

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

ORIGINAL APPLICATION NO.060/00651/2017
Chandigarh, this the 8th day of January, 2018

**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A).**

Dr. S.C. Bansal S/o Sh. Sohan Lal Bansal, Aged 62 years, working as Assistant Professor (Non-Medical), Department of Radio Diagnosis, PGIMER Chandigarh, R/o H.No. 388, Sector 38A, Chandigarh (Group 'A').

.....Applicant

(Argued by: Mr. Rohit Seth, Advocate)

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Health and Family Welfare, Central Secretariat, North Block, New Delhi.
2. The President, PGIMER, Chandigarh-cum-Union Minister of Health and Family Welfare, Govt. of India, Nirman Bhawan, New Delhi.
3. Chairman, Governing Body, PGIMER, Sector-12, Chandigarh.
4. Director, Postgraduate Institute of Medical Education & Research, Sector-12, Chandigarh.

....RESPONDENTS

(Argued by: Mr. Sanjay Goyal, Advocate)

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. The contour of facts and material, culminating in the commencement, relevant for disposal of the instant Original Application (OA), and exposed from the record, is that applicant Dr. S.C. Bansal, joined as Lecturer (Medical Technology), on adhoc basis, and continued as such till 2nd November, 1993, in Postgraduate Institute of Medical

Education & Research, Chandigarh (for brevity "PGIMER"). Thereafter, he was selected against a direct recruit post of Lecturer (Medical Technology) on regular basis w.e.f 3rd November, 1993, as per appointment letter dated 2.11.1993 (Annexure A-3). The post of Lecturer (Medical Technology), held by him, was re-designated as Assistant Professor (Non Medical) in the pay band of Rs.15600-39100, with grade pay of Rs.8000 with minimum pay of Rs.30,000/- (PB-3, an Assistant Professor's Pay Scale), by the Governing Body, with the approval of the Institute Body, vide order dated 5.9.2016 (Annexure A-4).

2. According to the applicant, that the retirement age of the Assistant Professor (Non Medical) is 65 years. Although, he attained the age of 62 years on 15.1.2017, but he was not superannuated on 31.1.2017 as he was re-designated as Assistant Professor (Non-Medical) on 5.9.2016 (Annexure A-4), where the retirement age is 65 years. It was alleged that all of a sudden, he was abruptly retired with immediate effect from 31.5.2017, vide impugned order dated 31.5.2017 (Annexure A-1), by the Director, PGIMER (Respondent No.4).

3. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned order (Annexures A-1), on various grounds being arbitrary, illegal, non-speaking and without jurisdiction, as mentioned therein in the OA.

4. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claims that since he was re-designated as Assistant Professor (Non-Medical) on 5.9.2016, vide order dated 5.9.2016 (Annexure A-4), by the Governing Body of the PGIMER, where his retirement age is 65 years but strangely enough, he was abruptly reverted and retired with immediate effect w.e.f. 31.5.2017, vide impugned order dated 31.5.2017 (Annexure A-1), that too without

issuing any show cause notice or providing an opportunity of being heard, by the respondent no.4 (incompetent authority). On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order dated 31.5.2017 (Annexure A-1), in the manner, indicated herein above.

5. On the contrary, the respondents refuted the claim of the applicant and filed the reply, wherein, it was acknowledged that the applicant was appointed as Lecturer (Medical Technology) Department of Radio-Diagnosis, and although his post was re-designated as Assistant Professor (Non-Medical) by the Governing Body, but since he was appointed as a Lecturer, the retirement age of which was 62 years, prior to re-designation of his post of Assistant Professor, so he was rightly retired with immediate effect, vide impugned order, by Respondent No.4. Instead of reproducing the contents of the reply in toto, and in order to avoid repetition of facts, suffice it to say that while virtually acknowledging the factual matrix and reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations and grounds contained in the OA, and prayed for its dismissal.

6. Controverting the pleadings in reply filed by the respondents, and reiterating the grounds contained in the OA, the applicant has filed the rejoinder. That is how, we are seized of the matter.

7. Having heard the learned counsel for the parties at quite some length, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that the instant OA deserves to be accepted, in the manner, and on the grounds, mentioned herein below.

8. As is evident from the record, that the applicant was duly recruited on the post of Lecturer (Medical Technology), on regular basis, vide order dated 2.11.1993 (Annexure A-3). Thereafter, on the recommendations of the Governing Body, and with the prior approval of the Institute Body, the post of Lecturer (Medical Technology), Radio Diagnosis, occupied by the applicant, was re-designated to that of Assistant Professor (Non Medical) in the pay band of Rs.15600-39100, with grade pay of Rs.8000 with minimum pay of Rs.30,000 (PB-3)) with immediate effect, vide order dated 5.9.2016 (Annexure A-4). Sequelly, the Teaching Programme for B.Sc. Medical Technology (Radiodiagnosis & Imaging), Part I, II & III for the period September, 2016 to August, 2017, Schedule of Seminars for M.Sc. Medical Technology 1st Year Students, Programme of Radiological Physics & RAD Technique Class (Theory), Schedule of Seminars for M.Sc. Medical Technology, 2nd year, Schedule of Seminars for M.Sc., Medical Technology 1st Year Students, (Annexure MA-1 (Colly).), would reveal that the applicant duly performed the duties of the Assistant Professor. As per office order dated 9.5.2017 (Annexure MA-2 (Colly).), even the Registrar, Rajasthan University of Health Sciences, Jaipur, in compliance to the decision of the Research Board, taken in its meeting dated 11.4.2017, constituted the Committee to evaluate and finalize the synopsis of concerned scholars of Ph.D programme of year 2015 scholars in which applicant [Dr. S.C. Bansal, Assistant professor (Non Medical).] was included as a subject expert No. II.

9. Sequelly, as per letter dated 20.2.2017 (Annexure MA-2 (Colly).) issued by Baba Farid University of Health Sciences, copy endorsed to applicant as Assistant Professor, Department of Radiodiagnosis and Imaging, PGIMER, Chandigarh, registration of Mr. Ajay Kumar, Ph.D candidate under the Faculty of Medical Sciences, was approved. As per

letter dated 22.8.2008, Lecturer Medical Technology is termed as a teaching post and other teaching faculty includes Professors, Additional Professors, Associate Professors and Assistant Professors. The case of the applicant for re-designation to the post of Assistant Professor was strongly recommended by the Professor and Head of the concerned Department. Not only that, there is a letter / note dated 18.3.2015, giving detailed justification for up-gradation of the post held by the applicant to that of Assistant Professor. It indicates that the applicant has been entrusted with the responsibility of looking after the B.Sc. Medical Technology (Radiodiagnosis) students, M. Sc. Medical Technology (Radiodiagnosis) apart from teaching Radiological Physics to the MD Radiology students.

10. Thus, it would be seen that it is clear from the indicated documents, (Annexures MA-1 to MA-6), that the applicant was duly performing the duties of Assistant Professor. As per relevant Rules and Regulations of PGIMER, (Annexure MA-7), the holders of various posts fall within the definition of faculty members i.e. Professor in Senior Scale, Professor, Additional Professor, Joint Medical Supdt, Associate Professor, Genetist, Assistant Professor, Dy. Medical Supdt, Senior Resident, Junior Resident, Educationist-cum-Lecturer I/C, Education Cell, Senior Demonstrator and Jr. Demonstrator. Thus, the post held by the applicant falls within the ambit/ category of the Faculty and as per notification dated 23.12.2009 (Annexure A-2), issued under PGIMER Act, 1966, the age of superannuation of the members of the Teaching Faculty of the Institute shall be 65 years. Perhaps that was the reason that the applicant was not retired, when he attained the age of 62 years on 15.1.2017, and was allowed to continue on the post of Assistant Professor. However, he was abruptly reverted to lower post and was

retired with immediate effect on 31.5.2017, vide impugned order of even date (Annexure A-1), by Respondent No.4, the Director (not by the Competent Authority i.e. Governing Body, who promoted the applicant), which is not legally permissible.

11. There is yet another aspect of the matter, which can be viewed entirely from a different angle. It is not a matter of dispute that on recommendations of the Governing Body and with the approval of the Institute Body, the post of Lecturer (Medical Technology) held by the applicant, was re-designated as Assistant Professor (Non Medical) in the pay scale of Assistant Professor, vide orders dated 5.9.2016, (Annexure A-4). Once the post of applicant was re-designated by the Governing Body, with the approval of the Institute Body, then the Director of the Institute became ***functus officio*** and a very brief impugned order, (Annexure A-1), passed by him, retiring the applicant, would become inoperative. It was for the Governing Body to take a decision in this regard. Above all, there is no evidence on record, much less cogent, to indicate that the applicant was ever reverted back, to the post of Lecturer by the (Competent Authority) Governing Body. Therefore, it is held that once the post of applicant was duly re-designated as Assistant Professor in the pay scale of the Assistant Professor (Non Medical), then he is entitled to all the benefits accruing to him relatable to that post including the benefit of age of retirement. In this manner, it becomes his vested right which cannot be taken away except, after following the procedure established by law.

12. Hence, in case the Competent Authority (Governing Body) intended to revert back the applicant to the post of Lecturer, and then to retire him in that eventuality, it was incumbent upon it (competent authority) to issue show cause notice, to provide him an opportunity of being

heard, in order to observe the principles of natural justice. Thereafter, it was required to consider the entire matter in the right perspective to decide the real controversy and pass a legal and reasoned order. The providing of opportunity of being heard to the applicant and passing of a speaking order by the Competent Authority are the basic legal requirements and principles of natural justice, which are totally lacking in the present case.

13. This is not the end of the matter. The impugned order dated 31.5.2017 (Annexure A-1), passed by the Director, PGIMER, reads as under :-

“ESTABLISHMENT BRANCH-I
PHONE 0172-2755504, 2755510

Dr. S.C. Bansal, Lecturer (Medical Technology), Radiodiagnosis, re-designated as Assistant Professor (Non-Medical), Department of Radiodiagnosis is retired from the services of the Institute with immediate effect i.e. 31.05.2017 (A.N).

Dated, Chandigarh, the DIRECTOR
31st May, 2017 PGIMER, Chandigarh".

14. It is, thus, apparent that the impugned order, (Annexure A-1), is very brief, sketchy and lacks reasoning. It is now well settled principle of law that in case a public authority wants to pass an adverse order, it has to follow the principles of natural justice. As indicated hereinabove, in the instant case, the applicant was allowed to continue on the post of Assistant Professor, even after he attained the age of 62 years. In that eventuality, it was incumbent upon the Competent Authority to follow the principles of natural justice, and to pass a speaking order.

15. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of **Chairman, Disciplinary Authority, Ranilakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others** (2009) 4 SCC 240 has in para 8 held as under:-

“8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation”.

16. An identical question came to be decided by Hon'ble Apex Court in a celebrated judgment in the case of **M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others** 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that “recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. It was also held that ‘while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution”. Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of **Divisional Forest Officer Vs. Madhuusudan Rao** JT 2008 (2) SC 253.

17. Therefore, thus, seen from any angle, once the post of the applicant was re-designated as Assistant Professor, by the Governing Body (Competent Authority), and he actually worked as such, in that eventuality, he (the applicant) could neither be reverted to the post of Lecturer nor could he be retired by the Director of the PGIMER, that too without following the principles of natural justice. In case, such an

illegal order is allowed to operate, then it will inculcate and perpetuate injustice and cause irreparable loss to the applicant. Accordingly, it is held that the impugned order dated 31.5.2017 (Annexure A-1), cannot legally be sustained and deserves to be quashed, in the obtaining circumstances of the case.

18. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

19. In the light of the aforesaid prismatic reasons, the OA is hereby allowed. The impugned order dated 31.5.2017 (Annexure A-1) is set aside. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
08.01.2018

HC*