

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1269/2011

Order Reserved on:08.08.2016
Order pronounced on 19.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K.N. Shrivastava, Member (A)

1. Smt. Durgesh Nandini
Aged about 57 years
(Widow of Late Sh. Vijendra Kumar)
R/o 1/562, Ruchi Khand II
Sharda Nagar Yojana, Lucknow-226002.
2. Km. Asmita Prasad,
Aged about 31 years
(Daughter of Late Sh. Vijendra Kumar)
R/o 1/562, Ruchi Khand II
Sharda Nagar Yojana, Lucknow-226002. . . Applicants

(By Advocate: Sh. S.K.Gupta with Shri Vikram Singh)

Versus

1. Union of India
Through the Secretary to the Govt. of India
Ministry of Personnel, Public Grievances & Pension
Dept. of Personnel & Training
New Delhi.
2. State of Himachal Pradesh
Through its Chief Secretary
Govt. of Himachal Pradesh
Shimla.

3. Smt. Asha Swaroop
 Formerly Chief Secretary
 Govt. of Himachal Pradesh
 Shimla. ... Respondents

(By Advocate: Sh. R.N.Singh for Sh. R.V.Sinha for R-1 and Sh. Rahul Singh and Sh. Varun Lal for R-2)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant (Late Shri Vijendra Kumar), a 1987 batch Indian Administrative Service Officer of Himachal Pradesh Cadre, had filed the OA, seeking to quash the Annexure A1 Order No.2 (No.25013/01/2010-AIS II) dated 14.07.2010, issued by order and in the name of the President, whereunder, the applicant, who attained 50 years of age, was compulsorily retired from service in public interest with immediate effect, under sub-rule 3 of Rule 16 of the All India Services (Death-cum-Retirement Benefits), Rules, 1958 (in short, 1958 Rules).

2. Since, after the OA was filed, the applicant died, his wife and daughter were substituted as the applicants being his legal heirs, vide Order dated 08.08.2016 in MA No.2375/2016.

3. Heard Shri S.K.Gupta with Shri Vikram Singh, the learned counsels for the applicants and Shri R.V.Sinha with Shri R.N.Singh, the learned counsels for Respondent No.1 (UOI), and Shri Rahul Singh with Shri Varun Lal, the learned counsels for Respondent No.2, and perused the pleadings on record.

4. Shri S.K.Gupta, the learned counsel appearing for the applicants, in support of the OA averments, inter-alia, mainly raised the following grounds:

- a) Impugned order is violative of Para 4 of the Annexure A2, DoPT letter dated 27.05.2009.
- b) The criminal case filed against the applicant in FIR No.217/2005 had ended in clean acquittal on 17.07.2008 itself, but the Review Committee failed to consider the same.
- c) The Review Committee which considered the cases of the applicant and two others, namely, Dr. Desh Deepak and Shri S.C.Ahluwalia, in respect of Shri Ahluwalia, noticing that the inquiry against him with respect to the major penalty chargesheet dated 10.08.2009 is yet to be completed, felt that the case needs to come up for review after the disciplinary proceedings are completed by the Government, but whereas, in respect of the applicant though the disciplinary proceedings against the applicant were still pending, failed to take the same stand, and hence, the said action is discriminatory and violative of the Articles 14 and 16 of the Constitution of India.
- d) As per Annexure RJ-1, DoPT letter dated 31.07.1987 while considering a case of an All India Service Officer under Rule 16(3) of the 1958 Rules, the entire service record of that officer is required to be considered before passing any order

under the said Rule, but the respondents failed to comply with the same.

- e) Applicant was promoted during the relevant period, i.e., 2004-2009 and in view of the said promotion, the adverse record, if any, against the applicant, is required to be ignored, but the Review Committee failed to do so.
- f) In support of his claim, the learned counsel for the applicant placed reliance on the following Judgements:
 - i) State of U.P. v. C.M. Nigam, 1977 SCC (L&S) 535
 - ii) Baikuntha Nath Das & Anr. v. Chief Distt. Medical Officer, Baijpada & Anr., 1993 SCC (L&S) 521
 - iii) State of Gujrat v. Umed Bhai M Patel, (2001) 3 SCC 314.
 - iv) Nand Kumar Verma v. State of Jharkhand & Ors., (2012) 3 SCC 592
 - v) Rajesh Gupta v. State of J&K & Ors., (2013) 3 SCC 514
 - vi) K. Lal, IAS. V. Union of India (decided on 22.05.2001 by the Principal Bench, CAT)

5. Refuting the contentions of the applicant, the respondents submitted that all the requirements of Rule 16(3) of 1958 Rules, were complied with before passing the impugned order and hence, there is no illegality or irregularity in their action. The learned counsel appearing for the 1st Respondent-UOI placed reliance on the following decisions:

- i) Baikuntha Nath Das & Anr. v. Chief District Medical Officer, Baripada & Anr., (1992) 2 SCC 299.
- ii) K. Kandaswamy v. Union of India & Anr., (1995) 6 SCC 162

- iii) State of Gujrat v. Umedbhai M. Patel, (2001) 3 SCC 314
- iv) Pyare Mohan Lal v. State of Jharkhand & Ors., (2010) 10 SCC 693
- v) Rajasthan State Road Transport Corporation & Ors. v. Babu Lal Jangir, 2014(1) SLJ 64 SC.

6. Before advertizing to the various rival submissions, it is necessary to refer to the sequence of events of the case in brief.

a(i). In respect of certain charges, alleged against the applicant vide Charge Memorandum dated 01.04.1995, and after the inquiry conducted, the respondents imposed the penalty of compulsory retirement on the applicant, under the All India Services (Discipline & Appeal) Rules, 1969 vide Annexure R2 Order dated 10.06.1998. The applicant questioned the said order by filing OA No.497-HP-98 and the Chandigarh Bench of this Tribunal, by its interim order dated 23.06.1998, (Annexure A10-A), stayed the said penalty of compulsory retirement Order dated 10.06.1998. The said OA 497/HP/98, was finally disposed of by an Order dated 07.12.2000 (Annexure A8), as under:

"Since this Tribunal cannot reduce the punishment, but it can set aside the order of penalty, if it pricks the conscience of the court and the impugned order, in this case having been found to be shockingly disproportionate, the impugned order dated 10.06.98 (Anneuxre A-1) is set aside. It would however, be open to the authorities to pass a fresh order of lesser penalty on the applicant."

(ii) The Writ Petition No.572/2001 filed by the respondents against the aforesaid order was disposed of on 02.06.2011 by the Hon'ble High Court of Punjab & Haryana, as under:

"The petitioners approached this Court challenging the order dated 7.12.2000, passed by the Central Administrative Tribunal, Chandigarh. The matter pertains to the disciplinary proceedings initiated against the first respondent. The petitioner was imposed the punishment of compulsory retirement from service. That was set aside by the Tribunal, observing that the punishment is shockingly disproportionate and directed them to consider the matter afresh in the matter of imposition of lesser punishment.

2. It is seen that during the pendency of the writ petition, the appellants have passed the order, dated 14th July, 2010, which is produced as Annexure A-1 along with CMP No.10349 of 2010, whereby the petitioner has been retired in the matter, nothing survives in this writ petition. However, the submission of the learned counsel for the first respondent that liberty may be reserved to him to pursue the matter in appropriate proceeding is recorded. The writ petition is disposed of without prejudice to the liberty to first respondent, as above. The pending applications, if any, also stand disposed of."

b) The Chargesheet dated 13.10.1995 issued to the applicant, after considering his reply thereto, was withdrawn, however, he was administered a simple warning to be more careful in future, vide Annexure 9 Order dated 02.12.1995.

c) In pursuance of a major penalty chargesheet dated 06.01.1996, after following due procedure, the applicant was issued with a warning vide Annexure A/10 dated 22.09.2007, by taking a lenient view.

(d) The Criminal Case No.1-2 of 2006 filed against the applicant, under Sections 353/332/452/506-II(B) of IPC, Section 30 of Arms Act, and Section 3 of Prevention of Damages to Public Property Act, vide FIR No.217 of 2005, dated 26.07.2005, PS Sadar, Shimla, was ended with acquittal of the applicant by an Order dated 17.07.2008 of the Chief Judicial Magistrate Court, Shimla, as under:

"23. Viewed from any angle, the entire evidence as brought, is neither cogent nor satisfactory nor points out towards guilt of the accused inevitably and exclusively.

Most of the witnesses had been suspended and were found, hatching a conspiracy against the accused with Union leader. No one was discharging their official duties. No one has seen the accused coming with gun towards the office of PW-I. No damage was done by the accused to the public property in the presence of any person. Material witnesses have not been examined. The accused was custodian of the office, hence, his presence in the office cannot be viewed as criminal trespass. Hence, an interference is inescapable that the prosecution has miserably failed to establish guilt of the accused at home beyond shadow of all reasonable doubts. All points are accordingly decided against the prosecution.

FINAL ORDER

24. In view of my aforesaid discussion and findings, the accused is acquitted for the commission of offences punishable under sections 353, 332, 452, 506-II IPC, Section-3 of Prevention of Damage to Public Property Act and Section 30 of Arms Act....."

(e) In respect of the registration of aforesaid criminal case, applicant was placed under suspension on 27.07.2005 and the respondents issued another Annexure A10-A, Charge Memorandum dated 30.11.2005.

(f) The Committee on Review of IAS Officers under Rule 16(3) of 1958 Rules, in its meeting held on 14.09.2009, opined as under:

"Due to his doubtful integrity and lack of devotion to duty, the officer has not been given a substantive charge for a long time and is now without a posting since 09.06.2009.

The Committee felt that the officer has time and again shown his lack of devotion to duty and also his integrity has been doubtful. He has lost his usefulness to administration and is not contributing to public good at all. On the other hand the Government has been involved in unnecessary litigation by him. In view of the above facts the Committee recommends that Shri Virendra Kumar, IAS may be retired prematurely under Rule 16(3) of AIS (Death cum Retirement Benefits) Rules, 1958."

7. It is relevant to quote the Rule 16(3) of All India Services (Death cum Retirement Benefits) Rules, 1958, as under:

"16. Superannuation gratuity or pension.-

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16(3) The Central Government may, in consultation with the State Government concerned and after giving a member of the Service at least three months previous notice in writing, or

three months' pay and allowances in lieu of such notice require that member to retire in public interest from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice."

8. In **Nand Kumar Verma** (supra), while the appellant was working as Chief Judicial Magistrate, based on the report of the Inquiry Officer, the Disciplinary Authority, i.e., the High court, took a decision to compulsorily retire him from service in its administrative jurisdiction and accordingly a Notification was issued reverting the appellant from the rank of Sub-Judge (Civil Judge, Senior Division) to the lower post of Munsif (Civil Judge, Junior Division). The issue that fell for consideration before the Hon'ble Apex Court was as to whether the High Court was justified in passing the order of reversion and the order of compulsory retirement. The Hon'ble Apex Court, while observing:

"36. The material on which the decision of the Compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service."

and by considering various other decisions, allowed the appeal.

9. In **Umedbhai M Patel** (supra), while the respondent was working as an Executive Engineer, he was compulsorily retired invoking Clause (aa)(i)(1) of Rule 161(1) of the Bombay Civil Services Rules, 1959. The Hon'ble Apex Court after considering **Baikuntha Nath Dass, Allahabad Bank Officers' Association, Dulal Dutt**

and **J.D.Shrivastava**, summarized the principles relating to compulsory retirement as under:

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus :

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) compulsory retirement shall not be imposed as a punitive measure."

Thereafter, observing that there were absolutely no adverse entries in the respondent-confidential reports, and that the Review Committee did not recommend the compulsory retirement of the respondent, and on facts, said that the order of compulsory retirement was passed for extraneous reasons and accordingly dismissed the appeal.

10. In **Rajesh Gupta** (supra), while the appellant was working as Executive Engineer, on the basis of the recommendations made by the High Powered Review Committee, was compulsorily retired from

service. The Hon'ble Apex Court considering various decisions, including the **Baikuntha Nath Dass, Nand Kumar Verma and Umeshbhai M Patel**, and also after opining that the recommendation made by the High Powered Committee was indubitably arbitrary, allowed the appeal.

11. In **K. Lal** (supra), wherein the applicant also an IAS Officer and who was compulsorily retired under Rule 16(3) of the 1958 Rules *ibid*, a Coordinate Bench of this Tribunal observing that the procedure adopted for retiring the applicant therein, was nothing more than a short cut to get around the proceedings initiated, which have taken quite some time, till showing no signs of completion, though there is nothing on record to show that the delay in any way was caused by the applicant, allowed the OA.

12. In **Babu Lal Jangir** (supra), the respondent, a Driver of the appellant-Corporation, was compulsorily retired from service basing on a Screening Committee recommendation under the Standing Orders of the Corporation. The High Court held against the Corporation, mainly on the ground that adverse entries/minor misconducts of the respondent, related to 12 years prior to premature retirement, were taken into consideration, and there was no material whatsoever before the Review Committee, in the recent past, on the basis of which the requisite opinion could be framed that the premature retirement of the respondent was in public interest. It was also held that:

"24. The principle of law which is clarified and stands crystallized after the judgment in *Pyare Mohan Lal v. State of*

Jharkhand and Ors.; 2010 (10) SCC 693 is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this 'washed off theory' will have no application when case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration an earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.

25. Having taken note of the correct principles which need to be applied, we can safely conclude that the order of the High Court based solely on the judgment in the case of Brij Mohan Singh Chopra was not correct. The High Court could not have set aside the order merely on the ground that service record pertaining to the period 1978-90 being old and stale could not be taken into consideration at all. As per the law laid down in the aforesaid judgments, it is clear that entire service record is relevant for deciding as to whether the government servant needs to be eased out prematurely. Of course, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively. What is to be examined is the "overall performance" on the basis of "entire service record" to come to the conclusion as to whether the concerned employee has become a deadwood and it is public interest to retire him compulsorily. The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the Authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the Court to interfere in the exercise of its limited power of judicial review."

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28. It hardly needs to be emphasized that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non application of mind, malafide, perverse, or arbitrary or if there is non-compliance of statutory duty by the statutory authority. Power to retire compulsorily, the government servant in terms of service rule is absolute, provided the authority concerned forms a bonafide opinion that compulsory retirement is in public interest.(See: AIR 1992 SC 1368) "

13. The learned counsel for the applicant contends that in respect of Charge-sheet dated 01.04.1995, the respondents imposed a punishment of compulsory retirement on 10.06.1998 and the same was questioned by the applicant in OA No.497/1998, and the said order of compulsory retirement was stayed on 10.06.1998 and the OA was finally allowed on 07.12.2000, by setting aside the order of compulsory retirement by giving liberty to the respondent to pass a fresh order of lesser penalty on the applicant. Since no final order of penalty in respect of the said Chargesheet dated 01.04.1995 was passed, till the passing of the present impugned order of compulsory retirement, the said Chargesheet is very much pending, as on the date of the impugned order in this OA. The learned counsel further submits that in respect of Chargesheet dated 30.11.2005, also no penalty order is passed, till the date of the impugned compulsory retirement order. Placing reliance on Annexure A2, letter dated 27.05.2009 of the DoPT, the applicant submits that since the Chargesheets dated 01.04.1995 and 30.11.2005 are pending as on the date of the impugned order of compulsory retirement, the same is liable to be set aside.

14. The respondents contend that in respect of Chargesheet dated 01.04.1995, penalty of compulsory retirement was imposed on 10.06.1998 itself, and hence, it cannot be said that the said Chargesheet is pending. It is further submitted that in respect of Chargesheet dated 30.11.2005, since penalty of reduction of pay by

three stages was proposed, it cannot also be said that the said Chargesheet is pending.

15. The contention of the respondents in respect of the pendency of the chargehsheets, is unacceptable. Once, the penalty in respect of Chargesheet dated 01.04.1995 was set aside by the Tribunal in OA No.497/1998 on 07.12.2000, and that no fresh penalty order, as per the liberty granted by the Tribunal, was passed, as rightly submitted by the applicant's counsel the said Chargesheet cannot be said to be pending. Similarly, even as per the respondents themselves, no penalty order was passed in respect of the Chargesheet dated 30.11.2005 and the proposal of a penalty made in Minutes of a Committee cannot be said that a final order is passed and the Chargesheet is not pending. However, it is to be seen whether the pendency of Chargesheets/ Disciplinary Proceedings as on the date of the impugned compulsory retirement order issued under 1958 Rules, ipso facto, can make it void, in view of Annexure A2 DoPT letter dated 27.05.2009. The relevant para of the DoP&T letter dated 27.05.2009 (Annexure A/2) which was issued mainly to bring to notice of all the concerned about the observations of Hon'ble Supreme Court in

Umedbhai M. Patel case (supra), reads as under:

"4. While forwarding the proposal of premature retirement of any AIS officer to the Central Government, the State Government concerned should ensure that the disciplinary proceeding (if any) should be completed in all respect and that no proceeding is pending against the officer."

Perhaps, some of the principles summarized, in **Umedbhai M. Patel** (supra) at Para 11(vi) & (viii) i.e.,

11. (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable;

11 (viii) Compulsory retirement shall not be imposed as a punitive measure;

made the DoP&T to add the observation vide its letter dated 27.05.2009. In our view, Hon'ble Supreme Court did not mean to say that if a chargesheet/disciplinary proceeding is pending against an AIS Officer, order under Rule 16(3) of 1958 Rules cannot be passed at all. It only require the competent authority to apply its mind to which course, i.e., to proceed with the disciplinary action, if already initiated, or to pass an order under Rule 16(3), in the facts of a particular case, is more desirable and that the compulsory retirement order should not be passed as a punitive measure. It is relevant, in this regard, to refer to the latest Guidelines issued by DoP&T, vide its letter dated 28.06.2012 (No.25013/02/2005-AIS II), pertaining to passing of an order under Rule 16(3) of the 1958 Rules, when disciplinary inquiries are ongoing:-

"3. THE MATTERS TO BE KEPT IN MIND WHERE DISCIPLINARY INQUIRIES ARE ON GOING

3.1 In a case where on an alleged misconduct a departmental inquiry has been conducted and the stage has been reached for a decision by the competent authority on the punishment to be imposed, it would not be appropriate to issue, instead, an order of premature retirement. However, there may be cases where there is independent material to justify the premature retirement of an officer either on the grounds of inefficiency or lack of integrity, the Review Committees may in such cases formulate its recommendations. Further where no departmental inquiry has been initiated and the specific allegation of misconduct involving lack of integrity is only one fact on the service record of the officer, which has to be considered in toto, an order under Rule 16(3) can quite appropriately be passed if the same is otherwise justified. Each case has to be considered and decided on its own merits. In the case of **State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others** (AIS 1977 SC: 2411) it was observed:-

"We should hasten to add that when integrity of an officer is in question that will be an exceptional circumstance for which orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rules are fulfilled, apart from the choice of disciplinary action which will also be open to Government."

3.2 In the case of **State of Gujarat Vs. Umedbhai M. Patel** (Civil Appeal No.1561 of 2001, 3 SCCC 320, the Supreme Court has observed that:

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) "For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer".
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even un-communicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure."

In view of the above discussion, the pendency of a chargesheet or disciplinary inquiry does not, ipso facto, invalidate the order passed under Rule 16(3) of 1958 Rules. However, the Review Committee shall have to weigh the balance between both the actions, basing on the material available, and if satisfied that conditions to invoke Rule

16(3) are met, can recommend for passing an order under Rule 16(3) against an officer.

16. The learned counsel for the applicant further contends that though the Review Committee has to consider the entire service record of the applicant, before forming an opinion to retire the applicant compulsorily, and though the ACRs for the period from 1994-1995 to 2006-2007 were written but not considered and hence, the impugned order is liable to be set aside.

17. The other contention that though nothing is adverse with respect to the integrity of the applicant, the Review Committee opined that the applicant's integrity is doubtful and even if any adverse remarks in any of the ACRs of the applicant were recorded, the same shall have to be treated to have been washed off, as he was promoted subsequently.

18. The respondents while denying the said contentions would submit that in ACR for the period from 4/04 (April, 2004) to 10/2004 (October, 2004) the Reporting Authority had recorded that "*I am unable to certify his integrity and this should be separately investigated by appropriate authorities*". and hence, it cannot be said that there is nothing adverse with regard to his integrity. While relying on **Babu Lal Jangir** (supra), they contend that the "washed off" theory, i.e., on promotion the adverse entries prior thereto would have no relevance, will have no application, when a case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement.

19. As per the above referred various judicial pronouncements, the consideration and review of cases under Rule 16(3) of 1958 Rules, is dependent on the overall facts and circumstances of a particular case. Unlike, imposing a penalty for specified charges, the overall conduct, integrity, performance, efficiency, usefulness and necessity to continue in service are to be considered as a whole, before passing the order under Rule 16(3) *ibid*. Hence, punishment in pursuance of one chargesheet or acquittal in one criminal case, or a promotion cannot solely determine the overall view of the review committee while recommending or deferring with a particular case for action under Rule 16(3). Nothing specifically shown that the review committee not considered the overall facts and record of the applicant before recommending to take action under Rule 16(3). Accordingly, the contentions of the applicant mentioned at para 6(b) to (e) are rejected.

20. The order of compulsory retirement is neither punitive nor stigmatic and is based on subjective satisfaction of the employer and interference by way of judicial review is permissible only on the ground of non-application of mind, *mala-fide*, perverse or arbitrary or if there is non-compliance of statutory duty by the statutory authority, if the authority concerned forms a *bona-fide* opinion that compulsory retirement is in public interest. We do not find any valid ground to interfere with the impugned order, in the totality of the facts of this case.

21. In the circumstances, and for the aforesaid reasons, the OA is found to be devoid of any merit and accordingly, the same is dismissed. However, the respondents, shall release all the benefits, if any, payable in pursuance of the order of compulsory retirement dated 14.07.2010, if not already released, within three months, from the date of receipt of a copy of this order, as per rules. No costs.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/