

(2019) 04 KAR CK 0011

In the Karnataka High Court

Case No : Writ Appeal No. 1555, 1556 Of 2018 [S-Res]

N. Murugesan

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Central Research Power Institute (Service Conditions) Rules, 1989 — Rule 1, 2, 45
Constitution Of India, 1950 — Article 14, 16, 21, 226

Citation : (2019) 04 KAR CK 0011

Hon'ble Judges : B.V.Nagarathna, J;H.T.Narendra Prasad, J

Bench : Division Bench

Advocate : Shashikantha C, S.R.Dodawad, N. Murugesan

Judgement

1. These intra-court appeals are preferred by the petitioner in Writ Petition No.9941 of 2015 and Writ Petition No.50774 of 2016, being aggrieved by order dated 14th March, 2018 by which the writ petitions were dismissed. The first writ petition was dismissed inter alia, on the ground of delay and laches and consequently the second writ petition was rejected as not surviving for consideration.

2. We have heard the petitioner who has appeared in-person, Sri C.Shashikantha, learned Assistant Solicitor General in both the appeals and Sri.S.R.Dodawad, learned counsel for respondent No.5 in Writ Appeal Nos.1555-1556 of 2018 and perused the material on record as well as the original file.

FACTUAL MATRIX:

3. In Writ Petition No.9941 of 2015, petitioner assailed letter bearing No.20/16/2009-EO(SM)II, dated 4th March, 2010 (Annexure - F) of the Secretariat of the Appointments Committee of the Cabinet ("ACC" for the sake of convenience); appointment letter bearing No.3/17/2007-T&R, dated 22nd March, 2010 of the Director of Ministry of Power, New Delhi (Annexure - A) and

Advertisement dated 18th February, 2015 [Web-hosted in CPRI website on 21st February 2015], bearing No.3/33/2014-T&R of Central Power Research Institute, Bengaluru ("CPRI" for the sake of convenience) (Annexure - P) by seeking a declaration that he is entitled to continue in the post of Director General, CPRI till the date of his superannuation i.e., 31st May, 2019. Petitioner also assailed order bearing No.3/17/2007-T&R, dated 20th March, 2015, issued by respondent No.1 (Annexure - AA) by which he was relieved from service.

In Writ Petition No.50774 of 2016, petitioner called in question appointment order dated 09th August, 2016 of the ACC (Annexure 'C1') which was issued to respondent No.5, as Director General of CPRI.

4. The facts in a nutshell are that CPRI had been established by Government of India with the support of UNESCO and United Nations Special Fund having the Director as its head. According to the petitioner, the post of Director of CPRI is equivalent the rank of Joint Secretary in Government of India. CPRI was re-organised as an autonomous Institution and registered under the Societies Registration Act, 1960 having its head quarters at Bangalore. The post of Director General, CPRI, is a permanent post. The CPRI is governed by Memorandum of Association, Rules and Regulations, Bye-laws and Working Rule Nos.1 and 2.

5. At the 66th meeting of the CPRI held on 2nd April, 2009, there was a decision taken to amend the Recruitment Rules pertaining to Director General, CPRI. The appointment was to be by selection, either by direct recruitment or on deputation only. The requisite qualification and experience required were also modified and stipulated.

6. The Ministry of Power issued an Official Memorandum (OM) on 09th June, 2009 to the Department of Personnel and Training ("DoP&T" for the sake of convenience) for constitution of a Search-cum-Selection Committee ("SCSC" for convenience sake) for the post of Director General, CPRI. An advertisement (Annexure - B) was issued on 18th May, 2009 for appointment on direct recruitment basis or on deputation as per the provisions contained in the Memorandum of Association, Rules and Regulations of CPRI and other applicable instructions.

The SCSC by its meeting held on 29th July 2009 resolved to appoint the appellant as the Director General of the CPRI by way of direct recruitment as per the order of merit (Annexure - D). The Ministry of Power submitted a proposal requesting approval of the ACC to appoint the appellant herein as the Director General on direct recruitment basis till his superannuation i.e., 31st May, 2019 vide Annexure - E dated 12th November, 2009. However, Annexure - F being letter dated 04th March, 2010 was addressed by the Secretariat of ACC, DoP&T to the Ministry of Power approving the appointment of the appellant for an initial tenure of five years or till further orders. It was also stated that the appellant would be eligible for re- appointment for further term upto 31st May, 2019 i.e.,

the date of his superannuation (Annexure 'F'). Accordingly, the offer of appointment was made to the appellant herein as per Annexure 'A' dated 22nd March, 2010. The appellant assumed charge of the said post on the same day.

7. According to the appellant, on 30th December, 2014, a representation (Annexure 'G') was submitted by him to rectify the mistake in the appointment order seeking deletion of the word "tenure" and to permit him to retire on attaining the age of superannuation as per the norms of direct recruitment. Appellant made another representation as per Annexure - H dated 11th January, 2015.

Another reminder was sent by the appellant on 13th February, 2015 (Annexure 'S') to the Ministry of Power; Establishment Officer; Cabinet Secretary; Principal Secretary to Hon'ble Prime Minister seeking the discrepancy to be rectified in the appointment letter dated 22nd March, 2010. According to the appellant, there was no response to the aforesaid representations, but on 18th February, 2015, an advertisement was issued inviting applications for the post of Direct General, CPRI. According to the appellant neither in the advertisement dated 18th May, 2009 on the basis of which he was appointed nor in the advertisement dated 18th February, 2015 was the expression "tenure" found. But, it was added in the appointment letter issued to the appellant herein.

8. According to the appellant, as there was no response from any of the authorities to the fourteen representations made by him, for removal of the discrepancy in the appointment order and for the withdrawal of the advertisement dated 18th February, 2015, he filed Writ Petition No.9941 of 2015. During the pendency of the writ petition, on 20th March, 2015, appellant was relieved purportedly under Rule 45 of the Rules and Regulations of CPRI. On 23rd April, 2015, this Court issued an interim order that the appointment of a fresh Director General is subject to the decision of the writ petition. The writ petition was amended challenging the relieving order as well as the authenticity of the relieving report, submitted before this Court on 20th March, 2018. Subsequently, on 09th August, 2016, the ACC approved the appointment of respondent No.5 as Director General, CPRI. Hence, Writ Petition No.50774 of 2016 was filed challenging the appointment of respondent No.5, Sri V.S.Nandakumar as Director General, CPRI. Both the writ petitions were heard together and dismissed vide order dated 14th March 2018 on the ground of delay and laches and consequently rejected. Being aggrieved, these appeals have been preferred by the petitioner.

SUBMISSIONS:

9. The appellant appearing in person contended that the advertisement at Annexure 'B' prescribed the qualification / experience necessary for the post of Director General of CPRI, which is a premiere research Organisation in electrical power engineering with head office at Bengaluru. That the said post could be filled either by deputation or by direct recruitment. The advertisement (Annexure

'B') was issued for the purpose of selection of the candidate for appointment by direct recruitment. According to the same, the appointment to the post of Director General of CPRI was to be regulated by the provisions contained in Memorandum of Association, Rules and Regulations of the CPRI and other relevant Rules and instructions applicable to CPRI. That in the case of candidate selected by direct recruitment, a performance review on completion of one year of service after appointment was to be undertaken by a three member committee and the outcome was to be communicated to the candidate appointed which was

binding on him. That the said advertisement did not prescribe that the appointment of the Director General by direct recruitment was a tenure post or was for a period of five years only. Such being the position, on selection of the appellant to the said post as per the Minutes of the Meeting of Search-Cum-Selection

Committee (SCSC) held on 29th July 2009 (Annexure

'D'), a communication dated 12th November 2009 (Annexure 'E') was addressed by the Joint Secretary, Ministry of Power, Government of India, to the Establishment Officer and Additional Secretary, DoP&T, New Delhi, to the effect that the approval of the Appointments Committee of the Cabinet (ACC) may be obtained for the appointment of the appellant as Director General, CPRI, "on direct recruitment basis from the date he assumes charge up to

31st May 2019, the date of his retirement on superannuation, or until further orders, whichever event occurs earlier." But, when the Under Secretary of the Secretariat of the ACC, Ministry of Personnel, Public Grievances & Pensions, DoP&T sent a communication on 04th March 2010 (Annexure 'F') to the Secretary, Ministry of Power, it was to the effect that the appellant herein had been appointed as Director General, CPRI, "for an initial tenure of five years or until further orders" and that the appellant "would be eligible for reappointment for a further term up to 31st May 2019 i.e., the date of his superannuation."

10. Appellant contended that Annexure 'A' / Appointment Letter dated 22nd March 2010 was also in terms of letter dated 04th March 2010. That there was a variation between Annexure 'E' and Annexure 'F' communications leading to the appointment letter at Annexure 'A'. The confirmation of his appointment was as per Order dated 26th March 2010, Annexure 'R2'. Appellant contended that his appointment by way of direct recruitment was "not a tenure appointment", but appointment to last until his retirement on attaining the age of superannuation. That when the appointment is by direct recruitment under the extant Rules, it could not be "for an initial period of five years or until further orders". Therefore, he was under a bona fide impression that although the offer letter was worded in the aforesaid manner, he would ultimately retire on attaining the age of superannuation on 31st May 2019 having regard to the order of confirmation. However, when he became aware of the fact that an advertisement was being

issued and in fact was issued on 18th February 2015 for the purpose of inviting applications for the post of Director General, he filed the writ petition challenging the said advertisement as well as his appointment letter. Subsequently, on the appointment of respondent No.5, an amendment to the writ petition was sought by the appellant and the same was permitted. That as per the interim order granted by this Court, the appointment of respondent No.5 as Director General, CPRI, was subject to the result of the writ petition.

11. Appellant further contended that the learned Single Judge was not right in dismissing the writ petitions on the ground of delay and laches without considering the merits of his case as the appellant had made as many as fourteen representations with regard to the nature of his appointment-which was in substance by direct recruitment till his superannuation, but in fact had been converted into a tenure post-but none of his representations had been answered by respondent No.2 or by the authorities concerned. He submitted that having regard to the settled position of law as per the various judgments of the Hon'ble Supreme Court, relief may be granted to him by declaring that his appointment is until he retires from service i.e., on 31st May 2019 on attaining the age of superannuation.

12. In this regard, appellant placed reliance on various judgments of the Hon'ble Supreme Court and also several documents which he has appended to the memorandum of writ petition and he submitted that gross injustice has been meted out to him as his fundamental rights under Articles 14, 16 & 21 of the Constitution have been violated. Appellant also took us through the order of the learned Single Judge and contended that the writ petition could not have been dismissed on the ground of delay and laches and consequently, the second writ petition also being dismissed as not surviving for consideration.

13. Per contra, Sri.C.Shashikantha, learned Assistant Solicitor General (ASG) appearing for Union of India and other authorities supported the order of the learned Single Judge and contended that the appellant was appointed as per letter dated 22nd March 2010. That the letter of appointment clearly indicated that he was appointed on direct recruitment basis from the date on which he assumed charge of the post for an initial tenure of five years only or until further orders. That he was eligible for appointment for a further term up to 31st May 2019, which is the date of his superannuation. That the appellant assumed charge on 22nd March 2010 itself without any demur and did not raise any whisper about the nature of his appointment. That it was only when his tenure was coming to an end, that he filed the writ petitions and he was relieved as per the order of appointment, which cannot be faulted. That in fact during the pendency of the writ petitions, respondent No.5 was selected and appointed as the Director General of CPRI. The learned Single Judge was, therefore, right in dismissing the writ petitions on the ground of delay and laches.

14. Learned ASG further contended that posts such as the Director General, CPRI are normally tenure posts for a period of five years and it cannot be until

retirement on attaining the age of superannuation as contended by the appellant. That the appellant accepted the letter of appointment and worked as such and therefore, later, he could not have assailed the same. The same amounts to approbation and reprobation which is impermissible.

That the writ petitions have been rightly dismissed on the ground of delay and laches. It would also have to be dismissed as per the doctrine of acquiescence, waiver and estoppel.

15. Learned ASG has also made available to us the original file pertaining to the appointment of the appellant, which we have closely perused. Learned ASG submitted that there is no merit in these appeals and the same may be dismissed in limine as there is no violation of Articles 14, 16 or 21 of the Constitution in the instant case.

16. Learned counsel for respondent No.5 Sri.S.R.Dodawad also adopted the submissions of learned ASG. He further contended that the appellant cannot challenge the appointment of respondent No.5 as he was not an applicant pursuant to advertisement dated 18th February 2015. He also submitted that both the writ appeals may be dismissed by affirming the order of the learned Single Judge.

17. By way of reply, appellant reiterated his contentions and submitted that if the appellant is successful in convincing this Court that his appointment for initial period of five years or until further orders is in violation of Articles 14 and 16 of the Constitution, then, this Court may order for his reinstatement and that any amount of monetary relief to the appellant would not be a substitution for reinstatement. He submitted that his fundamental rights have been violated and his reputation has suffered a severe dent and therefore, reinstatement is the only way in which justice could be meted to him.

18. Having heard the appellant-in-person, learned ASG and learned counsel for respondent No.5, the following points would arise for our consideration:

I. Whether the appellant could have been appointed for an initial tenure of five years or until further orders, having regard to the fact that his appointment was on the basis of direct recruitment till he attained the age of superannuation?

II. Whether the judgment of the learned Single Judge calls for any interference?

III. What order?

19. The detailed narration of facts and contentions would not call for reiteration except highlighting the fact that pursuant to the advertisement issued for the appointment of a Director General, CPRI, by the Ministry of Power, appellant applied for the said post. The same could be filled either by direct recruitment or on deputation basis. As per the Minutes of the Meeting of the SCSC held on 29th July 2009 (Annexure 'D'), the appellant was first in the order of merit and Dr.R.S.Shivakumar Aradhya, who was working as Additional Director General,

CPRI, was second. Ultimately, the then Hon'ble Minister for Power selected the name of the appellant who was then working as a Chief Manager, TCE Consulting Engg. Ltd., Bangalore and recommended his name to the ACC for appointment as Director General, CPRI. The ACC is headed by the Hon'ble Prime Minister and comprises of the Hon'ble Home Minister also. Thereafter, communication was issued by the Under Secretary, Secretariat of the ACC to the Secretary, Ministry of Power on 04th March 2010 which culminated in issuance of the appointment letter dated 22nd March 2010 to the appellant which stated that he was appointed on direct recruitment basis and from the date of assumption of charge of the post, his appointment was "for an initial period of five years or until further orders". The appellant assumed charge on the basis of said appointment letter. His appointment was confirmed by Order dated 26th March 2010 (Annexure 'R2') and thereafter by communication dated 20th December 2011 (Annexure 'J' / 'R3'). Appellant was informed by a communication dated 29th September 2011 (Annexure 'K') issued by the Deputy Secretary, Ministry of Power, Government of India, that as per the Recruitment Rules for Director General, CPRI, a review of appellant's performance was made and the Review Committee had recorded its views and rated appellant's performance at 9 on a 10 point scale. On nearing completion of five years, a second advertisement was issued on 18th February 2015 as per Annexure 'P', which is in pari materia with the advertisement issued earlier as per Annexure 'B' dated 18th May 2009. The appellant filed Writ Petition No.9941 of 2015 seeking the aforementioned prayers.

20. During the pendency of the aforesaid writ petition, appellant was relieved from the post of Director General, CPRI, with effect from 21st March 2015 (AN) vide Communication dated 20th March 2015 (Annexure 'AA') issued by the Deputy Secretary (T&R), Ministry of Power. Respondent No.5 was appointed but his appointment was until further orders, subject to the final order of this Court in the writ petitions as per the interim order granted by this Court.

21. As already noted, CPRI was initially established by the Government of India and thereafter in the year 1960, it was re-organised as an autonomous Institution in the year 1977 and registered under Karnataka Societies Registration Act, 1960, it is governed by Memorandum of Association, Rules and Regulations, Bye-laws, Working Rule No.1 and Rule No.2.

22. As per the Memorandum of Association, Rules and Regulations (Annexure 'R7' to the statement of objections filed by Union of India in Writ Petition No.9941 of 2015), Hon'ble Union Minister for Energy, Government of India is the President of the Society. That as per Clause 45, appointments to the post of Joint Director or equivalent and above is made by the President of CPRI, but appointment to the post of Director General and the next lower level of CPRI has to be made with the approval of the Government of India. There are Bye-laws of the CPRI which are not relevant for the purpose of this case.

23. As per the Central Power Research Institute (Pay, Recruitment and Promotion) Rules, 1989 (Working Rule No.1) [hereinafter referred to as

'Working Rule No.1'], the post of Director General is filled up on the basis of the following requisites:

"@5 Director General

Name of the post

No. of Posts

Classification

Scale of Pay

Whether Selection Post or Nonselection post

Whether benefit of added years of service admissible under Rule 30 of the CCS (Pension Rules) 1972

Age limit for direct recruits

1

2

3

4

5

6

7

Director General

1

--

Rs.37,400- 67,000 plus Grade pay of Rs.12,000

Not Applicable

Not Applicable

Not exceeding 55 years

@ amended and approved by the Governing Council at its 66th Meeting held on 02.04.2009.

Educational and other qualifications required for direct recruits

Whether age & educational Qualifications prescribed for direct recruits will apply in the case of promotes

Period of Probation, if any

Method of recruitment - whether by direct recruitment or by promotion or by deputation / absorption and percentage of vacancies to be filled by various methods

8

9

10

11

Essential:

Masters Degree in Science (Physics/Chemistry/Material Science) or Bachelors Degree from a recognized University / Institute or equivalent with at least 15 years of experience in any of the following fields:

Not Desirable

Nil However, in the case of direct recruits, a performance review on completion of one year of

By Direct Recruitment / Deputation

Design and/or Construction and/or Operation and Maintenance of generating stations.

Design and/or Construction and/or Operation and Maintenance of transmission and/or supply of electricity Applied Research in the field of electricity.

Desirable:

Ph.D. in Science (Physics / Chemistry / Material Science) or Masters Degree in Engineering / Technology (Electrical / Mechanical / Energy Studies / Material Science) from a recognized University / Institute. The candidate should have excellent academic record and possess administrative capabilities and demonstrated aptitude for R&D.

service after appointment as DG CPRI will be undertaken by a 3 Member Committee consisting of the President, CPRI, Vice President, CPRI and one member of the Governing Council of CPRI to be nominated by the President, CPRI. The outcome will be communicated and it will be binding on the incumbent.

n case of recruitment by promotion / deputation / absorption grades from which promotion / deputation / absorption to be made

If a Departmental Promotion Committee exists, what is its composition

Circumstances in which Union Public Service Commission to be consulted in making recruitment

12

13

14

Officers under the Central / State Govts. / Electricity / Universities Boards / Public Sector Undertakings / Statutory / Semi-Government or Autonomous Organisations:

Not applicable Note: Selection procedure will be as per extant orders of Central

Not applicable

(a) (i) holding analogous posts on regular basis or (ii) With three years minimum service in the scale of pay of Rs.37,400-67,000/- plus Grade Pay of Rs.10,000/- or equivalent; and (b) Possessing the educational qualifications and experience prescribed for direct recruitment under column 8.

The period of deputation shall be 3 years extendable upto 5 years with the approval of a 3 Member Committee consisting of the President, CPRI, Vice President, CPRI and one Member of the Governing Council of CPRI to be nominated by President, CPRI. (Period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organisation / Deptt., of the Central Govt. shall not ordinarily exceed 3 years.) The maximum age limit for appointment by deputation shall not be exceeding 56 years as on the closing date for receipt of applications.

Government

As per the above, the applicant for the post of Director General, CPRI should not be above 55 years of age, have the requisite educational and other qualifications and the post could be filled by either direct recruitment or by deputation for which specific norms have been prescribed. On perusal of the same, it is noted that as far as a deputationist is concerned, the period of deputation is three years extendable up to five years with the approval of a three member committee as prescribed. The maximum age limit for appointment by deputation is 56 years as on the closing date for receiving applications. However, for appointment by direct recruitment, no such tenure of appointment has been prescribed and it only states that in the case of direct recruitment, a performance review on completion of one year of service after appointment as Director General, CPRI would be undertaken by a three member committee. The outcome would be communicated to and it would be binding on the incumbent. The aforesaid norms are exactly the same in the advertisement issued which is extracted later. Clause 7 of Working Rule No.1 also states that appointment to the post of Director General will be made by the Ministry of Power with the approval of the ACC, based on the recommendations of the SCSC. As per Clause 48, the age of superannuation for regular employees of CPRI is 60 years although the governing council could grant extensions with prior approval of the

Government of India.

24. The Central Research Power Institute (Service Conditions) Rules, 1989 (Working Rule No.2) [hereinafter referred to as the 'Working Rule No.2'] applies to those persons who are appointed to the service of the Society on regular basis whose pay is debitable to the funds of the Society.

25. In terms of Working Rule No.1, Ministry of Power issued advertisement No.3/17/2007-T&R dated 18th May 2009 inviting applications for the post of Director General, CPRI. As already noted, the post could be filled by direct recruitment or on deputation basis. In the advertisement, the eligibility criteria for appointment of a candidate on deputation basis reads as under:

" For deputation:

Officers under the Central / State Govts. / Electricity Boards / Universities / Public Sector Undertakings / Statutory / Semi-Govt. or Autonomous Organisations:

(a) (i) holding analogous posts on regular basis or

(ii) with three years minimum service in the Pay Band of Rs.37,400-67,000/- plus Grade Pay of Rs.10,000 or equivalent; and

(b) Possessing the educational qualifications and experience prescribed for direct recruitment as above.

The period of deputation shall be 3 years extended upto 5 years with the approval of a 3 Member Committee consisting of the President, (CPRI), Vice President, (CPRI) and one Member of the Governing Council of CPRI to be nominated by President, CPRI Governing Council. (Period of deputation in another ex- cadre post held immediately preceding this appointment in the same or some other organisation / Deptt., of the Central Govt. shall not ordinarily exceed 3 years)."

In the advertisement, the terms and conditions of selection of a candidate for appointment by Direct Recruitment as Director General are as under:

"Powers of the Director General:

x x x

The terms and conditions of the candidate selected for appointment (direct recruit) as Director General, CPRI, will be as under:

i) Appointment to the post of Director General, CPRI will be regulated by the provisions contained in the Memorandum of Association, Rules & Regulations of the CPRI and the other relevant rules and instructions applicable to the CPRI.

ii) Pay will be fixed according to rules, in the Pay Band of Rs.37,400 - 67,000/- with grade pay of Rs.12,000/- and he would also be entitled to draw allowances

as admissible to officers of his grade under the CPRI from time to time.

iii) In case of the candidates selected on direct recruitment, a performance review on completion of one year of service after appointment as DG, CPRI will be undertaken by a 3 Member Committee consisting of the President, CPRI, Vice President, CPRI and one member of the Governing Council of CPRI to be nominated by the President, CPRI. The outcome will be communicated and it will be binding on the incumbent.

iv) The appointment carries with it the liability to serve in any part of India."

26. On a close reading of Working Rule No.1 as well as advertisement dated 18th May 2009, it is noted that the period of deputation is fixed for a period of three years extendable up to five years with the approval of three member Committee consisting of president, CPRI, Vice-president, CPRI and one member of the Governing Council of CPRI to be nominated by the President, CPRI, Governing Council. But, for appointment on direct recruitment of the Director General, CPRI, no period of appointment is stipulated. According to the appellant, the appointment is till the age of retirement on attaining the age of superannuation and it is not a tenure post.

27. The relevant documents having a bearing on the appointment of the appellant are extracted as under:

(a) Annexure 'E' is the copy of communication dated 12th November 2009 issued by the Joint Secretary, Ministry of Power to the Establishment Officer and Additional Secretary, DoP&T. The same reads as under:

"SUDHIR KUMAR, IAS

JOINT SECRETARY

Tele: 23710389

GOVERNMENT OF INDIA MINISTRY OF POWER UNIQUE PIN CODE NO.110119
SHRAM SHAKTI BHAWAN, RAFI MARG NEW DELHI - 110 001.

D.O.No.3/17/2007-T&R 12th November, 2009

Dear Sir,

Please refer to DOPT's correspondence number 20/5/2008-EO(SM.II) dated 29.07.2009 conveying the approval of Appointments Committee of the Cabinet (ACC) for extension of additional charge of the post of Director General, Central Power Research Institute (CPRI) to Shri P.K.Kognolkar, w.e.f. 1.7.2009 to 31.12.2009 or till the post is filled up on regular basis or until further orders, whichever is the earliest.

2. The post of Director General, CPRI carries the pay scale in the Pay band of Rs.67,000-(annual increment @ 3%) - 79,000. The post of DG, CPRI fell vacant on 25.4.2008 due to retirement of Shri A.K. Tripathy, DG, CPRI, on attaining the

age of superannuation.

3. As per the directions of ACC vide DOPT's letter No.20/5/2008-EO(SM.II) dated 10.07.2008 directing, inter-alia, to amend the Recruitment Rules (RRs) for the post of DG, CPRI, notify the rules and to undertake action for regular recruitment to the post expeditiously on the basis of rules so amended. Accordingly, recruitment rules for the post of DG, CPRI have been amended with the concurrence of the DOPT (RR Division) vide DOPT's OM No.AB/14017/65/2008-Estt. (RR) dated 17.03.2009 and with the approval of Governing Council of CPRI. CPRI has also notified the RRs on 03.04.2009. Copy of the amended RRs for the post of DG, CPRI was also sent to DOPT for information of ACC vide this Ministry's OM No.3/12/2008-T&R dated 13.04.2009 (copy enclosed).

4. As per the existing recruitment rules for this post, a Circular inviting applications was issued to CEA, statutory/autonomous bodies, State Electricity Boards, PSUs and other Ministries, related organizations like CSIR, IITs, NITs, etc. The post was also advertised in the Employment News/Rozgar Samachar of 16-22 May, 2009 and other leading national dailies viz. Times of India, Indian Express and Navbharat Times. The advertisement was also available on the website of this Ministry as well as that of CPRI. The last date for receipt of applications as indicated in the advertisement was 16.6.2009.

5. In pursuance of the instructions of DOP&T and with the approval of Hon'ble Minister of Power, a Search-cum-Selection Committee was constituted for recommending a panel of suitable officers for the post of Director General, CPRI. The composition of the Search-cum-Selection Committee is as under:-

(i) Shri Hari Shankar Brahma, Secretary, Ministry

(ii) Shri T.Ramasami, Secretary, Ministry of Sc. & Tech.: Member

(iii) Shri Rakesh Nath, Chairperson, CEA

: Member

(iv) Prof.Surendra Prasad, Director, IIT, Delhi

: Member

6. In response to the circular/advertisement, a total of 11 applications were received. The first meeting of the Search-cum-Selection Committee was held on 13th July 2009. The Committee scrutinized all the eleven applications and shortlisted six candidates who were within the prescribed age limit and possess the requisite qualifications/experience.

7. The second meeting of the Search-cum-Selection Committee was held on 29.7.2009. All the six candidates were called for personal interview/interaction. After personal interaction with each candidate and review of Service Record and ACRs, the Search-cum-Selection Committee unanimously recommended the following persons in that order for appointment to the post of Director General,

CPRI in the Pay band of Rs.67,000-(annual increment @ 3%) - 79,000:-

(i) Shri N.Murugesan, Chief Manager, TCE Consulting Engg. Ltd., Bangalore.

(ii) Dr.R.S.Shivakumara Aradhya, Additional Director, CPRI.

8. A copy each of the minutes of the first and second meeting of the Search-cum-Selection Committee is enclosed.

9. A complete folder containing the Recruitment Rules of CPRI, copy of the advertisement and ACR Gradings as well as CR Dossiers of Shri N.Murugesan, Chief Manager, TCE Consulting Engg. Ltd., Bangalore (from 2002-03 to 2006-07 when working in CPRI) and Dr.R.S.Shivakumara Aradhya, Additional Director, CPRI (from 2004-05 to 2008-09) and the requisite prescribed proforma, duly filled in, requiring approval of ACC is also enclosed. In accordance with DOP&T OM.No.27/2/2009-EO (SM.II) dated 16.07.2009, the consent of both the above officers to join as DG, CPRI, in case they are selected, has also been obtained. Copy of the same are enclosed.

10. The Hon'ble Minister of Power has approved the name of Shri N.Murugesan, Chief Manager, TCE Consulting Engg. Ltd., Bangalore who is at Sl.No.(i) in the panel of two candidates recommended by the Committee for appointment of DG, CPRI.

11. A copy of the vigilance clearance received from CVC is enclosed. A copy of the clearance of intelligence Bureau in respect of Shri N. Murugesan, Chief Manager, TCE Consulting Engg. Ltd., Bangalore is also enclosed.

12. I shall be grateful if you would kindly convey the approval of ACC to the appointment of Shri N.Murugesan, Chief Manager, TCE Consulting Engg. Ltd., Bangalore as Director General, Central Power Research Institute (CPRI) in the Pay band of Rs.67,000/- (annual increment @ 3%) -79,000 on direct recruitment basis from the date he assumes charge upto 31st May, 2019, the date of his retirement on superannuation, or until further orders, whichever event occurs earlier.

Yours sincerely,

Sd/-

(Sudhir Kumar)

Encl: As above

Shri P.K.Misra,

Establishment Officer and Additional Secretary Department of Personnel & Training

North Block, New Delhi - 110001."

(underlining by us)

(b) Pursuant to the said communication, the matter was placed before the ACC and communication dated 04th March 2010 Annexure 'F' was issued to the Secretary, Ministry of Power as under:

"No.20/16/2009-EO(SM.II)

Government of India

Secretariat of the Appointments Committee of the Cabinet Ministry of Personnel,
Public Grievances & Pensions Department of Personnel & Training

New Delhi,

dated the 4th March, 2010

Reference correspondence resting with Ministry of Power's DO No.3/17/2007-T&R, dated 12.11.2009.

2. The appointments Committee of the Cabinet (ACC) has approved the appointment of Shri N.Murugesan as Director General, Central Power Research Institute, Bangalore for an initial tenure of five years or until further orders.

3. The ACC has directed the Ministry of Power that Shri Murugesan would be eligible for re-appointment for a further term upto May 31, 2019, i.e., the date of his superannuation.

Sd/-

(Mohd. Monirazzaman)

Under Secretary to the Govt. of India

Tel.23093913

Ministry of Power,

(Shri H.S.Brahma, Secretary),

Shram Shakti Bhawan,

New Delhi."

(underlining by us)

(c) On the basis of the above, Annexure 'A' / offer letter was issued to the appellant on 22nd March 2010. The same is extracted as under:

"No.3/17/2007-T&R

Government of India

Ministry of Power

Shram Shakti Bhavan, New Delhi

Dated the 22nd March, 2010.

To

Shri N.Murugesan,

Chief Manager,

TCE Consulting Engineers Ltd.,

Sheriff Centre,

73/1, St. Marks Road,

Bangalore - 560 001.

Subject: Appointment to the post of Director General, Central Power Research Institute (CPRI), Bangalore - reg.

Sir,

I am directed to say that the Competent Authority has approved your appointment as Director General (DG), Central Power Research Institute (CPRI), Bangalore on direct recruitment basis from the date of your assuming the charge of the post for an initial tenure of five years or until further orders. You would be eligible for reappointment for a further term upto May 31, 2019 i.e., the date of your superannuation.

2. In view of the above, you are requested to join the new assignment as Director General, Central Power Research Institute, Bangalore immediately.

3. The orders regarding the terms and conditions regulating the above appointment will be issued separately.

Yours faithfully,

Sd/-

(Bina Prasad)

Director

Tel: 23752496

Copy forwarded to:

1. Director General (I/c), Central Power Research Institute, Bangalore [Shri V.Ramakrishna, Member (Power System), Central Electricity Authority, R.K.Puram, New Delhi] with the request that the charge assumption report in respect of Shri N.Murugesan as DG, CPRI may please be forwarded as soon as he joins the post, to enable this Ministry to issue formal orders of his appointment.

2. Department of Personnel & Training [(Secretariat of the Appointments Committee of the Cabinet) Shri Mohd. Moniruzzaman, Under Secretary (ACC)],

North Block, New Delhi w.r.t. their reference No.20/16/2009-EO(SM.II) dated 04.03.2010.

Sd/-

(Bina Prasad)

Director."

(underlining by us)

(d) The said letter was followed by an Order dated 26th March 2010 as per Annexure 'R2', which is extracted as under:

"No.3/17/2007-T&R

Government of India

Ministry of Power

Shram Shakti Bhavan, New Delhi

Dated the 26th March, 2010.

O R D E R

In pursuance of Rule 45 of the Rules & Regulations of the Central Power Research Institute, the President of the Central Power Research Institute is pleased to appoint, with the approval of the Government of India, Shri N.Murugesan, Chief Manager, M/s. TCE Consulting Engineers Ltd., Bangalore as Director General, Central Power Research Institute, Bangalore on direct recruitment basis in the Scale of Pay Rs.67,000/-(annual increment @ 3%) - 79,000/- w.e.f. 22nd March 2010 (afternoon) for an initial tenure of five years or until further orders.

2. Detailed terms and conditions regulating the appointment of Shri.N.Murugesan as Director General, Central Power Research Institute, will be issued separately.

Sd/-

(Bina Prasad)

Director

Tel: 23752496

Copy to:

1. Shri.N.Murugesan, Director General Central Power Research Institute, Bangalore.

2. x x x "

--*--

(underlining by us)

On a reading of the same, it is apparent that no condition regarding re-appointment of the appellant as per offer letter at Annexure 'A' has been stated in Annexure 'R2'. Hence, the initial tenure of appointment is five years.

28. The moot question that falls for consideration in this case is, whether, the appellant could have been appointed by direct recruitment "for an initial tenure of five years or until further orders". In other words, could the appointment have been in the nature of a tenure appointment? At the outset, it is observed that the appointment order (Annexure 'A') issued to the appellant is contrary to the recommendation made by the Ministry of Power to the Additional Secretary, DoP&T (Annexure 'E') and the ACC which was "on direct recruitment basis from the date he assumes charge up to 31st May 2019, the date of his retirement on superannuation, or until further orders, whichever event occurs earlier". In other words, when the appointment was to be on direct recruitment basis until the date of retirement on attaining the age of superannuation or until further orders, could it have been converted as an appointment for an initial tenure of five years or until further orders?

29. Bearing in mind the aforesaid points, we have perused the original File submitted by the learned ASG appearing for the Union of India for our perusal.

(a) On perusal of the same, we find that the proposal of the Ministry of Power for appointment of the appellant as Director General, CPRI on direct recruitment basis before the Hon'ble Minister of the State (PP), prior to the same being submitted to the ACC. On approval by the then Hon'ble Minister of the State (PP), DoP&T, Office of the Establishment Officer through its Secretary, ACC put up the proposal of the Hon'ble Minister for Power before the ACC regarding the appointment of the appellant as Director General (DG), CPRI, on direct recruitment basis giving details of the designation of the post, scale of pay attached to the post, name of the Ministry / Department / Organisation in which the post was located, the number and date of the vacancy, approval of the officer proposed to be appointed, service to which the officer belonged to. As regards duration of proposed appointment, etc., at paragraph No.6(e), it was stated as under:

"From the date he assumes charge of the post up to 31st May 2019, the date of retirement on superannuation or until further orders, whichever is earlier."

Details of CR Dossier of the officer proposed to be appointed, details of vigilance proceedings against the officer, names of other officers considered, if any, whether the CR Dossier(s) were available, method of recruitment / appointment "by direct recruitment / deputation basis"; a copy of the amendment recruitment rules for the post of Director General, CPRI were also noted. Further details as to whether the proposed appointment was in accordance with the prescribed recruitment rules, whether the proposed recruitment was based on the recommendations of UPSC / DPC / Selection Committee / any other body; whether Hon'ble Minister in-charge had approved the proposal were also noted.

The above proposal had the approval of the then Hon'ble Minister for Power.

In the comments recorded at paragraph Nos.21 and 23 it is stated as under:

"21. Normally tenure of heads of institution is restricted to 5 years. The Ministry has proposed a tenure upto 31.05.2019 i.e., date of superannuation of Shri Murugesan as the appointment is proposed on direct recruitment basis. However, the ACC may like to approve an initial tenure of 5 years. The proposed candidate meets the requirement laid down for the post. The ACC may like to approve the proposal.

22. x x x

23. Point for consideration of the

ACC:

In the light of the aforesaid background, the ACC may consider for appropriate orders, the proposal of Ministry of Power for appointment of Shri.N.Murugesan, Chief Manager, TCE Consulting Engg. Ltd., Bangalore, as Director General, Central Power Research Institute (CPRI), Bangalore on direct recruitment basis from the date he assumes charge of the post upto 31.05.2019 (i.e., the date of his retirement on superannuation) or until further orders, whichever is earlier.

Sd/- 18/1/2010

(P.K.Misra)

Secretary

Appointments Committee

of the Cabinet

Cabinet Secretary Recommended.

Sd/- 9.2.10

Home Minister Sd/-

Prime Minister "

(underlining by us)

On further perusal, it is noted that the then Hon'ble Prime Minister approved the appointment of the Director General, CPRI, "for an initial tenure of five years or until further orders" and he "would be eligible for reappointment for a further term upto 31st May, 2019 i.e., date of his superannuation."

(b) The Under Secretary submitted a note, on perusal of which, it becomes clear that an opinion was sought from the Establishment Division on the appropriateness of the appointment of appellant made on "tenure basis" when neither rules and regulations nor vacancy advertisement issued for the post had

any provision for appointment on tenure basis. It is also noted that CPRI being an autonomous organisation under the Ministry of Power, the guidelines, instructions on personnel matters which are applicable to Central Government Civil Employees and Posts are not suo moto applicable to autonomous bodies, PSUs, Trusts or Banks. It is further noted that as regards the direct recruits, there is no provision which stipulates any tenure for appointment made on Direct Recruitment basis and the candidate who is appointed on direct recruitment, remains on the post till his promotion to the next higher post or superannuation or resignation.

(c) It is further noted that the Ministry of Power should perhaps place the matter before the ACC before relieving the appellant from the post of Director General, CPRI and initiating the selection process for fresh incumbent.

(d) On further perusal of the File, it is noted that the appellant had sought rectification in the appointment letter dated 22.03.2010 of the Ministry of Power, stating that there is no fixed tenure for a directly recruited candidate, as such appointment to the post of Director General, CPRI, may be considered up to 31st May 2019 i.e., the date of superannuation. It was felt that as order dated 22nd March 2010 of the Ministry of Power was based on ACC's approval dated 04th March 2010, any modification in Ministry of Power's order would first require approval of the ACC. Therefore, the opinion of the Establishment Division was sought on the appropriateness of his appointment made on tenure basis, when neither rules and regulations nor the vacancy advertisement issued for the post had any provision for appointment on tenure basis. Therefore, the comments of the Ministry of Power on the representations of the appellant was sought. A draft note to the Establishment Division was submitted for approval requesting to furnish their views on the appropriateness regarding appointment made on tenure basis in respect of the appellant. The Under Secretary of the Establishment (RR) Division submitted a Note.

(e) Even before any further action could be taken on the request made by the appellant seeking rectification in appointment order, as an advertisement had been issued calling for applications from eligible candidates to fill up the post of Director General, CPRI, appellant filed Writ Petition No.9941 of 2015.

(f) Thereafter, the File pertains to the entrustment of additional charge of the post of Director General, CPRI, to Sudhakar R.Bhat, Principal Secretary, Southern Region, Power Committee, CEA, Bangalore with effect from 23rd March 2015 till the appointment of a regular incumbent or until further orders whichever was earlier. Accordingly, on 27th March 2015 Sri.Sudhakar R.Bhat, Principal Secretary, SRPC was entrusted additional charge of the post of Director General, CPRI. He assumed office on 28th March 2015. 30. On 23rd April 2015, this Court passed an interim order directing that the appointment to the post of Director General, CPRI, would be subject to the decision in the writ petition.

31. Two aspects of the matter emerge from the aforesaid discussion. The first

aspect concerns the tenor of appointment order issued to the appellant vis-à-vis the term of appointment. The second aspect is the nature of relief that could be granted to the appellant, in case he succeeds in the matter.

32. With regard to the first aspect of the matter, it is not in dispute that the appointment of the appellant was by direct recruitment. Working Rule No.1 speaks of appointment by Direct Recruitment; the advertisement issued calling for applications to fill up the post of the Director General, CPRI, was also by Direct Recruitment. On selection of the appellant, Additional Secretary, Ministry of Power, issued a communication to the Joint Secretary, DoP&T, to issue the appointment letter to the appellant on Direct Recruitment basis from the date he assumes charge up to 31st May 2019, the date of his retirement on superannuation, or until further orders, whichever event occurs earlier. It is only when the Cabinet Note was put up, the appointment of the appellant was proposed as a 'tenure appointment' initially for a tenure of five years or until further orders. In fact, neither Working Rule No.1 nor the advertisement calling for applications stated that the appointment was a tenure appointment. That was also not the thinking in the Ministry of Power also. But, when the Cabinet Note was prepared, the appointment was proposed as an initial tenure of five years. This is clearly a case of departure in the term of appointment of the post of Director General, CPRI after selection of the appellant which is contrary to the advertisement and Working Rule No.1. When neither working Rule No.1 nor the advertisement calling for applications for appointment by direct recruitment stipulated that the appointment was to be for a specified tenure or the post was a tenure post of an initial period of five years, at the time of approval of the appointment of the appellant by the ACC, it could not have been converted into a tenure post initially for a period of five years. In other words, the change in the nature of appointment after selection of the appellant, to be more precise at the time of approval by ACC, was contrary to Working Rule No.1 as well as the advertisement calling for applications. In the words of the Hon'ble Supreme Court, "the rules of the game cannot be changed after the game has begun". Therefore, on that ground alone, the communication dated 04th March 2010 (Annexure 'F') and the appointment letter dated 22nd March 2010 (Annexure 'A') stating "for an initial tenure of five years" has to be declared to be illegal as being contrary to Working Rule No.1 and the advertisement would have to be declared to be illegal and ultra vires Articles 14 and 16 of the Constitution.

33. Further, as per Annexure 'R2', which is the confirmation order of appointment of the appellant, it is stated as "for an initial tenure of five years or until further orders" which is also contrary to what the ACC headed by the then Hon'ble Prime Minister had approved. In other words, the ACC was misled by the concerned officers who had prepared the Cabinet Note, as a result of which, there was a total departure in the period of appointment of the appellant as Director General, CPRI. Such a departure contrary to Working Rule No.1 and advertisement cannot be countenanced.

In other words, as stated in communication at Annexure 'E' by the SCSC, the appointment of the appellant on direct recruitment basis had to be from the date he assumed charge up to 31st May 2019, the date of his retirement on superannuation or until further orders whichever event occurred earlier. In fact, on perusal of Annexure 'X' communication dated 23rd February 2015 issued by the Director of the ACC to the Joint Secretary, Ministry of Power, it is noted that the recruitment rules for the post of Director General, CPRI, prevailing at the time of appointment of the appellant did not have any provision for appointment on tenure basis.

34. The idea behind what has been stated in Column No.21 in paragraph 21 of the Cabinet Note appears to be from Annexure 'DD', which is an Office Memorandum wherein it states that appointments specified in the Annexure to the First Schedule to the Government of India (Transactions of Business) Rules, 1961, made after obtaining the approval of the ACC are normally for a specified period or in the alternative until further orders. But, the Office Memorandum does not apply in the instant case, as CPRI does not come within the First Schedule to the aforesaid Rules as it is an autonomous body and hence, the recommendation at paragraph No.21 of the Cabinet Note that the ACC may approve the appointment of the appellant for an initial tenure of five years is contrary to Working Rule No.1 as well as the advertisement. Moreover, on perusal of the note sheet produced as Annexure 'HH1', at paragraph 9, it is stated that the recruitment rules for the post of Director General, CPRI, prevailing at the time of the appointment of the appellant "did not have any provision for appointment on tenure basis". In fact, it was also recorded in the note-sheet of the Ministry of Power that the matter may be taken with DoP&T for rectifying the erroneous interpretation by taking into account the provisions for direct recruitment in the recruitment rules for the post of Director General, CPRI. Further, since the appellant was eligible for re-appointment for a further term upto 31st May 2019, opinion was expressed to process for "re-appointment" as per extant Rules and Regulations.

35. On perusal of Annexure 'JJ' dated 19th January 2015, it is noted that the ACC had in fact conveyed that the appellant would be eligible for reappointment for a further term upto 31st May 2019 i.e., the date of his superannuation and hence, directions were issued for considering his Dossier (APAR) and Vigilance Clearance so as to enable T&R Division to take further action in the matter.

However, on 18th February 2015, an advertisement was issued calling for applications to fill up the said post.

36. It is observed that the stipulation of initial tenure of five years on direct recruitment and eligibility for reappointment till superannuation vide Order dated 04th March 2010 is an incongruous conjunction of a tenure appointment with continuance till superannuation. Such a contradictory nature of appointment is illegal and in the instant case, contrary to Working Rule No.1 as the post of Director General cannot be a tenure post. As noted above, in the instant case,

the Establishment Officer suggested to the ACC to fix an initial five year tenure which was not only contrary to the SCSC's recommendation of direct recruitment till retirement, but also Working Rule No.1 and the advertisement calling for applications. Therefore, paragraph No.21 in the note put up before the ACC is illegal as it makes a clear departure in the nature of appointment of the appellant. In the instant case, the appointing authority is the ACC. The recommendation of the SCSC was forwarded to the ACC. No reason whatsoever was recorded for differing from the recommendation of the SCSC which was also approved by the Ministry of Power. Giving a colour of a tenure appointment to the post of Director General, CPRI on the basis of paragraph No.21 and appointing the appellant in such a manner is illegal as it is contrary to Working Rule No.1. Such, a recommendation could not have been made to the ACC in the Cabinet Note by the concerned Officers. Thus, the recommendation to the ACC did not follow the Recruitment Rules as well as the terms and conditions stipulated for direct recruitment of Director General, CPRI as given in the advertisement at Annexure 'B'. The ACC, in fact, totally modified the terms and conditions of appointment of the appellant which was detrimental to the appellant as it was contrary to the Rules and Regulations and advertisement. Hence, the appointment order converting the direct recruitment to the post of Director General, CPRI until further orders or the appellant attaining the age of superannuation, into an initial period of five years as a tenure post, is contrary to Articles 14 and 16 of the Constitution. Unless the Rules and Regulations provide for direct recruitment by way of a tenure or a period being fixed, it cannot be so. In the absence of such a rule to that effect, the appointment order at Annexure 'A' is an unholy mix of appointing the appellant for an initial period of five years or until further orders and being eligible for reappointment till superannuation which is unheard of. Thus, the action of the respondents in issuing the appointment order as per Annexure 'A' is unreasonable, unfair, arbitrary and unconstitutional.

37. There is one other aspect of the matter which has to be borne in mind from the aforesaid discussion. It has been held that communication dated 04th March 2010 and appointment letter dated 22nd March 2010 are contrary to Working Rule No.1 as well as the advertisement issued calling for applications to fill up the post of the Director General of CPRI vide Annexure 'B' dated 18th May 2009. Therefore, the expression "for an initial tenure of five years" is declared to be in violation of Articles 14 & 16 of the Constitution. So also the expression "you would be eligible for reappointment for a further term up to 31st May 2019, i.e., the date of your superannuation" is declared to be in violation of Articles 14 and 16 of the Constitution. In fact, the above is conspicuous by its absence in the confirmation of order of appointment of the appellant (Annexure 'R2') dated 26th March 2010. Consequently, the appointment of the appellant is "from the date he assumes charge up to 31st May 2019, the date of his retirement on superannuation or until further orders whichever event occurs earlier" as found in Annexure 'E' communication dated 12th November 2009. Consequently, the

appellant could not have been relieved from his post on 20th March 2015, although it is possible to argue that the relieving order has been in consonance with the order of appointment. That may be so. Since we have declared that the order of appointment was contrary to Working Rule No.1 and the Rules and Regulations and the advertisement issued calling for applications to the post of Director General, CPRI pursuant to which the appellant had applied, it is declared that the relieving order dated 20th March 2015 is also not in accordance with law. In the circumstances, it is also declared that the issuance of the advertisement calling for applications from eligible candidates to fill up the post of Director General, CPRI dated 18th February 2015 is also illegal. In the circumstances, the appointment of respondent No.5 as Director General, CPRI by order dated 09th August 2016 Annexure 'C1' is also illegal.

38. In this context, reference could be made to the following decisions of the Hon'ble Supreme Court:

(a) In *A.K. Doshi (Dr.) Vs. Union of India*, (2001) 4 SCC 43, it was observed that after a Selection Committee completes the exercise and recommends one or more names for appointment, the recommendation along with the materials considered by the Selection Committee should be placed before the Appointments Committee without any further addition or alteration. If in any exceptional case, the Appointments Committee feels that certain material which was not available to be considered by the Selection Committee has come into existence in the meantime, and the material is relevant for the purpose of appointment, then, the matter should be placed before the Appointments Committee with the additional material for its consideration. According to the Hon'ble Supreme Court, the noting made by the Secretary of the Appointments Committee in the file in the said case was an attempt to interfere with the process of selection, which was neither permissible under the Rules nor desirable otherwise. By indulging in such unhealthy process, the sanctity of the selection by the Selection Committee was attempted to be set at naught. Such conduct on the part of the senior and experienced Government Officers did not commend to the Hon'ble Supreme Court. The aforesaid observations are squarely applicable to the instant case. Further, on the facts of the case, the Hon'ble Supreme Court observed that there was favouritism and a blatant attempt to get the appellant appointed as Member (Technical) in the said case.

(b) In *State of H.P. Vs. Suresh Kumar Verma and Others*, (1996) 7 SCC 562, it has been observed that it is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per the recruitment rules and appointments shall be made accordingly.

(c) In *J & K Public Service Commission Vs. Dr.Narinder Mohan and Others*, (1994) 2 SCC 630, it was emphasised that once statutory rules have been made, the appointment shall be made only in accordance with the Rules. Executive power could be exercised only to fill in the gaps but the instructions cannot and

should not supplant the law, but only supplement the law. The aforesaid is also explained with reference to a Latin maxim "Expressum facit cessare tactum", which means, express mention of one thing implies the exclusion of others.

(d) In *Bedanga Talukdar Vs. Saifudaullah Khan*, (2011) 12 SCC 85, it has been held that the selection process has to be conducted strictly in accordance with the stipulated selection procedure.

There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved in the Rules and/or advertisement. Relaxation of any condition in advertisement without due publicity would be contrary to the mandate contained in Articles 14 and 16 of the Constitution.

In the said case, the Hon'ble Supreme Court on perusal of the advertisement found that there was no power of relaxation and found fault with the High Court in directing that condition with regard to submission of identity card either along with application form or before appearing for preliminary examination could be relaxed in the case of respondent No.1 therein, which was impermissible in view of the mandate of Articles 14 and 16 of the Constitution of India.

(e) In *Hemani Malhotra v. High Court of Delhi*, [(2008) 7 SCC 11], the question for consideration was whether introduction of requirement of minimum marks for interview, after the entire selection process was completed, would amount to changing the rules of the game after the game was played. The Hon'ble Supreme Court noted that no doubt, rules prescribing minimum marks for both written examination and viva-voce, could be made but if minimum marks were not prescribed for viva-voce before commencement of selection process, the authority concerned, could not either during or after the selection process add an additional required qualification that the candidate should also secure minimum marks in the interview. The Hon'ble Supreme Court was of the opinion that the prescription of minimum marks by the respondent therein at viva-voce test was illegal.

(f) In *Tamil Nadu Computer Science B.Ed Graduate Teachers Welfare Society (I) v. Higher Secondary School Computer Teachers Association and others*, [(2009) 14 SCC 517], the Hon'ble Supreme Court held that prior to holding of the test, guidelines were formulated through a policy decision, laying down the criteria that the minimum qualifying marks in the said list would be at least 50%. According to the Hon'ble Court, the said guideline for recruitment laid down in the policy was sacrosanct and was required to be followed for all practical purposes. Reduction of the minimum qualifying marks by subsequent decision from 50% to 35% after holding the examination and at the time when the result of the examination was to be announced and thereby, changing the criteria on the verge of and towards the end of the game was held to be arbitrary and unjustified. Consequently, candidates who had secured more than 50% qualifying marks in the special recruitment test were to be treated as qualified and recruited as per instructions and those candidates who had secured less than

50% qualifying marks were to be declared as unsuccessful.

(g) The aforesaid decision was based on another decision in *A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra & Others*, (1990 (2) SCC 669). In that decision, it was held that the word 'selection' must be understood not only the final act of selecting candidates with preparation of the list for appointment, but the selection process consists of various steps such as inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conduct of examination, calling for interview, or viva voce and preparation of list of selected candidates for appointment. Therefore, there are different steps in the process of selection. The Hon'ble Supreme Court on the point of controversy therein, held that the minimum or maximum age for suitability of a candidate for appointment could not be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection was delayed and more often it happens for various reasons, the candidates who were eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. According to the Hon'ble Apex Court, it would be, therefore, unreasonable to construe the word 'selection' only as the factum of preparation of the select list, but encompasses many stages commencing from inviting applications by an advertisement or in any other mode.

39. The aforesaid judgments have laid down the law in the context of recruitment to posts which are squarely applicable in the instant case, whereby direct recruitment was being made for the post of Director General, CPRI.

40. The fact that in the instant case, Working Rule No.1 did not contemplate a tenure appointment and that the post of Director General, CPRI was not a tenure post, though by way of a direct recruitment could be better appreciated by contrasting the case of the appellant with the following cases:

(a) In *Dr.L.P. Agarwal Vs. Union of India*, (1992) 3 SCC 526, the case pertained to the post of Director of All India Institute of Medical Sciences, New Delhi (AIIMS). Under the recruitment rules governing the post of Director, it was by direct recruitment only and the post was a tenure post of five years, inclusive of one year probation. The question for consideration in the aforesaid case was, whether the incumbent Director of AIIMS could be prematurely retired before completion of his tenure. In other words, the question was whether "premature retirement in public interest" was applicable to a tenure post filled by way of direct recruitment. The High Court therein had observed that the post may or may not be a tenure post. What is relevant is the term on which the petitioner therein was appointed. That the manner in which the appointment order was worded made it clear that the appointing authority was conscious of the limitation placed upon it, that the tenure should not be more than five years. That is why it fixed maximum period of five years or till the petitioner therein attained the age of 62 years (which was the age of superannuation), whichever expired earlier. But, the

Hon'ble Supreme Court did not agree with the aforesaid reasoning. It opined that under the recruitment Rules, the post of Director of AIIMS being a tenure post, as such the question of superannuating or prematurely retiring the incumbent of the said post did not arise. It was further observed that tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of his tenure unless curtailed on justifiable grounds. Such person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring does not arise. The appointment order gave a clear tenure to the appellant therein and therefore, the concept of superannuation in the said order did not apply and that it is alien to tenure appointments which have a fixed life span.

(b) In *P. Venugopal Vs. Union of India*, (2008) 5 SCC 1, also the Hon'ble Supreme Court considered the case of the Director of AIIMS, New Delhi, having been duly appointed for a period of five years, had been removed prior to the completion of the said period and referred to the reasoning in the case of *Dr.L.P.Agarwal*.

(c) In *J.S.Yadav Vs. State of Uttar Pradesh and Another*, (2011) 6 SCC 570, considering the case of the appellant therein under the provisions of Protection of Human Rights Act, 1993, it was held that an employee appointed for a fixed period under a statute is entitled to continue till expiry of tenure and in such cases there can be no occasion to pass order of superannuation since tenure comes to an end automatically by efflux of time.

41. Therefore, having regard to the aforesaid dicta, the appointment of the appellant as Director General, CPRI, on a tenure basis is illegal, arbitrary and in violation of Articles 14 & 16 of the Constitution of India. Further, as opined by the Hon'ble Supreme Court in the case of appointment to a post on tenure basis, the notion of retirement on attaining the age of superannuation does not apply.

42. The second aspect of the matter is, whether, relief could at all be given to the appellant as according to the learned Single Judge, the writ petition filed by the appellant challenging his appointment for an initial tenure of five years only is hit by the principles of delay and laches. In this regard, it is the contention of the appellant that he sought rectification of his order of appointment by making several representations, in fact as many as fourteen representations were made, but none was responded to by the concerned authorities.

43. From the original File, we have also found that there has been inter-departmental communications on the representations made by the appellant. However, the same could not be taken to its logical conclusion on account of the advertisement dated 18th February 2015 issued by the respondent calling for applications for the post of Director General, CPRI, lead to the appellant filing the writ petitions. On account of the filing of the writ petitions before this Court, no

further steps were taken on the representations made by the appellant before the respective authorities.

44. The doctrine of delay and laches is a salutary doctrine and it has been applied in innumerable cases by the Hon'ble Supreme Court. In this context, a plethora of decisions of the Hon'ble Supreme Court are available on the issue regarding delay and as to how a Court of equity exercising jurisdiction under Article 226 of the Constitution would have to approach the issue.

45. The relevant decisions in that regard are as follows:

a) In the case of *Shankar Co-op. Housing Society Ltd. v. M.Prabhakar & Ors.*, [2011 AIR SCW 3033], the Apex Court at Para 53 has given the relevant considerations, in determining whether delay or laches in approaching the writ court under Article 226 of the Constitution of India. The same reads as follows;

"53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

b) Similarly, in the case of *The Municipal Council, Ahmednagar & Anr. Vs. Shah Hyder Beig & others*, [(2002) 2 SCC 48], it has been opined thus:-

"The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the Writ Court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."

c) In Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu, [(2014) 4 SCC 109], on the doctrine of delay and laches and approach of the Court in that regard, the Hon'ble Supreme Court has ruled as under:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court."

d) Further, recently in the case of State of Jammu and Kashmir Vs. R.K. Zalpuri and others, [(2015) 15 SCC 602], the Hon'ble Supreme Court has opined that the writ Court while deciding a writ petition he has to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice.

46. Question is as to whether the learned Single judge could have dismissed the writ petition on the ground of delay and laches in this case. In our view, it could not have been done so, firstly because the appellant was neither dormant nor silent as to his tenure of appointment. He had made several representations (fourteen) seeking rectification in his appointment order before the tenure of five years came to an end. In fact, there were inter-departmental communications also in that regard as it was felt that the matter required a consideration or a re-look by the ACC. But, no concrete steps were taken for rectifying the appointment order and before any decision could be taken and communicated to the appellant, he had filed the writ petitions before this Court by being aggrieved by the issuance of the advertisement calling for recruitment to the post of Director General, CPRI, on 18th February 2015, which was the catalyst for filing the first writ petition. In fact, when the appellant filed his first writ petition, he was very much in service. He was relieved from service during the pendency of the first writ petition. This is not a case where after his termination, he instituted the writ petitions by way of an after-thought or after a long slumber, neither is the matter speculative in nature. Further, there was no delay in filing the second writ petition. Both the writ petitions were connected and heard together as the issues raised in them were intertwined. This aspect has been lost sight of by the learned Single Judge. As there was no delay or laches in filing the second writ petition, in order to consider the same, the issues arising in the first writ petition had to be also considered. But, both the writ petitions were not considered on merits and instead, learned Single Judge dismissed the first writ petition filed by

the appellant herein on the ground of delay and laches and the second writ petition was rejected as not surviving for consideration.

47. In the circumstances, we find that the first writ petition could not have been dismissed by the learned Single Judge on the ground of delay and laches, particularly when it was entertained in the early part of 2015 and was disposed off only in March 2018 and there was no delay in filing the second writ petition.

48. The learned Single Judge was also not right in holding that this is a case of delay defeating equity. Reliance placed on decisions of the Hon'ble Supreme Court in *Balu & Another Vs. State of Kerala & Others*, (2009) 2 SCC 479; *NDMC Vs. Pan Singh*, (2007) 9 SCC 278; *Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Company (P) Limited*, (1996) 11 SCC 501; *State of Rajasthan Vs. D.R. Lakshmi*, (1996) 6 SCC 445 are not applicable to the present case as those cases were filed after an inordinate delay and they revolved around the facts of the respective cases. But, we are of the view that in the instant case, the doors of justice cannot be closed on the appellant on the ground that there has been unexplained and inordinate delay in approaching this Court in challenging the condition prescribing the tenure of office of the appellant as five years.

49. Learned Single Judge is also not correct in observing that the petitioner has compounded the issue by not making an application pursuant to the second advertisement which was issued calling for applications to fill up his post. In fact, the petitioner has called in question the said advertisement. Having done so, it was not expected for the appellant to have also applied pursuant to the said advertisement on being relieved, which according to the appellant was a case of illegal termination. In the event the appellant had applied to the post pursuant to the advertisement dated 18th February 2015, it would have been a case of approbation and reprobation and may have come in the way of granting relief to him.

50. Learned Single Judge has accepted the contentions of the Union of India and other respondents to the effect that the appellant had accepted his order of appointment dated 22nd March 2010 without any demur or protest and hence, principles of acquiescence and waiver would apply.

51. At the outset, it must be emphasized that the aforesaid principles cannot play any role when fundamental rights of a citizen are at stake. The point is as to whether, a person who is appointed to a particular office contrary to Articles 14 and 16 of the Constitution must be shown the door by Courts of Justice when he pleads arbitrariness and violation of his fundamental rights. In our view, the case of the appellant could not have been dismissed by the learned Single Judge by applying the aforesaid principles. Accordingly, point No.2 is answered.

52. In the circumstances, it is held that the appointment of the appellant on a tenure basis for an initial period of five years is declared as illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution. That the appellant having

been appointed by direct recruitment was required to be appointed from the date he assumed charge of the post up to 31st May 2019, the date of retirement on superannuation or until further orders, whichever was earlier. The termination of the appellant on completion of five years was also illegal although the same may have been in accordance with the appointment order issued to him. But, since the appointment on a tenure of five years is declared to be illegal, the termination is also bad in law.

53. But we find it necessary to mould the relief in the instant case having regard to the significant fact that the appellant would have in the normal course retired from service on attaining the age of superannuation on 31st May 2019.

54. In view of our answer to Point Nos.1 and 2, the appellant must be deemed to be in service from the date he assumed charge up to 31st May 2019, on which date he would retire on attaining the age of superannuation. Consequently, the appellant is reinstated to the post of Director General, CPRI, but only symbolically. The reason as to why we have stated that he is reinstated as Director General, CPRI, only symbolically and not in actual terms, is on account of the nature and functions of the Director General, CPRI. CPRI is a premier power research Institute in the country where ongoing research and other projects are being monitored by respondent No.5 herein, having been appointed as Director General in the year 2015, for the last four years. The appellant herein even if reinstated would retire from service on 31st May 2019, which is about a month away. Since, the appellant has a very short period of service before his date of superannuation and bearing in mind the responsibilities and functions of the Director General, CPRI and more importantly the Institution being a premier institution in the power sector involved in research, where a stable leadership is of vital importance, we do not think it is appropriate to displace the present incumbent, namely respondent No.5. If we do so, then once again an advertisement would have to be issued immediately to fill up the post. In this regard, we rely upon the following three decisions of the Hon'ble Supreme Court by way of analogy, cited by the learned ASG:

(a) In the case of *Union of India & another Vs. Tulsiram Patel*, (1985) 3 SCC 398 (Constitution Bench decision), reliance has been placed on *Shankar Dass Vs. Union of India*, (1985) 2 SCC 358, to hold that when an order of penalty of dismissal from service is set aside by a court, it is not necessary that there should be an order of reinstatement in service with full back-wages. The Court can instead substitute the penalty, which in its opinion, would be just and proper in the circumstances of the case.

(b) In *Prabhakar Rao and others, etc. Vs. State of A.P. and others, etc.*, AIR 1986 SC 210, the majority judgment opined that "there would be really no point in re-inducting an employee if he has but a month or two to go before retiring. Re-induction of such a person is not likely to be of any use to the administration and may indeed be detrimental to the public interest. So other ways of compensating must be found i.e., to compensate monetarily. In industrial law, back and future

wages are awarded". That a similar principle could be adopted in the case of Government employees also, as the Government, public corporations and local authorities must be accepted to act as model employers.

(c) Recently in Punjab and Sind Bank and Another Vs. Daljinder Singh, (2015) 16 SCC 293, the Hon'ble Supreme Court, while affirming a wrongful dismissal of an employee of the Bank from service, further opined in the facts and circumstances of the case, it was not a fit case for directing reinstatement. Rather awarding a lump-sum compensation of an amount by the appellant Bank therein for his wrongful dismissal was thought of as to meet the ends of justice. In the said case, having regard to the cadre in which the employee belonged to, a sum of Rupees Five Lakhs was awarded to be paid within three months from the date of judgment failing which, Bank was to pay interest at the rate of 9% per annum from the expiry of three months.

55. Bearing in mind the aforesaid decisions and the manner in which the relief has been moulded therein, we note that in the instant case, the appellant has not been in service with effect from 20th March 2015, the date on which he was relieved, till date. Thus, he has not drawn any pay or allowances for the said period as he has not worked. The appellant would have retired on 31st May 2019 on attaining the age of superannuation if his services had continued. Since, we have restored the services of the appellant, albeit, symbolically, we, nevertheless, deem it just and proper to compensate the appellant monetarily.

56. In the circumstances, the appellant shall be entitled to be paid 50% (fifty per cent) of his salary plus proportionate Dearness Allowance with effect from 21st March 2015 till 31st May 2019 by taking into consideration the pay revisions and increments, as applicable.

Further, the appellant shall be entitled to the pensionary benefits under New Pension Scheme as applicable to the appellant if he had been continued in service to the extent of employer's contribution. He shall also be entitled to gratuity and any other terminal benefits to be calculated on the basis of notional reckoning of the salary of the appellant for the period from 22nd March 2010 till 31st May 2019, on which date the appellant shall be deemed to retire from service, including the pay revision and increments as applicable. The respondents are directed to issue the necessary Relieving Order dated 31st May 2019 so as to enable the appellant for all monetary retiral and pensionary benefits as he is deemed to retire on the said date. Same shall be paid to the appellant within one month from 31st May 2019 after deducting the amounts already received by the appellant.

57. In the result, the appeals filed by the appellant are allowed and disposed of in the aforesaid terms by setting aside the Order of the learned Single Judge.

Office (Court Officer) to return the original File after sealing the same to the learned ASG Sri.C.Shashikantha. He shall give the acknowledgement for receipt of the same in the order sheet itself.