

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 552/2018

Reserved on :29.07.2020
Pronounced on :07.08.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Kumar Indu Bhushan s/o Late Gurudayal Sahu aged about 52 years, a resident of Plot No.189, Anjani Marg, Hanuman Nagar Extension, Jaipur earlier working as Addl. Director General of Police, Rajasthan.

...Applicant.

(By applicant in person)

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, Government of India, North Block, Central Secretariat, New Delhi-110001.
2. State of Rajasthan through Chief Secretary Government Secretariat, Jaipur-302005 (Raj.)
3. Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur-302005 (Raj.)
4. Ajit Singh, The then Director General of Police, Rajasthan (since retired), Residential Address: c/o Col. Raj Singh r/o Surya Niketan, C-11, Jai Singh Highway, Bani Park, Jaipur, Rajasthan PIN – 302016.

...Respondents.

(By Advocate: ShriRajendraVaish for respondent No.1,
Shri V.D.Sharma for respondents No.2 & 3
None for respondent No.4.)

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ORDER**Per: Dinesh Sharma, Member (A):**

In this OA the applicant, who was a member of Indian Police Service (RJ-1989 Batch), has prayed for quashing the order dated 29.03.2018 (Annexure A/1) by which he has been prematurely retired from government service under Rule 16(3) of All India Services (Death-cum-Retirement Benefits), Rules, 1958 (hereinafter called as the "AIS (DCRB) Rules"). At the time of his retirement, he had been working in the rank of Additional Director General of Police since 01.01.2014. The applicant has challenged this order mainly on the following grounds (mentioned in the OA/rejoinder and during the arguments when the applicant argued his own case without the aid of any counsel):-

a) The order has been issued without following the detailed guidelines prescribed in this regard by the DoP&T by their order dated 28th June, 2012 (Annexure A/4). Under these guidelines, only persons of doubtful integrity or those who have outlived their utility should be compulsorily retired. The guidelines also provide that no one who is to retire within one year should be retired using this Rule. The list of persons considered by the Review Committee (constituted for the purpose of recommending who should be retired under Rule 16(3) of AIS (DCRB) Rules, Annexure A/3) included a

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few persons who were going to retire within the same year. This shows total non-application of mind by all who processed this matter. The Review Committee also ignored other guidelines, e.g. that the conduct should be unsatisfactory for the immediate past 5-6 years. The committee considered the "Good" and "Very Good" ACRs of the applicant as "Average" and "Weak" in comparison with others, which is wrong and is in clear violation of the guidelines.

b) The competent authority has followed the advice of the Review Committee without any independent application of mind. This amounts to delegating the satisfaction of the competent authority to this Review Committee, which is not correct.

c) The Review Committee was prejudiced against the applicant. This prejudice is clear from the fact that while there were a number of cases before this committee, it has examined only the case of the applicant in detail while proposing action against his continuance. The applicant alleges there were serious cases of criminal conduct/misconduct/corruption against a number of persons in that list. Proposing no action against them and singling him out for compulsory retirement is a sign of prejudice against him.

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d) Several instances of misconduct mentioned in the recommendations of the Review Committee, on the basis of which the Review Committee has arrived at their decision, are factually incorrect. Out of the four cases in which FIR is said to have been lodged against the applicant, 2 cases were already closed with an FR. No chargesheet has been filed in the third. The fourth case is still pending. There are no HRA dues pending from him and he is not in possession of a second government accommodation as alleged. The allegations of misconduct (misbehaviour with Telangana Governor/ unauthorised press conference, etc.) are wrong and some of these are based on newspaper reports, which should not have been relied upon. There was no misbehaviour on part of the applicant in asking the Governor a question about the RTI Act and the Governor was at fault in reacting the way he did. The charges of misbehaviour with a superior officer are driven by malice that the superior officer (Respondent No. 4) carried against the applicant since the applicant came in the way of the superior officers corrupt actions. Briefly put, the applicant has challenged all the grounds except for his reaction against his transfer from Dungarpur, which he accepts, was an over-reaction at the beginning of his career, on account of his being

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young and over-zealous. This incident which happened decades back, should not have been considered relevant for retiring him prematurely.

e) The grounds given by the Review Committee for recommending premature retirement are clearly stigmatic in nature. These could have been grounds for a disciplinary action, where the applicant would have had an opportunity to defend himself. Using Rule 16(3) of AIS (DCRB) Rules, to remove a person on these grounds, is an abuse of these provisions, as settled in various pronouncement of the Hon'ble Court.

f) One of the Review Committee members, ShriAjit Singh, DGP, (Respondent No. 4) had malice against the applicant, as the applicant had stood in his way, when ShriAjit Singh, the then D.G.(Jails), wanted to pursue some purchase deals which the applicant found to be against the rules.

2. The applicant has cited a number of cases decided by the Hon'ble Apex Court/High Courts in support of his arguments (the applicant has filed a 441 page argument note including a copy of most of these decisions). These cases are listed below. During his arguments, he especially mentioned the decision in the cases of Baldev Raj Chaddha & Union of India & Others, 1981 AIR 70; Baikuntha Nath Das

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and Another vs. Chief District Medical Officer, 1992 AIR 1020; Brij Mohan Singh Chopra vs. State of Punjab, 1987 AIR 948; A.M. Chauhan vs. Union of India & Others, 2006 (92) SLJ 303 CAT; Nand Kumar Verma vs. State of Jharkhand & Others; 2006 (4) JCR 560 Jhr; J.D. Shrivastava vs. State of M.P. Others 1984 AIR 630; S.R.Upadhyay vs. State (High Court of Chhattisgarh WPS No.2488/2005) and S.R. Venataramana (1979 AIR 49) mainly to support his arguments against using old, obsolete and less relevant records; using the process of compulsory retirement as a punitive measure, citing newspaper reports to arrive at conclusions, and basing decision on incorrect or non-existing facts, etc. The list of cases given in the argument note (enclosing photocopies of these decisions) is as follows:-

1. Kamta Singh vs. State of U.P. and Anr.
2. Brij Mohan Singh Chopra vs. State of Punjab
3. A.M.Chauhan, I.P.S. vs. Union of India (UOI) & Ors
4. Nand Kumar Verma vs. State of Jharkhan & Ors
5. Shamim Ahmed Laherwal vs. State of J.K. & Ors.
6. M.P.State Dairy Cooperative Federation vs. Rajnesh Kumar Jaminder
7. R.L.Butail vs. Union of India & Ors
8. Baldev Raj Chaddha vs. Union of India
9. Baikunth Nath Das and Anr vs. Chief District Medical Officer Baripada
10. S.R.Upadhyaya vs. State
11. Union of India Etc vs. M.E. Reddy and Anr.
12. Gian Singh Mann vs. Punjab and Haryana High Court.
13. Shyam Lal vs. State of Uttar Pradesh
14. Union of India vs. Col.J.N.Sinha & Anr
15. High Court of Judicature at Patna vs. Ajay Kumar Srivastava and Ors.
16. State of Gujarat vs. Umedbhai M.Patel

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17. Y.N.Krishna Murthy vs. Karnataka Silk Industries
18. J.D.Srivastava vs. State of M.P. & Ors.
19. Jagdish Mitter vs. Union of India
20. Anoop Jaiswal vs. Government of India & Anr
21. Allahabad Bank of Officers Association And Another vs. Allahabad Bank And Others
22. Ghulam Mohammed Lone vs. State of J.&K.
23. S.M.Thirunavukkarsu vs. Secretary to the Govt.
24. E.P.Royappa I.A.S. vs. State of Tamilnadu and Anr.
25. High Court of Madras vs. R.Rajiah and K.Rajeswaran
26. State of Gujarat & Anr vs. Suryakant Chunilal Shah
27. Union of India and Anr. vs. Mahendra Kumar
28. Bodu Tarmamad vs. Dt.Supt. of Police, Jamnagar
29. Golam Mohiuddin vs. State of West Bengal
30. Naresh Chandra Sharma vs. State of U.P.
31. Smt.Kabootra Devi vs. State of Uttar Pradesh.”

3. The respondents (Both the Central and the State Government) have filed their written statements denying the allegations made in the OA. They have stated that the applicant has been prematurely retired, by orders of the competent authority, in the public interest, following the rules and the procedure prescribed for such retirement. The Review Committee constituted for this purpose had members, (including the DGP against whom the applicant has alleged malafides) in their official capacity and the process cannot be said to be vitiated only because the applicant has thrown some baseless charges of bias against one of the members. There has been no prejudice against the applicant and there is no stigma attached in a compulsory retirement under Rule 16(3) of the AIS (DCRB)

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Rules. There had been various instances of misdemeanour by the applicant and therefore his retirement under the abovementioned rules is fully justified and should not be interfered with.

4. The Learned counsels for the respondents cited cases of Ram MurtiYadav vs. State of Uttar Pradesh and Another, (2020) 1 SCC (L&S) 245; Secretary Management Committee BSPMG College,Roorkee Vs. Dr.Samrat Sharma & Others (Civil Appeal No.6189 of 2019); Roop Singh Vs. Union of India & Others WLC (Rajasthan) 2006 (5) in support of their arguments that the decision making process, and not the decision itself, should be a subject matter of judicial review. The case of Rajasthan High Court Vs. VedPriya&Anr. 2020(2) SCT 423 was cited to support the argument that conduct other than that reflected by the ACRs could form a part of subjective satisfaction.

5. We have gone through the pleadings and heard the arguments of the applicant (appearing as party in person), and the learned counsels of both the Union of India (ShriRajendraVaish) and the State Government (Shri V.D. Sharma). The Applicant argued that the action against him was arbitrary, mala-fide, against the Government guidelines and a stigmatic exercise which amounted to abuse of the provisions relating to the premature retirement, for the sole

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purpose of getting rid of him without following the due procedure of disciplinary enquiry. The learned counsel for the Union of India stressed on their being no scope of judicial review of the decision, since there was no flaw in the decision making process. The Tribunal should not substitute its judgment for the decision of the competent authority which has been taken after following due procedure. The decision is that of the competent authority, and the review committee's recommendations are only recommendations. This subjective satisfaction of the competent authority, following the prescribed procedure (none of which has been seriously challenged by the applicant) cannot be questioned by this Tribunal. The learned counsel appearing for the State Government argued that the applicant has not sought the relief of quashing the recommendations of the Review Committee, which is the basis on which the decision to retire him prematurely has been taken. The Review Committee had considered a number of facts brought before it and the committee had 5 members only one of whom has been alleged to have mala fides against the applicant. The involvement of the applicant in the incidents mentioned in the report has not been denied by the applicant and he has only sought to justify his conduct with respect to those incidents. The Respondent No. 4, against whom mala fides have been alleged, was part of the committee by way of his

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holding the office of the DGP at that time, He, too, has filed a reply on 21.07.2020, denying these allegations. The applicant objected to having this reply on record since, according to him, it was filed after the beginning of the hearing of the OA.

6. We have gone through the pleadings and heard the arguments of all the parties at length. The main issue to be decided is whether the premature retirement of the applicant under Rule 16 (3) of AIS(DCRB) Rules, 1958, by order dated 29.03.2018 (Annexure A/1), based on the recommendations of the Review Committee (Annexure A/3) is correct. Another fundamental issue, most closely connected with this issue, is the legal issue about whether, as argued by learned counsel for the respondent GOI, this Tribunal can only look into the procedural aspect of the decision making exercise and not go into the correctness of the decision itself.

7. Before discussing these issues, we reproduce here the impugned order dated 29.03.2018 (Annexure A/1) and the Minutes of the Review Committee on which this order is based (Annexure A/3), as these are the basic documents questioned in this OA:-

“In exercise of the powers conferred under sub-rule 3 of Rule 16 of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958, the President in

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consultation with the State Government of Rajasthan hereby requires Shri Indu Kumar Bhushan, IPS (RJ:1989), a member of the Indian Police Service, borne on the cadre of Rajasthan, who has completed 25 years of qualifying service, to retire in public interest with immediate effect by giving three months' pay and allowances in lieu of notice.

2. A cheque for a sum equivalent to the aggregate amount of his pay and allowances for a period of three months calculated at the same rate at which he was drawing immediately before the date of this order is enclosed."

"MINUTES OF THE MEETING OF THE REVIEW COMMITTEE CONSTITUTED UNDER RULE 16(3) OF ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFITS) RULES, 1958.

The meeting of Review Committee constituted under rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rule, 1958 to review the performance of the IPS Officers borne on the cadre of Rajasthan was held in Jaipur on 31.10.2017 & 01.11.2017 under the chairmanship of the Chief Secretary in his chamber. The following were present:

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| 1. Shri Ashok Jain
Chief Secretary
Government of Rajasthan, Jaipur | Chairman |
| 2. Shri Ajit Singh, IPS
Director General of Police,
Rajasthan, Jaipur | Member |
| 3. Shri Vijay Kumar Singh, IPS (RR:84)
Director General,
Home Guards,
Government of Madhya Pradesh, Bhopal | Member |
| 4. Shri Sudarsan Sethi
Addl.Chief Secretary to Government,
Rural Development & Panchayati
Raj Department, Rajasthan, Jaipur | Member |
| 5. Shri, Deepak Upreti, IAS
Principal Secretary to Government
Home Department
Government of Rajasthan, Jaipur | Member |

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The Review Committee was convened to carry out screening of regular and deferred cases (which were decided to be deferred in the meeting held on 9th May, 2016). After going through the guidelines it was pointed out that the prior approval of Government of India under point number 5.13 had not been obtained as per guidelines of DOPT dated 28th June, 2012. It was therefore decided that the matter be referred by DOPT for seeking permission of the Competent Authority in terms of the guidelines for conducting the review of IPS cadre of Rajasthan.

After the receipt of the permission of Competent Authority vide Letter No.30012/15/2016-IPS-II dated 31.10.2017 the meeting was reconvened on 1st November, 2017.

The Review Committee was informed that every State Government is required to carry out intensive review in respect of:-

- (i) All officers who have completed 15 years of qualifying service;
- (ii) All officers who have completed 25 years of qualifying service or attained the age of 50 years, whichever is earlier, subject to the following conditions;
 - (a) An officer should have completed minimum 15 years of qualifying service;
 - (b) In the case of State Service Officers appointed to an All India Service by promotion or by selection, they should have completed a minimum of 5 years of actual service in the respective All India Service.
 - (c) Additionally, there may be officers who may have completed 16 years or more of qualifying service but their review was not carried out. Therefore, a review is required to be carried out by the State Governments in respect of the officers who have completed qualifying service of 16-23 years.

The Committee was informed that intensive review to be carried out as per the provisions of All India Services (Death-cum-Retirement Benefits) Rules, 1958. The provisions of rule 16(3) read as under:-

“The Central Government may, in consultation with the State Government concerned, require a Member of the

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Service to retire from Service in public interest, after giving such Member at least three month's previous notice in writing or three month's pay and allowances in lieu of such notice:-

- (i) after the review when such Member completes 15 years of qualifying service or
- (ii) after the review when such Member completes 25 years of qualifying service or attains the age of 50 years, as the case may be; or
- (iii) if the review referred to in (i) or (ii) above has not been conducted, after the review at any other time as the Central Government deems fit in respect of such Member.

The Committee was informed that the detailed procedure for review has been laid down by DOPT, Government of India letter No.25013/02/2005-AIS II dated the 28th June, 2012. The Committee was further informed that the State Government is required to follow the general principles and procedure contained in the letter cited above.

The Committee was informed that while the entire service record of an officer should be considered at the time of review. If an officer had been promoted to a higher post during the said period of 5 years, the service in the higher post shall receive greater emphasis. If, during the aforesaid period of 5 years, there is evidence of deterioration in efficiency and unsatisfactory performance, the Review Committee shall examine entire service record and arrive at a total picture about the suitability or otherwise of the officer for further retention in Service.

The Committee examined the records of the following IPS officers:-

S NO	NAME OF OFFICER	BATCH	DATE OF BIRTH	DATE OF APPOINTMENT
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Completed Service 25 Years/attained age of 50 yrs (As on 01-07-2017)

1.	SHRI DALPAT SINGH DINKAR	RR:86	15/09/1958	28/08/1986
2.	SHRI BHUPENDRA KUMAR DAK	RR:89	05/04/1964	21/08/1989
3.	SHRI INDU KUMAR BHUSHAN	RR:89	30/12/1965	21/08/1989
4.	SHRI UMESH MISHRA	RR:89	01/05/1964	20/08/1990
5.	SHRI K.NARSIMHA RAO	RR:88	01/07/1960	22/08/1989

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6.	SHRI DHARAM CHAND JAIN	RR:91	15/10/1963	15/09/1991
7.	DR. RAVI PRAKASH MEHADRA	RR:90	13/06/1965	16/09/1989
8.	SHRI A.PONNUCHAMY	RR:91	17/05/1965	23/09/1991
9.	SHRI SAURABH SRIVASTAVA	RR:91	21/04/1963	22/12/1991

S NO	NAME OF OFFICER	BATCH	DATE OF BIRTH	DATE OF APPOINTMENT
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Completed Service 15 Years as on 01-07-2017)

1.	SHRI THANGKHALAL GUTE	RR:92	20/04/1961	11/10/1992
2.	SHRI SUNIL DUTT	RR:93	14/08/1964	04/09/1994
3.	SMT SMITA SRIVASTAVA	RR:95	02/06/1970	04/09/1995
4.	SHRI ANAND KUMAR SRIVASTAVA	RR:94	13/05/1967	05/09/1995
5.	SHRI DINESH M.N.	RR:95	06/09/1971	04/09/1996
6.	SHRI PONUGUMATLA RAMJEE	RR:98	06/07/1970	07/09/1998
7.	SHRI H.G.RAGHAVENDRA SUHASAA	RR:01	17/05/1972	02/09/2001
8.	SHRI PRAFULLA KUMAR	RR:01	26/12/1974	26/12/2001

**IPS OFFICERS (PROMOTED FROM RPS) AS ON 01.07.2017
(WHO HAVE COMPLETED 5 YEARS IN IPS)**

S NO	NAME OF OFFICER	BATCH	DATE OF BIRTH	DATE OF APPOINTMENT
1.	SHRI K. BAHADUR SINGH KAPOOR	SP:98	20/03/1958	01/01/2008
2.	SHRI SAWAI SINGH CHAUDHARY	SP:01	01/02/1958	01/02/2010
3.	SHRI S.N.KHINCHI	SP:01	25/02/1959	01/02/2010
4.	SHRI RAJESH MEENA	SP:01	10/11/1967	01/02/2010

Committee examined APAR dossiers, personal files and other available records/documents of all the officers. On perusal of APARs of Shri Indu Kumar Bhushan, it was found that overall grading of Shri Indu Kumar Bhushan ranges from "Good" to "Very Good" and was quite weak compared to other Officers. After perusal of all the available record, Committee especially thought it appropriate to check records related to Shri Bhushan in detail in view of his average performance as reflected in his ACR/APAR as well as other documents. From the records, the Committee noticed some of the incidents reflecting the improper, unusual & unwarranted behaviour of Shri Indu Kumar Bhushan as follows:

- (1) He used unparliamentary language with the GAD Officers and the then Special Secretary, GAD sought an apology from him.

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- (2) Vide Order dated 06-07-1999, he was transferred out from the post of S.P.Dungarpur. On his transfer from Dungarpur he wrote a letter to Hon'ble C.M. threatening to commit suicide.
- (3) Shri Indu Bhushan prematurely repatriated to Rajasthan Cadre from ITBP and the request of Rajasthan Govt. to post him at some other post on Central Deputation was also turned down by GoI.
- (4) Unparliamentary language used against the then D.G.Jails, when asked to come office in time.
- (5) Shri Indu Bhushan was posted as ADG (Jails) from 22.06.2015 to 07.09.2015 during this tenure serious reports of misconduct & misbehaviour against him were sent by D.G.Jails.
- (6) He was repatriated to the state from the SVPNPA during the MCTP phase V training from reasons of indiscipline as he used unparliamentary language with the Governor of Talangana. (Times of India, Sep.21).
- (7) He did not pay House Rent while staying in Government accommodation in RPA from 26 Dec. 2011 to 29 Feb.2016. A recovery order of Rs.1,45,323/- was issued which has not paid till now. He also unauthorisedly occupied an extra house in RPA and did not pay rent for over 13 years.

Though there is no official record, but the news published in various newspapers about his behaviour from time to time also reflect the unusual and irresponsible behaviour of Mr. Indu Bhushan and gives an insight into the mind and personality traits of the Officer. The details of these are as under:

- (1) Threatened a person with a revolver weapon at Police Station, Sindhi Camp, Jaipur.

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- (2) Abused & levelled baseless allegations against a fellow IPS officer, during a presentation on social media being given by a Delhi firm which tarnished image of IPS officers in front of media as well as other colleagues. (Times of India, June 16, 2017, Rajasthan Patrika June, 2016 Page-2).
- (3) Recently he also conducted a Press Conference which is violation of Circular No.F.3(I)DOP/Inq/2004 dated 12.10.2017.

Further the Committee was informed that following criminal cases have been registered against him:-

- (a) 25 Aug 2015 – FIR 813/15 u/s 504 IPC, 3(i)(x) SC/ST Act, PS, Vaishali Nagar, Jaipur (South) (Misbehaving with Dr. Kamlesh Kumar, I/C Central Jail, Jaipur) – In this case FR has been given but the complainant has filed a protest petition.
- (b) 21 April 2015 – FIR 325/15 u/s 374, 384 IPC, PS, Vaishali Nagar, Jaipur (South) (Took away vehicle and misbehaved with Labour who was working at his house) – Closed.
- (c) 10 May 2014 – FIR 591/14 u/s 341, 323, 34 IPC, PS, Behrampore, Distt. Murshidabad, WB (Harassing and injuring workers who were carrying out election rally with due permission). Chargesheet has been filed in this case.
- (d) 22 July 2013 – FIR 202/13 u/s 341,323, 504, 379 IPC, 3 SC/ST Act, PS, Shastri Nagar, Jaipur (North) regarding misbehaving, beating and injuring Ct.Driver Gopal Meena 5372). In this case order for charge sheet has been issued.

After examining all records of the above officers the Committee recommends as follows:-

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with the guidelines in the decision making process, we, cannot avoid going into these issue of facts. These are dealt with in the following paragraphs.

9. The first major issue raised by the applicant is the issue of mala-fides on the part of Respondent No. 4, the then DGP of Rajasthan and a member of the Review Committee. He has given detailed account of how he stood in the way of that respondent's allegedly corrupt ways and hence might have incurred his wrath. The applicant has also argued that Respondent No. 4 has not specifically denied his allegation of mala-fides against him by filing a separate reply in time. The late denial cannot be taken on record. We agree with this argument of the applicant and find the filing of reply at a late stage inappropriate. Therefore, no cognizance will be taken of it. The other respondents have argued that the Respondent No.4 was only one of the members of the Review Committee. The whole process cannot be vitiated only because the applicant has thrown some charges of malice against this one member, without actually showing any evidence to prove this malice. Mere throwing of charges of mala-fides and giving some possible reasons why there could be mala-fides, is not equal to proof of mala-fides. The applicant has also not shown anything to support that the decision of the Review Committee was entirely influenced by

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this one person's alleged malice against him. The respondents also argued that out of the seven incidents mentioned in the Minutes of the Review Committee, only one related to the time when the applicant worked under the Respondent No.4. Thus, it would be wrong to presume malafides or prejudice on the part of the whole Review Committee just because, for a brief period, the applicant worked under one of the members and had alleged differences with him. We agree with the arguments of the respondents. There is not even a charge of mala-fides against any of the other members or the chairperson of the Review Committee. There are no mala-fides alleged against the officers of the decision-making authority, the Government of India, or the Government of the State (other than Respondent No.4). There is no doubt that in his capacity as the head of the police force, and also having worked as immediate boss of the applicant, the Respondent No. 4 would have known the applicant more closely, and may have also formed an opinion about him. However, these facts alone cannot lead to a conclusion that the whole decision was driven by his mala-fides against the applicant. There is neither any allegation nor any proof to show that the whole decision making process was driven by just by one person (Respondent No 4). It is also not established that other members of the committee and the competent

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authorities of the two governments (The GOI and the Govt of Rajasthan) blindly followed an allegedly biased advice of respondent no. 4. Hence, we cannot hold the decision bad only because the applicant has thrown charges of malafides against one of the members of the review committee.

10. The other major ground for challenging premature retirement, is the alleged not following of the guidelines (Annexure A/4) and the (in)correctness of facts minuted by the Review Committee. We have gone through these guidelines. The guidelines lay emphasis on retiring officials, in public interest, on grounds of lack of integrity, inefficiency and ineffectiveness, for which, while looking at the whole record, the recent records, including a recent promotion, should be considered more relevant. Persons whose records are "Average" or just "Satisfactory" should be seen as a sign of plateauing and therefore fit candidates for premature retirement. No one should be considered for premature retirement in the last year of their service unless it is for integrity reasons. The applicant has argued that not a word doubting his integrity has been mentioned in the minutes. He has also questioned the propriety of considering a two-decade old incident of transfer from Dungarpur, ignoring his recent promotion in 2014. He has questioned terming his "Good" and "Very Good" APARs as average. He has also

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termed the incidents mentioned in the Review Committees decisions as factually inaccurate. While broadly agreeing with the principle of non-interference in matters of subjective satisfaction of a competent authority, we have gone through these claims of the applicant to see if there has been any miscarriage of justice by non- application of mind, mistake of facts or serious procedural error because of not following of the guidelines. We find that the committee has, after quoting the guidelines, given detailed reasons for arriving at their finding after examining the records of all the candidates whose cases were put before them for review. Not much is mentioned about other officers other than that their records were perused, the APAR recordings of the applicant were found to be "weak" in comparison with them, and that it was recommended to continue others in service, while recommending premature retirement for the applicant. The applicant has argued that this amounts to pre-judgment by the Review Committee. We, too, feel that the decision of the Review Committee could have been better minuted by giving more details about other persons under review. However, we do not agree with the argument of the applicant that it is a sign of pre-judgement against the applicant. It could also be due to adopting a style of writing minutes where reasons are shown only for a decision that is different from a normal course of action (in this case, of

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continuing officers in service). Regarding factual incorrectness of incidents cited as instances of applicant's misbehaviour, the applicant, in most of these cases, has not denied the actual happening of the alleged events. He has either justified his conduct (e.g. of alleged misbehaviour with Hon'ble Telangana Governor or with his superiors or in relation to his conduct during election duty etc); or quoted later events (closure of cases/ payment of House Rent Dues); or dismissed them as false being based on newspaper reports. Thus, there appears to be no serious mistake in the facts listed which would justify quashing the decision on ground of mistake of fact. While it is true that there is no allegation of lack of integrity by the applicant, the application of Rule 16(3) of AIS (DCRB) Rules is not restricted to removing only those who suffer from lack of integrity. We find that the committee's assessment of the whole career of the applicant is in line with the guidelines which suggest going into not only the APARs, but the whole conduct of the officer to assess his effectiveness and efficiency. The incidents listed include not only older instances of apparent misbehaviour but also more recent ones (e.g. incidents at a training institute leading to his expulsion from the training and the incidents during election duty leading to cross FIRs), leading to a suspicion of a continuing malaise. For all these reasons, we cannot agree

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with the applicant's contention that the Review Committee has not followed the guidelines, or, had based its findings on grossly wrongly reported facts, or, were prejudiced against the applicant.

11. The impugned order dated 29.03.2018 (Annexure A/1) is simply an order of premature retirement which does not involve any stigma of the type which a punishment of compulsory retirement under the provisions of the conduct Rules involves. It has been laid down in a number of judicial pronouncements (many of them listed in para 7 above) that the provisions related to premature retirement should not be used as a punitive measure where it would be more appropriate to conduct an inquiry, which gives full opportunity to a charged officer to defend oneself. The applicant has argued that in this case, the facts mentioned in the Review Committee's minutes are serious enough to cause a stigma and therefore, an inquiry should have been held instead of retiring him prematurely. We have already expressed our reluctance to go into the subjective satisfaction of the competent authority on grounds other than those already mentioned. The learned counsel for the respondents (State of Rajasthan) has argued that the applicant has nowhere sought the relief of quashing the recommendations of the Review Committee. What he has

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challenged before us is the order of premature retirement, simpliciter, and it obviously, does not involve any stigma. The applicant argued that the challenge to the Review Committee's recommendations is "implicit", even though not specifically sought in the reliefs. Technicalities apart, the Review Committee's recommendations are apparently based on the evaluation of the overall career of the officer, citing a series of incidents to judge the applicant's suitability for (dis)continuance. It does not, prima facie, appear to be a case for proceeding with any particular disciplinary action for any specific breach and hence, we do not think this case falls into the category of cases where it would have been more appropriate to start a disciplinary proceeding.

12. Hence, to repeat, while it is not for this Tribunal to go into the subjective satisfaction of the competent authority and to substitute it with our own judgment, we have examined the matter closely to see if there is any violation of any law, procedure, or of relevant judicial verdicts on this matter. This was done in order to rule out any possible miscarriage of justice due to the subjective satisfaction of the competent authority being affected by extraneous facts, incorrect reporting of facts or due to mala-fides. As explained at length in the previous paras, we have not found any violation of laws or rules or any other lapse in the

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procedure serious enough to warrant quashing the decision taken by the competent authority to retire the applicant. The O.A. is therefore, not allowed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/