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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00451//2014

Jodhpur, this the 4th day of July, 2016

Reserved on 02.06.2016

CORAM

Hon'ble Sh. U. Sarathchandran, Judicial Member

Hon'ble Ms. Praveen Mahajan, Administrative Member

Surendra Kumar Lotan S/o Shri Late Shri Sukhan Lal, aged about 58 years,
R/o H.No.C-157, Krishna Nagar, New Pali Road, District Jodhpur, Rajasthan.
At present former Section officer, DMRC, Jodhpur.

.....Applicant

Mr. R.S. Shekhawat, proxy counsel for
Mr. P.S. Bhati, counsel for applicant.

Versus

1. Union of India through the Secretary, Ministry of Health, Government of India, New Delhi.
2. Director General & Appellate Authority, Indian Council of Medical Research, Ansari Nagar, New Delhi.
3. Director, Desert Medicine Research Centre, New Pali Road, Jodhpur Rajasthan.
4. Dr. A.P. Dass (Erstwhile Director Incharge, DMRC, Jodhpur) Flat No.104, Asha Apartment, Hally Road, Connaught Place, New Delhi.
5. Dr. Ramesh Chandra Sharma (Erstwhile Deputy Director and Officer-In-Charge, DMRC, Jodhpur) 190, Anupam Apartment, Meharoli, Badarpur Road, New Delhi.

.....respondents

Mr. M.S. Godara, counsel for respondents.

ORDER (Oral)

Per Sh. U. Sarathchandran

Annexure-A/1 retiring the applicant under sub rule (j)(i) of Rule 56 of Fundamental Rules (hereinafter referred to as F.R., for short) and in circumstance that the applicant's normal date of superannuation is on the 30th of June 2016 and also for the reason that Tribunal is closing for summer holidays from 04th June to the 01st July 2016.

2. Applicant was a Section Officer under the respondents working in the office of respondent No.3. As per Annexure-A/1 he was retired under the provisions of clause (j) (i) of Rule 56 of the F.R.. Annexure-A/1 reads:

"Indian Counsel for Medical Research
(Ministry of Health & Family welfare)
Desert Medicine Research Centre
New Pali Road, Jodhpur-342005

Ref. No.PF011(3)/86/DMRC/
Dated: 3rd February 2009

ORDER

Whereas the Director In Charge is of the opinion that it is in the public interest to do so;

Now, therefore, in exercise of the powers conferred by clause (j)(i) of rule 56 of the Fundamental Rules, the Director in Charge hereby retires Shri S.K. Lotan, Section Officer with immediate effect, he having already attained the age of 50 years. Shri S.K. Lotan shall be paid a sum equivalent of the amount of his pay plus allowances for a period three months calculated at the same rate at which he was drawing them immediately before his retirement.

Sd/-
Director In Charge

3. While challenging Annexure-A/1 and Annexure-A/2 in the present OA the applicant seeks relief as under:

"A. By an appropriate order or direction, the compulsory retirement order dated 2/3.02.2009 (Annexure-A/1) and appellate order dated 30.06.2014 (Annexure-A/2) may kindly be quashed and set aside and the appellant reinstate back in service with all consequential benefits.

B. By an appropriate order or direction, the respondents may kindly be directed to enquire the complete matter and thereafter, take the disciplinary action against the person liable for the same.

C. Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

D. Application of the applicant may kindly be allowed with costs."

4. He had submitted appeal against Annexure-A/1 order to the Appellate Authority (respondent No.2) vide his appeal dated 27.08.2009. However the Appellate Authority rejected the appeal vide Annexure-A/2 order dated 30th June, 2014.

5. On an earlier occasion applicant had challenged Annexure-A/1 order before this Tribunal in OA No.65/2009. Noting that the applicant had submitted a representation (Appeal) before the competent authority on 27.08.2009 and that the same was received by the authority on 31.08.2009, this Tribunal disposed of OA No.65/2009 with a direction that the respondent department shall decide the said representation within 2 months, permitting the applicant to file additional documents before the Appellate Authority. It was in accordance with the aforesaid direction Annexure-A/2 decision was taken by the respondent No.2, in his capacity as Appellate Authority.

6. Applicant attacks Annexures-A/1 and A/2 orders mainly on the ground of *mala fide* motive of some superior officials in the respondent No.3 Centre and violation of clause (j)(i) of Rule 56 of F.R. It is alleged that Annexure-A/1 is an anti-dated order to suit the convenience of respondent No.4 who had taken charge of Dr.Ramesh Chandra Sharma (Respondent No.5). According to the applicant Dr.Sharma had some malice towards him and he with the connivance of respondent No.4 had issued Annexure-A/1 order. It is further alleged that respondent No.4 had handed over the charge of Director-In-charge of the respondent No.3 Centre on 23.02.2009 vide

03.02.2009 to make it appear that they were issued during tenure of respondent No.4. Applicant states that the postal stamps on the envelope he received Annexure-A/1 order and the copies of the despatch register maintained in the office of respondent No.2 would prove that Annexure-A/1 order was not actually issued on 03.02.2009 but on a later date. He refers to page Nos. 109 and 110 of the paper book and point out that the despatch number noted on the right hand side of the document shows that it was indeed dispatched on 25.02.2009, not on 03.02.2009. Applicant states that the cheque issued to him along with Annexure-A/1 order for Rs.85,974/-, purportedly in lieu of the 3 months' salary, was actually not issued on 03.02.2009 as indicated in the cheque (see Annexure-A/18 at page 189 of the paper book) but it was issued only a later date. Referring to the attendance register for the month of February 2009 the copy of which is produced at page 216 of the paper book, applicant states that two of the signatories in Annexure-A/18 cheque were not in station on 03.02.2009 and hence the cheque was purposefully anti-dated to suit the manipulated date in Annexure-A/1. According to the applicant all these shows the lack of bona fides on the part of the respondent officials who had illegally concocted the anti-dated Annexure-A/1 were bent upon seeing him removed from service on account of the personal ill-will his superior officers have maintained towards him.

7. The respondents resist this OA by generally contending that the applicant was removed from service on account of the fact that he was clearly ineffective in discharging of his responsibility as Section Officer in

facilitation of administrative process as a disciplined team of persons. Besides, the respondents state, applicant was creating unrest amongst the employees belonging to the members of Scheduled Caste and Scheduled Tribe by instigating caste feeling amongst them. According to respondents a Committee was constituted to review the work of the applicant and the Review Committee which met on 8/10 January 2009 has heavily come down upon the applicant for his caste-ridden attitude disobedience and dereliction of duty. Respondents further state that the Review Committee consisting of outside members was of the opinion that it is essential to compulsory retire the applicant invoking power of clause (j)(i) of Rule 56 of F.R. in order to "create good congenial working environment in the Centre". Respondents admit that the applicant continued to work in the Centre till 25.02.2009 as Annexure-A/1 order could not be served on him. It is also stated by the respondents that the letter Annexure-A/1 along with cheque 3 months notice salary was despatched on 23.02.2009 and hence the date of applicant's compulsory retirement was fixed as 25.02.2009. Respondents point out that earlier the applicant was subjected disciplinary proceedings and the penalty of compulsory retirement was imposed on 27.12.2006 against which he filed OA No.108/2008 before this Tribunal. This Tribunal in OA No.108/2008 had quashed the punishment order of the Disciplinary Authority and the order passed by the Appellate Authority. According to respondents while issuing Annexure-A/1 order respondent authorities had taken into consideration of the entire service record of the applicant. Respondents pray for rejecting the OA.

8. We have heard Shri R.S. Shekhawat representing Shri P.S. Bhati learned counsel for the applicant and Shri M.S. Godara learned counsel for the respondents *in extenso*. Perused the record including the service records of the applicant containing his ACRs starting from 1991 to 2007-2008. We have also perused the file containing the record of proceedings of the Review Committee which had evaluated the efficiency, conduct and the nature of work of the applicant. The aforesaid Review Committee consists of a scientist from NIMR, Delhi and a scientist from RMRC, Jabalpur both from outside DMRC.

9. We take note that there was a disciplinary proceeding initiated against the applicant culminating in Annexure-A/6 order passed by respondent No.5 while he was holding of post as Officer-in-charge, awarding him the penalty of compulsory retirement. Annexure-A/6 and the order of the Appellate Authority were challenged by the applicant herein in OA No.108/2008. It was disposed of vide Annexure-A/8 order of this Tribunal (page 154 of the paper book) quashing the said order *inter alia* on the ground that Annexure-A/6 was not passed by the Director who could have been the appointing authority/ disciplinary authority, but was by the 'officer-in-charge' only. It was thereafter the respondents went ahead with setting up of a Committee to review the work and conduct of the applicant.

10. The order of compulsory retirement can be imposed under two circumstances; one by way of a punishment as per Rule 11 of CCS (CCA) Rules after a disciplinary proceedings and the other by way of exercising

Annexure-A/1 order the respondents invoked sub-rule (j)(i) of Rule 56 of F.R.

R. The rule reads:

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

- (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government Service before attaining the age of 35 years, after he has attained the age of 50 years;*
- (ii) in any other case after he has attained the age of fifty-five years."*

11. It is now well settled position that only in public interest an employee can be retired by invoking the power under sub-rule (j)(i) of Rule 56 FR. In this case the applicant obviously is at the age of above 50 years and hence is within threshold zone of retireability under Rule FR 56 of F.R. In *Baldev Raj Chadha v. Union of India and others* (1980) 4 SCC 321 Krishna Iyer J. observed that the whole purpose of Rule 56 (j) of F.R. is to weed out the worth-less without the punitive extremes covered by Article 311 of the Constitution. It was held that the validity of the order under Rule 56 F.R. depend on its being supported by public interest and therefore the authority invoking the power under the said rule should disclose the material on which he relied on and the order so passed should be reasonable to a man reasonably instructed in the law [see *Baldev Raj Chadha (supra)* page 8+9]. It was further observed that the limitations of judicial power in this area is confined to an examination of the material relied on by the competent authority to see whether a rational mind may conceivably be satisfied that

interest (see *ibid*). The aforesaid exposition of the law relating to compulsory retirement invoking Rule 56 of FR has further been repeatedly affirmed by the apex court through several decisions. In *State of Gujarat v. Umedbhai M. Patel* 2001 (3) SCC 314 the apex court held that the entire service record of the employee should be considered before determining that he has become a *dead wood*. It was also held in that case that even uncommunicated entries in the ACRs can be taken into account. The apex court cautioned that the compulsory retirement under Rule 56(j) F.R. shall not be used a short-cut to avoid departmental enquiry and that it should not be imposed as a punitive measure.

12. Learned counsel for the respondents Shri M.S. Godara referred to *Union of India and others v. Dulal Dutt* (1993) 2 SCC 179, wherein a Full Bench of the apex court placed reliance on the court's earlier decision in *Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another* (1992) 2 SCC 299. In *Baikuntha Nath Das* case the apex Court observed :

"An order of compulsory retirement 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. 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. There may be number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R.56 (J) or a rule corresponding to it.

.....
An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. Principles of natural justice have no place in the context of an order of compulsory retirement. Since the nature of the function is not quasi-judicial in nature and because the action has to be taken on the Subjective

However, this does not mean that Judicial scrutiny is excluded altogether. While the High Court or the Supreme 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 is it 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. The remedy provided by Article 226 is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action”

13. The above dictum of the apex court ruling mandates that the order of compulsory retirement invoking Rule 56 FR should be an action taken on the subjective satisfaction of the authority based on objective consideration, without arbitrary exercises of power or without non-application of mind. It is clear from the *Dulal Dutt* decision of the Full Bench of the apex court that the order retiring an official under Rule 56 (j) F.R. being not a punishment need not be a speaking order and that there is no room for importing the *audi alteram partem* principle of the natural justice.

14. We had the advantage of perusing the service record of the applicant containing his ACRs. We note that the applicant had 'good' entries in his ACRs of 1991 to 2004-2005, but subsequently all his entries were either 'average' or 'below average' with a lot of adverse comments on his attitudes towards work, his is caste mindedness and tendency for avoidance of duty. As observed by the apex court in *Umedbhai M. Patel* (*supra*) even the uncommunicated entries can be taken into account. However, in this case the applicant has no case that ACRs were not communicated to him. Moreover as observed by the apex court in *Baikuntha Nath Das* the competent authority retiring an officer under sub-rule (j)(i) of Rule 56 FR shall have to consider the entire record of the service attaching more importance to the record of

part of respondents while taking a decision of retiring him under Rule 56 FR on the basis of his recent confidential records. It is worth noticing that through the ACRs of the applicant in the early years of service were good, as he crossed 50 years he began to develop the tendency of unsuitability for continuance in service, gradually becoming a '*dead wood*' in so far as efficiency in service is concerned.

15. The report of the Review Committee dated 24.12.2008 produced by the learned counsel for the respondents for our perusal also has come down heavily upon the efficiency, conduct and caste-ridden attitude of the applicant. They found that the applicant was tainted with the following characteristics :

- (i) does not comply with the orders of his superior
- (ii) disobedient
- (iii) non-performance of assigned duties
- (iv) non co-operative to his fellow colleagues
- (v) give caste colour to all administrative matters
- (vi) lack of supervisory capability.

16. The Review Committee came to the conclusion:

"Under the circumstances explained above, the above committee is of the opinion that Shri S.K. Lotan is highly incompetent, disobedient, undisciplined officer trying to gain advantage of being Scheduled Caste in every trivial office matter giving caste colour which is very unfortunate. A sufficient time of one & half year was given to him to improve himself, which he failed till date. Thus to create a good congenial working atmosphere the committee recommends stringent disciplinary punishment against Shri Lotan in the form of either

1. Compulsory Retirement under FR-56(j) or
2. Other capital punishment like dismissal from the

17. Learned counsel for the applicant submitted that the Review Committee has done its work behind the back of the applicant and that no copy of the report was given to him. However in the light of the *Baikuntha Nath Das* decision, there is no room for importing the *audi alteram partem* rule of natural justice in a case of compulsory retirement under FR 56 (j)(i) as it does not amount to a stigmatic punishment.

18. Learned counsel for the respondents relying on another decision of the apex court in *Union of India v. Ajoy Kumar Patnaik* (1995) 6 SCC 442 submitted that if the decision of competent authority is based on sufficient material and has come to the conclusion that the officer has no impeccable integrity and absolute devotion to duty for further continuation in service, the authority can take decision to compulsorily retire the officer, if he is of opinion that continuation of such officer is not in public interest.

19. Learned counsel for the applicant relied on *Narasingh Patnaik v. State of Orissa* (1996) 3 SCC 619, *S. Ramachandra Raju v. State of Orissa* 1995 SCC (L&S) 74 and also decision of the co-ordinate bench of this Tribunal in *George Felix Mani v. Union of India and others* 2006 (91) SLJ 225 CAT in support of his contention that if there is illegality while exercising the powers under FR 56 the Courts/Tribunals can interfere by judicial review. Pointing out that the impugned Annexure-A/1 order and the cheque issued to the applicant were back dated and were with a view to ensure that the applicant is retired before the departure of respondent from DMRC, the learned counsel

20. However on a perusal of the record produced by the respondents and in the light of service records of the applicant including the Review Committee's report, we are of the view that the competent authority of respondents had relied on sufficient materials to come to the conclusion that the applicant deserves to be retired by invoking power under Rule 56 (J) FR. It was also argued by the learned counsel that Annexure-A/1 was issued by respondent No.4 who is an incompetent authority merely holding the charge of the Director. We are not impressed by that contention because at the time of issuing Annexure-A/1 respondent No.4 had all the power of the Director.

21. It has to be noted further that though Annexure-A/1 order was received by the applicant only later, the respondents were inclined to treat his retirement only w.e.f. 25.02.2009. All these indicate that there was a conscious decision taken by the respondents, based on material which in our opinion is quite reasonable and sufficient to arrive at the decision of retiring the applicant.

22. In the result the OA is dismissed. Parties shall suffer their own costs.

23. Before parting with this case we note with consternation that certain acts of the then incumbent of respondent No.2, which in our opinion, tantamount to lowering the authority of this Tribunal in the eyes of the public.

24. Applicant had produced Annexure-A/49 a certified photocopy of the internal file notings which appears to have been obtained under the Right to Information Act 2005, as seen from an endorsement at the left hand corner of

seen computer-typed, at page 261 of the paper book. The relevant portion of the reasoning for the decision taken by the Director General ICMR reads:

"The undersigned has reviewed the matter pertaining to case filed by Shri S.K. Lotan, former Section Officer, DMRC, Jodhpur vide OA no.108/2008 wherein Hon'ble CAT, Jodhpur had quashed the orders passed by disciplinary authorities (Officer-incharge, DMRC, Jodhpur as well as appellate authority (DG, ICMR), CAT has based its decision on two grounds i.e. initial order was without jurisdiction and without adequate reason as well.

1. First interpretation of Dr. R.C. Sharma, being only Officer-Incharge, not the Director, hence he cannot be the appointing and consequently the disciplinary authority. This interpretation of CAT needs to be challenged as Officer-Incharge has all the power for appointment and disciplinary authority against group 'B', 'C' & 'D' employees. Apparently the order appointing Dr. R.C. Sharma (dt.11.04.2002 was up to 31.03.2003). Dr. R.C. Sharma continued to be the Officer Incharge during the period from 01.04.2003 to 26.03.2009 and took all the decisions as before. It is implicit that he continued to enjoy same powers and had same responsibilities as he originally had. If Dr. R.C. Sharma did not have the powers of the Director, then obviously the powers for the same vested with Director General as the organization (DMRC in this case) or any other organization cannot run without a Head (Acting or regular). Further, more acceptance of this erroneous and flawed decision of the CAT will make all the decisions taken during that period null and void creating an unprecedented situation. Hence, we have to contend the right status- that Dr. R.C. Sharma as an Officer-Incharge had all the powers during this period which were delegated to him at the time of his initial appointment unless there is some order to the contrary or someone else was appointed as an Officer Incharge by the DG during that period. No such date has been made available to me.

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Sd/- 28.07.2011
V.M. KATOCH
DIRECTOR-GENERAL, ICMR

(emphasis supplied)

25. Though the above file noting is an internal communication, it has to be noted that the same was written by a high ranking official i.e. respondent No.2. It being a part of the file notings, is likely to be read by the other officials in the hierarchy. When a copy of it is issued under the provisions of RTI Act 2005, it becomes all the more susceptible for being seen and read by

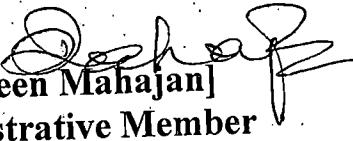
contemptuous attitude towards the decision of the Tribunal in OA No.108/2008.

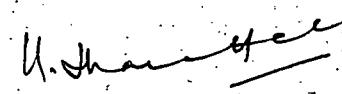
26. Being a judicial authority established under the Administrative Tribunals Act 1985, this Tribunal exercises the powers vested in it under Section 14 of the said Act. In order to ensure that the orders of this Tribunal are to be obeyed by all concerned, the power of punishment under Contempt of Courts Act 1971 also has been vested in this Tribunal, unlike in the case of the other Tribunals established under Article 323-A of the Constitution of India.

27. In our view, page 261 of paper book being now available in the public domain, the tenor of the language used by Shri V.M. Katoch, the then incumbent of respondent No.2 in the aforesaid file noting has become potent to lower the authority of this Tribunal in the eyes of the general public. If the said official is not taken to task, the tendency to make intolerant remarks on the court verdicts will perpetuate amongst the officials of the posterity, ultimately leading to a situation that the orders of this Tribunal will be sidelined by such officials.

28. Hence we direct the Registry to issue notice to Shri V.M. Katoch, the then Director-General, ICMR, through respondent No.2 Director General, ICMR Ansari Nagar, New Delhi-110029 directing the former to show cause why he should not be proceeded against under the provisions of Contempt of Courts Act 1971. Respondent No.2 shall cause the notice to be served on Shri V.M. Katoch in his present address by Registered Post with acknowledgement due and shall send a report of compliance to this Tribunal.

Post the matter on 12th August, 2016 for appearance of the said person and to show cause, as ordered above. A copy of this order shall also be annexed to the notice issued to Shri V.M. Katoch.


[Praveen Mahajan]
Administrative Member


[U. Sarathchandran]
Judicial Member

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