intricacies involved. He was also reported to be an average scientist who worked satisfactorily only under supervision and directions. In the year 1986, his professional theoretical ability and general professional knowledge were assed as 'average'. He was also reported to be "still in the process of finding his feet" and "needing more time to gain experience and act on his own".

His retention in service will not be in public interest and he deserves to be retired immediately."

13. We note that although Government of India's O.M. dated 30.1.1978 specifically required that the entire record of the employee be considered, the Review committee has focussed only on the negative aspects, it could find in applicant's ACR; and there is not a single word mentioned about the positive qualities found by the initiating/reviewing/accepting authorities in successive ACRs right from 1972 onwards, nor

indeed of the grading of Good/Very Good he has obtained over that period, including the overall grading of Good for the year 1989 by the accepting authority despite applicant not being able to impress the reviewing authority. Under the circumstances we hold that there has not been a consideration and assessment of the entire service record of the applicant as required under Government of India's O.M. dated 30.1.78 by the Review Committee on which the competent authority based its decision to prematurely retire the applicant. We have also seen the noting that led to the decision of the competent authority to prematurely retire the applicant and we note that there was no discussion in that note either (available at page 2-3/N of File No. 10558/Review/RD/Pers-6 maintained by the respondents) of both the negative aspects as well as positive attributes of applicant noted by his superior officers in his ACRs.

14. We have already noted that applicant submitted a detailed representation against respondents' decision to retire him prematurely. That representation was put up before the Representation Committee on 19.3.91. After summarising the contents of that representation in one paragraph, the

note goes on to say that the reasons for the Review Committee recommendations are contained in their minutes (extracted in para 12 above) and add further that it may be seen that the Committee came to its conclusion on the basis of his record of service particularly with reference to his latest ACR; after his promotion to the grade of Scientist 'C' w.e.f. 1.7.86, and it is seen that his performance of late has been of average standard. The Representation Committee in its minutes dated 26.4.91 also does not discuss the grounds taken by applicant in his representation in any detail. It merely states that it has carefully considered applicant's representation along with the records of the case and his ACR. Applicant's case basically is that he has a good record and that he should not have been retired prematurely solely on the ground of an adverse ACR in 1989 against which his representation was still pending, but a perusal of the records of the case and his ACR reveal that it is not merely on the grounds of an adverse entry in 1989 that he deserved to be prematurely retired. His overall record was not such as would recommend his retention in service in public interest and as such the Committee

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felt that the order prematurely retiring applicant was correct. We note that in these minutes also there is no detailed consideration of the entire service record of the applicant, including both negative and positive features.

15. In the note that was put up to the competent authority on the recommendation of the Representation Committee also, there was no such consideration of the entire record of the applicant and all that was done was to summarise applicant's representation in 1 paragraph and the recommendation of the Representation Committee in another. On that basis applicant's representation was rejected.

16. In Baikuntha Nath Das & Anr. Vs. Chief D.M.O., Baripada JT 1992 (2) SC 1, while laying down the principles ~~and~~ ^{and} circumstances warranting judicial intervention in cases of compulsory retirement, the Hon'ble Supreme Court has emphasised that the Govt. (or the Review committee) shall have to consider the entire record of service before taking a decision in the matter, of course attaching more importance to record of and performance during the later years. The record to be considered, would naturally include the entries in the Confidential Records/Character Rolls both favourable and adverse (emphasis supplied). If a Govt. servant is promoted

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to the higher post notwithstanding the adverse remarks such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

17. We have already noted that the official minutes and notings in so far as they relate to the applicant, extracted above, contain no discussion of the favourable remarks received by him. Furthermore, admittedly the applicant was promoted from Scientist 'B' to Scientist 'C' in January, 1987 through the DRDO assessment Board, and in the light of the Hon'ble Supreme Court's judgment cited above any adverse remarks recorded prior to that date would lose their sting.

18. Applicant has contended that except for the adverse remarks for 1989, none of the adverse remarks for the other years, which also formed the basis of Respondents' decision to retire him prematurely were ever communicated to him, and the decision to retire him prematurely was taken when his representation against the 1989 adverse remarks filed within the prescribed time period, was still pending with the Respondents. In this connection it is emphasised that there has been a violation of Home Ministry's letter dated 30.1.78 (Annexure A-7) which provides that adverse remarks should not be deemed as operative if any representation is filed within the

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time limit is pending.

19. In Baikuntha Nath Das' case (Supra) the Hon'ble Supreme Court has held that an order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. Under the circumstances while this ground taken by the applicant's counsel of non-communication/delayed communication of adverse remarks which formed the basis of the decision to retire him prematurely by itself may not warrant judicial interference, we hold that in the present case judicial interference is warranted because of the non-consideration of the entire record of the applicant as reflected in his CR entries, both favourable and adverse.

20. In this connection some of the other rulings cited by applicant's counsel before us may also be briefly noticed.

21. In S. Ramchander Raju Vs. State of Orissa JT 1994 (5) SC 459 the Hon'ble Supreme Court has held that where there was a failure to take the total record of service into consideration objectively, it amounted to an illegal exercise of power and accordingly the order of compulsory retirement was set aside. Inter alia their Lordships also observed that those who wrote CRs bore an onerous responsibility as the career prospects of the subordinate officer largely depend upon the

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work and character assessment of the retiring officer. Comments were therefore to be scrupulously fair, objective, dispassionate, constructive and honest and subordinates were to be encouraged to improve efficiency in service for the better discharge of his duties.

22. Similarly in B.R. Chadha Vs. U.O.I. 1980 (4) SCC 321 the Hon'ble Supreme Court has held that any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision of premature retirement is bad in law. Likewise, any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon cannot be sustained. Legality depends on regard of the totality of material facts viewed in a holistic perspective. In the present case, we have noticed that such a holistic perspective does not appear to have been adopted by the respondents, in as much as they focussed on the adverse remarks operating against the applicant and did not pay due consideration to those remarks which operated in his favour.

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23. Again in Narsingh Patnaik Vs. State of Orissa JT 1996 (3) SC 754 the Hon'ble Supreme Court has held that in a case involving premature retirement the performance in the later years must be given more importance. In that case the appellant was not only promoted in later year but was also apprised as "good". The Hon'ble Supreme Court had held that the adverse remarks in the CRs for the years 1975-76 and 1977-78 ^{not} could by itself sustain the opinion leading to the compulsory retirement of the appellant. Accordingly the judgment of the Orissa Administrative Tribunal upholding the State Government's order prematurely retiring the appellant, was set aside and the order of compulsory retirement was quashed.

24. Another case relied upon by the applicant's counsel is U.P. Jal Nigam & Ors. Vs. P.C. Jain JT 1996 (1) SCC 641 in which the Hon'ble Supreme Court has held that in case where the ACRs were down graded reasons for the same should be recorded on the Personal File of the officer concerned, and he be informed of the change in the form of an advice to enable him to improve his performance. Applicant's counsel has contended that this was not done in the present case and without giving applicant any chance to improve he was prematurely retired on the basis of remarks which had not even been communicated to him. We have already

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noted the Baikuntha Nath Das' case (Supra) that the Hon'ble Supreme Court has held that an order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration, and in that background this particular ruling may not be of much benefit to the applicant, it cannot be denied that the Respondents did take into account only the adverse remarks against the applicant and prematurely retired him on that account without in the first instance giving an opportunity to him to improve himself.

25. Another ruling relied upon by the applicant's counsel is Smt. S.R. Venkataraman Vs. U.O.I. & Anr. 1979 (2) SCC 491 wherein, in a case involving compulsory retirement the Respondent Dept. did concede that there was nothing in the record that could justify such an order of premature retirement. Upon that the Hon'ble Supreme Court held that the action prematurely retiring the appellant amounted to malafide in law and the impugned order was accordingly struck down.

26. In the present case before us, neither has the Respondent Dept. conceded that there was nothing on the record which could justify the impugned order of premature retirement, nor can it be said that they were actuated by any malicious intent towards the applicant, but there is little doubt that the holistic assessment of the entire service

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record of the applicant, particularly in regard to his later years of service, and due consideration of the favourable as well as adverse entries, which they were required to do was not done, as is manifest from the proceedings of the Review Committee and Representation Committee and the decision taken thereon.

27. In this connection applicant's counsel has invited our attention to CAT, Principal Bench judgment dated 13.2.92 in O.A. No.537 of 1991 V.B. Tawakley Vs. U.O.I. & Anr. In that case Shri Tawakley who belonged to the very same dept. was also compulsorily retired pursuant to the Review Committee's decision dated 4.1.91 and in fact the minutes of the Review Committee relating to his case are ~~as~~ little above the applicant's minutes. He filed the afore-mentioned O.A. and after completion of pleadings and hearing both parties, the Tribunal in its judgment dated 13.3.92 allowed the O.A. and quashed the impugned order of premature retirement dated 19.2.91. In their aforesaid judgment the Tribunal, after noticing Baikuntha Nath Das' case (Supra) observed that the whole of the CRs did not appear to have been seen by the Review Committee, in as much as in that case also the Respondents had focussed on the adverse entries and disregarded those entries which were in favour of the applicant. In so far as the adverse entries were concerned which recorded certain shortcomings in the performance of that applicant, the Tribunal

noted that the same were never communicated to him and it therefore concluded that the findings of the Review Committee could not be said to be based upon an objective analysis of the service record of the applicant. No materials were shown to us by the Respondents to indicate that the said judgment dated 13.3.92 in Tawakley's case (Supra) had not become final and we hold that the ratio of that judgment is mutatis mutandis fully applicable to the facts of the present case.

28. In the result this O.A. succeeds and is allowed. The impugned order dated 19.2.91 (Ann. A-1) prematurely retiring the applicant and the order dated 6.6.91 (Ann. A-6) rejecting his appeal are quashed and set aside, and the applicant shall be deemed to have continued in service w.e.f. 19.2.91 till he attains the normal age of superannuation under the relevant Rules, and shall be entitled to all the consequential benefits as if he had ~~been in~~ continuous service, which shall be paid to him within three months from the date of receipt of a copy of this judgment. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
Member (J)
/GK/

S. R. Adige
(S. R. ADIGE)
Member (A)