

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. 407/1993

Date of Decision: 4-4-2001

Dr. R.K.Khola : Petitioner(s)

Mr. P.H.Pathak : Advocate for the Petitioner(s)

Versus

Union of India & Ors. : Respondents (s)

Mr. Akil Kureshi : Advocate for the Respondent(s)

CORAM:

HON'BLE MR. V.RAMAKRISHNAN : VICE CHAIRMAN.

HON'BLE MR. A.S.SANGHVI : MEMBER (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? *Ys*

Dr. R.K.Khola, M.Sc.(Phys.),
M.Sc.(Tech.), Ph.D., F.I.E.T.E.&
M.I. EEE (USA)
Scientist/Engineer SF
E/15 DOS Housing Colony
Vastrapur, Ahmedabad-15.

Applicant

Advocate: Mr. P.H.Pathak

Versus

1. Union of India

(To be served through the
Secretary, Deptt.of Space
Antriksh Bhavan, New ~~Reshix~~ BEL Rd.,
Bangalore- 560 054.

2. Prof. U.R. Rao

and/or his successor in Office
Chairman ISRO & Secretary, DOS
Antriksh Bhavan, New BEL Road
Bangalore 560 054.

3. Shri P.P.Kale

and/or his successor in office
Director, Space Applications
Centre, Jodhpur Takera
Ahmedabad.

Respondents

Advocate: Mr. Akil Kureshi-

JUDGEMENT

in

Dated 4th April ~~April~~, 2001

OA/407/1993

Per Hon'ble Mr. V.Ramakrishnan, Vice Chairman:

PM
The applicant who was serving as
Engineer SF Grade in the Space Application
Centre (SAC) in Ahmedabad in Indian Space
Research Organisation (ISRO) has filed the
present O.A. where he has sought the following
reliefs:-

- i) To quash and set aside the order of premature retirement dated 3.5.1993 (Annex. A-10) of the petitioner and be pleased to declare the said order as absolutely illegal and bad, unconstitutional, null and void and that the petitioner continues in the service of the respondents as if the said order was never passed against the petitioner and to confer upon him all consequential benefits accordingly.
- ii) To declare the ~~section~~ of the respondents in rejecting the representation by passing the order dated 17.2.1994 (Annexure A-12) as arbitrary, illegal, violative of Articles 14 and 16 of the Constitution of India and also Rule 56(j) and to quash and set aside the same.

2. The applicant has filed another O.A./44/1992 where he had challenged ~~against~~ certain adverse remarks in his ACRs for the period from 1986 to 1991 as also the rejection of his representation for expunging such adverse remarks. He has also made a grievance in the O.A. that he had not been promoted to SG Grade.

After he filed that OA/44/1992 he came to know that the order of premature retirement under section 56(j) was issued and filed MA/144 of 1993 dated 5.5.93 in that O.A. for a direction that the order should not be served on him.

But later on ^{he} did not press the same as that request had become infructuous. The present O.A. was filed on 7.5.1993 and on the same day it was placed before the Bench. The Tribunal by its detailed order dated 7.5.1993 refused the prayer for interim direction to stay the implementation of the order of premature retirement and also admitted the O.A. on that day. On 17.12.93 the applicant filed MA/680 of 1993 where he stated that the respondents had passed order dated 5.7.93 that they want to continue the pending disciplinary inquiry against him even after passing the order dated 3.5.1993 of premature retirement and he wanted to implead the Chairman, Appointments Committee of the Cabinet and a number of officers in the Department of Space and ISRO as respondents.

The Tribunal noted that the present O.A. only challenges the order of premature retirement and not the maintainability of the inquiry against him. The applicant did not press the

M.A. He also filed MA/679/93 where he had requested for retention of the official quarter. The respondents agreed to permit him to retain the quarter upto 30th June 1994. On 27.6.94 he filed another MA/331 of 1994 requesting for allowing him retention of quarter till the disposal of this O.A. or at least till 30.9.94. This M.A. was rejected by the Tribunal by its order dated 1.7.94.

On 8.9.95, he filed MA/605 of 1995 where he wanted to amend O.A. as also the relief clause as the representation submitted by him against the order of premature retirement had been rejected by the authority. This was allowed.

He also filed MA/607 of 1996 where he asked for:

- (a) For the ACRs from 1980 to 3rd May 1993.
- (b) Proceedings of the Review Committee.
- (c) Proceedings of the Representation Committee.
- (d) Proceedings of the Appointments Committee of the Cabinet (ACC.).
- (e) Records/Rules/documents placed before the ACC.
- (f) The order passed by the Minister.

The respondents filed a reply. The matter was adjourned from time to time. The respondents

filed reply and produced copies of the proceedings of the Review Committee, a copy of the decision of the ACC etc. The applicant requested for some more documents later and the Tribunal directed that a copy of the proceedings of the Representation Committee and also the file containing the notes placed before the A.C.C. and the file containing the approval of the Minister approving the decision to prematurely retire the applicant shall be made available to the Tribunal. These have been shown to the Tribunal by Mr. Kureshi, for the respondents. The applicant also had changed his counsel and had engaged Mr. P.H. Pathak later. There was also a change of counsel of the respondents.

After getting the documents referred to earlier, the applicant filed MA/31 of 2000 for amendment to the O.A. contending that it became necessary after inspection of the documents. The M.A. was allowed and respondents had filed a reply. After the matter was finally heard for some time, the applicant filed a rejoinder dated 21.11.2000, which was permitted to be taken on record. These are some of the developments during the course of the present

O.A. with the result that the case records have become quite voluminous.

The O.A. was heard on a number of occasions by a Bench consisting of Vice Chairman and Shri P.C. Kannan, Member (J) and was reserved for orders on 22.12.2000. But before the orders could be pronounced, Shri P.C. Kannan tragically passed away on 26.1.2001 falling a victim to the earth quake in Ahmedabad on that day. The O.A. has been subsequently re-heard by the present Bench.

3. We have heard Mr. Pathak for the applicant and Mr. Akil Kureshi the Special Counsel for the respondents. We have also gone through the various materials including the copies of the A.C.Rs of the applicant, Minutes of the Review Committee, the proceedings of the Representation Committee and the file where the applicant's case was placed before the ACC, both initially while issuing the order of premature retirement and subsequently while rejecting his representation against the same order.

4. As stated earlier, the applicant has filed OA/44 of 1992 where he has challenged

certain adverse entries in the ACRs and rejection of his representation against such adverse entries. There was elaborate discussion on this by Shri Pathak while arguing OA/44/1992. Mr. Pathak submits that these arguments will be equally relevant in the present O.A. also where one of the grounds urged is that the A.C.Rs were not written according to the procedure prescribed.

5. Mr. Pathak states that the Reporting Officer Mr. Ram Bilas had held the applicant fit for retention in service. The applicant relies on the certificate given by Mr. Ram Bilas and also by Mr. Pramod Kumar the earlier Group Director. The applicant also has written a number of papers and was appointed as a Member of the Steering Committee of S.Band propagation experiment. In the circumstances, the performance of the applicant should be taken as excellent and he cannot be regarded as ineffective. He should have been retained in service. According to the guidelines, a person who is not ineffective can be prematurely retired only if his integrity is doubtful. The respondents had made no such allegation

against the applicant's integrity. It is contended that the action has been taken against the applicant solely on the remarks of Mr. U.R.Rao the then Chairman, ISRO who is prejudiced against the applicant as the applicant had filed a case challenging the fitness of Mr. U.R.Rao to be appointed as Chairman, ISRO. The Director of the Centre also had not recommended his premature retirement. The decision was taken on mala fide considerations at the instance of Mr. U.R. Rao. The applicant was not given any work allotment ^{and} he could not be expected to show any achievements. All the same he made some contributions.

It is also argued that the guidelines dated 5.1.78 were not followed. As the applicant's integrity is not in doubt and his work performance is Very Good he could not ~~have~~ have been prematurely retired.

The respondents also had not adhered to the time schedule fixed for review when a person completes 50 years of age. The Review Committee and the Representation Committee were not constituted properly. Mr. U.R. Rao was a Member of the Review Committee and he acted as

a judge in his own case as it was only Mr. U.R.Rao who had given adverse entries to the applicant in his A.C.Rs . Besides in the Review Committee, Mr. U.R.Rao should not have been included. It is also alleged that entire service records of the applicant were not scrutinized and only A.C.Rs were taken into account. Such action is challenged in the O.A. It is also argued that the applicant was not given three months' pay and allowances in one lump-sum at the time of retirement. Besides there are a number of officers in ISRO who had crossed 50 years but only the applicant was singled out ^{for} retirement and therefore action to retire him under section FR 56(j) and not to retire any other officer ^{not} was discriminatory. He was given an option ~~to~~ to retire voluntarily on his own. It is also contended that his representation was rejected without taking into account the various contentions raised therein and the representation committee consisted of Members who are friends of Mr. U.R.Rao. Besides in 1991, disciplinary proceedings were initiated against the applicant and they were continued and the decision ~~of~~ to prematurely retire the applicant does not seem to be a clean decision.

When the order under F.R.56(j) retiring the applicant prematurely was issued ^{the} and applicant was not allowed his full pension and other dues. There are court decisions stating that if there are pending proceedings the same ought to have been brought to the notice of the competent authority which was not done in the present case. The applicant has been made to lose his dues by continuing such proceedings. The action of the department in continuing disciplinary proceedings even after issue of the order under Section F.R. 56(j) is self contradicting. ^{Art 310 and Art 311 of the Constitution} as in the present case both have been invoked simultaneously. Mr. Pathak submits that ^{for} these reasons the O.A. should be allowed.

6. Mr. Akil Kureshi for the respondents opposes the O.A. He submits that as the applicant had made no contribution, the Govt. issued the impugned order dated 3.5.1993 as he had become totally ineffective. The respondents also disposed of the representation dated 7.9.93 submitted by the applicant against the order of premature retirement after considering his contentions in the representation, submitted against the order of premature retirement. There was no need for the applicant's case to be taken to the ACC as the applicant was drawing pay below Rs.2500/- but all the same the matter had gone

to the ACC consisting of the Prime Minister, Home Minister and Cabinet Secretary. The Establishment Officer had given a detailed note discussing the case of the applicant and a decision was taken by the ACC. Similarly, the Civil Services Board consisting of the Cabinet Secretary, Secretary (Personnel) and Establishment Officer considered the representation of the applicant and after taking into account his contentions recommended that the representation deserves to be rejected. This was placed before the A.C.C. and the ACC had confirmed such recommendation. Mr. Kureshi states that the competent authority is the Appointments Committee of the Cabinet and the others are only recommendatory committees. The competent authority had applied its mind while taking the decision. There is nothing irregular in the procedure followed. Mr. Kureshi does not agree that the applicant's retirement was done on account of extraneous consideration. The authorities had gone on the basis of the service records as reflected in the ACRs. He finds no merit in the contention that the entire service records were not taken into

account. The A.C.R. constitutes the major input for taking such a decision. The applicant has claimed that he has contributed various papers but he has not reflected the same as part of his work output. He has not chosen to give his self assessment. Mr. Kureshi does not dispute the contention that there was no allegation against the integrity of the applicant. However, on the basis of his entire service record, the authorities took the view that he was ineffective and had to be retired prematurely. He emphatically denies the allegation of any bias or mala fides against Shri U.R.Rao or Shri Kale. They were very senior officers and there is no basis at all for holding that they were prejudiced against him. Their jobs were not at stake just because the applicant had sent some telegrams against them. The applicant has laid no foundation in support of the charge of mala fides, and the same deserves to be rejected. Mr. Kureshi also says that the authorities had followed the proper procedure while taking the impugned decision. The applicant had not done any work for ^a number of years and was not fit to be continued in the

organisation. His case was reviewed soon after he attained the age of 50 years. The Department of Personnel in O.M. dated 5.1.1978 ^{has} laid down certain guide lines and they have been kept in view to the extent possible. Mr. Kureshi says that even if there is some deviation from the guidelines with regard to the time schedule etc. it would not vitiate the final order. He submits that what is required is that the appropriate authority has to form an opinion that it is in the public interest to retire a person under F.R.56 (j) on the basis of the service records and in that event, that there is no bar for the exercise of the power under that rule. Government instructions are only guidelines laid down for its functioning and the Government servant cannot be heard to say that even though the order of retirement is justified on the basis of the service records, but since there is violation of some Government instructions, the order is liable to be quashed. He relies in this connection on the decision of the Supreme Court in the case of Union of India vs. N.A. Chauhan- 1994 Supply.(2) SCC 537. He submits that there are other officers in this organisation who had crossed age of 50 years but the department took up the cases of

those against whom *prima facie* there was no justification for continued retention. He states that the applicant's case was not a solitary case as stated by him and another officer Dr. M.S.N. Balasubramanian Scientist/Engineer SF Grade who was serving in Trivandrum Space Application Centre was also prematurely retired. The charge of discriminatory treatment against the applicant is baseless.

Mr. Kureshi submits that the applicant had been paid three months pay and allowances as per the pay drawn by him prior to the retirement and the Dearness Allowance and C.C.A. upto 3.5.93 after recovering the contribution towards the Group Insurance Scheme. He has been paid three month's pay and allowances in lieu of notice. If it was found that it fell short of some amount on account of the claim of the applicant that his pay should have been fixed at higher level, it would not vitiate the order of retirement. He relies in this connection on the decision of the Supreme Court in the case of State of Orissa vs. B. Sathapathy AIR 1994 SC 1127. Mr. Kureshi heavily relies

on the decision of the Supreme Court in the case of Bai Kuntha Natha Das vs. Chief District Medical Officer Baripada AIR 1992 SC 1020 and says that this is not a fit case for the Tribunal to interfere with the decision. He also does not agree that the order under section FR 56(j) is void solely on the ground that it was issued during the pendency of the disciplinary proceedings. He relies in this connection on the decision of the Supreme Court in the case of State of U.P. and another vs. Abhai Kishore Masta 1995 (1) SC SLJ 139. He submits that the O.A. is devoid of merit.

7. We have carefully considered the submissions of both the sides.

8. The main grounds urged in support of the O.A. are the following:-

(a) The finding that the applicant has become dead wood is perverse as the applicant has been having very good record of service, has high qualification and has made significant contributions to the organisation. While coming to this finding, the adverse entries given by Professor U.R. Rao only were taken into account disregarding the favourable reports given by Dr. Ram Bilas, Shri Pramod Kumar and others. The adverse remarks for the period from

1986-1991 have to be totally ignored for a number of reasons spelt out in OA/44/1992. Briefly these are that the ACRs were written in 'one go' and not in the normal course and that they did not reflect the factual position as the Reviewing Officer Shri Pramod Kumar had given him good certificate and reasons were not given by the authorities for giving him the gradings that he is not fit to be retained in the particular grade and they were written by incompetent authorities inasmuch as Shri Kale for some years functioned as Reporting Officer whereas he could only be the countersigning authority and also that Shri U.R. Rao had functioned as countersigning authority for some years and as a Reviewing authority for some other years when he had no role to play at all. Besides the entire service records were ^{not} _{in} taken into account. The fact that the disciplinary proceedings were pending against the applicant is an important material which was not brought to the notice of the Committee and also the A.C.C.

It is also alleged that the rejection of his representation against the adverse entries is not legal.

(b) The guidelines of the Government contained in the Department of Personnel in O.M. dated 5th January 1978 which are stated to have binding force have been flouted. In particular, when there is no doubt about his integrity, he should not have been retired. The time schedule fixed for the review has not been adhered to and only the applicant and ^{1/} ~~no~~ other person was considered for premature retirement.

(c) The Review Committee and the Representation Committee were not properly constituted. Shri U.R.Rao ought not to have been a Member of the Review Committee. The Representation Committee consisted of Members who are close friends of Shri U.R.Rao and who are influenced by the opinion of Shri U.R.Rao. It is also alleged that the Representation Committee had not dealt with the various contentions made in the representation.

(d) The applicant was not given three months' pay and allowances as required under the rules and the cheque was not enclosed. Besides the three months' pay and allowances were not

properly calculated. As the amount was not given in one lump-sum the order automatically stands vitiated.

(e) The applicant was visited with disciplinary proceedings where he was charged with conduct unbecoming of a Government servant. These proceedings were pending and were not closed when the order of premature retirement was issued. These proceedings were not brought to the notice of the Committees and the ACC. This amounts to the Government exercising powers under Article 310 and Article 311 simultaneously which cannot be done. As the continuance of the disciplinary proceedings has reduced the pension and other retirement benefits of the applicant, such an order is a penal order and is not a simple order of premature retirement.

9. The applicant also has relied on various authorities particularly a number of decisions which are rendered by this Tribunal in various Benches, a few decisions of Delhi, Rajasthan and Allahabad High Courts, apart from some decisions of the Supreme Court. As the law in this regard has crystallised with authoritative

pronouncements by the Supreme Court in respect of premature retirement, we propose to refer only to Supreme Court decisions while dealing with the various contentions. A number of recent decisions of the Supreme Court referred to the principles laid down by the Supreme Court in *V. Baikuntha Nath Das vs. District Chief Medical Officer, Baripada* - AIR 1992- SC 1020. In that case the Supreme Court has elaborately dealt with the various issues pertaining to the exercise of power under F.R. 56(j). For example, in the case of *I.K.Misra vs. Union of India* AIR 1997 SC 222 3740, the Supreme Court has referred to Baikuntha Nath Das's case and has observed as follows:-

" Counsel for the appellant reiterated the argument advanced before the court below characterising the order compulsorily retiring the appellant from service as arbitrary and mala fide. It was urged that the service record of the appellant being unblemished, the impugned order compulsorily retiring the appellant deserves to be held as arbitrary. The law in regard to the compulsory retirement of the Govt. servants in terms of service rule is almost settled by now by number of decisions of this Court. Repeatedly it has been held that the power to retire compulsorily a Govt. servant in terms of the service rules is absolute provided the concerned authority forms an opinion bona-fide that it is necessary to pass order of compulsory retirement in the public interest. This Court in the case of *Baikuntha Nath Das v. Chief District Medical Officer, Baripada* (1992) 2 SCC 299: (1992) AIR SCW 793) after considering the number of decisions of the Apex Court referred

the following principles for testing the validity of order of compulsory retirement.

"34. The following principles emerge from the above discussion:

(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 of 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 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, 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 adverse 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. This aspect has been discussed in paras 30 to 32 above".

The issues raised in the present O.A. have to be examined e in the context of these principles.

10. The first ground urged in support of the O.A. is that the impugned order is ^{mala fide and} perverse. The applicant says that he was having excellent record of service earlier and has also received good certificates from his Reporting Officers. It is contended that it is not open to the department to take a decision only on the basis of the opinion of Shri Kale and Shri U.R. Rao. In particular, Shri U.R. Rao, who has been instrumental in giving adverse remarks is ^{alleged} allowed to be biased against the applicant and should have not participated in the Review Committee. The A.C.Rs for the period 1986 to 1991 suffer from serious irregularities and such ACRs should not have been taken into account by the competent authority. As the applicant challenged the adverse entries in the ACRs in OA/44/92 the matter was sub judice and the adverse entries should not have been relied upon.

11. We do not find any merit in this contention. While disposing ^{of} OA/44/1992 by a detailed order we have dealt with the challenge to the ACRs, particularly the three elements as as to when they were written, what was written therein and by whom they were written. We have held that the ACRs for the relevant period did not suffer from any illegality or irregularity even though they were written in 'one go' and Shri Kale had functioned as Reporting Officer for two years and Shri U.R.Rao has acted as a countersigning authority and has given gradings. We had also rejected emphatically the allegation of mala fides against Shri U.R.Rao and Shri P.P. Kale. While disposing of OA/44/92 we have held that the ACRs for the relevant years have been properly recorded and the gradings have been correctly given. In particular, we have noticed that the so-called certificate given by Shri Pramod Kumar the Reporting Officer is at variance with the report he has given in the ACRs for the years 1986, 1987, 1988, 1989, 1990 and 1991 and that such a certificate is more in the nature of a testimonial for a person seeking a job elsewhere. The applicant had been

having problems for a number of years even from as early as 1975 on the basis of the materials furnished by the applicant himself and that he did not fit into the culture of ISRO. In OA/44/1992 we have also rejected the challenge to the rejection of his representation for expunction of his adverse ~~xxx~~ entries. In the light of this position, the fact that the ACRs were relied upon by the authorities while taking the impugned decision will not vitiate the order under F.R. 56(j).

The applicant has sought to argue that as he has challenged the adverse ~~xxx~~ entries in his ACRs in OA/44 of 1992 before this Tribunal, the matter was sub judice and the authorities could not have gone on the basis of the entries in the C.Rs while taking the impugned decision.

There was no direction by the Tribunal while dealing with OA/44/92 that the ACRs containing adverse entries cannot be taken into account for any purpose whatsoever. Merely because the applicant has challenged the adverse entries in ACRs, it cannot be argued that all other actions of the Govt. should come to a stand-still when there is no stay granted by the Tribunal. We find no merit in this submission.

The applicant has contended that it was essential that his entire service records should be taken into account and this was not done and only the ACRs were relied upon. The applicant had not written his self assessment and had not brought out his contribution to the organisation even though subsequently he claims to have done some work. The authorities will go on the basis of the ACRs dossier which is the most important input. When the applicant has not made any efforts to bring on record through his self assessment report his contribution, if any, he cannot make a grievance that they were not taken into account. The applicant has stated that he has been made a Member of a Steering Committee of S.Band Propagation Experiments. He has not ^{and} spelt out his role ^{and} as to what he has done in that committee and what importance has to be attached to his membership.

He has contended that the fact that he was facing disciplinary proceedings by issue of a Memorandum dated 7.8.1991 has not been brought to the notice of the committees or to the ACC and that the Supreme Court has held in the case

of State of Orissa vs. Ram Chandra Das (1996) 5

SCC 3317 has held that the:

"..... Records of inquiry may be relevant consideration for the Government or the Officer to decide whether the concerned Government servant should be compulsorily retired or not".

We do not see as to how this assists ~~to~~ the case of the applicant. The fact that a Govt. servant is facing disciplinary proceedings is not a favourable feature for him. The ACC had already decided that the officer should be retired in the public interest. If they had known about the pendency of the disciplinary proceedings, this would have only re-inforced their stand and is not a ground for reversing their decision. Besides in Ram Chandra Das's case the Supreme Court has inter alia observed as follows:-

" In the instant case the adverse remarks made are after promotion. Even otherwise, the remarks form part of service record and character roll. The record of the pending inquiry on conduct also would be material. Though minor penalty may be imposed on given facts and circumstances for the act of misconduct, nevertheless it remains part of the record for overall consideration to retire a Government servant compulsorily. The object always is public interest. The material question is whether the entire record of service was considered or not? It is not for the court/tribunal to see whether the decision of the Government to compulsorily retire the government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. What would be relevant is whether upon that state of record as a

reasonable prudent man would reach that decision. Although the selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service".

In the present case the authorities had gone on the basis of the service records as reflected in his entire C.Rs dossier and had come to the finding. The omission to refer the pending disciplinary proceedings has not caused any prejudice to the applicant. While disposing of OA/44/92 we had also emphatically rejected the allegation of mala fides against Shri U.R. Rao. There is also a statement that as he had received promotion to SF Grade in 1986 the service records till that period should be taken as excellent. We have already noted that the applicant had been having problems even earlier and his earlier promotion was also delayed.

We may also refer to the observation of the Hon'ble Supreme Court in the case of State of Punjab vs. Gurdas Singh AIR 1988 SC 1661. In particular we may extract part of para 11 as follows:-

" Before the decision to retire a Govt. servant prematurely is taken the authorities are required to consider his whole record of service. Any adverse entry prior to his earning of promotion or crossing of efficiency bar on taking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during the whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well".

So long as the decision of the Government has been taken bona fide and it has come to the

conclusion that the Government servant has become ineffective and needs to be retired under F.R.

56(j) if it is not open to the Courts to interfere in the same. We may extract part of para 4 of the judgement of the Supreme Court in the case of State of U.P. vs. Bihari Lal - AIR 1995 SC 1161

"...It is on an overall assessment of the record, the authority would reach a decision whether the Government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore the Government could legitimately exercise their power to compulsorily retire a Government servant. The Court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be ground for interference by the Court/Tribunal in exercise of its judicial review."

12. We therefore reject the contention that the ^{mala fide or} decision to retire him under FR 56(j) is perverse viewed from his service records.

13. The applicant has also contended that there has been infraction of the guidelines contained in Government circular dated 5th Jny. 1978. According to him the instructions and procedure laid down in this regard are statutory in nature

and are binding on the Government. He says that Government has not adhered to the time schedule laid down in Para IV of the Consolidated instructions. He also refers in this connection to the decision of the Supreme Court in the case of State of U.P. vs. Chadra Mohan Wigam- AIR 1977 (4) SCC 345. He submits that he has been singled out for premature retirement when there are a number of officers in ISRO who had attained 50 years of age and they were not retired. He also submits that before issuing the order of premature retirement he should have been given an option to seek voluntary retirement.

14. As regards the charge of discrimination, we find that there was another case of Dr. Bala subramanian who was also in ISRO in Trivandrum who was also retired prematurely under F.R. 56(j). It is stated that the organisation took up the cases of those persons who ~~prima facie~~ were unsuitable to be continued and the applicant's case fell into that category. The guidelines no doubt require that all the departments should maintain a suitable register in respect of employees who are due to attain age of 50/55 years or complete 30 years of service as the case may be, and the same should be scrutinised, at

the beginning of every quarter by a senior officer in the Ministry/Department. It would seem that such a procedure was not followed by the ISRO. All the same they have taken up the case of those few officers who *prima facie* were not suitable to be retained in service. We may in this connection refer to the decision of the Supreme Court in the case of Union of India vs. N.A. Chauhan- AIR 1994 (2) SCC 537. Para 3 of this judgement reads as under:-

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

As such the fact that the administrative instructions have not been strictly complied with would not vitiate the order if it is held to have been issued in the public interest and the authorities came to the finding on bona fide consideration that the applicant was not fit to be retained in service.

15. The applicant has sought to argue that the decision of the Supreme Court in Chauhan's case was rendered by a Bench consisting of two judges whereas in the case of Chandra Mohan Nigam AIR 1977 SC 2411 the Supreme Court has held that the instructions of the Govt. of India under FR 56(j) are statutory and mandatory and are binding on the Government.

We find that the decision in Chauhan's case is a later decision. We have gone through the decision of the Supreme Court in Chandra Mohan Nigam's case. The Supreme Court in this case has dealt with certain guidelines issued by the Home Ministry with regard to application of Rule 16(3) of All India Service (Death-cum-Retirement Benefits) Rules. Rule 16(3) is similar to F.R. 56(j).

In para 27, the Supreme Court has observed 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"....."

In para 29 the Supreme Court has stated:- as under:-

"29. The correct position that emerges from Rule 16(3) read with the procedural instructions is that the Central Government, after consultation with the State Government may prematurely retire a civil servant with three months' previous notice prior to his attaining 50 years or 55 years, as the case may be. The only exception is of those cases which had to be examined for the first time after amendment of the rule substituting 50 years for 55 where even

officers who had crossed the age of 50 years, even before reaching 55 could be for the first time reviewed. Once a review has taken place and no decision to retire on that review has been ordered by the Central Government, the officer gets a lease in the case of 50 years upto the next barrier at 55 and, if he is again cleared at that point, he is free and untrammelled upto 58 which is his usual span of the service career. This is the normal rule subject always to exceptional circumstances such as disclosure of fresh objectional grounds with regard to integrity or some other reasonably weighty reason".

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It will be from this that in Chandra Mohan Nigam's case the Supreme Court has not held that all the guidelines or instructions to be mandatory other than the instructions for not having multiple reviews excepting in exceptional circumstances. Such an instruction reflects the basic intention of Rule 16(3) of the AIS (Death-cum-Retirement Benefits) Rules. The other guidelines with regard to the time schedule etc. are not mandatory.

The case of the applicant before us was reviewed only once on completion of 50 years of age and it was held that he was not fit to be retained in the service. The fact that there is some deviation from the executive instructions will not vitiate the decision of the Government to retire the applicant under F.R.56(j).

16. The applicant also has contended that he ought to have been given option for voluntary retirement before passing an order of premature retirement under FR 56(j) and in support of his stand he has referred to the decision of the Supreme Court in the case of State of U.P. vs. Chandra Mohan Nigam referred to supra. We have carefully gone through the Supreme Court decision in that case. There is nothing in the judgement to substantiate the contention that it is incumbent on the part of the Government to inform the Government servant about their intention to retire him prematurely and inquire from him whether he would like to retire on his own. We reject this contention.

17. The applicant's submits that the Review Committee and the Representation Committee were not properly constituted. The respondents have taken the line that as his pay was less than Rs.2500/- was less than ~~Rs.2500/-~~ there was no need for reference to the ~~g~~ ACC for its approval but all the same it was done. They held that it is for the Department of Space to constitute such Committee and the same consisted not only of

-- Shri U.R. Rao but also other senior officers ^{mainly} and the Additional Secretary to the Government of India from a different department who is not under the control of Shri U.R. Rao. They also stated that this committee is ~~recommendation~~ and is only to make the ~~recommendation~~ decision ^{one} taken at the level of the A.C.C. who is the highest body.

We find that the Review Committee consisting of Shri U.R. Rao and Shri B.R. Prabhakaran Additional Secretary, Department of Atomic Energy met on 27.6.86 and considered the case not only of the applicant but also ^{one} Dr. M.S.N. Balasubramanian and recommended their premature retirement. Eventually orders were issued under Section 56(j) in both the cases after obtaining the decision of the A.C.C. A similar contention ~~contention~~ regarding the constitution of the Review Committee was raised before the Ernakulam Bench of this Tribunal by Dr. M.S.N. Balasubramanian who was also retired under F.R.56(j). While disposing of the OA/829 of 1993 by its order dated ~~xxix~~ 9.11.1994 in para 12 the Ernakulam Bench has observed as follows:-

"12. As far as procedural matters are concerned, respondents have prescribed guidelines. Applicant submitted that these have been violated. Learned counsel for respondents stressed the fact that these are only administrative instructions and that even non-compliance would not invalidate the decision taken. This view is supported, as already noticed, in Union of India and others vs. Nasirmiya Ahmadmiya Chauhan (supra) where, as in this case, a contention was raised that the time schedule prescribed in the guidelines was not followed. As long as the requisite opinion was formed by the competent authority on reasonable grounds, even breach of guidelines may not invalidate the decision taken. Though the applicant contended that the review was not made by the Central Establishment Board as prescribed in the guidelines, no material has been produced to show who, according to the applicant, are the members of the Central Establishment Board. Merely because a two-member committee has been prescribed for a lower category of officers and the review committee in the case of applicant had two members, it would not follow that it was not the prescribed committee. We called for the minutes of the review committee and perused them. The members are the Secretary of the Department to which applicant belongs and an Additional Secretary from another Department. There is a recital that it was the committee constituted according to Department of Personnel & Training O.M. No. 25013/15/86-Estt(A) dated 27.6.86. Its recommendations were submitted to the ACC. The ACC, which is the highest body for the purposes of this case, considered the recommendations and arrived at the opinion that continuance of applicant would not be in public interest and that he may be compulsorily retired under FR 56(j). We do not see any reason why the procedure should be faulted".

In the present case, we have gone through the relevant file where the matter was placed before the Appointment Committee of the Cabinet. Establishment Officer &

Secretary of the ACC had given a note where he has referred to the case of Dr. M.S.N. Balasubramanian Scientist/Engineer SF Grade in VSSC Trivandrum and the present applicant Dr. R.K. Khola. He had brought out that the Department of Space has been reviewing periodically the cases of all the employees who have attained the age of 50/55 years or completed 30 years of service and that during the last review conducted recently, the department found that the above two scientists/Engineers were not fit for continuance in service. As they are in the grade of Rs. 4500-5700, their cases are referable to the A.C.C. He also referred to the views of the Review Committee in respect of these two officers and it has become necessary to process these two cases for approval of the Competent authority. He had placed the C.R. dossiers of both these officers for perusal of the A.C.C. In para 9 he had submitted in that the light of the aforesaid documents, ACC may consider whether proposal to retire these two officers under FR 56(j) is to be approved. He had brought out that the Minister of State (Personnel) had ~~been~~ seen

the proposal and had put up the note for consideration and orders of the Appointments Committee of the Cabinet. The Cabinet Secretary approved the proposal as also the Union Home Minister. The Prime Minister had also approved the same on 24.4.93. After such approval, the impugned orders were issued in respect of Dr. Khola. In the light of this position irrespective of the question whether the Review Committee ^{who} considered the case of the applicant was constituted strictly in accordance with the guidelines or not the competent authority namely the A.C.C. which is the highest body has gone into this question and with due application of mind has taken this decision.

18. The applicant also has challenged the composition of the Representation Committee. He has stated that the Committee should have been chaired by Shri S.Rajagopal who was the ~~then~~ Cabinet Secretary at the relevant time. He also says that the Representation Committee ^{had} has rejected his representation by a ~~bad~~ order. We have gone through the proceedings of the Civil Services Board in its meeting held on 23rd August 1993. As per the relevant

kyky guidelines, the Representation Committee should be Senior Selection Board which should make recommendation to the Appointments Committee of the Cabinet. In the present case, the representation of the applicant was considered by the Civil Services Board/has taken the place of the Senior Selection Board. It consisted of:-

S/s. Zafar Saifullah Chairman
N.R. Ranganathan Member
B. Narasimhan Member Secretary.

that Shri Rajgopal
The applicant says/ continued to be the

Cabinet Secretary and was the Chairman of the Senior Selection Board. The applicant has come to the conclusion that Shri Rajagopal continued to be the Cabinet Secretary and Chairman of the Senior Selection Board, as Shri Rajagopal issued some orders as Cabinet Secretary in March 1993 but he is apparently not aware that there can be a change in the incumbency at the Cabinet Secretary's level on retirement of the earlier incumbent. Shri Saifullah was the Cabinet Secretary in August 1993 and acted as Chairman and Shri N.R. Ranganathan Secretary (Personnel) acted as Member and Shri B. Narasimhan Establishment Officer to the Govt. of India acted as Member Secretary.

The Civil Service Board noted the representation of the applicant and found that ~~rejection~~ was based essentially on the following grounds:-

- (i) He has high technical qualifications and experience and considerable experience in R & D.
- (ii) The grounds of inefficiency and indiscipline were baseless.
- (iii) He has been victimized on account of extraneous considerations.

The Board noted that grounds urged by the officer were not borne out by his service records and that for the purpose of Rule/56 F.R. RR (j) it is necessary to evaluate the performance of the officer and his continuation in public interest. It noted the clarification of the Department of Space that the applicant's output was almost negligible during the past few years and his contribution to the organisation was insignificant. It also noted that the decision to retire Dr. Khola had been taken after following prescribed procedure and taking into consideration the entire record of service of the officer. It concluded that Dr. Khola's retirement was therefore in public interest and it recommended that his representation may be rejected. The Secretary of the A.C.C.

place such recommendation of the Civil Service Board for consideration and orders of the A.C.C. The same was also shown to the Minister of State (Personnel) and also to the Minister of State (Space) who was also MOS in the Prime Minister's Office. All the three Members of the Appointments Cabinet Committee namely, the Cabinet Secretary, Union Home Minister and Prime Minister took the view that the representation should be rejected. Accordingly the representation of the applicant was rejected.

We find that the competent authority namely the Appointments Committee of the Cabinet had gone into the question and had applied its mind to the issue while taking a decision to reject his representation.

19. We therefore reject the challenge to the impugned order on the ground of the composition of the Review Committee and the Representation Committee and also reject the allegation that his case was not properly considered by the A.C.C. The A.C.C. was shown the relevant materials namely the A.C.Rs dossier of the applicant and had considered the matter with due care.

20. The applicant has contended that the applicant was not given three months' pay and allowances in lieu of three months' notice. It is obligatory on the part of the respondents to have handed over the cheque for the entire amount also with the order but he says that this was not done and no cheque was enclosed with the order. Besides, the amount of the ~~l.~~ also fell short of full pay and allowances for three months' by a sum of Rs. 762/-.

The respondents have brought out that they took steps to serve the applicant with the impugned order alongwith cheque No. 394893 dated 5.5.93 for Rs. 30,409 towards the pay and allowances in lieu of the notice ~~max~~ period. After reading the order he refused to receive or acknowledge the same. This had therefore to be posted with Registered A.D. to his known address and the same was acknowledged by the applicant with a letter dated 11.5.93. He also received the cheque for the amount. They submit that they have followed the prescribed procedure as laid down in para 11 of the instructions which provides for a situation when the Govt. servant refuses to accept the order of retirement alongwith the cheque.

According to applicant he was entitled to stagnation increment raising his pay from Rs.5850 to Rs.5700 as calculated by the respondents. This has not been taken into account while preparing the cheque.

21- It is seen from the letter dated 20th May 1993 (Annexure A-28 collectively) that the respondents have calculated the three month's he was drawing immediately before the retire- pay and other allowances at the same rate / ment. The applicant's contention is that he was to get a stagnation increment and the amount in the cheque has fallen short of three months' pay and allowances. Even if it is so and the amount has been calculated ^{on per} on the pay actually drawn and not on the actual entitlement, the same does not vitiate the order.

22. The applicant has referred to some judgements of the Tribunal particularly to the case of M.T.Keshava Iyengar vs. Govt.of India Ministry of Finance, Department of Revenue ATR 1988 (2) CAT 560. This decision of Tribunal goes on the assumption that FR 56(j) has to be understood in the same manner as Section 25-F of the Industrial Disputes Act. There is a reference to the decision of the Supreme Court in CA No.724 of 1980 and also to the decision of the Supreme Court in the case of Chandra Mohan

Nigam's case referred to earlier.

Section 25-F ~~is~~ of the Industrial Disputes Act is a part of Labour Welfare Registration and Courts have held that such ~~a~~~ enactment should be interpreted in a manner so as to safeguard the interests of the workmen. Order under FR 56(j) stands altogether on a different footing. As held by the Supreme Court in ~~various~~ Baikuntha Natha Das's case, Courts/Tribunals ~~can~~ can interfere with such orders only in exceptional cases when the decision is perverse. In view of this position and in the light of the Supreme Court decision in Sathpathy's case to be referred to later we hold that the decision of the Tribunal in Keshava Iyengar's case does not constitute a binding precedent.

As regards the reference to the Supreme Court decision in CA/724 of 1990 the applicant in his written statement has stated that the Supreme Court has observed as under:-

"" That the guidelines issued by the Govt. of India also require such single payment i.e. in one single lump sum) and it should be given simultaneously with the service of the order of the retirement".

It has not been brought out from this observation that if ^{the said} a small amount has been calculated on the basis of the pay and allow-

ances actually drawn by the Govt. employee and it transpires that there is a marginal shortfall the impugned order of compulsory retirement will automatically stand vitiated.

23. In Chandra Mohan Nigam's case referred to earlier the Supreme Court had held that once a review has taken place after 50 years or 55 years a further review normally should not be conducted. There was no discussion about the effect on the order if there is a marginal shortfall of the amount paid in lieu of three months' notice. The so-called difference has arisen as the applicant says that he is entitled to a stagnation increment which was not released. The applicant has challenged before this Tribunal in OA/273 of 94 the continuation of disciplinary proceedings against him even after he was retired prematurely under FR 56(j). The O.A./273/94 was finally disposed of by the Tribunal on 27.10.99 after the disciplinary proceedings were dropped by the department. At the time of final disposal of this O.A., the applicant had raised the issue that some stagnation increment due to him had not been released to him. The Tribunal noted that it was not one of the

reliefs sought for in that O.A. and held that it was upto him to take up the matter with the department. The applicant has now enclosed some certificate from an Accounts Officer dated 26th June 2000 where his pay on the date of retirement is shown as Rs.5850/- It would seem from this that after he took up the matter with the department, such stagnation increment has been released to him sometime in ^{the year} 2000. So far as the cheque in lieu of three months notice is concerned, the department has proceeded on the basis of the pay and allowances actually drawn by him at the relevant time.

24. The respondents have relied on the decision of the Supreme Court in the case of State of Orissa vs. Balkrushna Sathapathy AIR 1984 SC~~1222~~ 1127. Para,8 and 9 of this judgement read as follows:-

"8. The Rule requires three months prior notice to be given or payment of three months pay and allowances in lieu of such notice. In other words, the alternative mode prescribed of payment of the amount in lieu of three months notice, when adopted entitles the Government servant to get that amount, but the validity of the order of compulsory retirement does not depend on its prior full payment as a pre-requisite. The only right of the Government servant under such an order is to get the amount of three months' pay and allowances in lieu of such notice, and no more. This is the manner in which similar provisions have been construed in Raj Kumar Vs. Union of India (1975) 3 SCR 963: (AIR 1975 SC 1116) and Union of India v. Arun Kumar Roy (1986) 1 SCR 136: (AIR 1986 SC 737).

"9. Assuming, deduction of the income-tax at source could not be made, the only right of the respondent is to get the deficit amount, but the order of compulsory retirement is not invalidated for that reason. Since the appellant has offered to pay the deficit amount, deducted as tax, from the amount paid to the respondent, it is unnecessary in the present case to decide the question whether that deduction was rightly made. "

25. In our view, this judgement squarely applies to the present case even if the applicant is held entitled to a stagnation increment, his only right is that he can claim the deficit amount stated to be Rs.762/- The order of premature retirement is not vitiated for that reason.

26. The other main ground urged in support of the O.A. is that the applicant was facing disciplinary proceedings by issue of a Memorandum dated August 7, 1991 where the applicant was charged for conduct unbecoming of a Government servant. When the orders of a premature retirement dated 3.5.1993 were issued the proceedings against him were not closed. The respondents have taken the line that this was in the nature of deemed proceedings under Rule 9 of C.C.S. (Pension) Rules and in view of the pendency of the proceedings, he cannot

be released gratuity and allowed commutation of pension and he has been paid pension only on provisional basis. According to the applicant, the order of premature retirement is not a clean decision when the pending disciplinary proceedings were not dropped. The applicant had challenged these proceedings by filing OA/273/94. The applicant referred to the averment of the respondents while filing the reply to MA/513 of 1996 in OA/273/94 that the petitioner will not be entitled to any pension etc. if the disciplinary action ended with dismissal from Government service. He states that this would show that the decision of the respondents to prematurely retire him is penal in nature. The respondents in their reply have contended that articles of charge against the applicant are quite independent of the action taken under F.R.56(j) which was done as the department came to the conclusion that he can no longer render useful service. They deny the allegation that the premature retirement under F.R.56(j) is a short-cut method adopted to penalise the applicant. They also bring out that applicant had been given provisional pension equal to the full pension.

Subsequently, when the proceedings were dropped his gratuity etc. were released. They also rely on the decision of the Supreme Court in the case of State of U.P. vs. Abhai Kishore (1995 (1) SC SLJ 139) and contend that the pendency of disciplinary proceedings does not vitiate the order of premature retirement.

27. The applicant's argument is based on the assumption that when disciplinary proceedings are pending, the decision ~~for~~ ^{for} premature retirement is not a clean decision as he is not given all his retiral dues. In the written submissions given by him, he states that Delhi High Court in one case- 1992 LAB & IC 772 has held as under:-

" Once a decision to retire an official compulsorily is taken, it is expected that it would be a clean decision and order of compulsory retirement without anything more and after dropping or closing of pending or contemplated proceedings in regard to matters which form the back ground motive to the decision".

In the present case, a persual of the proceedings of the review committee and ^{Shows} ~~Shows~~ also the note placed before the ACC ^{Shows} ~~Shows~~ says that the decision to retire the applicant was taken for the reason that the applicant is ineffective in his duties and has been indisciplined and is of no use to the organisation.

There is no reference at all to the disciplinary proceedings pending against the applicant. The applicant has separately contended that the pendency of the disciplinary proceedings ought to have been brought to the notice of the Committee and the A.C.C. and it was not done. In any event, the pendency of the above proceedings was not one of the factors which led to the issue of the orders under section F.R.56(j). The pending proceedings did not form the background motive to the decision to issue the order under FR 56(j). The decision of the Delhi High Court referred to by the applicant is clearly distinguishable.

28. The applicant in the written statement has referred to the ~~same~~ case of O.P.Gupta vs. Union of India and another ^{before} ~~the~~ Delhi High Court and states that the Court has held as under:-

✓ ~~the~~ "..... So long as the Government does not cancel the compulsory retiring of the petitioner ~~as~~ the petitioner, ~~the~~ continuation of disciplinary proceedings cannot be sustained in law".

This observation questions the validity of continuation of the disciplinary proceedings when the order of premature retirement is not cancelled and not the validity of the order of

premature retirement itself.

29. So far as the present applicant is concerned, it is a fact that the proceedings were continued even after issue of the order of premature retirement. However, subsequently the authorities dropped the proceedings by an order dated 30th September, 1999. This order brings out that after careful consideration of all the relevant aspects of the issue the competent authority has reviewed the pending proceedings against the applicant. Considering the circumstances of the matter and the premature retirement of the officer in 1993 it is decided that the said proceedings should be closed. Dr. Khola had then referred to the delay in release of the retiral benefits and the Tribunal directed that the gratuity amount which was withheld should be released with 12% interest from 1.8.93 which is about three months from the date of the retirement till the actual date of payment of gratuity. Applying the principle in the decision of the Supreme Court in the case of State of Orissa vs. Bal Krishna Sathapathy ~~xxx~~ referred to supra, when the Government

servant has not been paid his full dues, his only right is to get the deficit amount but the order of compulsory retirement is not invalidated for that reason. So far as the applicant is concerned, the gratuity withheld has been released to him with 12% interest. He has also been allowed commutation of pension and till such commutation he was drawing full pension by way of provisional pension without any deduction on account of the commuted value of pension.

30. The respondents have relied on the decision of the Supreme Court in the case of *Abhai Kishore Masta* - referred to supra. para 7 and 8 of this judgement reads as follows:-

"7. So far as the order o-f compulsory retirement under FR 56(j) is concerned, we are of the opinion that the principle enunciated by the High Court in *J.N.R Bajpai* and followed in the judgement under appeal is unsustainable in law. It cannot be said as a matter of law nor can it be said as invariable rule that any and every order of compulsory retirement made under FR 56(j) (or other proviso corresponding thereto) during the pendency of disciplinary proceedings is necessarily penal. It may be or it may not be. It is a matter to be decided on a verification of the relevant records or the material on which the order is based".

"8. In the State of Uttar Pradesh v. Madan Mohan Nagar (1967(2) SCR 333), it has been held by a Constitution Bench that the test to be applied in such matter is "does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily?" It was observed that if the charge or imputation against the officer is made the punishment-otherwise not. In other words if it is found that the authority has adopted an easier course of retiring the ~~em~~ employee under Rule 56-J instead of proceeding with and concluding the enquiry or where it is found that the main reason for compulsory retiring the ~~enquiry~~ employee is the pendency of the disciplinary proceeding or the levelling of the charges, as the case may be, it would be a case ~~e~~ for holding it to be penal. But there may also be a case where the order of compulsory retirement is not really or mainly based upon the charges or the pendency of disciplinary enquiry. As a matter of fact, in many cases, it may happen that the authority competent to retire compulsorily under Rule 56-J and authority competent to impose the punishment in the disciplinary enquiry are different. It may also be that the charges communicated or the pendency of the disciplinary enquiry is only one of the several circumstances taken into consideration. In such cases, it cannot be said that merely because the order of compulsory retirement is made after the charges are communicated or during the pendency of disciplinary enquiry, it is penal in nature."

31. In the present case the respondents have brought out that the articles of charge in the memorandum are quite independent of the action taken under FR 56(j) and that the decision to retire him was taken without referring to the pendency of the disciplinary proceedings. The applicant has also contended that pending disciplinary proceedings ought

to have been brought to the notice of the Committee and the ACC but it was not done. We have gone through the Memorandum dated 7.8.91, the Articles of Charge and the State of Imputations. The Articles of charge state that he was directly addressing the Prime Minister and the Deputy Prime Minister without routing through proper channel and also replied to his superiors in intemperate language etc. and making baseless allegations vide his letter dated 21.3.91 when he was called upon to explain why inspite of written instructions to the contrary he has resorted to the same. He was charged with ~~for~~ having acted in a manner unbecoming of a Government servant.

The contention of the respondents that the pendency of the disciplinary proceedings did not weigh with authorities while taking a decision to retire him prematurely is substantiated from the proceedings of the Review Committee, the note to the ACC and the proceedings of the Representation Committee and the orders of the A.C.C. rejecting the representation. These authorities had not taken into account the pendency of disciplinary proceedings

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while deciding to invoke the provisions of FR 56(j). Even though the disciplinary proceedings were pending at the relevant time, the authority had not adopted an easier course of retiring the employee under F.R.56(j) in respect of proceedings without concluding the inquiry.

32. It is clear from the decision of the Supreme Court in *Abhai Kishore Masta*'s case that the mere fact that disciplinary proceedings are pending would not vitiate the order issued under FR 56(j). so long as the order is a bona fide order. The applicant in his written submission has given his comments on this judgement and states that ~~when~~ decision was rendered by a Bench of two Judges ^{and} ~~but~~ has not noticed other decisions of larger benches. He has stated as follows:-

" In the para 11 of the said judgement, the following two judgements have been relied on:

i) Baikuntha Nath Das and Anr. Vs. Chief District Medical Officer, Baripada and Anr. (AIR 1992 SC 1020).

ii) Union of India vs. J.K.Sinha (1971 (1) SCR 791= AIR 1970 SC 40)".

" The applicant submits that Hon'ble Supreme Court while dealing with the case (i.e. State of U.P. Vs. *Abhai Kishore Masta*), have even failed to take note of the observation

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✓ and was not of punishment and the complete

made in these above referred two cases that in both the judgements the entire service records of the Government servants were taken into consideration and the order of retirement was not at all stigmatic and retirement benefits were paid to the employee who retired under FR 56(j) rules. But in the case of the applicant his entire service records was not considered, the order was purely in nature because the pending inquiry remained continued and he was not paid his full pension as well as the retirement benefits.

The applicant further submits that in the above referred cases the Hon'ble Supreme Court has also failed to realise the fact that pending the disciplinary inquiry proceedings (i.e. charge sheet) etc. form the part and parcel of the entire service records of a Government servant and therefore the charge-sheet and the proceedings of the disciplinary inquiry etc. are also to be taken into consideration before taking the decision for premature retirement".

33. These comments of the applicant on the Supreme Court decision speak for themselves.

All that we say is that the applicant does not seem to realise that law laid down by Supreme Court in such matters is binding on this Tribunal.

34. So far as the present case is concerned while taking a decision to retire the applicant under FR 56(j), the authorities had not relied at all on the pendency of the disciplinary proceedings and this did not constitute or form back ground motive to the decision. It is

also not the case here that the main reason for prematurely retiring the applicant is the pendency of the disciplinary proceedings and the levelling of the charges. The decision to prematurely retire the officer was taken on the basis of other materials. When there are deemed proceedings under Rule 9 of the C.C.S. (Pension) Rules the statutory rules set up a bar for release of gratuity (Rule 69(1) (c) of the C.C.S. (Pension) Rules) and for commutation of pension (Rule 4) of the C.C.S. Commutation of Pension Rules) for permitting commutation of pension. When it is held that orders under FR 56(j) can be issued even when the disciplinary proceedings are pending the non-release of gratuity and declining permission to commute part of the pension will naturally follow and such decisions cannot be regarded as not a "clean decision". In the present case, the order under FR 56(j) cannot be regarded as penal only on the ground of continuation of the disciplinary proceedings which did not influence the authorities while issuing the order under ^{FR} ~~section~~ 56(j) and the fact that the applicant did not get all his retirement and dues viz. Gratuity, commutation of pension etc. at the time of retirement and they were released only later.

35. Following the Supreme Court decision referred to supra and in the facts and circumstances of the case, we hold that the pendency of the disciplinary proceedings (which were subsequently dropped) and the omission to release all the retiral dues does not vitiate the order of prematurely retiring the applicant.

36. We hold that the impugned decision has been taken after considering his A.C.Rs dossier as a whole and that it is not mala fide or arbitrary. The opinion formed by the authorities to retire the applicant on the basis of such materials is not at all perverse. As such, this is not a fit case for the Tribunal to interfere.

37. The O.A. is dismissed with no orders as to costs.

Aane.

(A.S.Sanghavi)
Member (J)

*OKed
4/4/201*

(V.Ramakrishnan)
Vice Chairman

pmr

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

O.A. No. 407 / 1993

Serial No. 224
Register No.: 06
Page: 56
Date: 18/10/2013

Certified copy of order dated 07/05/2013 in CA/Special C.A. No. 9190/2004 passed by the Hon'ble High Court of Gujarat against the Judgment / Order passed by this Tribunal in Original / Transfer Application No. O.A. No. 407 / 1993 is placed for kind perusal please.

Hon'ble High Court has.....

- Confirmed the CAT order
- Partly allowed.
- ✓ • Reversing CAT order
- Modifying the order
- Stay the order / In fructuous
- Restored / Remanded Back
- Notice

Submitted for perusal and orders please.

~~SECTION OFFICER (J)~~ 21/10/13

~~DEPUTY REGISTRAR~~ 21/10/13

~~Hon'ble Mr. Ashok Kumar, Member (A)~~ 23/10/13

~~Hon'ble Mr. U. Sarathchandran, Member (J)~~ 23/10/13

Despatch No.: DD-SCA/
Date:98134
11/10/13

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9190 OF 2004

(Under Article 226 of the Constitution Of India)

R.K. KHOLA, EX. SCIENTIST/ENGINEER SF, ---- Petitioner(s)
V/S

UNION OF INDIA & 2 ---- Respondent(s)

To,

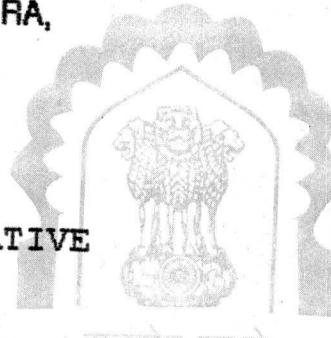
Inward No. (1).....

Date..... 15/10/13.....

1 UNION OF INDIA	2 PROF. UR RAO OR HIS SUCCESSOR IN OFFICE
THRO' SECRETARY, DEPTT. OF SPACE, ANTRIKSH BHAVAN, NEW BEL ROAD, BANGALORE 560 054	CHAIRMAN ISRO AND SECRETARY, DOS ANTRIKSH BHAVAN, NEW BEL ROAD, BANGALORE 560 054
3 P P KALE OR HIS SUCCESSOR IN OFFICE	
DIRECTOR, SPACE APPLICATIONS CENTRE, JODHPUR TAKERA, AHMEDABAD	

To,

✓ 1 - REGISTRAR
 CENTRAL ADMINISTRATIVE
 TRIBUNAL,
 OPP. SARDAR PATEL STADIUM,
 AHMEDABAD-14.



THE HIGH COURT
OF GUJARAT

Upon reading the SPECIAL CIVIL APPLICATION of the above named Petitioner(s) presented to this High Court of Gujarat at Ahmedabad on 28th of July, 2004 praying to issue a writ of certiorari or any other appropriate writ, direction or order for quashing and setting-aside the Constitution of the Review Committee and its decision (dated 22-12-1992 (Annexure at page 312 of the petition), the Constitution of Representation REview Committee and its decision dated 20-8-1993

AND WHEREAS Upon Hearing

MR SURYAKANT R KHOLA, ADVOCATE for the Petitioner(s) No. 1

MR JITENDRA MALKAN, ADVOCATE for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

SERVED BY AFFIX.- (R) for the Respondent(s) No. 3

The Hon'ble Court has passed the following order/judgement
 ORAM: HONOURABLE MR.JUSTICE RAVI R.TRIPATHI
 and
 HONOURABLE MR.JUSTICE R.D.KOTHARI

Date : 07/05/2013

ORAL JUDGMENT

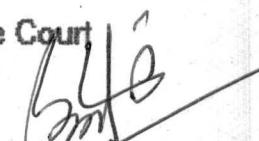
(PER : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)

"1. The present petition is filed by the petitioner Dr.R.K.Khola, Senior Scientist /Engineer S.F. being aggrieved by judgment and order dated 04.04.2001 passed by the Central Administrative Tribunal, Ahmedabad Bench in O.A. No.407 of 1993. ... The department to take note of this declaration and adjust the amount payable to the petitioner accordingly."

(copy of the judgement is attached herewith)

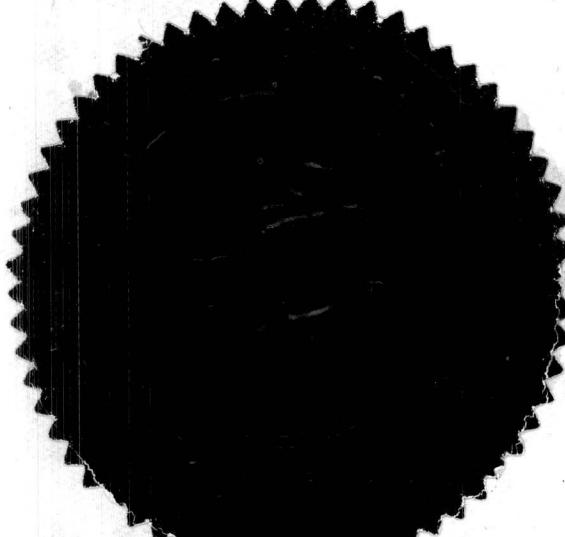
Witness VIJAY MANOHAR SAHAI, Esquire the ACTING CHIEF JUSTICE at Ahmedabad aforesaid this 07th day of May, 2013

By the Court


FOR DEPUTY REGISTRAR

This 15 Day Of October, 2013

Note:- This writ should be returned duly certified within 2 weeks.


 You are hereby informed that the free legal services from the State Legal Services Authorities, High Court Legal Services Committees, District Legal Services Authorities and Taluka Legal Services Committees, as per eligibility criteria, are available to you and in case you are eligible and desire to avail the free legal services, you may contact any of the above Legal Services Authorities/Committees.

You are also informed that if you desire to negotiate your case for compromise, you may request the court to refer the case to the Gujarat High Court Mediation Centre.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9190 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

and

HONOURABLE MR.JUSTICE R.D.KOTHARI

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

R.K. KHOLA, EX. SCIENTIST/ENGINEER SF,...Petitioner(s)

Versus

UNION OF INDIA & 2....Respondent(s)

THE HIGH COURT
OF GUJARAT

Appearance:

PARTY-IN-PERSON for the Petitioner(s) No. 1

MR KETAN A.DAVE, ADVOCATE for the Respondent(s) No. 1

NONE for the Respondent(s) No. 2-3

CORAM: HONOURABLE MR.JUSTICE RAVI R.TRIPATHI
and
HONOURABLE MR.JUSTICE R.D.KOTHARI

Date : 07/05/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)

1. The present petition is filed by the petitioner
- Dr.R.K.Khola, Senior Scientist /Engineer S.F. being

aggrieved by judgment and order dated 04.04.2001 passed by the Central Administrative Tribunal, Ahmedabad Bench in O.A. No.407 of 1993.

1.1 The petitioner appeared Party-in-Person and invited attention of the Court to the fact that he had filed Civil Application No.7493 of 2005 seeking amendment which was allowed by this Court by order dated 23.08.2005. Pursuant to that order, the petitioner has added the following prayer in this petition:-

"7(A); Be pleased to issue a writ of certiorari or any other appropriate writ, direction or order for quashing and setting aside the Constitution of the Review Committee and its decision (dated 22-12-1992 (Annexure at page 312 of the petition), the Constitution of Representation Review Committee and its decision dated 20-8-1993 (Annexure at page 313 of the petition) and the decisions of the Appointment Committee of the Cabinet dated 22-4-1993 (at Annexure A-1B) and dated 01-02-1994 (at Annexure A-1C). Further be pleased to quash and set aside the judgments of the Central Administrative Tribunal, Ahmedabad dated 04-4-2001 (at Annexure-A) and dated 31-10-2001 (at Annexure A-1A) passed in O.A. No.407/93 and R.A. No.91/2001, respectively."

1.2 The petitioner has also prayed the following further reliefs:-

"7. B) Consequent upon the grant of relief in above para (A), the petitioner prays for the following further reliefs:-

i) Your Lordships may be pleased to quash and set aside the order of premature retirement of the petitioner and be pleased to declare the said order as absolutely illegal and bad, unconstitutional, null and void and that the petitioner continues in the service of the respondents as if the said order was never passed against the petitioner and to confer upon him all consequential benefits accordingly.

ii) To declare the order of retirement dated 3.5.1993 (at Annexre A-10) of the OA) as arbitrary, illegal, violative of Arts. 14 and 16 of the Constitution of India and quash and set aside the same.

iii) To declare the action of the respondents in rejecting the representation by passing the order dated 17.2.1994 (at Annex A-12 of the OA) as arbitrary, illegal, violative or Arts. 14 and 16 of the Constitution of India and also rule FR 56(j) and to quash and set aside the same.

2. The petitioner - party-in-person filed O.A.

No.407 of 1993 seeking the following reliefs:-

"i) To quash and set aside the order of premature retirement dated 3.5.1993 (Annex. A-

10) of the petitioner and be pleased to declare the said order as absolutely illegal and bad, unconstitutional, null and void and that the petitioner continues in the service of the respondents as if the said order was never passed against the petitioner and to confer upon him all consequential benefits accordingly.

ii) To declare the action of the respondents in rejecting the representation by passing the order dated 17.2.1994 (Annexure A-12) as arbitrary, illegal, violative of Articles 14 and 16 of the Constitution of India and also Rule 56(j) and to quash and set aside the same."

2.1 The Central Administrative Tribunal, after considering the rival, recorded from para-34 onwards as under:-

सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

"34. So far as the present case is concerned while taking a decision to retire the applicant under FR 56(j), the authorities had not relied at all on the pendency of the disciplinary proceedings and this did not constitute or form back ground motive to the decision. It is also not the case here that the main reason for prematurely retiring the applicant is the pendency of the disciplinary proceedings and the levelling of the charges. The decision to prematurely retire the officer was taken on the basis of other materials. When there are deemed proceedings under Rule 9 of the C.C.S.

(Pension) Rules the statutory rules set up a bar for release of gratuity (Rule 69(1) (c) of the C.C.S. (Pension) Rules) and for commutation of pension. When it is held that orders under FR 56(j) can be issued even when the disciplinary proceedings are pending the non-release of gratuity and declining permission to commute part of the pension will naturally follow and such decisions cannot be regarded as not a "clean decision". In the present case, the order under FR 56(j) cannot be regarded as penal only on the ground of continuation of the disciplinary proceedings which did not influence the authorities while issuing the order under FR 56(j) and the fact that the applicant did not get all his retirement dues viz. Gratuity, commutation of pension etc. at the time of retirement and they were released only later.

35. Following the Supreme Court decision referred to supra and in the facts and circumstances of the case, we hold that the pendency of the disciplinary proceedings (which were subsequently dropped) and the omission to release all the retiral dues does not vitiate the order of prematurely retiring the applicant.

36. We hold that the impugned decision has been taken after considering his A.C.Rs dossier as a whole and that it is not mala fide or arbitrary. The opinion formed by the authorities to retire the applicant on the basis of such materials is not at all perverse.

As such, this is not a fit case for the Tribunal to interfere.

37. The O.A. is dismissed with no orders as to costs."

3. The matter was argued at length by the petitioner-party-in-person and it was his insistence that the case pleaded by him and contentions raised in the memo of the petition be allowed to be read. The facts giving rise to the present petition are set out in paras 2.1 onwards of the petition, which read as under:-

"2.1 The petitioner was working as Scientist/Engineer-SF (Grade Rs.4500-5700) in the respondent organization at Ahmedabad. The petitioner possesses M.Sc. (Physics), M.Sc. (Electronics Engg.) and Ph.D. Degrees to his credit. The petitioner was the highest scientifically and technically qualified person in the respondent organisation. His original and independent research publications were second to none in the satellite communication area of Space Application Centre (SAC), Ahmedabad. Further the systems and sub-systems hardware designed and developed by the petitioner have been excellent throughout and are second to none in the respondent organization among all the similarly situated officers. The petitioner had been working with the respondent organisation SAC-ISRO for the last more than 20 years at the relevant time with a neat and clean service record and his

performance has been excellent throughout. The petitioner is an acknowledged person of merit which is clear from the certificates issued by his Reporting Officer and Group Director copies of which are annexed with the OA.

2.2 By way of this humble petition, the petitioner has been constrained to knock the doors of this Hon'ble High Court against the absolutely illegal, arbitrary, discriminatory and inhuman action on the part of the respondents herein in pre-maturely retiring the petitioner from service on attaining the age above 50 years. The action of retiring the petitioner prematurely is absolutely illegal, bad and vitiated on account of the prejudice and bias mainly on the part of UR Rao against the petitioner.

2.3 The petitioner has been subjected to injustice and victimisation since 1975 because he has ~~represented~~ ^{THE} his grievance of the Chairman ISRO vide his letter dated 18.2.1975 and also the Prime Minister of India, when the petitioner was denied his well deserved promotions to SE and SF grades by the respondents due to malafide intention and biased approach against the petitioner. The petitioner has always been subjected to step-motherly and discriminatory treatment by the respondents in each and every respect and he has been victimised beyond limits. The petitioner was the only highest qualified research and development Engineer in the organisation in the grade of Scientist/Engineer

SF who has never been given any dedicated manpower, funds, laboratory facility, equipments and other supporting facilities, to carry out his research and development work. The petitioner further states that he has successfully and efficiently completed all the tasks assigned to him by the authorities and his performance has been excellent throughout. Even the posts, manpower, funds, laboratory facilities etc. which are given to four of his juniors are not given to him. Copies of the representations made to the concerned authorities for requesting for project work, manpower funds etc. are annexed with the OA. Inspite all sorts of harassment the petitioner has contributed significantly and has generated nine very good proposals single-heartedly (sic-handedly) which are of great interest to ISRO activities and which are appreciated by the Chairman ISRO also. Most of them are approved and funded but none of them is given to the petitioner.

2.4 The petitioner submits that he was given a merit promotion to SF-grade (Rs.4500-5700) in the year 1986. This fact alone clearly establishes that the adverse remarks made by Prof. UR Rao (the then Chairman, ISRO) in the 1990 and 1991 ACRs of the petitioner that "He (petitioner) has contributed nothing to the organisation at all last almost 10-12 years" are absolutely false, fabricated and baseless and are made only due to malafides.

2.5 The petitioner states that including the

petitioner eight candidates were promoted to SF Grade w.e.f. 1.1.1997. The bias and prejudice against the the petitioner becomes more evident from the order of the petitioner wherein the respondent No.4 herein has used the discriminatory language only in the order of the petitioner out of more than hundred officers of SF grade with a view to further victimise the petitioner in the matter of his promotion to the higher grade of Scientist/Engineer SG.

2.6 The petitioner states that the adverse and unfavourable remarks and low gradings are recorded in his ACRs for the years 1986 to 1990 due to malafide intention of Shri OPN Calls, Shri PP Kale and Prof. UR Rao, which are communicated to the petitioner after a delay of several years. The authorities have got vindictive attitude against the petitioner since long because the petitioner made complaints against their illegal acts to the Prime Minister of India and the petitioner was having strained relations with these authorities and the petitioner has reason to believe that these authorities have forced Mr. Pramod Kumar, his Reporting Officer to give adverse and unfavourable remarks in his ACRs. These facts will become evident from the perusal of the ACRs and the Certificate given by the Reporting Officer. The petitioner has got the apprehension that his ACRs for the years 1986 to 1989 were destroyed and again written with adverse and unfavourable entries by forcing the Reporting Officer of the

petitioner. The petitioner states that the communication of adverse remarks was grossly delayed without any justification. It is submitted that such adverse ACRs have been used by the authorities to screen him out and for not placing his case before the DPC for considering for promotion to SG-Grade. Therefore, the acts of screening committee and DPC in the year 1990 for not considering the petitioner properly and with the due application of mind becomes arbitrary, discriminatory and illegal.

2.7 The petitioner states that the adverse remarks given in his ACRs for the years from 1986 to 1991 have been communicated to the petitioner after a very long delay of about six years without any justifications and all the rules and procedures of writing and maintaining ACRs have been violated. The adverse remarks of 1991 were communicated on 30.1.1992, whereas the remarks of the ACRs of 1986 to 1990 were communicated only on 17.2.1992 to the petitioner at one time. The petitioner submits that the adverse remarks in his ACRs were given by UR Rao was not all concerned with the petitioner. The petitioner has submitted his detailed representation against these adverse entries on 16.4.1992 which was also rejected by UR Rao himself and that too by a bald order and without any reasons. The petitioner submits that at the time when the order of his premature retirement was issued, the ACRs of the petitioner were subjudice in nature. The petitioner therefore submits that these adverse

remarks deserves to be totally ignored and may not be relied on for any purpose whatsoever.

2.8 The petitioner submits that he had filed the original application for challenging his premature retirement under apprehension and till that time he was not served with the order. The said order of premature retirement was dated 3.5.1993 and it was sent to the petitioner by post alongwith the communication dated 5.5.1993 which was received by the petitioner only on 10.5.93. The petitioner submits that the order of premature retirement dated 3.5.93 did not contain any cheque or payment dated 3.5.93 and a cheque for a payment of rs.30,409/- was received by the petitioner by post only on 15.5.1993.

2.9 The petitioner submits that in accordance with the provisions of FR 56(j) the appropriate authority has the right to retire, if it is necessary to do so in the public interest, any government employee, the relevant portion of this rule which is applicable to the petitioner's case has been annexed and discussed in the OA. The petitioner submits that all the rules and statutory guidelines have been violated and the petitioner has been retired arbitrarily and illegally and his representation was also rejected arbitrarily and illegally by a bald and non-speaking order.

2.10 The petitioner submits that the order of his premature retirement is punitive in nature because he has not been paid his full pension

and other retirement benefits for several years even after issuing the said order and the order has caused several other evil consequences also to the petitioner. The order of retirement dated 3.5.1995 read with the order of continuance of pending enquiry and read with the order of non-payment of full pension, other retirement benefits and the denial of stagnation increment, etc. make the action of the respondent of prematurely retiring the petitioner becomes hybrid and punitive in nature which becomes illegal in view of the settled position in law by a catena of judgements."

3.1 The aforesaid facts lead to passing of an order under F.R. 56(j) which gave rise to the present petition.

4. It will be appropriate to mention that the petitioner-party-in-person had challenged his non-promotion from S.F. to S.G. on various grounds including that, he was wrongly screened out on the basis of the adverse entries in the ACRs for the period 1986 to 1989, which were written in 'one-go' and were communicated to the petitioner after several years. The said O.A. was dismissed by the Hon'ble Central Administrative Tribunal and that judgment and order was the subject matter of Special Civil Application No.9192 of 2004 which is allowed by this Court by judgment and order dated 04.04.2013. In the said judgment and order, the Court

has come to conclusion that ACRs for the period 1986 to 1989 could not have been written in 'one-go' and the same could not have been taken into consideration for screening out the petitioner and therefore a direction is given to the Department to consider the case of the petitioner 'only on the basis of the material available at the relevant time' and to decide his promotion from S.F. to S.G. Accordingly.

4.1 What is important is that, it is during the pendency of the said O.A. that the order under F.R. 56(j) came to be passed which is challenged in this petition. What is important is that the Department had initiated departmental inquiry against the petitioner for imposing major penalty and while that inquiry was pending, the Department decided to pass an order under F.R. 56(j). It is in light of these facts, the Court is required to consider whether exercise of passing an order under F.R. 56(j) can be said to be a bonafide exercise or it is a shortcut resorted by the Department to close the chapter of the petitioner.

4.2 In light of the aforesaid fact situation, the averments made by the petitioner from para-2.11 onwards of the petition are also relevant. The same are as under:-

"2.11 The petitioner states that as has been mentioned above, he was not communicated any adverse remarks whatsoever till 30.1.1992. He completed 50 years of age on 15.3.1992. He was charge sheeted on 7.8.1991. According to FR 56(j) rules his case was to be reviewed for premature retirement in September, 1991. The petitioner states that till 30.1.1992 when he was not shown any adverse remarks regarding his work performance or efficiency or integrity or honesty then there is no question of believing that there was any ground for making a decision for premature retirement in his case, because, an employee who has been found to be efficient and honest till 30.1.1992 cannot become totally inefficient one month thereafter. In fact a deliberate design has been engineered by UR Rao in order to punish the petitioner against whom he (UR Rao) had great hatred. The way in which the respondents have acted against the petitioner for his premature retirement speaks volumes and it undoubtedly goes to prove that the respondents have not acted fairly and bonafide but have acted with malafide. The petitioner therefore states that the action of the respondent in deciding to retire the petitioner prematurely is absolutely arbitrary, unjust, mamafide, illegal and violative of Arts. 14 and 16 of the Constitution of India and the order has been passed by way of colourable exercise of power.

It is also worthy of mention at this stage that on the one hand it has been stated in the adverse remarks that the petitioner has not

done any work at all from 1979 onwards whereas on the other hand he was given purely merit based promotion w.e.f. 1.1.1986 and that too to a very senior and responsible post of Scientist/Engineer-SF (in the grade of Rs.4500-5700) and his basic pay as on 1.1.1993 was Rs5850). This fact alone goes to establish the malafides on the part of UR Rao. It was a predecided and motivated act done by Mr.UR Rao, Mr.P.P.Kale and Mr.OPN Call etc. due to malafide intentions and prejustice (sic-prejudice) against the petitioner. It was a very serious case of victimisation where not only the bright career of a highly qualified, honest and competent R&D engineer has been ruined but his whole family has been made to suffer a lot due to acts of gross misuse of authority by Mr.Rao, etc. Mr.UR Rao has openly and unambiguously has tried to intimidate an honest, efficient and competent engineer by threatening to oust him from the office and actually passing the order of forced retirement by creating false and fabricated record. The petitioner submits that it is a fittest case for the Hon'ble Court to exercise its extraordinary powers and impose exemplary punishment to Mr.Rao, Mr.Kale and Mr.Calla etc. to deter such illegal sufferings and victimisation of honest and efficient government servants."

4.3 The petitioner after having invited attention of the Court to the aforesaid facts invited attention of

the Court to the various contentions raised by him, incorporated in the memo of the petition. The petitioner-party-in-person submitted that on various grounds, the order of premature retirement is vitiated and is required to be quashed and set aside by this Court as the Hon'ble Tribunal has failed to do so.

4.4 The petitioner-party-in-person submitted that under the settled legal position, payment of three months salary and allowances is to be made simultaneously along with order of retirement. It is the case of the petitioner-party-in-person that the order of retirement was passed on 03.05.1993, but the said order was not accompanied by such payment. The order of retirement was received on 10.05.1993 and the payment was sent to him subsequently, which was received by him on 15.05.1993.

The case of the petitioner-party-in-person is that payment made was not of the required amount under the Rules.

4.5 The petitioner-party-in-person submitted that he made representation against the order of premature retirement raising several points, but the said representation was rejected by the authorities by a cryptic and bald order. The petitioner-party-in-person submitted that a detailed procedure is prescribed for consideration of the representation made and it is

obligatory on the part of the authorities to get considered that representation by a Committee which has to take into consideration all important aspects of the matter and pass a reasoned order. The petitioner-party-in-person submitted that in his case, the representation is not considered by the Committee and no speaking order is passed on the representation of the petitioner.

4.6 The petitioner-party-in-person submitted that the authorities have failed to take into consideration the important and undisputed facts of the case which are set out in para-2.15 of the petition, which reads as under:-

"2.15 Some of the important and undisputed facts of the case are as under:-

- i) It is not in dispute that petitioner's ACRs of 1990, 1991 and 1992 years were not written by his reporting and reviewing officers which is mandatory under the statutory rules of writing ACRs and it is a settled point in law also.
- i) It is not in dispute that U.R.Rao (stationed at Bangalore) who was not concerned with the petitioner (stationed at Ahmedabad) has recorded absolutely false and concocted adverse entries and incorrect gradings in the ACRs of the petitioner for the years from 1986 till 1992.

ii) It is not in dispute that the petitioner's representation made against adverse ACRs was also rejected by U.R.Rao himself and that too by a cryptic three lines bald order. Thus the Tribunal has seriously erred in not appreciating the contentions of the petitioner that there has been gross violation of principles of natural justice.

iii) It is not in dispute that the petitioner's representation made against adverse ACRs was also rejected by U.R.Rao himself and that too by a cryptic three lines bald order. Thus the Tribunal has seriously erred in not appreciating the contentions of the petitioner that there has been gross violation of principles of natural justice.

iv) It is not in dispute that rules of writing ACRs have been grossly violated while writing the adverse entries in the petitioner's ACRs.

v) It is not in dispute that even under the rules framed by the respondents it is mandatory to write the ACRs of an officer in accordance with the time schedule laid down under the rules of writing ACRs, even if the officer does not write his self-appraisal.

vi) It is not in dispute that ACRs of the petitioner of the years 1986, 1987, 1988

and 1989 were written in one go at the same time on the same day on 2.8.1990.

vii) It is not in dispute that the adverse entries of the petitioner's ACRs were communicated to him after a gross delay of 5 to 6 years.

viii) It is also is also not in dispute that when the order of premature retirement was passed on 3.5.93 the ACRs of the petitioner of the years from 1986 till 1991 were sub-judice in nature in view of his OA No.44/92 which was pending in the Hon'ble Tribunal.

ix) It is not in dispute that when the order of premature retirement dtd. 3.5.93 was passed, the departmental enquiry for major penalty under Article 311(2) of the Constitution of India was pending against the petitioner and the same enquiry was continued even after passing order of premature retirement.

x) It is also not in dispute that the retirement benefits such as full pension, gratuity, communication of pension, encashment of EL, etc. were not paid to the petitioner even after passing the order of premature retirement. It is also not in dispute that under the rules of premature retirement dtd. 5.1.78 there is absolutely no provision either for continuation of pending disciplinary enquiry or denial of retirement benefits

after passing the order of premature retirement.

xi) It is not in dispute that the work done report, research papers published and project proposals generated by the petitioner and also the recommendations of his Group Director etc. were not placed before the Review Committee.

xii) It is also not in dispute that even in the year 1992 the Reporting Officer and Group Director of the petitioner had given recommendation that the work performance of the petitioner was satisfactory.

xiii) It is also not in dispute that the charge-sheet issued to the petitioner on 7.8.1991 and the detailed letter dated 9.1.1991 which the petitioner wrote to the Prime Minister of India were also not placed before the Review Committee, Representation Committee and the ACC.

xiv) It is also not in dispute that the Review Committee consisting of U.R.Rao, Secretary, DOS and B.R.Prabhakara, Addl. Secretary, DAE was not constituted legally and had got no jurisdiction in the case of the petitioner which is clearly established from the Office Memorandum No.25013/15/86-Estt. (A), Government of India, Department of P&T dated 27.6.1986. It is submitted that the Central Establishment Board consisting of five members is the legally constituted Review

Committee in case of the petitioner who was appointed by ACC.

xv) It is not in dispute that even the Civil Service Board which has acted as the Representation Committee was also not constituted legally because it must consists of five members.

xvi) It is not in dispute that Appointment Committee of the Cabinet (ACC) must consists of Prime Minister, Home Minister and Finance Minister in case of the petitioner (refer AIR 1995 SC 568 para 16 page-571) which establishes the fact that even the ACC which approved the recommendations of the review committee and representation committee was not constituted properly and legally.

4.7 The petitioner-party-in-person submitted that if the authorities had taken into consideration the aforesaid facts in right perspective, the authorities would not have passed the order of premature retirement under F.R. 56(j). The petitioner-party-in-person submitted that if the Hon'ble Tribunal had taken into consideration all these facts and the contentions raised by the petitioner in O.A. (Original Application) and subsequently in M.A. (Misc.Application), the Hon'ble Tribunal would have quashed and set aside the order of premature retirement, but having failed to get any relief

from the Hon'ble Tribunal, the petitioner is constrained to approach this Court by way of this petition.

4.8 The petitioner-party-in-person submitted that even at the cost of repetition, he may be allowed to reiterate the contentions raised in the Grounds set out in the petition, particularly Ground-F), etc. Grounds-F) and I) read as under:-

"F) The Tribunal has seriously erred in not considering the fact that most competent authority who can comment about his work performance and technical competence was his reporting officer and Group Director (Mr.Rambilas) in the year 1991, 1992 and 1993 and therefore in view of the settled law the petitioner's case for premature retirement must have been initiated with the recommendations of his reporting officer and Group Director (i.e. Mr.Rambilas) and after that the same must have been processed through his reviewing officer and Dy. Director (Mr.OPN Calls) and after that the case must have been forwarded to his counter-signing authority and Director of the Centre (Mr.P P Kale) for making his bonafide, true, honest and unbiased recommendation after considering in totality the facts and circumstances of the case which was not done by the respondent authorities and, therefore, the order becomes absolutely arbitrary, capricious, malicious and *per se*, illegal in eye of law.

I) What has been upheld by the Tribunal in

para Nos.17, 18 & 19 in its judgment is completely erroneous and illegal. It is submitted that as per the statutory rules of premature retirement, the Central Establishment Board must act as the review committee in the case of the petitioner because he was appointed to the Scientist/Engineer-SF post with the approval of ACC. These facts are clearly established from the perusal of Oms dated 27.6.1986 and 27.10.1970 which are annexed hereto and marked as Annex A-7 and Annex A-8. From the OM dtd. 27.6.1986 (Annex A-7) it is clearly established that Review Committee consisting of UR Rao and B.R.Prabhakara was constituted by the Government only to review the case of the lower grade Gazetted officers whose appointments were need not be approved by the ACC. The Tribunal has seriously erred in not considering the repeated submissions of the petitioner that Central Establishment Board must act as the review Committee but the Tribunal took the wholly erroneous view and passed illegal decision based on the misrepresentation of facts by the respondents and their advocate, Mr.Akil Kureshi (as he then was). The respondents have committed an act of perjury by not showing correct orders of the constitution of the review committee and representation committee." (emphasis supplied).

4.9 The petitioner-party-in-person submitted that he belongs to Department of Space and for this Department, Appointment Committee of the Cabinet (ACC)

consists of Prime Minister, Home Minister and Finance Minister. In this regard, he relied upon a decision of the Hon'ble the Apex Court in the matter of *Union of India Vs. N.P.Dhamania*, reported in AIR 1995 SC 568. He invited attention of the Court to para-16 of the said judgment, which reads as under:-

"16. The relevant portion of the procedure contained in the Ministry of Home Affairs O.M. No. 18/42/50-Estts. Dated 27- 11-1950 is reproduced below:

"The Government of India have decided that where the Union Public Service Commission has been consulted in regard to any appointments the recommendations made by the Commission should not be departed from unless, in the opinion of the Hon'ble Minister concerned, exceptional circumstances exist which in the public interest require such departure. In such a case the reasons for holding this opinion should be communicated to the Commission and the Commission given an opportunity of further justifying their recommendations. On the receipt of the observations of the Commission, their recommendations should be considered further by the Ministry concerned, if, after further consideration, the Ministry still considers that the recommendations made by the Commission should not be accepted, the case should be referred

with a self-contained summary to the Establishment Officer of the Government of India who will place it before the Appointments Committee of the Cabinet consisting of the Hon'ble Prime Minister, the Hon'ble Minister for Home Affairs and the Hon'ble Minister concerned administratively with the appointment(s). In cases in which the Hon'ble Home Minister or the Hon'ble Prime Minister happens to be the Minister concerned with the appointment, the Hon'ble Finance Minister will be added to the Committee. The decision reached by the Appointments Committee in all such cases should be communicated to the Commission by the Minister administratively concerned. Final orders in accordance with the decision will also be issued by that Ministry, copy being endorsed to the Commission."

THE HIGH COURT
OF GUJARAT

4.10 The petitioner-party-in-person submitted that thus it is clear that the Review Committee which reviewed the case of the petitioner for prematurely retiring him, the Representation Committee which rejected the representation of the petitioner and the ACC which approved the order of his premature retirement, were not properly, legally and in accordance with the Rules constituted.

4.11 The petitioner-party-in-person next invited

attention of the Court to Ground-K), which reads as under:-

"K) The entire service records of the petitioner including the chargesheet dtd. 7.8.2992 issued to him and also his letter dtd. 9.1.1991 which he has sent to the Prime Minister have not been considered by the Review Committee, Representation Committee, Appointment Committee of the Cabinet (ACC) and the Government. Admittedly the review committee has taken its decision solely based on the ACRs of the petitioner upto the year 1991 (Refer Annex A-25) annexed to the OA). It is a well settled point of law by catena of judgments of the Supreme Court that the entire service records and the totality of the facts and circumstances of the concerned officer should be considered by the Review Committee and the Government at the time of review."

THE HIGH COURT
OF GUJARAT

4.12 The petitioner-party-in-person next submitted that an order under F.R. 56(j) can be passed in the public interest and the sole object of this Fundamental Rule is to remove inefficient persons. To decide inefficiency, the Department was required to place before the authorities the details of the 'work out-put' of the petitioner and to see that the same could be appreciated in right perspective, it was necessary to place the details of the 'work in-put', i.e. the work assigned to the petitioner. The petitioner-party-in-person submitted

that the Hon'ble Tribunal has committed an error in ignoring this important aspect of the matter, viz. the Department has not produced one single order assigning the work to the petitioner from the year 1980 till 1993. The petitioner-party-in-person submitted that if the case of the Department is accepted that the work was not assigned, the Department has no explanation as to why the work was not assigned to the petitioner. The petitioner-party-in-person submitted that in case, the Department contends that, 'the work was not assigned to the petitioner because he was not making any substantial contribution' then the Department must show as to what action was taken against the petitioner. The petitioner-party-in-person submitted that the Department must not be allowed to take advantage of its own wrong, viz. either 'non-assigning any work' or 'not taking any action' against the petitioner for not making any substantial contribution.

4.13 The petitioner-party-in-person submitted that it is a settled position of law that 'pending departmental inquiry' or even 'contemplated departmental inquiry' form an integral part of the service record of a Government servant and the same cannot be lost sight of while assessing suitability or otherwise for retention in service after the Government servant has attained the age

of 50/55 years. The petitioner-party-in-person submitted that in the present case, the Department is not able to produce any material much less the relevant material to establish that the factum of 'pending departmental inquiry', i.e. charge sheet dated 07.08.1991 was ever placed before the authorities at the time of taking decision for issuing pre-mature retirement order under Fundamental Rule 56(j). In this regard, the petitioner relied upon a decision of the Hon'ble the Apex Court in the matter of *State of Orissa & Ors. Vs. Ram Chandra Das*, reported in (1996) 5 SCC 331. The petitioner invited attention of the Court to para-7 of the judgment, which reads as under:-

"7. It is Contended for the respondent that adverse entries for the two years referred to earlier and pending departmental proceedings would not be sufficient to compulsorily retire the Government servant on the premise that after promotion they would become irrelevant and minor penalty was imposed. It is true that the Government servant was allowed to cross the efficiency bar to enable him to avail the benefits to draw higher scale of pay after crossing the efficiency bar. The adverse remarks made are after promotion. Even otherwise, the remarks tore part of service record and character role. The record of enquiry on conduct also would be material. Though minor penalty may be imposed on given

facts and circumstances to act of misconduct, nevertheless remains part of the record for overall consideration to retire a Government servant compulsorily. The object always is public interest. The material question is: whether the entire record of service was considered or not? It is not for the court/tribunal to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It for the Government to consider the same and take a proper decision in that behalf. As stated earlier, it is settled law that the Government is required to consider the entire record of service. Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsorily retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that self-same material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after

promotion and not earlier to promotion. Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits."

(emphasis supplied)

4.14 Besides, the petitioner-party-in-person also contended that the order of compulsory retirement could not have been passed without dropping or closing all pending or contemplated departmental inquiry proceedings in regard to matter which form the 'background motive' for the decision in question. In support of this contention, the petitioner-party-in-person relied upon a decision of the Punjab & Haryana High Court in the matter of H.O.Kaushik HSE (Retd.) Vs. State of Haryana & Ors., reported in 1992 LAB I.C. 772. The petitioner-party-in-person invited attention of the Court to para-4 of the judgment, relevant part of which reads as under:-

"4. The approach of the respondents is illegal and once a decision to retire an official compulsorily is taken it is expected that it would be a clear decision to order compulsory retirement without anything more and after dropping or closing all pending or contemplated proceedings in regard to matters which form the background motive to the decision. The statement of allegation intimated to the petitioner vide memorandum dated June 23, 1986 indicates that the recovery sought to be effected from the petitioner is based on the

allegation pertaining to the year 1982. Respondent No.1 did not think it proper to institute regular inquiry against the petitioner before ordering his premature retirement. If there was any substance in the allegations, it would have been apt for respondent No.1 to frame proper charge sheet against the petitioner and hold the enquiry. He might have been exonerated. If found guilty any major penalty under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 could not have been imposed. Respondent No.1 did not think it proper to proceed with the inquiry presumably for want of evidence. The same might have weighed with respondent No.1 to order premature retirement of the petitioner. Respondent No.1 having once taken the decision to compulsory retire the petitioner, it should have dropped all the pending or contemplated proceedings against him....."

सत्यमव जयते

THE HIGH COURT

OF GUJARAT

In the case on hand, the aforesaid decision is not squarely applicable because in the present case, while departmental proceeding was pending, the Department deemed it proper to pass an order of premature retirement and later on decided to drop the departmental proceedings.

4.15 The petitioner-party-in-person then invited attention of the Court to the charge sheet issued to him, which is at page No.54 in SCA No.3136 of 2005. The

charge sheet is dated August 7, 1991. It is issued under the signature of Joint Secretary to the Government of India. The opening para of the charge sheet reads as under:-

"The President proposes to hold an inquiry against Dr.R.K.Khola, Scientist/Engineer 'SF', Space Applications Centre, Ahmedabad under Rule 11 of the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976. The substance of the imputations of the misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour, in support of each article of charge, is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV)"

It will be appropriate to peruse Articles-I and II of the charge against the petitioner, which read as under:-

"ARTICLE-I"

That the said Dr.R.K.Khola, Scientist/Engineer 'SF', Space Applications Centre, Ahmedabad directly addressed vide his letter dated 9-1-91, the then Prime Minister and the then Deputy Prime Minister for redressal of his grievances,

with a copy marked to Chairman, ISRO, and Director, SAC without routing the letter through proper channel, despite specific instructions not to written the same.

2. Dr.Khola has thus violated the instructions contained in MHA OM No.118/52-ESTD dated 30-4-52 as amended from time to time, and acted in a manner unbecoming of a government servant Civil Services (Conduct) Rules-1964.

ARTICLE-II

That the said Dr.R.K.Khola, while functioning as Scientist/Engineer 'SF' in the Space Applicationss Centre, Ahmedabad has contrary to the advice given to him earlier at the level of the then Minister of State (S&T), addressed letters to higher authorities; and replied to his superiors in a derogatory, intemperate, abusive and offensive language making wild and baseless allegations vide his letter dated 21-3-91 when he was called upon to explain why inspite of addressing higher authorities, making wild and baseless allegations against his superior authorities.

2. Dr.R.K.Khola has thus acted in a manner which is inconsistent and incompatible with the due discharge of his duties and the letter in question is insulting and insubordinate to such a degree as to be incompatible with the continuation of employer - employee relation, and is therefore an act highly unbecoming of a government servant of

his position thereby violating Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules 1964.

In the statement of imputation, in support of articles of charge, certain portion of the letter dated 21.03.1991 of the petitioner (Dr. Khola) are reproduced. The said extracts are reproduced hereinbelow for ready perusal:-

"-i) "You people have been abusing the powers and have been continuously launching a slanderous and provocative campaign against me."

-ii) "The way in which you have been manoeuvering the false and untrue entries in my ACRs, in connivance with Mr. Pramod Kumar and Mr. OPN Calla it absolutely deplorable and disgusting."

-iii) "Because you elite people are jealous of my qualifications and R&D achievements, you had dropped my name from INSAT-1A team based upon unfair and extraneous criteria."

-iv) "It will not be incorrect if I say that you have been using all sorts of wicked and inhuman methods to finish me."

-v) "You people have grossly abused the power by using discriminatory language in the office orders of my SE and SF grade promotions."

-vi) "I am still, ready to prove in front of any impartial and experts audience that my R&D competence and achievements in the fields of electronics and communications engineering are second to none in ISRO including Prof. U.R.Rao, Mr.N.Pant, Dr.Kasturirangan and you. But it is unfortunate that you people have manipulated top posts based upon favouritism and extraneous criteria whereas I am still struggling for survival at a relatively low post of Engineer-SF."

The aforesaid extracts suggest that the petitioner had complaints against the persons named therein. What is important to note is that, 'it is an admitted fact that ACRs of the petitioner, starting from 1986 to 1989 were not written and the same were written at 'one-go' and the explanation for the same is that, 'as the petitioner did not submit his self-appraisal form, the Department lost sight of writing ACRs of the petitioner''. The explanation proceeds further saying that, 'It was only when the case of the petitioner was put before the Screening Committee for consideration for promotion to the higher post, the Department noticed that ACRs of the petitioner are not written and therefore, on the basis of the available material, by the available officer ACRs for the years 1986 to 1989 were written at

'one-go'. It is also a matter of record that in those ACRs, entries were made which were adverse in nature and were communicated to the petitioner subsequently. The petitioner had a grievance about the same as the same resulted into denial of promotion from SF to SG. The adverse entries in the years 1986 to 1989 were the subject-matter of challenge before the Hon'ble Central Administrative Tribunal in another proceedings being O.A. No.44 of 1992, which was dismissed by the Tribunal against which SCA No.9192 of 2004 was filed which is allowed by this Court.

(emphasis supplied)

4.16 This makes it clear that the petitioner did not have smooth relations with the Management and had reason to make grievance. In such situation, the Court is required to consider whether writing a letter without routing it through proper channel could be a ground for issuing charge sheet and above it it is also required to be considered whether during the pendency of such charge sheet /departmental proceedings, an order of premature retirement could have been passed.

4.17 The petitioner-party-in-person next relied upon a decision of the Delhi High Court in the matter of *O.P.Gupta Vs. Union of India & Anr.*, reported in 1981 LAB I.C. 1202 and submitted that, "So long as the government

does not cancel the order compulsorily retiring the petitioner the continuation of disciplinary proceedings cannot be sustained in law".

5. The aforesaid decision has no application to the facts of the present case inasmuch as, in the present case, the Department first passed order of premature retirement and then dropped the departmental proceedings. In such circumstances, this Court has to examine the matter from a specific angle, i.e. whether, "order of premature retirement is camouflaged one and is passed resorting to a short-cut to the departmental proceedings".

5.1 Learned advocate Mr. Ketan Dave appearing for the Department, to answer this contention of the petitioner, relied upon a decision of the Hon'ble the Apex Court in the matter of State of U.P. & Anr. Vs. Abhai Kishore Masta, reported in (1995) 1 SCC 336, wherein the Hon'ble the Apex Court was pleased to hold that, "order of compulsory retirement passed during the pendency of departmental inquiry cannot be held to be necessarily penal and its true nature is to be decided on verification of relevant record or material on which the order is passed".

True it is that an order of compulsory retirement passed

during the pendency of departmental inquiry cannot be held to be necessarily penal, but then the Hon'ble the Apex Court has specifically provided that the true nature of an order is to be decided on verification of relevant record or material on which the order is passed. In the present case, the Department has failed to give much less substantiate any valid ground justifying the order of premature retirement.

5.2 The case of the Department is that, 'the petitioner was not making any substantial contribution' in the Department and therefore, on his reaching age of 50, the Department decided to take his case in review and at the end of the review, decided to 'prematurely retire' him. But then, it is not the case of the Department that, 'the integrity of the petitioner was doubtful' or that there was any complaint with regard to his integrity. In absence of that, the material made available on record is taken into consideration by this Court while deciding the validity of the order of premature retirement. It is not in dispute that the Department has not issued one single memo specifically during the period in which it is stated that the petitioner did not make any substantial contribution to the petitioner for his so-called inefficiency. In absence of any material to bring home the charge that the petitioner was not

making any significant contribution for which order of premature retirement is passed, is found without any basis. The order is without necessary support from the record and hence, it has to necessarily fall. In this regard, decision of the Hon'ble the Apex Court in the matter of M.S.Bindra Vs. Union of India & Ors., reported in (1998) 7 SCC 310 provides necessary guidance. In the aforesaid decision, the Hon'ble the Apex Court was dealing with the following facts:-

"Appellant was an officer of Indian Revenue Service who made a steep rise in his career and was held in high esteem but suddenly at the age of 52 years, his integrity was doubted and he was compulsorily retired. The Screening Committee gave the following reasons for recommending his compulsory retirement; "On the basis of सर्वोच्च न्यायालय विभाग
THE HIGH COURT
OF GUJARAT
material...., he (the appellant) is found to be of unreliable integrity and unfit to be entrusted with any position of responsibility in the government service as he has widely and systematically indulged in extortion of moneys from the parties and adopted methods which have the effect of bringing down the esteem of the Government in the public eye."

5.3 The order of compulsory retirement was challenged by Mr.Bindra before the Central Administrative Tribunal. The said challenge failed. Against that, he

approached the Hon'ble the Apex Court by filing appeal by special leave, which came to be allowed by the Hon'ble the Apex Court by the aforesaid judgment and order. The Hon'ble the Apex Court was pleased to consider various aspects of the matter and ultimately allowed the appeal by observing as under :

"21. We have no doubt that there is utter dearth of evidence for the Screening committee to conclude that appellant had doubtful integrity. Such a conclusion does not stand judicial scrutiny even within the limited permissible scope. We, therefore, allow this appeal and set aside the order under attack including the order by which premature compulsory retirement was imposed on the appellant. The department concerned shall now work out the reliefs to be granted to the appellant as sequel to this judgment."

THE HIGH COURT
OF GUJARAT

5.4 The Hon'ble the Apex Court considered the matter in detail in Paras-13, 14, 15, 17 and 19. Instead of prepeating all these paras, gist of these paras from the Head Notes is reporduced for ready perusal :-

"Want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till

recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

On facts, the three cases which formed the basis for proceeding against the appellant do not reveal anything for which the appellant's integrity should have been doubted. In fact in the first case, it was the appellant who headed the operation against the mill and unearthed a huge amount of concealed excise duty. This work should have won him appreciation but instead of doing so, it was alleged against him that he willfully created lacunae in confiscation for providing an escape route to the defaulter. This allegation was

levelled on the reasoning that confiscation order which was nearly of 100 pages was prepared in too short period. Normally it is an achievement that an order of 100 pages was prepared within a short period. There was nothing wrong in preparing the order promptly. Possibility is that the officer hearing the case for several days would have prepared its prefatory portion as well as statement of summary of evidence during the days when arguments were in progress, leaving out crucial discussion to be dictated after conclusion of hearing. Such course of action is not objectionable. If so, achievement in preparing an order of confiscation within a short time should not have been frowned at, instead there is a scope of compliment for his promptitude. It is also not possible to conclude that the appellant's omission to issue show-cause notice before imposing penalty and fine was a deliberate attempt to help the defaulter mill because it was open to the appellate authority to set aside the order and direct the appellant to pass fresh order after issuing show-cause notice.

The ground taken against the appellant in second case is equally untenable. Minimum which should have been done before drawing any inference against the appellant was to ascertain circumstances under which appellant's subordinate officer kept investigation in abeyance. Attributing a sinister motive to the appellant for his subordinate had done, without ascertaining true facts, is seemingly unfair.

In the third case, there was nothing objectionable when the appellant took steps for cancellation of bail granted to defaulters. It is *prima facie* a point in favour of appellant's tenacity. Role played by him was of a dutiful and efficient officer of the department. The Screening Committee formed opinion about the appellant's doubtful integrity on the basis of allegation made by the defaulters who in turn stated that some other person told them the appellant was to be paid Rs.10 lakhs to save them from the proceedings. Nobody checked up the truth, instead hearsay was believed. If integrity of senior officers, who established unblemished reputation and earned encomiums from all concerned till then, is proclaimed as doubtful merely on the strength of statements of persons prosecuted by such officer, what is the safety of such officers more so when they have to ~~THE HIGH COURT
OF GUJARAT~~ embark on hazardous operations risking their lives against big business houses?"

5.5 While other paras are dealing with the facts of that case, para.-13 deals with scope of judicial scrutiny and serves purpose of providing helpful guidance which are of great help in the present case. In the present case, the case of the Department is not about doubtful integrity of the petitioner. The case of the Department is that the petitioner was 'dead-wood', but then, there is no material placed to substantiate the said allegation

- branding the petitioner was 'dead-wood'. If the present petition is dismissed, it will amount to putting seal of approval on the decision of the Department which decision is without any support in record. Therefore, the expression used by the Hon'ble the Apex Court in the aforesaid case that, "..... there is utter dearth of evidence.....", will be appropriate in the facts of the present case. In the case on hand also, there is no evidence which will satisfy the judicial conscious that the decision reached by the Department of branding the petitioner a 'dead-wood' has any support in the record. Hence, the said decision deserves to be quashed and set.

5.6 The petitioner-party-in-person relied upon various other judgments of the Hon'ble the Apex Court and other High Courts, but the same are not referred to as they are found not applicable to the facts of the present case.

6. Learned Advocate Mr.Ketan Dave for the Department strenuously tried to support the order of 'premature retirement' and the judgment and order of the Hon'ble Tribunal, which was pleased to uphold the same.

6.1 Learned advocate for the respondent invited attention of the Court to the affidavit-in-reply filed by

the Department in O.A. No.407 of 1993, which is affirmed by one Shri P.B.Giridharan, working as Administrative Officer-II in the office of Space Applications Centre. Learned Advocate relied upon contents of para-8 of the affidavit, which reads as under:-

"8. As regards para VI(7), it is denied that the ACR gradings of the applicant are given due to malafide intentions. The adverse remarks recorded for the years 1986-90 were communicated in letter No.1/4(9)/1-1 dated 14/02/92. Adverse remarks in the ACR for 1991 were communicated in letter No.1/4(9)/91-1 dated 28/01/92. His representations were considered by the competent authority and rejected. The adverse remarks were therefore, confirmed. The applicant challenged the above said gradings in OA 44/92 which is pending before the Hon'ble Tribunal. The applicant had not submitted his self-assessment reports for the years 1986 to 1990. It is mainly due to the fact that the applicant had not done any work during the said period. The ACRs reflect that no work was done by the applicant, as reported by the Reporting Officer. The other allegations are imaginary. The applicant has prayed before the Hon'ble Tribunal vide para 7(g) of M.A. No.50/92 in OA No.44/92 that the ACRs of the years 1986 to 1991 be sent to the forensic laboratory situated in Ahmedabad. The said prayer was rejected by the Hon'ble Tribunal vide order dated 03/05/93 (copies of MA and orders are

marked as Annexure R-3, collectively). The ACRs were written as per Rules. Delayed communication of adverse remarks does not vitiate the remarks. Reliance is placed on judgment in Ravji's vs Union of India AIR (2) CAT 157 (Delhi), wherein it was held that instruction regarding communication of adverse entries in Confidential Reports are in the nature of guidelines, breach of which does not render the remarks void. Reliance is also based on Baldev Kapoor vs Union of India and others, reported in 1980(2) SLR 309 (Punjab and Haryana) where it was held that non-compliance of the executive instructions, having no statutory force, does not render the decision illegal.

This being the legal position, I submit that there is no merit in the contention of the applicant that the delayed communication of adverse remarks vitiates the order of premature retirement. I further say and submit that the applicant prayed for interim relief to direct the respondents to consider his case for promotion to the SG grade as on October, 1990 by the DPC to be held in March, 1992 and April, 1993, before the Hon'ble Tribunal vide Mas No. 52/92 and 132/93 in OA No. 44/92 respectively which were rejected by the Hon'ble Tribunal by speaking orders. Hence there is no merit in the applicant's allegation that the respondents' action in not placing his case before the DPC became arbitrary, discriminatory and illegal. I say and submit that the Hon'ble Tribunal held in their orders dated 03 / 05 /93 in MA No. 132 /

93 that the screening procedure followed in respondents organisation is in order. I further say and submit that the Ernakulam Bench of the Hon'ble Tribunal in K. Venkatarao vs Union of India and others (OA No.461/89) upheld the procedures followed by the respondents in the matter of promotion to higher posts of Scientific and Technical Officers, by a speaking order. The relevant portion of the judgment is enclosed as Annexure R-4."

7. From the aforesaid para, it is clear that the adverse remarks recorded for the years 1986 - 1990 were communicated by letter dated 14.02.1992, whereas adverse remarks in ACRs for the year 1991 were communicated by letter dated 28.01.1992. There cannot be more clear an admission on the part of the Department than the one which is made in the aforesaid para. It is specifically stated that, "..... The applicant had not submitted his self-assessment reports for the years 1986 to 1990. It is mainly due to the fact that the applicant had not done any work during the said period. The ACRs reflect that no work was done by the applicant, as reported by the Reporting Officer.....".

7.1 In this para, the deponent has tried to derive a support from a decision wherein it is held that, "Delayed communication of adverse remarks does not

vitiates the remarks" [Ravji Vs. Union of India AIR(2) CAT 157 (Delhi)]. Similarly, the deponent has also placed reliance on a decision in the matter of *Baldev Kapoor Vs. Union of India and others*, reported in 1980(2) SLR 309 (Punjab and Haryana), to support the contention that, "non-compliance of the executive instructions, having no statutory force, does not render the decision illegal".

7.2 This Court is not able to accept any of these submissions for the simple reason that law is very well settled on this issue and in absence of any justifiable reason of not writing ACRs at the relevant time and communicating the adverse ACRs for the period 1986 to 1990 by letter dated 14.02.1992 renders the adverse entries in this ACRs not worthy of relying upon for passing an order of premature retirement and therefore, the submission made in the aforesaid affidavit in reply that, "This being the legal position, I submit that there is no merit in the contention of the applicant that the delayed communication of adverse remarks vitiates the order of premature retirement", does not find favour.

7.3 Now that the petition filed by the petitioner being SCA No.9192 of 2004 is allowed, the Court has upheld the challenge of the petitioner to the adverse entries made in the ACRs for the years 1986 to 1990 and has directed the respondents to consider the case of the

petitioner for promotion from 'SF' to 'SG' on the basis of the other relevant material available, but ignoring the ACRs, the validity of the order of premature retirement is also required to be considered on the basis of the material available that is treating the adverse entries in the ACRs of the petitioner non-existent.

7.4 Coming to para-9 of the affidavit in reply, the deponent has made it clear by saying that, "..... I further say and submit that vide para 6 of the appeal the applicant himself had admitted that he had not submitted his self appraisal from 1985 to 1989 under protest. Even in the appeal the applicant failed to submit his work report. Though the applicant made representation against the ACR yearwise, he failed to bring on record the details of work performed by him. I say and submit that the applicant had nothing to say in this regard and is just trying to cover up his own lapses raising wild allegations on each and every superior officer.....". (emphasis supplied).

7.5 This clearly shows that the Department was in know of the 'non-submission' of self-appraisal report. Besides that, the Department was under an obligation to write his ACRs even in absence of self-appraisal report. The very fact that the Department did not opt for the other alternative available to it, the Department cannot

be allowed to justify its action of the order of premature retirement.

8. The aforesaid reasons are the basis for passing an order dated 07.05.2013, which reads as under:-

Date : 07/05/2013

(PER : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)

OPERATIVE ORDER

1. Heard Dr.R.K.Khola, who is appearing as party-in-person and learned advocate Mr.Ketan A. Dave, who is appearing for the respondents - Union of India, Prof. U.R.Roa and Prof. P.P.Kale.

2. For the reasons to follow, the petition is allowed. The judgment and order of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, dated 4.4.2001 passed in O.A.No.407 of 1993 and judgment and order dated 31.10.2010 passed in R.A. No.91 of 2001 in O.A.No.407 of 1993 are quashed and set aside. The order of premature retirement dated 3.5.1993 (Annexure -A10 of the O.A.) is quashed and set aside. The consequences of the quashing of the premature retirement order should follow, meaning thereby the petitioner be deemed to have continued in service till he reached the age of superannuation i.e. 31.3.2002. The petitioner be entitled to all the benefits as if he was in service till

he retired on superannuation. Since the petitioner is ordered to have continued in service upto 31.3.2002, his case will be required to be considered by the Department for whatever promotions he was entitled to on the basis of material available. The decision be taken about his promotion to Grade - G and H and in the event, he is found fit to be promoted to Grade-G and H, the consequential benefits should be given to him.

3. At this juncture, the petitioner - Shri R.K.Khola states before the Court that during the period 3.5.1993 to 31.3.2002, he had practiced as an Advocate and had earned an amount of Rs.2 lacs which he declares for being adjusted by the Department against the amount payable to him pursuant to this order. The department to take note of this declaration and adjust the amount payable to the petitioner accordingly.

Sd/-
(RAVI R. TRIPATHI, J.)

Sd/-
(R.D.KOTHARI, J.)

*Shitole/Vipul

(1)

FORM NO. 21
(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH
OA/TA/RA/CP/ 407/93 af

DS R.K. Khwaja

APPLICANT (S)

VERSUS

Adv. S. Q.S.

RESPONDENT (S)

I N D E X - S H E E T

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
1	-OA.	1 - 58
2	MA/629/93	57 - 83
3	MA/680/93	83 - 86
4	Reply	87 - 119
5	Reply n MR.	120 - 131
6	MA/133/93	132 - 152
7	Reply	151 - 153
8	MA/605/95	155 - 176
9	Reply	177 - 180
10	MA/667/96	181 - 186
11	Cr. Reply to M.A.	187 - 192
12	Affidavit	193 - 195
13	Affidavit in Reply to MA/667/96	196 - 209
14	Re. to Reply	210 - 251

Certified that the file is complete in all respect

Signature of S.O. (J)

(P)

Signature of Dealing Hand

P.T.O.

(2)

FORM NO. 21
(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

~~OA/TA/RA/CR/~~ 407/93 of

Dr. R.K. Khatri

APPLICANT (S)

VERSUS

U.O. S. & O.C.S.

RESPONDENT (S)

INDEX-SHEET

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
15.	Further Reply	252 - 253
16.	Further Reply to MA	A 253 - 414 B 254 - 415
17.	Cur Stat	A 415 - 417 B 416 - 418
18.	MA/31/2000	A 418 - 444 B 419 - 445
19.	Reply to MA	A 445 - 447 B 446 - 448
20.	Submission	A 448 - 450 B 449 - 451
21	Reply	A 451 - 458 B 452 - 459
22.	Replies to Reply	A 459 - 497 B 460 - 498

23 Certified that the file is complete in all respects
Judgment of 14/12/2001 (C 58 pages)

AM 22/12/2001

Signature of S.O. (J)

Signature of Dealing Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

MISC. CIVIL APPLICATION (FOR CONTEMPT) NO.839 OF 2014 IN
Special Civil Application No.9190 of 2004 IN
O.A. No.407 of 1993

WITH

MISC. CIVIL APPLICATION NO.841 OF 2014 IN
Special Civil Application No.9192 of 2004 IN
O.A. No.44 of 1992

WITH

MISC. CIVIL APPLICATION NO.905 OF 2014 IN
Special Civil Application No.3136 of 2005 IN
O.A. No.814 of 2000

Serial No.: 285
Register No.: 07
Page: 96
Date: 26.09.2017

Certified Copy of order dated 08.09.2017 in Misc. Civil Application Nos. 839 of 2014, 841 of 2014 and 905 of 2014, IN Special Civil Application No.9190 of 2004, 9192 of 2004 and 3136 of 2005 against the judgment/ order passed by this Tribunal on 04.04.2001 in O.A.407 of 1993 and O.A.44 of 1992 and on 06.08.2001 in O.A. No. 814 of 2000, has been received and placed for your kind perusal please.

Hon'ble High Court of Gujarat has passed following order on 08.09.2017 ::

..... 2

" 12 In view of the aforesaid discussions,..... case of the applicant for promotion and thought it fit not to grant him promotion. The applications are, therefore, dismissed. However, it is clarified that if the applicant is aggrieved by any decision taken by the respondent authorities while complying with the orders passed by this court, it is open for the applicant to avail an appropriate remedy available under the law."

Submitted for kind perusal and/or Orders, if any, please.

*SLB
26/09/17*

Section Officer (J)

*KL
26/09/17*

Deputy Registrar

Hon'ble Mr. M. Nagarajan, Member (J)

10/09/2017

MCA - FINALLY DISPOSED

Despatch No.: DD-SCA
Date:203927/17
21/09/17

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION (FOR CONTEMPT) NO. 839 OF 2014
IN SPECIAL CIVIL APPLICATION NO. 9190 OF 2004

With

MISC. CIVIL APPLICATION NO 841 OF 2014
In SPECIAL CIVIL APPLICATION NO 9192 OF 2004

With

MISC. CIVIL APPLICATION NO 905 OF 2014
In SPECIAL CIVIL APPLICATION NO 3136 OF 2005

C.A.T. AHMEDABAD

Inward No. 2648

Date 25/09/17

RAMKISHAN MURLIDHAR KHOLA, EX. SCIENTIST/ENGINEER SF, ----

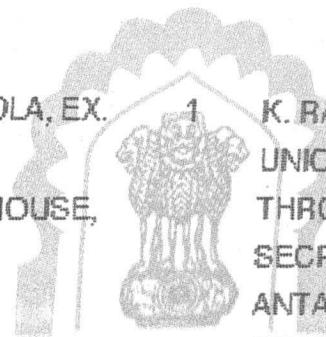
Applicant(s)

V/S

K. RADHAKRISHNAN -CHAIRMAN - UNION OF INDIA & 2 ----

Opponent(s)

To,



1 K. RADHAKRISHNAN -CHAIRMAN -
UNION OF INDIA
THROUGH CHAIRMAN, ISRO AND
SECRETARY, DOS
ANTARIKSH BHAVAN, NEW BEL
ROAD,
BANGALORE 560 054

3 A.S. KIRAN KUMAR
DIRECTOR, SPACE APPLICATIONS
CENTRE, JODHPUR TAKERA,
AHMEDABAD

*Recd
01/09/17
Pl. Recd & on file
SJK*

✓ 1 - CENTRAL ADMINISTRATIVE
TRIBUNAL,
OPP. SARDAR PATEL STADIUM,
NAVRANGPURA, AHMEDABAD

(O.A.NO. 814/2000) 814/2000).

Upon reading the MISC. CIVIL APPLICATION of the above named
Applicant(s) presented to this High Court Of Gujarat at Ahmedabad
on 13th of March, 2014 praying to quash & set aside the order of
his premature retirement dtd:03/05/93.....

Page 1 of 3 107 HC00455 on 19/9/2017

Recd today at 11.30 AM.

*11
28/09/17*

AND WHEREAS Upon Hearing
 NOTICE UNSERVED for the PETITIONER(s) No. 1
 PARTY-IN-PERSON as ADVOCATE for the Applicant(s) No. 1
 NOTICE SERVED for the RESPONDENT(s) No. 2
 NOTICE SERVED BY DS for the RESPONDENT(s) No. 3
 MR DEVANG VYAS as ADVOCATE for the Opponent(s) No. 1

The Hon'ble court has passed the following order

CORAM: HONOURABLE THE CHIEF JUSTICE MR. R. SUBHASH REDDY and
 HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 08/09/2017

ORAL ORDER (PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

"1. These Misc. Civil Applications are filed by the applicant - party-in-person under the provisions of the Contempt of Courts Act, 1971.....The applications are, therefore, dismissed. However, it is clarified that if the applicant is aggrieved by any decision taken by the respondent authorities while complying with the orders passed by this Court, it is open for the applicant to avail an appropriate remedy available under the law."

(A copy of court's order passed in C/MCA/839/2014 dated 08/09/2017 is enclosed here with)

ORDERS ACCORDINGLY FOR THE COMPLIANCE OF THE DIRECTIONS GIVEN BY THE HON'BLE COURT IN THE ABOVE ORDER

Witness R. SUBHASH REDDY, Esquire the CHIEF JUSTICE at Ahmedabad aforesaid this 08th day of September, 2017

सत्यमव जयते

THE HIGH COURT
 OF GUJARAT
 By the Court

FOR DEPUTY REGISTRAR
 This 21st Day Of September, 2017

It should be returned duly certified within 2 weeks

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION No 839 of 2014

In SPECIAL CIVIL APPLICATION no 9190 of 2004

With

MISC. CIVIL APPLICATION No 941 of 2014

In SPECIAL CIVIL APPLICATION No 9192 of 2004

With

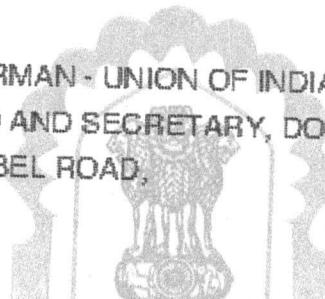
MISC. CIVIL APPLICATION No 905 of 2014

In SPECIAL CIVIL APPLICATION No 9136 of 2005

1 RAMKISHAN MURLIDHAR KHOLA, EX. SCIENTIST/ENGINEER SF,
HOUSE NO. P-9, AVANI ROW HOUSE,
NEAR SATELLITE TOWERS,
AHMEDABAD 380 015

Applicant(s)

VERSUS



- 1 K. RADHAKRISHNAN -CHAIRMAN - UNION OF INDIA
THROUGH CHAIRMAN, ISRO AND SECRETARY, DOS
ANTARIKSH BHAVAN, NEW BEL ROAD,
BANGALORE 560 054
- 2 K. RADHAKRISHNAN
CHAIRMAN ISRO AND SECRETARY, शत्यमेव जयते
DOS ANTRIKSH BHAVAN, NEW BEL HIGH COURT
ROAD, BANGALORE 560 054
- 3 A.S. KIRAN KUMAR
DIRECTOR, SPACE APPLICATIONS
CENTRE, JODHPUR TAKERA,
AHMEDABAD

Opponent(s)

Appearance:

NOTICE UNSERVED for the Applicant(s) No.
PARTY-IN-PERSON, ADVOCATE for the Applicant(s) No. 500
MR DEVANG VYAS, ADVOCATE for the Opponent(s) No. 279
MR IH SYED, ADVOCATE for the Opponent(s) No. 232
NOTICE NOT RECD BACK for the Opponent(s) No.

NOTICE SERVED for the Opponent(s) No.

DS AFF.NOT FILED (N) for the Opponent(s) No. 1

NOTICE SERVED BY DS for the Opponent(s) No.

CORAM: HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH REDDY
and

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date of Decision : 08/09/2017



सत्यमेव जयते
THE HIGH COURT
OF GUJARAT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
MISC. CIVIL APPLICATION (FOR CONTEMPT) No 841 of 2014

1 RAMKISHAN MURLIDHAR KHOLA
HOUSE NO B-9, AVANI ROW HOUSES
NR SATELLITE TOWERS,
AHMEDABAD - 380 015

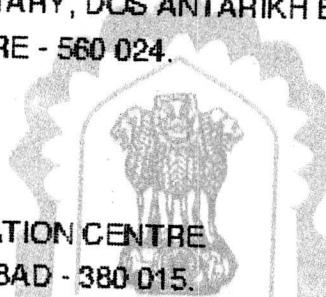
Applicant(s)

VERSUS

1 K. RADHAKRISHNAN - CHAIRMAN - UNION OF INDIA
THROUGH CHAIRMAN, ISRO & SECRETARY, DOS ANTARIKSH BHAVAN,
NEW BEL ROAD, BANGLORE - 560 054
NEW BEL ROAD, BANGLORE - 560 054

2 K. RADHAKRISHNAN
CHAIRMAN, ISRO & SECRETARY, DOS ANTARIKSH BHAVAN
NEW BEL ROAD, BANGALORE - 560 024.
NEW DELHI

3 A.S. KIRAN KUMAR
DIRECTOR, SPACE APPLICATION CENTRE
JODHPUR TEKRA, AHMEDABAD - 380 015.



सत्यमेव जयते
THE HIGH COURT
OF GUJARAT

Opponent(s)

Appearance:

NOTICE UNSERVED for the Applicant(s) No.
PARTY-IN-PERSON, ADVOCATE for the Applicant(s) No. 500
MR IH SYED, ADVOCATE for the Opponent(s) No. 232
NOTICE NOT RECD BACK for the Opponent(s) No.
NOTICE SERVED BY DS for the Opponent(s) No.
DS AFF.NOT FILED (N) for the Opponent(s) No. 1
NOTICE SERVED for the Opponent(s) No.

CORAM: HONOURABLE THE CHIEF JUSTICE MR. A. SUBHASH REDDY
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date of Decision : 08/09/2017

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
MISC. CIVIL APPLICATION (FOR CONTEMPT) No 905 of 2014

1 RAM KISHAN MURLIDHAR KHOLA
EX-SCIENTIST/ENGINEER-SF
B-9,AVANI ROW HOUSES
NR.SATELITE TOWERS AHMEDABAD.
380015

Applicant(s)

VERSUS

1 K RADHAKRISHNAN - CHAIRMAN
UNION OF INDIA, ISRO AND SECRETARY, DOS
ANTARIKSH BHAVAN, NEW BEL ROAD,
BANGALORE
560024

2 K RADHAKRISHNAN - CHAIRMAN
ISRO AND SECRETARY, DOS, ANTARIKSH BHAVAN,
NEW BEL ROAD,
BANGALORE.
560024

3 A S KIRAN KUMAR
DIRECTOR OF SPACE APPLICATION CENTRE,
JODHPUR TEKRA,
AHMEDABAD.
380015



Opponent(s)

Appearance:

PARTY-IN-PERSON, ADVOCATE for the Applicant(s) No. 500
MR IH SYED, ADVOCATE for the Opponent(s) No. 232
NOTICE NOT RECD BACK for the Opponent(s) No.
NOTICE UNSERVED for the Opponent(s) No.
NOTICE SERVED BY DS for the Opponent(s) No.
DS AFF.NOT FILED (N) for the Opponent(s) No. 1

CORAM: HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH REDDY
and

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date of Decision : 08/09/2017

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
 MISC. CIVIL APPLICATION (FOR CONTEMPT) NO. 839 of 2014
 In SPECIAL CIVIL APPLICATION NO. 9190 of 2004
 With
 MISC. CIVIL APPLICATION NO. 841 of 2014
 In
 SPECIAL CIVIL APPLICATION NO. 9192 of 2004
 With
 MISC. CIVIL APPLICATION NO. 905 of 2014
 In
 SPECIAL CIVIL APPLICATION NO. 3136 of 2005

RAMKISHAN MURLIDHAR KHALA, EX. SCIENTIST/ENGINEER
 SF,Applicant(s)
 Versus
 K. RADHAKRISHNAN CHAIRMAN UNION OF INDIA &
 2....Opponent(s)

Appearance:

NOTICE UNSERVED for the Applicant(s) No. 1
 PARTY IN PERSON, ADVOCATE for the Applicant(s) No. 1
 MR DEVANG VYAS, ADVOCATE for the Opponent(s) No. 1
 NOTICE SERVED for the Opponent(s) No. 2
 NOTICE SERVED BY DS for the Opponent(s) No. 3

CORAM: HONOURABLE THE CHIEF JUSTICE MR. R. SURHASH REDDY
 and
 HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 08/09/2017

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

1. These Misc. Civil Applications are filed by the applicant - party-in-person under the provisions of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act for short), alleging that the respondents have intentionally and willfully disobeyed the judgment dated 07.05.2013 passed in Special Civil Application No. 9190 of 2004, judgment dated 04.04.2013 passed in Special Civil Application No. 9192 of

2004 and judgment dated 07.05.2013 passed in Special Civil Application No.3136 of 2005.

2. Heard the applicant Mr. R. M. Khola - party-in-person and learned Assistant Solicitor General Mr. Devang Vyas for the respondents.

3. The applicant submits that he was working as Scientist / Engineer - SF in the organization of the respondent and by an order dated 03.05.1993 he was prematurely retired. The applicant, therefore, approached the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') by filing O.A. No. 407 of 1993. However, the Tribunal rejected the said O.A. The applicant, therefore, filed Special Civil Application No.9190 of 2004 for quashing and setting aside the order of his premature retirement. The Division Bench of this Court, by judgment dated 07.06.2013, allowed the said petition and thereby quashed and set aside the order dated 04.04.2001 passed by the Tribunal in O.A. No. 407 of 2013 and further the order dated 03.05.1993, whereby the respondent passed an order of premature retirement of the applicant, was also quashed and set aside. It is submitted that in the said order, this Court observed that the applicant be deemed to have continued in service till he reached the age of superannuation i.e. 31.03.2002 and therefore the applicant is entitled to all the benefits as if he was in

service till he retired on superannuation. This Court further observed that since the applicant is ordered to have continued in service up to 31.03.2002, his case will be required to be considered by the Department for whatever promotions he was entitled to on the basis of material available. It is further observed that the decision be taken about promotion of the applicant to Grade - G and H and in the event if the applicant is found fit to be promoted to Grade - G and H, the consequential benefits should be given to him.

4. The applicant further submits that he filed Special Civil Application No.9192 of 2004 seeking directions from this Court to consider his case for promotion to Scientist/Engineer - SG grade w.e.f. 01.01.1991. The said petition came to be filed against an order passed by the Tribunal in O.A. No. 44 of 1992 by which the Tribunal rejected the application of the applicant. It is submitted that this Court by an order dated 04.04.2013, allowed the said petition wherein this Court observed in para 32 as under:

"32. In view of the aforesaid discussions, this Court is of the opinion that the Honble Tribunal erred in rejecting the OA. The judgment of Honble Tribunal is quashed and set aside.

1. The respondents are directed to consider the case of the

petitioner on the basis of the only material which was available in the Year-1990 and decide his suitability for promotion from grade SF to SG.

2. The resultant effect of this direction will be that in the event the petitioner is held eligible for being promoted, the order passed under fundamental Rule 56J which is under challenge in another petition being Special Civil Application No.9190 of 2004 and if that petition fails that order will operate. Thereby, the petitioner will stand removed from SG grade and not SF.

3. At the request of the petitioner, it is clarified that order passed under fundamental Rule 56J is subject to outcome of Special Civil Application No.9190 of 2004. In the event that petition is allowed, the order under challenge will become honest. The petitioner will then be deemed to have continued in grade SG (subject to his right to get further promotion) till the date of his superannuation."

5. The applicant thereafter submitted that he had filed O.A.No.814 of 2000 before the Tribunal in which he had prayed that the respondents be directed to pay the retirement benefits as well as interest thereon. In the said application, Tribunal awarded 12% interest on additional amount of pension and therefore the applicant had

filed Special Civil Application No.3136 of 2005 before this Court. It is submitted that this Court by an order dated 07.05.2013 directed the respondents to pay interest at the rate of 18%.

6. Applicant submits that though this Court has passed the orders on different dates in the aforesaid petitions, respondent authorities have not complied with the directions issued by this Court and therefore he has filed present applications under the provisions of the Act seeking direction to take appropriate action under the Act and further prayed for compliance of the directions issued by this Court. At this stage, applicant submits that though the respondent authorities have paid total amount of approximately Rs.45 lakhs to the applicant as per the calculation produced on record by the applicant in the affidavit-in-rejoinder, still huge amount is outstanding. It is therefore submitted that the respondents have intentionally and willfully disobeyed the orders passed by this Court in the aforesaid petitions and hence appropriate directions be issued to the respondents and action be taken under the provisions of the Act against the respondents.

7. On the other hand, learned Assistant Solicitor General Mr. Vyas contended that the orders passed by this Court in Special Civil Application Nos. 9190 of 2004, 9192 of 2004 and

3136 of 2005 were challenged by the respondent Department by filing Special Leave Petition Nos. 9993 of 2014 to 9995 of 2014 before the Hon'ble Supreme Court. The delay was caused in filing said Special Leave Petitions because of the administrative procedure which was required to be followed by the Department. The Hon'ble Supreme Court granted the leave and the orders passed by this Court in the aforesaid petitions were stayed. However, thereafter the aforesaid SLPs came to be dismissed by the Hon'ble Supreme Court on 24.01.2017. It is further contended that in the meantime, as per the original directions issued by this Court in the aforesaid petitions and because of the order dated 15.04.2014 passed by this Court, the respondents have deposited an amount of Rs. 31,99,861/- in the Registry of this Court on 28.04.2014 pending the outcome of the decision of the SLPs. However, after the SLPs were dismissed by the Hon'ble Supreme Court, the respondent authorities have immediately taken a decision to comply with the orders passed by this Court in the aforesaid petitions.

8. Mr. Vyas would further submit that now the respondents have complied with all the directions issued by this Court in the aforesaid petitions. In fact the applicant was reinstated by an order dated 15.03.2017 as per the directions issued by this Court and as he attained the age of superannuation on 03.03.2002, an order of

revision of pay, pension and other retiral benefits with 18% interest was passed on 04.05.2017. It is further contended that Screening Committee considered the case of the applicant for review of DPC from the cadre of Scientist/Engineer SF to Scientist/Engineer SG as on the date of 01.01.1991 and for subsequent years i.e. upto 01.01.2002 based upon the material available in the form of Annual Confidential Reports and as per the directions issued by this Court. The concerned Committee, after considering the available record, held that the applicant is not entitled for the promotion. Thus, the case of the applicant was also considered for promotion by the concerned Committee. It is further submitted that on 14.06.2017 the respondents have given all the consequential benefits of arrears of pay, increments, retiral benefits and paid an additional amount of Rs.12,13,036/-. At this stage, it is clarified that the applicant had already withdrawn 31,99,861/- which was deposited by the respondents before the Registry of this Court long back. It is therefore submitted that the respondents have complied with the orders passed by this Court in the aforesaid petitions and therefore there is no merit in the present applications. Hence, the same be dismissed.

9. Having considered the submissions canvassed by the applicant - party-in-person as well as

learned Assistant Solicitor General Mr. Devang Vyas appearing for the respondent - Union of India and having perused the material on record, it is revealed that this Court passed orders dated 07.05.2013, 04.04.2013 and 07.05.2013 in Special Civil Application Nos. 9190 of 2004, 9192 of 2004 and 3136 of 2005, respectively filed by the present applicant. It appears from the record that the orders passed by this Court in the aforesaid petitions were not immediately complied by the respondents as they have initiated the process of filing SLP before the Hon'ble Supreme Court against the said orders. Delay caused in filing the SLPs is explained by the respondents by filing affidavit dated 14.04.2014 in the present proceedings. The fact remains that the leave was granted by the Hon'ble Supreme Court and aforesaid orders passed by this Court were stayed by the Hon'ble Supreme Court. It is further reflected from the record that in the meantime the respondents deposited an amount of Rs.31,99,861/- on 28.04.2014 in the Registry of this Court pending the outcome of the decision of the Hon'ble Supreme Court in SLP Nos. 9993 of 2014 to 9995 of 2014. It is also clear from the record that the aforesaid amount was subsequently withdrawn by the applicant.

10. It transpires from the record that the SLPs filed by the respondents were dismissed by the Hon'ble Supreme Court vide order dated 24.01.2017

and from the further affidavit dated 15.06.2017 filed by the respondents, it is clear that after the dismissal of the SLPs, the respondents immediately started taking action for implementation of the directions issued by this Court in the aforesaid orders. It is also not in dispute that the respondents have paid an amount of Rs.12,13,036/- on 14.06.2017 towards the arrears of pay, increments and retiral benefits. Thus, total amount of approximately Rs.45 lakhs has already been paid by the respondents to the applicant with interest @ 18%. It has also emerged from the record that as per the directions issued by this Court, the concerned Committee considered the case of the applicant for promotion. However, the said Committee, after considering the ACRs of the applicant for the concerned years, was of the opinion that the applicant was not eligible for promotion. The said decision is also communicated to the applicant.

THE HIGH COURT
OF GUJARAT

11. In the aforesaid facts and circumstances of the present case, now the limited grievance of the applicant is that the concerned committee has not considered the case of the applicant for promotion as per the directions issued by this Court and another grievance of the applicant is that he is entitled to get interest at the rate of 18% on difference of salary i.e. by calculating such interest from 03.05.1993, the

date on which he was prematurely retired from service. Thus, applicant has calculated interest on every month's salary and increments. We are of the view that the respondents have complied with the directions issued by this Court vide orders dated 07.05.2013, 04.04.2013 and 07.05.2013 passed in Special Civil Application Nos. 9190 of 2004, 9192 of 2004 and 3136 of 2005, respectively. However, if the applicant is dissatisfied with the orders passed by the respondent authorities, it is always open for him to challenge such orders before the competent Court/Forum.

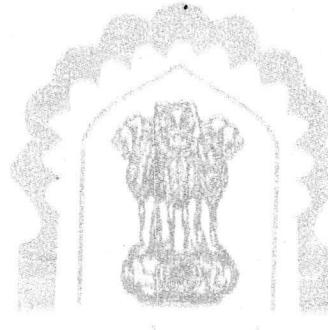
12. In view of the aforesaid discussions, we are of the view that the respondents have not disobeyed the orders dated 07.05.2013, 04.04.2013 and 07.05.2013 passed in Special Civil Application Nos. 9190 of 2004, 9192 of 2004 and 3136 of 2005, respectively, as alleged by the applicant. The respondents have paid total amount of approximately Rs.45 lakhs including 18% interest as per the directions issued by this Court to the applicant and also considered the case of the applicant for promotion and thought it fit not to grant him promotion. The applications are, therefore, dismissed. However, it is clarified that if the applicant is aggrieved by any decision taken by the respondent authorities while complying with the orders passed by this

Court, it is open for the applicant to avail an appropriate remedy available under the law.

SL
(R. SUBHASH REDDY, CJ)

SL
(VIPUL M. PANCHOLI, J.)

Jani



THE HIGH COURT
OF GUJARAT