

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(32)

OA No. 2757/91

New Delhi this the 18th Day of September, 1995.

Hon'ble Sh. N.V. Krishnan, Acting Chairman
Hon'ble Dr. A. Vedavalli, Member(J)

Dr. N.K. Dhingra

...Applicant

Versus

Union of India & Another

...Applicant

For the applicant

Sh. B.T. Kaul, Counsel

For the respondents

Sh. V.S.R. Krishna, Counsel.

1. Whether it needs to be circulated to other Benches of the Tribunal?
2. To be referred to the Reporter or not?

Yes


(Dr. A. Vedavalli)
Member(J)

(33)

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Hon'ble Dr. A. Vedavalli, Member(J).

Dr. N.K. Dhingra,
Ex-Lecturer in Russian,
S/o Shri Hiranand Dhingra,
10-83, Rajendra Nagar,
New Delhi.

..Applicant.

By Advocate Shri B.T. Kaul.

Versus

1. Union of India through
Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi.

2. Shri T.D. Bhutia,
Director,
School of Foreign Languages,
Govt. of India,
25, Lodhi Estate,
New Delhi.

..Respondents.

By Advocate Shri V.S.R. Krishna, Counsel, for
Respondent No.1.

None for Respondent No.2.

O R D E R

Hon'ble Shri N.V. Krishnan.

The applicant, Dr. N.K. Dhingra, was a Lecturer in Russian in the School of Foreign Languages under the Ministry of Defence. He was retired under Fundamental Rule 56(j) by the impugned order dated the 25th February, 1991 (Annexure A-I) in public interest on having already attained the age of 50 years. A representation against this order was filed on 17.3.1991 which is stated to have not been disposed of. Hence, he filed this application on 19.11.1991 for quashing the impugned Annexure A-I order and for a direction to the respondents to reinstate him with all consequential benefits. He has impleaded the Union of India through the Secretary, Ministry of Defence as the

first respondent and as he has made allegations of mala fide against Dr. T.D. Bhutia, Director, School of Foreign Languages, New Delhi, this official has been impleaded as the second respondent.

2. The principles governing the retirement ordered under FR 56(j) have been summarised by the Supreme Court in Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada, (1992) 2 SCC 299) as follows in para 34:

- "(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The government (or the Review Committee, as the case may be) 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 so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post, notwithstanding the adverse remarks,

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

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it, uncommunicated remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above." (u)

3. In order to enable the applicant to put forth his case properly, on our direction, the minutes of the meeting of the Review Committee held on 25.1.1991, consequent upon which he was retired and the character dossier, were shown to the learned counsel for the applicant.

4. For a proper appreciation of the issues involved, it is useful to bear in mind the recommendations made by the Review Committee which met and considered the case on 25.1.1991. Hence, that recommendation is reproduced below:

"Review Committee consisting of the following met on 25.1.91 at 11.00 A.M. under the Chairmanship of Defence Secretary,

1. Shri N.N. Vohra, Defence Secretary - Chairman
2. Shri S.G. Mankad, JS, Min of HRD - Member

2. The Committee examined the Annual confidential remarks on Dr. N.K. Dhingra from the year 1967. The Committee also reviewed various reports made against him by Director, SFL since 1982.

3. The Committee noted that the Annual confidential remarks for the years 1983, 1984 and 1987, in spite of dilution and expunction, contained serious adverse entries reflecting on his lack of interest in teaching, poor performance of his students and lack of cooperation with the Director, SFL.

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4. The Committee noted that Government displeasure had been communicated to Dr. Dhingra for granting fictitious marks to an officer in a periodical test held in March, 1984. In yet another case, a warning was issued to Dr. Dhingra for his offer to share the leaked questions with the student-officers in July '86. Government displeasure was also conveyed to Dr. Dhingra for taking up a teaching assignment in July-September 89 and for accepting honorarium of Rs.1500/- without the requisite permission under the Conduct Rules.

5. The Committee also noted that there were other instances and reports on his poor performance in teaching Russian language inasmuch as all the students had failed in the final examination held in May '84. He also failed to prepare lessons in the Russian Capsule Course in 1985, against which the Director had reported to Government. Dr. Dhingra's inefficiency was also reflected in the report of an outside language expert who came to test the standard of students taught by Dr. Dhingra.

6. On a careful examination of the entries in C.R. dossier, and a detailed appraisal of various orders of Government conveying displeasure/ warning to Dr. Dhingra, and on account of proved instances of inefficiency/poor performance, the Committee recommended that Dr. Dhingra was not fit to be retained in service".

5. It is stated that until 1982, the applicant had a good record of service. His problems arose when the second respondent became the Director in 1983. It is alleged that the second respondent had strong prejudice against the applicant and he had, therefore, tried his best to spoil the applicant's Confidential Character Rolls. Hence, the record for the years 1983 to 1987 contained a number of adverse remarks, though, on the representations made by him, many of the adverse remarks were either expunged or toned down. It is also claimed that the authorities who reviewed the remarks recorded by Respondent No. 2 in the Confidential Reports not only disagreed with the remarks but one of them noted that they should not be given credence as the second respondent was too subjective about his assessment.

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6. The other important allegations made are as follows:

in O.M. No.25013/14/77-Estt.(A)

(i) In terms of the standing instructions / dated 5.1.1978 issued by the Department of Personnel, the review should be made six months before an officer is due to attain the age of 50 years but, if so decided, the officer should be retired only after he completes 50 years. The applicant was born on 10.1.1935 and hence he attained the age of 50 years on 10.1.1985. The review should have been conducted before that date. Instead, the review has been done on 25.1.1991. The order of retirement was issued when he was already over 56 years and had just 2 years left for superannuation. Hence, the impugned order is vitiated on this ground.

(ii) It is clear from the review that the entire record has not been seen. This was absolutely necessary. The Review Committee has concentrated its attention only on the period when the second respondent spoiled the applicant's Character Rolls by giving adverse reports. It is also stated that no adverse remarks were communicated for the period after 1987.

(iii) In any case, as the applicant was allowed to continue after attaining the age of 50 years on 10.1.1985, the Committee should not have looked into the adverse remarks recorded for any period prior to that date.

(iv) It would be clear from the Review Committee's report that they have relied on specific allegations of misconduct to recommend his retirement. Instead, the respondents should have held disciplinary proceedings and punished him. It was not

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open to retire him under FR 56(j) merely to avoid disciplinary action.

(v) The instances mentioned in the Review Committee's report regarding issue of warning, etc. are fabrications of the second respondent.

(vi) The recommendation made by the Review Committee is thus without any basis.

7. The respondents have denied these allegations. They have produced for our perusal the relevant records. A privilege was claimed by the Secretary, Ministry of Defence in regard to the non-disclosure of the records other than the C.R. Dossier and the recommendations of the Review Committee. This has been rejected on 19.12.1994.

8. We shall first take up what we consider to be an important preliminary objection to the entire proceedings. That objection is that as the review was not undertaken immediately six months before the applicant attained the age of 50 years on 10.1.1985, as mandated by the instructions dated 5.1.1978 of the Department of Personnel, it has to be presumed that he was cleared and allowed to continue in service until he superannuated at the age of 58 years. Hence, his case could not have been reviewed in 1991. All proceedings are, therefore, void.

9. We have perused the file No. A-22887 CAO-P-2-538/S/90/D(Coord) relating to the review case of the applicant. It shows that the review could not be taken up on time because the ACRs for the years 1983 and 1984 contained adverse remarks and the officer's representations were pending consideration.

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As they had since been disposed of, the file was initiated on 13.2.1986. It was indicated in the note that the Review Committee consisted of the Defence Secretary as Chairman and the Joint Secretary, Ministry of Human Resources Development as Member. It was proposed to submit the file first to that Member. It is, thus, clear that no review was conducted before he attained the age of 50 years for the reasons mentioned above and the proceedings came to an end only on 25.1.1991.

10. The learned counsel for the applicant pointed out that the instructions issued/ have the force of law and are binding on Government. He pointed out that in State of UP Vs. Chandra Mohan Nigam, 1977 (4) SCC 345, the Supreme Court has held, with reference to the instructions issued by the Govt. of India in the context of the Rule 16(2) and Rule 16(3) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 - which are pari materia with FR 56(j) - as under, in para 26:

"....Since Rule 16(3) itself does not contain any guidelines, directions or criteria, the instructions issued by the Government furnish an essential and salutary procedure for the purpose of securing uniformity in application of the rule. These instructions really fill up the yawning gaps in the provisions, and are embedded in the conditions of service. These are binding on the Government and cannot be violated to the prejudice of the Government servant".

(Emphasis added)

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11. We have considered the matter. We notice that in Chandra Mohan Nigam's case (Supra), the Supreme Court went on to hold in para 27 that all the instructions cannot be considered as mandatory. Some may be prefatory and clarificatory. We also note that in the subsequent judgement of the Supreme Court in Union of India & Ors. Vs. Nasirmiya Ahmedmiya Chauhan (1994(28)ATC 66), this very issue has been dealt with. That was a case where the order of the Government of India retiring the respondent under FR 56(j) was set aside by the Ahmedabad Bench of the Tribunal on the only ground of belated review as such action was to the prejudice of the employee. The applicant attained the age of 55 years on 16.3.89 when he could be compulsory retired. His case was not reviewed by the Internal Screening Committee till 21.2.1989 and by the High Power Committee till 21.2.1990. According to the instructions dated 5.1.1978 of the Ministry of Home Affairs (relied upon by the present applicant also) the review should have been taken up between July to Sep 88. As this was not done, the Tribunal quashed the order of retirement apparently relying upon para 26 of the judgement of the Supreme Court in Chandra Mohan Nigam's case (Supra) extracted above and para 35, ^{u/s} ~~hereof~~ which reads as follows:

"35. While purity in administration is certainly to be desired, the security and morale of the Service have also to be maintained. It is because of these high considerations that the Government has issued appropriate and reasonable instructions to guide the authorities in passing orders for premature retirement. The instructions clearly show that "having arrived at an assessment in favour of further

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continuance in service at the age of $54\frac{1}{2}$ years or so, there would ordinarily be no occasion for changing the assessment during the next three years, so that an annual review would serve little practical purpose". The principle behind this instruction is that the sword of Damocles must not hang over the officer every six months after he attains the age of 50 years".

After noting these features, the Supreme Court allowed the appeal filed by the Union of India, holding, *inter alia*, as under:

"We have heard learned counsel for the parties. This Court has authoritatively laid down in various judgements that the power under Fundamental Rule 56(j) can be exercised by the appropriate authority at any time in public interest after the government servant has attained the relevant age or has completed the period of service as provided under the Fundamental Rules. The appropriate authority has to form the opinion that it is in the public interest to retire a person under Fundamental Rule 56(j) on the basis of the record of the person concerned. There is no other bar for the exercise of the power under the said Fundamental Rule by the prescribed authority. Government instructions relied upon by the Tribunal are only the guidelines laid down by the Central Government for its functioning. A government servant cannot be heard to say that though the order of retirement is justified on the basis of his service record but since there is violation of some Government instructions the order is liable to be quashed. The Tribunal was wholly unjustified in holding that prejudice was caused to the respondent in the sense that he could legitimately believe that under the instructions his case would not be reviewed after the lapse of certain period. The action under Fundamental Rule 56(j) against a government servant is dependent on his service record earned by him till he reaches the age or completes

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the service provided under the said rule. If the record is adverse than he cannot take shelter beind the executive instructions and must be "Chopped off" as and when he catches the eye of the prescribed authority".

(Emphasis supplied)

12. In view of these observations, a belated review does not invalidate the proceedings. There cannot, therefore, be any presumption in the applicant's favour, especially when the records show that it is the first review that was completed on 25.1.1991. Hence, this preliminary objection has no merit.

13. That takes us to the next connected preliminary objection. Even if a belated review was permitted, it is contended by Shri B.T. Kaul that no adverse record for any period earlier to 10.1.1985, when the applicant became 50 years (i.e. adverse record of 1983 and 1984) could be considered. He relies on a judgement of the Madras Bench of this Tribunal in the case of S.P. Francis Nathan Vs. Government of Pondicherry (1988) 6 ATC 729).

14. We have seen that judgement. It is held that if a belated review takes place there will be a presumption that when the employee attained the relevant age, he was allowed to continue upto the age of superannuation. Therefore, if a belated review takes place, only the record of the period after he attained that age can be considered. We have already rejected the contention based on belated review and presumed orders regarding continuance in service upto the age of superannuation in para 12 supra.

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15. That decision, however, does not finally settle the controversy about the particulars of the CRs/record which alone could be seen. We have to consider in this connection the effect of the judgements of the Supreme Court in the cases in Chandra Mohan Nigam and Nasirmiya Ahmedmiya Chauhan (Supra) to which we have referred in para 11(supra). Before doing so, it is also necessary/observation of the Supreme Court in Chandra Mohan Nigam's case in para 27 of the judgement.

That reads as follows:

"27. Whether all the aforesaid instructions issued by the Government are mandatory or not do not call for a decision in these appeals. Some of them may not be mandatory. Not that every syllable in the instructions is material. Some of them may be described as prefatory and clarificatory. However, one condition is absolutely imperative in the instructions, namely, that once a Review Committee has considered the case of an employee and the Central Government does not decide on the report of the Committee endorsed by the State Government to take any prejudicial action against an officer, after receipt of the report of the committee endorsed by the State Government, there is no warrant for a second Review Committee under the Scheme of Rule 16(3) read with the instructions to reassess his case on the same materials unless exceptional circumstances emerge in the meantime or when the next stage arrives. We should hasten to add that when integrity of an officer is in question that will be an exceptional circumstance for which orders may be passed in respect of such a person under Rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government. Although a faint attempt

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was made before the learned Single Judge that fresh facts were available for the purpose of the second Review Committee, the High Court did not accept the position nor do we find any reason to differ from that opinion. It is, therefore, clear that the respondent's order of termination was made not as a result of the report of the first Review Committee in accordance with the instructions but on the recommendations of the second Review Committee which could not have taken up his case, as it was, on the self same materials prior to his reaching the age of 55 years".

The principles that emerge from these two judgements are as follows:

- (i) There can be a belated review preceding action under FR 56(j), as directed in the instructions.
- (ii) The action under FR 56(j) against an employee is dependent on the service rendered upto the relevant age or the service rendered upto the time when he completes the relevant period of service, as enshrined in the said Rule. (50 years age in the instant case).
- (iii) When a review has already been completed at the relevant age (50 years in this case) there cannot be further annual review. The Damocles sword must not hang over his head.
- (iv) A second review is, nevertheless, permissible ^{adverse} if the employee comes to / notice for lack of integrity.

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16. We have to consider which principles apply to the facts of this case. For that purpose, it is necessary to consider the manner in which the review of the applicant's case was done.

17. A perusal of the original record referred to in para 9 shows that though the applicant attained the age of 50 years on 10.1.1985, the proceedings commenced only on 13.2.1986. The review had to be done by the Defence Secretary as Chairman and the Joint Secretary, Ministry of Education as Member. As seen from the records, the review was finally held only on 25.1.1991.

18. However, Shri L.S. Narayanan, Joint Secretary in the Ministry of Education has seen this case as a Member of the Review Committee as many as on three occasions:

(i) On 12.4.1986, he felt that it would be necessary to see the ACR for 1985 also, even though the ACRs for 1983 and 1984 were bad enough. He also wanted to see the inquiry reports relating to the complaints about awarding fictitious marks which would reflect on his integrity. He observed that if that was established, he could be retired even on that basis. He also wanted to see the records relating to the leakage of

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question papers in 1982.

(ii) He saw this case again on 7.8.1987. It was reported to him that there was nothing to implicate the applicant in the complaint regarding leakage of Russian Language paper in 1982. Likewise, it was stated by Shri K.S. Dhingra, SAO of the office of CAO on 26.6.1987, that there was no evidence to implicate the applicant in the complaint regarding award of fictitious marks. The ACR of 1985 was also furnished. On this basis, Shri L.S. Narayanan noted that it was difficult to hold that the integrity of Dr. Dhingra was doubtful. He observed, based on this note of the Defence Ministry, that there was no evidence, direct or circumstantial, to implicate Dr. Dhingra in the allegations. He also held that even if there was prima facie evidence of insubordination, it could not support a presumption of doubtful integrity. As far as the inefficiency is concerned, he wanted the Ministry to first take a decision on the representation against the adverse remarks of 1985 and send it to him.

(iii) The case was sent to him again after that representation had been disposed of. On 9.4.1988, he noted that a number of adverse remarks for 1985 have been expunged. He also felt that his performance had improved in 1985, as compared to his earlier performance. He, therefore, felt that

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it was difficult to hold that Dr. Dhingra was ineffective on the basis of the available C.Rs. Therefore, he mentioned that he would make his final recommendation after seeing the CRs of 1986 and 1987 also.

19. By the time these two reports were made available, there was a change in /Membership of the Reviewing Committee from the Ministry of Education. The case was sent to that Ministry on 25.8.1989. Shri K.S. Sharma, Joint Secretary, had to do the review. On 31.8.1989, he came to the conclusion, after review of the ACR dossier - which also included the report for 1988 - and other details and keeping in view the guidelines of 5.1.1978, that Dr. Dhingra should be retired prematurely and not recommended for continuance. This was particularly recommended in view of the role he has played though dubious in tampering of records, leakage of papers, etc. He, however, requested Shri L.S. Narayanan, who was also available as Joint Secretary in the Education Ministry, to examine the case in view of his earlier observations, before he sent his views to the Defence Ministry.

20. Shri L.S. Narayanan, JS&FA saw the case for the fourth time. He observed that the C.R. dossier showed that the Reporting Officer had not been objective as revealed by the comments of the Reviewing Officers. In particular, he referred to the comments of the Reviewing Officer for the year 1988. In regard to the role of the applicant in the leakage of the question papers, etc., he drew attention to his earlier note

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dated 7.8.1987 wherein he had pointed out that there was no evidence, direct or circumstantial, to implicate Dr. Dhingra in regard to the allegations. (This has been summarised in para 18(ii) above). Hence, he opined that there was no justification for premature retirement. He referred the matter to his colleague, Shri K.S. Sharma, for reconsideration. The latter recorded that he had considered all these matters. He observed that the ACRs and the history sheet of the applicant made a poor reading despite expunction of some remarks. He again recommended that Shri Dhingra should be retired in public interest, taking into account the totality of the records of service and his conduct. This note was recorded on 27.9.1989. He also mentioned that he had relinquished charge as Joint Secretary on 31.8.1989 - which is the date on which he recorded the first note.

21. For the first time, the file was put up to the Defence Secretary, Shri Naresh Chandra. He recorded the following recommendation on 4.10.1989:

"I have gone through the records and the above notes. I have not taken into account Note 17 recorded by Shri K.S. Sharma on 27.9.89, after he handed over charge as Joint Secretary to GOI on 31.8.1989. It is a very border line sort of case and there is also the fact that Shri Dhingra is now nearing 55 years of age. In these circumstances, action under FR 56(j) would be inappropriate. I, therefore, recommend retention in service".

(Emphasis added)

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22. The second respondent enquired of the CAO & JS, Ministry of Defence in his letter dated 24.11.1989 whether the case of the applicant has been reviewed at the age of 55 as it was not reviewed at 50 despite the many reports he had sent. He was informed on 5.12.1989 that no review at the age of 55 was provided for Group 'A' Officers and that "his case for retention beyond the age of 50 years already stands reviewed".

23. The case was called by Joint Secretary (E) on 5.4.1990. It was then noted that though the former Defence Secretary had recommended retention of Dr. Dhingra in service, approval of the Rajya Raksha Mantri had not been obtained, which was required to be taken on the basis of a standing order issued by the Defence Secretary and communicated on 29.4.90.

24. Shri S.P. Jakhanwal (JSE) noted this requirement and also mentioned that he has come across 20 complaints against Dr. Dhingra. He desired that a self contained note be put up so that the Committee could be approached again with full details. That is how he referred the matter to the Defence Secretary on 11.9.1990. He recommended that, in view of the 'differences of opinion in the Review Committee earlier and that 19 complaints are pending and that many adverse remarks remain even after expunction, a meeting of the Review Committee be called. Thereupon, the Defence Secretary directed the Additional Secretary to urgently appraise the substance of the complaints and advise him.

25. Accordingly, such an exercise was made. The records produced indicate the nature of the twenty complaints and the decisions taken in the meeting

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by the Addl. Secretary, on 8.11.1990 where the Joint Secretary (E), Joint Secretary (AD&CAO), Director (SFL), Under Secretary (Coord) and Desk Officer (Coord) were present. At this meeting, it was noted that only six allegations were found fit for further examination. In regard to these allegations, the latest position was explained in a later note of the Deputy Secretary dated 29.11.1990.

26. That file also contained a general summary of the C.R. assessment of Dr. Dhingra from 1967 to 1988. A detailed summary of the assessment made by the reporting officer, the remarks of the reviewing authority and the remarks on integrity, as finally toned down or expunged for the period from 1978 to 1988 was also prepared. The C.R. dossier was also kept on record. The Defence Secretary fixed a date for the meeting of the Review Committee. The file was then sent to the Joint Secretary (Human Resources Development) Shri S.G. Mankad on 14.1.1991. The meeting of the Review Committee took place on 25.1.1991. The recommendations have already been noted in para 4 supra.

27. This file shows that the Joint Secretary (AD&CAO) held the view that after the decision was taken by Shri Naresh Chandra, the then Defence Secretary on 4.10.1989 that the applicant might be recommended for retention in service, the review stood completed. In a note to the Addl. Secretary on 23.10.1990, he explained that the Department of Personnel & Training has confirmed that if the Review Committee recommends retention of an officer, there was no need to bother the appointing authority for orders and, therefore, reference to the Rajya Raksha Mantri was not necessary. In fact, the CAO division

had taken for granted that the review had been completed vide para 22 supra.

28. It is in the background we now proceed to consider whether the review conducted is hit on account of violations of the principles set out in para 15 supra.

29. The first question is whether in the circumstances narrated above it can be held that the review held on 25.1.1991 was a second review and, therefore, unauthorised.

30. We have considered the matter. In the first place, there are no specific instructions of the Department of Personnel that where the Review Committee recommends that an officer should be continued in service, it was not necessary to obtain the orders of the competent appointing authority, which in this case is the Rajya Raksha Mantri. As the Review Committee merely 'recommends' a course of action, it is obvious that a decision has to be taken only by the competent authority. Indeed, the then Defence Secretary merely recommended retention in service. Therefore, there was a need to obtain the decision of the Minister. At any rate, this was to be done in terms of a standing order issued by the Defence Secretary at a later date. We are of the view that merely putting up the matter to the Rajya Raksha Mantri, by itself would not have vitiated the proceedings.

31. Even if that be so, the question is whether the case could be reopened for a second review as appears to have been done in this case. We have considered the matter. Normally, the file should merely have been put up to the Minister for his orders. However, we see that the earlier proceedings had not been completed properly. No doubt, the Defence

Secretary as Chairman had recommended retention of the applicant but admittedly, he did not take into account the recommendation to the contrary made by Shri K.S. Sharma, Joint Secretary (Education), the other Member of the Committee. In the circumstance, there was on record only a recommendation by one of the Members i.e. the Chairman. That could not have been taken as a recommendation of the Review Committee. Hence, the file could not have been put up to the Minister. Therefore, we cannot conclude that the review taken up on 25.1.1991 was a second review. It was indeed the continuation of the first review initiated as early as on 13.2.1986.

32. We now consider the question as to which are the confidential reports and also incidents - which can be taken up in the belated meeting of a Review Committee. Though the departmental instructions do not throw any light on this issue, the decision, in the case of Nasirmiya (supra) makes it absolutely clear that the 'action under Fundamental Rule 56(j) against a government servant is dependent on his service record earned by him till he reaches the age or completes the service provided under the Rule' (emphasis given). The implication of this decision is that if a Review Committee meets belatedly to formulate its recommendations under FR 56(j) in respect of an employee, it cannot look into only the Character Rolls and the records of service upto the age of 50 years or 55 years, as the case may be and not the record of service rendered subsequently. Incidentally, this decision of the Supreme Court, in effect overrules the decision of the Tribunal in S.P. Francis Nathan Vs. Govt. of Pondicherry(Mad.), 1988(6) ATC-729 (CAT) in this regard. If on such a review, it is

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found that there is a case to retire an employee prematurely, then the Review Committee shall, nevertheless, look into the Character Rolls/record of service of the subsequent years but only for ascertaining whether on the basis of such later record, the premature retirement at the age of 50/55 years is unjustified. This is due to the fact that as a belated review is undertaken, it is only fair to consider whether there is any improvement after the relevant age, which can persuade the competent authority to take a more lenient decision.

33. If, on the contrary, on such a review, the Review Committee comes to the conclusion that no case is made out to prematurely retire the employee, it shall be deemed that on review, the employee has been allowed to continue in service till superannuation. It will not be open to the Review Committee to see the Character Rolls/record of service for the subsequent period with a view to finding whether such later record of service justifies action under FR 56(j). This is for two reasons. Firstly, the judgement of the Supreme Court in Nasirmiya's case lays down the outer limit of the period for which C.Rs/record of service can be seen for ordering retirement which is the relevant age, period of service mentioned in the Rules. Secondly, this will amount to an implied second review, not normally permitted. If the later record of service is not good, it is open to the appointing authority to take any disciplinary action that may be advised or justified. Acting otherwise will be contrary to the principle laid down in Chandra Mohan Nigam's case that a second review is not permissible and the sword of Damocles shall not be allowed to hang on the head of the employee. There is only one important exception to the bar against looking into the record of service for the subsequent period and the implied second review.

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The subsequent record can be looked into and an implied second review made only if the ground therefor is that there are complaints about the integrity of the employee or charges of corruption have been made out against him and no other, as stated by the Supreme Court in Chandra Mohan Nigam's case.

34. In the present case, we have held that the review held on 25.1.1991 is really the continuation of first review. The applicant attained the age of 50 years on 10.1.1985. The character rolls upto 1988 have been written calendar year wise. Therefore, only the CRs upto 1984 and also incidents upto 1984 having a bearing on his service could have been considered by the Committee. However, we notice from the proceedings of the Review Committee extracted above that the Committee has relied upon the character rolls for the period beyond 31.12.1984. It has also considered incidents which took place after that date for which the applicant has been warned, to make their recommendation. In other words, they have relied on extraneous considerations not germane to the issue and hence that recommendation is vitiated and the natural consequences have necessarily to follow.

35. In the circumstance, we do not wish to decide any of the other issues that were contested by the learned counsel for the parties except one.

36. The learned counsel for the respondent contended that ^{the} many issues, not raised in the pleadings in the O.A. have been raised by the learned counsel for the applicant. This has reference to the objection regarding belated review, taking into consideration CRs of the period before the applicant attained the

age of 50 years. He relied on the decision of the Supreme Court in AIR 1953(SC) 1167. On the contrary, the learned counsel for the applicant relied on the decision in Ram Sarup Gupta Vs. Bishnu Narain Inter College and Others, 1987(2) SCC 555, to contend that a pedantic view cannot be taken.

37. We have carefully considered the matter. No doubt, these issues are not raised as grounds in the O.A. but in the representation (Annexure A2) made by the applicant against the Annexure A-1 order, the applicant has squarely raised the issue of belated review and its validity. He has also raised the issues in the rejoinder dated 20.5.1992 indirectly. What is more important is that it is only when he was given a copy of the recommendations of the Review Committee, that the applicant could raise these grounds based on the facts disclosed in these recommendations. Hence, this objection has no force.

38. For the foregoing reasons, we find that the recommendations made by the Review Committee on 25.1.1991 suffer from a serious illegality inasmuch as, though the applicant had attained the age of 50 years on 10.1.1985, the Committee has relied on adverse entries in the character rolls for the period after 31.12.1984 as also incidents which took place after 31.12.1984 having a bearing on the applicant's conduct and efficiency, besides material pertaining to the period ending 31.12.1984. Thus, totally extraneous materials have been relied upon, besides relevant material. That has vitiated the recommendations of the Committee and consequently, the subsequent decision taken by the impugned Annexure A-1 order dated 25.2.1991 is untenable and hence it is quashed. We also quash the subsequent order passed by the first respondent rejecting the applicant's representation against the Annexure A-1 order, as seen from the records. The first respondent is directed to reconvene the

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Review Committee to consider the case of the applicant either for continuance in service beyond the age of 50 years or for premature retirement under FR 56(j) after attaining such age. The Review Committee shall reconsider the case of the applicant in the light of the observations made by us, including the proceedings which had taken place earlier for review, before the impugned review was conducted, as narrated in paras 18 to 21 supra. The first respondent is directed to pass final order, in accordance with law as may be advised, within four months from the date of receipt of this order. The applicant has already attained the age of 58 years on 10.1.1993 and in the normal course he would have superannuated. Therefore, there is no question of reinstating him in service. His status will abide by the ~~fresh~~ ^{fresh} order that may be passed by the first respondent. If any benefit accrues to the applicant therefrom, such benefits shall be granted to the applicant within two months from the date such order is passed. No costs.

A. Vedavalli
18/9/95

(Dr. A. Vedavalli)
Member(J)

N.V. Krishnan

(N.V. Krishnan)
Acting Chairman

'SRD'