

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2208/2017

Reserved on : 28.03.2018
Pronounced on : 05.04.2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Babulal Agrawal, IAS (CG:88),
S/o R. K. Agarawal,
Principal Secretary,
R/o "Samarth", New Timber Market,
Fafadi Raipur, Chhatisgarh.

... Applicant

(By Mr. Nidhesh Gupta, Senior Advocate and with him Mr. R. N. Singh, Mr. Amit Sinha, Mr. Vaibhav Pratap Singh and Mr. Somesh Tiwari, Advocates)

Versus

1. Union of India through Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001.

2. State of Chhatisgarh through its
General Administration Department,
Mahanadi Bhawan, Mantralaya,
Naya Raipur, Chhatisgarh.

... Respondents

(By Mr. Gyanendra Singh, Mr. Anniruddha P. Mayee, Ms. Charudatta Mahindra)

ORDER

Justice Permod Kohli, Chairman :

This OA has been instituted under Section 19 of the Administrative Tribunals Act, 1985 with the following prayer:

- “a) the order of DoPT vide which it has denied Vigilance Clearance to the Applicant and the same be given in terms of Office Memorandum no.104/33/2005 AVD.I New Delhi dated 29/10/2007 and 07.09.2011 thereby facilitating the Applicant’s Government of India deputation, further empanelment etc as per Service Rules and keeping in view the spirit of the All India Service to inculcate pan India vision among its members.
- b) Quash the order No.25013/02/2017-AIS.II dated 9.8.2017 (Annexure-A-2A impugned) passed by respondent No.1 and Order dated 11.08.2017 (Annexure-A-2B impugned), passed by respondent No.2 during pendency of the OA with all consequential benefits viz., continuity in service, pay and allowances with arrears thereof and seniority, etc.
- c) Issue an order/direction to Respondent No.1 Government of India to give the Applicant a suitable posting in Government of India and do the needful for Applicant’s further empanelment.
- d) Call for the original relevant records of respondents pertaining to the impugned order(s), including the original records of the respondents pertaining to the review of the services of the applicant after completion of 15 years, 25 years and also subsequently, including the one on the basis of which, the aforesaid orders dated 9.8.2017 (Annexure-A-2A) and 11.8.2017 (Annexure-A-2B) have been passed and peruse the same.
- e) Issue any order or direction as the court deems fit and proper.”

When the matter was taken up for hearing, Mr. Nidhesh Gupta, learned Senior Advocate appearing for the applicant, made a statement that he has instructions not to press the relief contained in para ‘a)’ at this stage. He further seeks liberty to avail the remedy as

and when so required at a later stage. Thus, the main challenge in the present OA relates to the order dated 09.08.2017 (Annexure A-2A) passed by the respondent No.1, and order dated 11.08.2017 (Annexure A-2B) passed by the respondent No.2 during the pendency of this OA. Vide order dated 09.08.2017, the applicant has been compulsorily retired on completion of 25 years of service and attaining 50 years of age, in public interest, in exercise of the powers conferred by sub-rule (3) of rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter to be referred as the Rules of 1958). Vide the second impugned order dated 11.08.2017, the State Government of Chhatisgarh has endorsed the order dated 09.08.2017 passed by the Central Government, ordering compulsory retirement of the applicant.

2. The factual matrix as emerges from the record is noticed hereunder.

3. The applicant is an IAS officer of 1988 batch (Chhatisgarh cadre) and has rendered 29 years of service. He was empanelled as Joint Secretary or equivalent level by the Government of India in 2007-08. It is stated that he is due to be empanelled as Additional Secretary, Government of India. It is further stated that he is left with another eight years of service and has a fair chance of occupying the

top post of Chief Secretary in the State Government. It is alleged that the applicant has been targeted by some of his colleagues without any basis. The applicant claims to be a permanent resident of Raipur belonging to a reputed business family for generations. His two brothers are industrialists in Raipur and are directors of a reputed firm, namely, M/s Prime Ispat Limited, engaged in manufacturing of steel products. It is further the case of the applicant that he has been discharging his duties and responsibilities with utmost sincerity, dedication and hard work. He claims to have earned outstanding ACR gradings throughout his career and earned promotions due to him from time to time. It is further stated that on the basis of his dedication, commitment towards his duties, his ability to provide influential leadership to his department and unimpeachable integrity, the applicant earned recognition not only in the country but also internationally for the work done by him in various departments of the State. He has referred to his performance as Secretary, Department of Health and Family Welfare, where he claims to have initiated a project known as "Mitnani Project" where a large number of community female volunteers were trained in various villages in the State to educate and address various health issues like diarrhea, RCH, institutional delivery etc. It is stated that with the successful implementation of such projects during his tenure, the infant

mortality rate came down from 95 to 64. The State Government nominated the said project for the United Nations Public Services Award. He also claims to have worked hard to achieve the status of Chhatisgarh as leprosy-free and polio-free State. He also claims credit for setting up the first and only medical college in the Bastar region, a Nexal infected area. Another achievement claimed to his credit as Secretary, Department of Labour, is the constitution of the Shram Kalyan Mandal under the Bhawan avam Anya Sannirman Karmkar Adhiniyam, 1996. This Board carries out various developmental activities for the development and upliftment of the labourers in the State, including providing medical insurance, sewing machines and other necessary articles in day-to-day life.

4. It is alleged that on account of his various achievements, the applicant's colleagues were envious of his performance and prompted false and frivolous information to the Income Tax Department. It is alleged that he was subjected to search by a team of the Income Tax Department in the year 2010. However, the Income Tax Department could not find any incriminating documents or unaccounted money. The Income Tax authorities seized a sum of Rs.7,73,400/- from the applicant and his wife. This amount was totally accounted for in the books of accounts of the applicant and his wife. Simultaneous searches and seizure operations were carried out

on the business premises of the brothers of the applicant. It is stated that as a consequence of the search, the assessing officer re-opened the assessment proceedings with regard to the applicant, his wife as also his children for last six years from 2004-05, and after detailed enquiry, levied a total payable tax demand of Rs.13,464/- on the applicant for the financial year 2007-08. The applicant preferred an appeal before the Commissioner of Income Tax (CIT) (Appeals) and the said demand was set aside vide order dated 13.05.2012. As a consequence of the order of CIT (Appeals), the Income Tax Department returned the seized cash with interest to the applicant. The Income Tax Department preferred an appeal before the Income Tax Appellate Tribunal against the order of the CIT (Appeals). The Appellate Tribunal rejected the appeal vide order dated 09.01.2017.

5. It is also the case of the applicant that the Income Tax Department hastened to send a preliminary report to the Chief Secretary, Government of Chhatisgarh on 11.02.2010, i.e., within less than a week of the search contrary to their own panchnama, to provoke the State Government to institute disciplinary action against the applicant. The State Government placed the applicant under suspension vide order dated 10.02.2010. However, on verification, no *prima facie* case was found and the suspension order was revoked by the State Government vide order dated 04.06.2010, and the proposed

charge-sheet for conducting the departmental inquiry was also dropped. The Income Tax Department again initiated wealth tax assessments for the last six years but found nothing against the applicant. Further, a preliminary report was sent by the Income Tax Department to the Economic Offences Wing/Anti Corruption Bureau (EOW/ACB) of the Government of Chhatisgarh to register case against the applicant. There was also adverse media coverage of the events. It is alleged that the EOW/ACB mechanically registered a case against the applicant vide FIR No.06/2010 dated 19.02.2010 under the Prevention of Corruption Act. Since there was no evidence against the applicant, the State Government filed a final closure report before the competent court. On account of false Income Tax raids, the applicant filed a writ petition bearing W.P.(T) No.1018/2011 in the Hon'ble High Court of Chhatisgarh at Bilaspur, challenging the aforesaid search and seizure, which is still pending.

6. It is also stated that having failed on all fronts, the detractors of the applicant further managed filing of a criminal case by writing a letter to CBI, Bhilai, which resulted in filing of another FIR, being case No.2010 RC 1242010A0009 dated 31.12.2010. This was done without the consent of the State Government, which was required under Section 6 of the Delhi Special Police Establishment Act, 1946. The CBI on completion of the investigation, filed a charge-

sheet in the court of ACJM, Raipur in November, 2011 after dropping the allegations under the Prevention of Corruption Act. Since this action was contrary to law, the applicant challenged the same in the High Court of Delhi in WP(c) No.8052/2011 challenging the jurisdiction of CBI. The Hon'ble High Court vide its order dated 18.11.2011 while issuing notice to the respondents stayed further arrest of the applicant. No charges have been framed till date in the aforesaid case. It is stated that the entire action of CBI was without jurisdiction as no consent of the State Government was obtained, as is required under law.

7. It is stated that CBI approached the State Government for issuance of sanction for prosecution of the applicant, but the State Government vide its communications dated 03.03.2014, 11.07.2014, 23.06.2015 and 03.08.2016 declined sanction for prosecution. The applicant has placed on record copy of letter dated 11.07.2014 obtained under RTI as Annexure A-10. The applicant has referred to letters of DOP&T whereby the proposal of CBI for sanction submitted to it was returned with advice to approach the State Government of Chhatisgarh. The applicant has specifically mentioned that the State Government considered the entire matter holistically and was pleased to grant promotion to the applicant in the HAG scale of Rs.67000-79000 vide its order dated 30.07.2015. The applicant was

promoted as Principal Secretary with retrospective effect and payment of arrears.

8. It is stated that despite causing harassment and victimization of the applicant, CBI again conducted search and seizure operations at the residence of the applicant on 18.02.2017 in a bid to clamp fresh concocted offence, and based upon the said search and seizure an FIR was registered u/s 120B IPC and section 8 of the Prevention of Corruption Act on 18.02.2017 at the headquarters of CBI at New Delhi. Again, no incriminating material was found against the applicant. The applicant has obtained copies of seizure memo and the notification dated 19.07.2012 under RTI (Annexure A-13). The applicant was issued notice dated 19.02.2017 u/s 41A CrPC asking him to make further statement at the Bhilai Office of CBI on 20.02.2017. The applicant complied with the notice. The applicant also made a representation giving all the details but was again issued another notice on 20.02.2017 to reach Delhi in CBI office on 22.02.2017. However, the CBI arrested the applicant illegally on 21.02.2017 from his residence at Raipur and took him to Delhi. The applicant was granted bail on 05.05.2017 by the court of Additional Sessions Judge, Patiala House, Delhi. The charge-sheet in this case has been filed which is pending and no cognizance has been taken so far. The applicant claims to have made representations to CVC, the

Hon'ble Prime Minister and the DOP&T, apart from filing two writ petitions, one before the High Court of Chhatisgarh and the other before the Delhi High Court. The Enforcement Directorate, Narpur registered an ECIR dated 10.01.2011 against the applicant alleging commission of offences u/s 3 and 4 of the Prevention of Money-Laundering Act, 2002, which is stated to be pending for the last six years.

9. The applicant applied for Central deputation under the Central Staffing Scheme in 2015. He required no objection and vigilance clearance from the State Government as well as vigilance clearance from DOP&T. The State Government conveyed no objection and vigilance clearance to the applicant. DOP&T, however, vide its letter dated 01.09.2016 denied vigilance clearance without passing any reasoned order. The action of DOP&T is stated to be contrary to the memorandum dated 29.10.2007. The State Government vide its order dated 21.02.2017 again placed the applicant under suspension on account of pending criminal investigation. It is stated that it is reliably learnt that the State Government sent a recommendation to the DOP&T for compulsory/premature retirement of the applicant. The suspension of the applicant was, however, not extended after 30 days and is deemed to have been revoked. The applicant has relied upon RTI

information received by him vide application dated 24.05.2017 (Annexure A-18). The applicant accordingly filed this OA in July, 2017 claiming relief at para 'a)' extracted hereinabove. It is stated that during pendency of this OA, the respondents in utter haste, illegally and arbitrarily passed the impugned orders dated 09.08.2017 and 11.08.2017. The applicant accordingly filed MA No.3048/2017 seeking amendment of the OA, which was allowed vide order dated 21.09.2017.

10. Since relief at para 'a)' stands withdrawn, the only challenge is to the orders dated 09.08.2017 and 11.08.2017. Challenge to these orders is made on two counts - (i) that the applicant has already been considered for review at the end of 15 years and 25 years of service and was found worthy of retention in service, and the second review for compulsory retirement is impermissible in law; and (ii) that for review on completion of 15/25 years of service, the entire service record of the applicant was required to be considered. It is stated that there is nothing adverse against the applicant in his service record. The allegations against the applicant are based upon FIRs registered against him as also the income tax raids. No incriminating material has been recovered in the income tax raids, and in the criminal cases even charges have not been framed. The

action of compulsory retirement, thus amounts to inflicting punishment upon the applicant.

11. Mr. Anniruddha P. Mayee, learned counsel appearing for the respondent No.2, State of Chhatisgarh, made a statement at the Bar that he has instructions to adopt the reply of respondent No.1.

12. The respondent No.1, DOP&T, has filed a detailed reply. It is mentioned that a request was received on 24.02.2016 for grant of vigilance clearance to the applicant for consideration of his case for retention in the offer list for Joint Secretary level post at the Centre. The DOP&T is the cadre controlling authority for grant of vigilance clearance to IAS officers for consideration of their appointment etc. under the Government of India. The vigilance clearance to IAS officers for various purposes is examined in terms of Guidelines contained in DOP&T office memorandum No.104/33/2005-AVD.I dated 29.10.2007. Accordingly the vigilance clearance in respect to the applicant was examined, and the following matters were recorded:

“(i) Shri Babu Lal Agarwal, IAS (CG:88) was placed under suspension by the Government of Chhatisgarh vide order dated 10.02.2010 for violation of Rule 3(1) of AIS (Conduct) Rules, 1968 and his suspension continued for 180 days vide order dated 07.05.2010.

- (ii) Shri Babu Lal Agarwal, IAS (CG:88) was charged sheeted on dated 22/3/2010 on the ground that during raids by Income Tax Department, it was revealed that a sum of Rs.60 crores was invested through ostensible owners in Prime Spat Limited, a company in which his brothers and their wives are Directors. Shri Babu Lal Agarwal, IAS (CG:88) played a lead role in the said transactions. A sum of Rs.15 lakhs towards life insurance policies in the form of gift to his son by his brother-in-law was reported by Shri Babu Lal Agarwal, IAS (CG:88) to the State Government whereas as per the report of the Income Tax Department a sum of Rs.9.75 lakhs and Rs.5 lakhs respectively was invested in insurance premium in the name of his son during 2003-04 and 2006-07. A sum of Rs.68.10 lakhs cash and 3.76 lakhs of jewellery were in his name. Investments in mutual funds, bonds, fixed deposits, LICs and PPF investment worth Rs.8.00 crores in his name and Rs.2.00 crores in the name of his wife and children also came to notice. Further, it was found through 140 land documents, a sum of Rs.11.00 crores was invested by Shri Babu Lal Agarwal, IAS (CG:88) in immovable properties. Besides, a sum of Rs.12.50 crores was deposited in the name of his relatives in different banks out of which Rs.10.64 lakhs is deposited in his name and in the name of his wife and children. Thus, Shri Babu Lal Agarwal, IAS (CG:88) violated Rule 3(1), 3(3)(i), 4(2)(b), 4(3)(a), 11, 14 and 16 of the All India Services (Conduct) Rules, 1968.

The Government of Chhatisgarh vide letter dated 11.05.2016 informed that the report of Income Tax Department, was forwarded to EOW vide letter No.E 2-03/2010/1/2 dated 17.02.2010 for enquiry and report. The Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) vide their OM No.286/06/2015-IT(Inv.II) dated 06.07.2016 has informed regarding search and seizure action in case of the above officer and that the said matter is pending in ITAT, Bilaspur Bench, Bilaspur (C.G.) for decision.

- (iii) The CBI has informed that RC No.9(A)/2010-Bhillai dated 31/12/2010 was registered against the officer and the matter is under investigation. CBI has informed that it has filed charge sheet on 17.11.11 in the Court of Special Magistrate, CBI cases, Raipur u/s 120 B, 419, 466 and 477-A of IPC against the officer, Shri Pawan Agarwal and Shri Antony Samy, the then manager, Bank of Baroda, Main Branch, Raipur. Charge sheet was filed against Shri Babu Lal Agarwal, IAS (CG:88) and Shri Pawan Agarwal on 17-11-2011. Accused Shri Babu Lal Agarwal, IAS (CG:88) filed a Writ Petition (Civil) No.8052 of 2011 in the Hon'ble High Court of Delhi challenging the notification issued by the Government of India under the provision of DSPE Act, 1946. The Hon'ble High Court vide its order dated 18.11.2011 in this case, observed that "till the next date of hearing the petitioner shall not be arrested" and since then the interim stay is continued. Since Shri Babu Lal Agarwal, IAS (CG:88) has not appeared in the Trial Court, charges could not be framed so far. No date after 22.07.2013 has been fixed in the Hon'ble High Court of Delhi in this matter.
- (iv) As per Memo No.E-2-3/2010/1/2, dated 10.02.2010 R and letter No.E-2-3/2010/1/2 dated 17.02.2010 of Government of Chhatisgarh, FIR received from Department of Income Tax, MP/Chhatisgarh was under consideration in State Economic Crime Investigation Bureau, Chhatisgarh, Raipur. Case No.06/10 dated 19.02.2010 registered under Section 13 (1) E 13(2) PCA 1988, sub-section 3 of Benami Transactions (Prohibition) Act, 1988, is under consideration in State Economic Crime Investigation Bureau, Raipur, Chhatisgarh. The allegations against Shri Babu Lal Agarwal, IAS (CG:88) was for misuse of official position and accumulation of property disproportionate to the known sources of income in his name, in the name of his family members, relatives and anonymous persons.

- (v) The Enforcement Director vide letter dated 9/9/2013 has informed that scheduled offences u/s 13(1)(E) and 13(2) under PC Act and under sections of Prevention of Money Laundering Act, 2002 has been registered against the officer and investigations were underway and that the said matter is pending in ITAT, Bilaspur Bench, Bilaspur (C.G.) for decision.
- (vi) CBI in RC 01/2010-CBI has sought sanction for prosecution against the officer for allegations of irregularities in implementation of State Malaria Control Programme. The State Government had refused sanction to prosecute the officer vide letter No.2459/581/2014/1/2 dated 11.07.2014 addressed to CBI and copy endorsed to DoPT. DoPT vide letter dated 04.11.2015 informed the CBI (EOZ-1) that the Department has decided to return the proposal of CBI for sanction for prosecution against Shri Babu Lal Agarwal, IAS (CG:88) with the advice to consider submitting the same to the State Government of Chhatisgarh for their consideration.
- (vii) A news report appeared in "The Statesman" dated 06.06.11 reporting that the officer is the most corrupt bureaucrat in the country and that he has accumulated Rs.253 crores of rupees. The matter has been referred to Government of Chhatisgarh requesting to furnish a factual report in the matter indicating inter alia the present status of various cases pending against the officer vide letter dated 10.06.11. The Government of Chhatisgarh vide letter dated 10.06.2011, views of the State Law Department were obtained on the institution of Departmental Enquiry against the officer and pursuant to the opinion of Law Department the charge sheet dated 22.03.2010 was cancelled.
- (viii) Shri Badruddin Quraishi, MLA, Chhatisgarh leveled certain allegation against Shri Babu Lal Agarwal, IAS (CG:88), Shri Alok Shukla and Shri Vivek Dhand. The matter has been referred to Government of Chhatisgarh, vide letter dated

01.05.12, for furnishing a report in the matter. As no report was received from the State Government, a copy of the complaint was forwarded direct to the officer for obtaining his comments in the matter vide letter dated 29.08.12. Subsequently, report of the State Government was received and after examination of the same, the complaint was closed on 30.09.2014.

In view of the submissions given in foregoing paragraphs, the Competent Authority in the DoP&T had decided on 01.09.2016 to deny vigilance clearance to Shri Babu Lal Agarwal, IAS (CG:88) for consideration of his case for retention in the offer list for Joint Secretary level post at the Centre.

- (ix) Shri Babu Lal Agarwal, IAS (CG:88) has submitted a representation dated 19.01.2017 to DoP&T requesting for expediting his vigilance clearance. A copy of the presentation has been forwarded to the CBI for furnishing their comments.
- (x) Subsequently, the Government of Chhatisgarh vide letter No.E2-5/2017/1/2 dated 22.02.2017 intimated that Shri Babu Lal Agarwal, IAS (CG:88) was arrested by CBI on 21.02.2017 in a case of criminal conspiracy under section 120 B of IPC and corruption under section 8 of PC Act, 1988. Accordingly, the State Government invoked sub rule 3 of AIS (D&A) Rules, 1969 and ordered suspension of the said officer.

Consequently, the vigilance clearance was denied vide this respondents letter dated 01.09.2016.”

In respect to the orders of premature retirement, it is stated that the premature retirement was not solely based on the case of CBI, and was on the recommendation of the review committee constituted under rule 16(3) of the Rules of 1958 and the recommendation of the

State Government thereon, after taking into consideration the entire service and vigilance track record that caused grave doubt on the applicant's integrity. It is stated that the recommendations of the review committee were placed before the Appointments Committee of the Cabinet (ACC), and with due approval of the ACC the impugned order dated 09.08.2017 has been passed. It is also mentioned that DOP&T has taken the decision after taking into consideration all aspects of rule 16(3) of the Rules of 1958 and the guidelines dated 28.06.2012. The applicant has been retired on the ground that the information available cast grave doubt on his integrity. Reference is also made to registration of FIR by CBI. It is, however, admitted in para 4.10 (ii) that the State Government refused sanction to prosecute the officer on 11.07.2014. It is also mentioned that the proposal for sanction for prosecution by the CBI is not directly related to the order of premature retirement under rule 16(3) of the Rules of 1958. It is stated that as per the inputs of the State Government, although the record of APARs do not reveal any adverse reporting, there have been issues relating to vigilance wherein CBI has undertaken investigation and requested sanction for prosecution. The sanction for prosecution has not been recommended by the State Government based on issue of jurisdiction. The State Government, however, recommended

premature retirement of the officer based on the record that cast grave doubt on his integrity. It is also relevant to note following averments in para XXIX (iii&iv):

“However, as ascertained by the State Government, according to them, at present there is no material to initiate any Disciplinary Proceedings against the officer and action as per the recommendations of the State Review Committee for premature retirement under rule 16(3) of AIS (DCRB) Rules, 1958 as submitted has been finalized.” (*emphasis supplied*)

It is also admitted that the State Government has already revoked the suspension of the applicant vide order dated 11.08.2017.

13. A rejoinder has been filed by the applicant primarily reiterating the averments made in the OA.

14. We have heard the learned counsel for parties at length. The impugned order of compulsory retirement dated 09.08.2017 reads as under:

“No.25013/02/2017-AIS-II
Government of India
Ministry of Personnel, PG and Pensions
(Department of Personnel & Training)

New Delhi, the 09th August, 2017

ORDER

In exercise of the powers conferred by sub-rule 3 of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, the President in consultation with State Government of Chhattisgarh

hereby requires Shri Babu Lal Agrawal, IAS (CG:1988) a member of Indian Administrative Service, borne on the cadre of Chhattisgarh (CG:1988) who has completed 25 years of service and already attained 50 years of age, to retire from service in public interest, with immediate effect by giving three months matters pay and allowances in lieu of notice.

2. A cheque for a sum approximate to the aggregate amount of his pay and allowances for a period of three months is enclosed.

3. By order and the name of the President.

Sd/-
(Rajesh Kumar Yadav)
Under Secretary to the Govt. of India"

The State Government passed order dated 11.08.2017 as a consequence of the order dated 09.08.2017 passed by the DOP&T. The impugned orders are based upon the report of the review committee dated 13.04.2017 which approved the compulsory retirement of the applicant. The report of the review committee is reproduced hereunder:

"Dr. B. L. Agarwal (IAS:1988)

Following cases are pending against Dr. B. L. Agarwal(IAS: 1988) at present:-

1. Head of Branch, CBI, ACB, Bhilai (CG) has registered FIR No.RC 1242010A009 in December, 2010 under section-120(B) read with 419, 420, 467, 468, 471 and 477A IPC and section-13(2) read with section-13(1d) of Prevention of Corruption Act, 1988 for criminal misuse of office. After preliminary investigation, a charge sheet under section 120(B) read with section-419, 466 and 477A IPC has been put up in

the Court of Special Magistrate, CBI, Raipur on 17.11.2011. Presently the case is in progress and at pre-charge stage. Shri B. L. Agarwal has filed petition No.8052/2011, in the High Court of Delhi, challenging the action taken by CBI. High Court of Delhi has granted interim relief on 18.11.2011, "till the date of next hearing, the petitioner shall not be arrested" and that interim order continues till date. Proceedings in Trial Court are not stayed and in progress and awaits framing of charges by the Court.

2. Permission of prosecution is sought by Mrs. Binita Thakur, Dy. Inspector General of Police, CBI (EO-III) New Delhi vide their letter u/r No.1169/01/2010 EOU-VII/N, Delhi for two criminal conspiracies, i.e.,

"(a) That Shri B. L. Agarwal, the then Secretary Health, Dr. Pramod Singh, the then Jt. Director, Shri Sunder Lal Patel, the then Store Clerk, Shri Om Prakash Verma, the then Store Keeper, all from the office of Director General, Health Services, Chhattisgarh entered into a criminal conspiracy with Shri Ashok Nihichilani, Shri Anil Nihichalani, Shri Sunil Nihichalani, Shri Murlidhar Kamnani and Shri Santosh Ramani, and by abusing their official positions caused a wrongful loss of Rs.3,74,34,266.00 and corresponding gain to themselves.

(b) That Shri B. L. Agarwal, then Secretary Health, Dr. Pramod Singh, the then Jt. Director, Shri Sunder Lal Patel, the then Store Clerk, all from O/o Director General Health Services, Chhattisgarh entered into a criminal conspiracy with Shri Navjeet Singh Tuteja, Mrs. Shailina Parveen and Shri Salim Umrani and by abusing their official position caused a wrongful loss worth Rs.24,86,656.00 and corresponding gain to themselves."

The State Government has refused to grant sanction for prosecution on ground of want of jurisdiction of CBI. The matter is pending in CBI.

3. CBI, AC-II, New Delhi Branch vide letter dated 21.02.2017 intimated to the State Government that CBI has arrested Dr. B. L. Agarwal, IAS (CG:1988), Principal Secretary, Higher Education, Chhattisgarh Govt., on 21.02.2017 in a case registered by the Bureau on 18.02.2017 U/s 120-B IPC r/w sec. 8 of Prevention

of Corruption Act, 1988 against him and two others. The CBI informed in its letter that during the investigation of the case, the residential premises of Dr. B. L. Agarwal at Raipur, were searched. The officer was arrested on 21.02.2017 at 08:02 a.m. to be produced before the Court of Spl. Judge for CBI cases, Patiala House Courts, New Delhi. On receipt of the above information the State Government having examined the CBI's report against Dr. Agarwal invoked sub-rule 3 of AIS (D&A) Rules 1969, and accordingly Dr. B. L. Agarwal, IAS (CG:1988) has been suspended by the State Government vide order No.E2-5/2017/1/2 dated 21.02.2017.

Recommendations:

The above mentioned facts cast grave doubts on the integrity of the officer therefore committee recommends that his continuation in services is not in the interest of administration, and he be retired in public interest."

Compulsory retirement of the applicant has been ordered invoking rule 16(3) of the Rules of 1958. Said rule is reproduced hereunder:

"(3) The Central Government may, in consultation with the State Government concerned, require a member of the 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 of any

other time as the Central Government deems fit in respect of such Member.

Explanation :- For the purposes of sub-rule (3), "review" of the entire service record of the Member of the Service regarding suitability or otherwise of such Member for further retention in the Service to be conducted regularly of each Member of such Service, firstly, after his completion of 15 years of qualifying Service and secondly, after his completion of 25 years of qualifying Service or on his attaining the age of 50 years, as the case may be, or if the review referred to in clauses (i) or (ii) of this sub-rule has not been conducted in respect of such Member, such review may be conducted at any other time as the Central Government deems fit." ;"

15. Apart from the statutory provision referred to above, the DOP&T has issued instructions dated 28.06.2012 laying down the guidelines for action in terms of rule 16(3). It is necessary to refer to some of the relevant guidelines:

"Subject:- All India Services (Death-cum-Retirement Benefits) Rules, 1958 - Rule 16(3) – Guidelines for intensive review of records.

Sir,

Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 has been amended on 31.01 .2012 which provides as follows:

"The Central Government may, in consultation with the State Government concerned, require a Member of the 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.*

Explanation: - *For the purposes of sub-rule (3), "review" means the review of the entire service record of the Member of the Service regarding suitability or otherwise of such Member for further retention in the Service, to be conducted regularly of each Member of such Service, firstly, after his completion of 15 years of qualifying Service, and secondly, after his completion of 25 years of qualifying Service or on his attaining the age of 50 years, as the case may be, or if the review referred to in clauses (i) or (ii) of this sub-rule has not been conducted in respect of such Member, such review may be conducted at any other time as the Central Government deems fit." (emphasis supplied)*

2. The rule, commonly referred to as the rule of premature retirement, is based on sound policy and in order to subserve public interest. Explaining the objects of the rule, the Supreme Court observed in the case of *Union of India Vs. M.E. Reddy and another* (AIR 1980 SC 563) as follows:

(i) *"The object of the Rule is to weed out the deadwood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment." (emphasis supplied)*

(ii) *"Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative.... so as to meet the expending needs of the nation, which require exploration of "fields and pastures new" Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of administration.*

3. The Supreme Court has observed in the case of *State of Gujarat Vs. Umedbhai M. Patel* (Civil Appeal No.1561 of 2001, 3 SCC:320 as follows:

(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." (emphasis supplied)*

16. Since Rule 16(3) itself does not contain any procedure nor does it prescribe the criterion or parameters for determining the public interest for purposes of compulsory retirement of an officer, the above instructions have been issued. In para 1 of the instructions, the requirement of the rule is reproduced. The explanation to the gist of the rules provides that for purposes of sub-rule (3), 'review' means the review of the entire service record of the member of the Service

regarding suitability or otherwise of such member for further retention in the Service, to be conducted regularly of each member of such Service. The object of the rule as indicated in para 2 of the instructions, is based upon the judgment of the Hon'ble Supreme Court in *Union of India v M. E. Reddy & another* [(1980) 2 SCC 15]. The object of the rule as laid down by the Apex Court is to weed out the deadwood in order to maintain a high standard of efficiency and initiative in the services. Para 3 of the instructions also contains the guidelines laid down by the Apex Court in case of *State of Gujarat v Umedbhai M. Patel* [(2001) 3 SCC 314]. Reference to the guidelines referred to in this para and the mandate of the judgments of the Hon'ble Supreme Court shall be discussed in the later part of the judgment.

17. Based upon the mandate of the rules and the guidelines issued, the applicant was subjected to review on completion of 25 years of service along with various other officers by a committee comprising senior officers constituted in terms of rule 16(3) of the Rules of 1958. The said committee held its meeting on 23.10.2013. Relevant extracts of the minutes of the meeting of the committee are reproduced hereunder:

“Minutes of Meeting dated 15-10-2015 regarding All India Service (Death-cum-Retirement Benefits) Rules, 1958 – Rule 16(3) – Intensive Review of Records

Review of records of officers for retirement in public interest under Rule 16(3) of AIS (DCRB) Rules, 1958 is being carried out by Review Committee today under the Chairmanship of Chief Secretary, following members are present in the meeting –

1. Shri Vivek Dhand, Chief Secretary - Chairman
2. Dr. Aruna Sharma, OSD cum Development Commissioner & Ex Officio ACS, Govt. Of MP, D/o PRI) (participated through Tele-Conferencing)
- Member
3. Shri Ajay Singh, Additional Chief Secretary, Govt. Of CG, Agriculture Department.
- Member
4. Shri Narendra Kumar Aswal, Additional Chief Secretary, Govt. Of CG, D/o Tribal and Scheduled Caste Development - Member
5. Smt. Nidhi Chhibber, Secretary, Govt. Of CG, GAD
- Member

2. The committee met on 15-10-2015 to formulate its recommendations. The relevant instructions as per GOI, DoPT letter No.25013/02/2005-AIS-II, dated 28-06-2012 contained in para 10 and 11 of the said communication, reproduced below, were perused by the Committee.”

“3. The list of Officers, borne on Chhattisgarh Cadre, who are included in the Zone of consideration, is given below-

S.N.	Name of Officer	Year of Allotment
14.	Dr. Babu Lal Agrawal	1988

“6. Records of officers for retirement in public interest under Rule 16(3) of AIS (DCRB) Rules, 1958 were reviewed keeping in mind the instructions as

illustrated above. The records were reviewed to assess doubtful integrity, inefficiency and ineffectiveness of officers who were not contributing to public service. The service records, which were taken into consideration include-

- ACR/PAR
- Personal file
- History of entire service
- Status of Departmental Enquiry, if any
- Confidential reports throughout the period of service
- Complaints against the officers”

“Recommendation:-

8. Findings/recommendations of Review Committee:-

After perusal of entire service of the officers, the Committee for the reasons recorded in the preceding paragraphs, summarizes its recommendations as below-

A- Officers to be kept under watch for the purpose of review of similar committees in future:-

B- The officers who are to continue in service in public interest -

S.N.	Name of Officer	Year of Allotment
13.	Dr. Babu Lal Agrawal	1988

The applicant was approved for retention in service by the review committee comprising Chief Secretary and other high officials of the State Government, and while considering the officers for retention or otherwise, it is specifically recorded in para 6 that the review was to assess doubtful integrity, inefficiency and ineffectiveness of officers who were not contributing to public service. The entire record of

service – ACR/PAR, personal file, status of departmental inquiry, if any, history of entire service, confidential reports throughout the period of service and complaints against the officers were examined, as is evident from the statement made in para 6 of the minutes. It is thus argued by Mr. Nidhesh Gupta, learned Senior Advocate appearing for the applicant that the applicant was duly assessed for retention in service by the high level committee in terms of rule 16(3) of the Rules of 1958, and has been retained in service after such review on completion of 25 years of service and attaining 50 years of age. Thus a second review is not permissible under law. He further referred to the ACRs of the applicant for the last five years which are placed as Annexure A-19. The gradings awarded to the applicant for the last five years has been reproduced at page 31 of the OA and reads as under:

S.No.	Relevant Year	Rating and Remarks
1.	2010-2011	9/10
2.	2011-2012	8.25/10
3.	2012-2013	8.05/10
4.	2013-2014	9/10
5.	2015-2016	9.5/10

We have also scanned the ACRs placed on record (Annexure A-19) and it may be noticed that in none of the ACRs there is anything adverse against the applicant. To the contrary, the grading awarded

is 8.05 to 9.5 for the last five years. This is equivalent to 'very good/outstanding'. Further, the pen picture for some of the relevant years records as under:

2010-2011

"8. Integrity: Nothing adverse came to my notice.

9. Pen picture by Reporting Officer.....

I have gone through the self appraisal made by the officer. The officer worked for about 6 months as Member, Board of Revenue during my tenure as President, Board of Revenue. One outstanding feature of his work during this period is the extraordinary courage, zeal and enthusiasm he showed in deciding the long pending cases. Under the Agricultural Land Ceiling Act the matters had been kept pending for long years as no officer would touch the files in the fear that deciding those cases may call for dealing with the cases of mighty and influential. This officer issued notices in all such cases and decided almost all the cases that were pending under the said Act without fear. Almost all his decisions have become final. In the matter of cases under Excise Act, Stamp Act and the like where huge revenue was locked up in pending appeals and revisions this officer continued to show alacrity and disposed off matters in a quick time frame which helped the State in realization of long pending revenues. Pendency has been reduced to less than 6 months and huge back log has been cleared. All this has been achieved maintaining high quality of decisions as seen from continued affirmation of his orders to a large extent. He has maintained his unbiased approach in deciding the cases and I have not come across any complaint or any bias on his

part. His knowledge, application, output and achievements are excellent.”

“11. Overall grade (on a score of 1-10) 9”

This grading has been affirmed by the accepting and reviewing authorities.

2011-2012

“8. Integrity: Nothing adverse came to notice.

9. Pen picture by Reporting Officer.....

Intelligent and innovative. He is knowledgeable about rules and regulations. He maintains cordial relation with public as well as with colleagues in administration. He is sympathetic to the problems of the weaker section.”

“11. Overall grade (on a score of 1-10) 8.25”

The overall grading of 8.25 was maintained by the accepting authority. However, the reviewing authority graded him 9.

2012-2013

“8. Integrity: (Pl. see sealed cover)

9. Pen picture by Reporting Officer....

Shri B. L. Agrawal is reasonably efficient. He was responsible for the regulatory department of revenue, where he performed tasks assigned to him. He has the ability to perform within time limits. He is well-behaved and gets along with peers.”

“11. Overall grade (on a scale of 1-10) 8.05”

Since the sealed cover is not on record, his integrity is to be presumed on the basis of the overall grading. His overall grading has been upgraded to 9.5 by the reviewing authority and maintained at 8.5 by the accepting authority. The overall grading for the year 2013-2014 is 9. 2014-2015 is "no report" period. For 2015-2016 the overall grading is 9.5.

18. Based upon the aforesaid gradings, the applicant was approved for retention by the review committee on 23.10.2015. It is also relevant to note that the applicant was also promoted as Principal Secretary vide order dated 30.07.2015 retrospectively w.e.f. 27.07.2012. The order of promotion reads as under:

"The State Government is hereby promoted Dr. B. L. Agarwal, I.A.S. (1988) in pay scale of Principal Secretary (HAG 67000 – annual increment @ 3%-79000) with effect from the date of taking charge in the pay-scale of Principal Secretary by his Junior Officer Shri K.D.P. Rao, I.A.S. (1988), that is w.e.f. 27.07.2012 and hence, he is hereby posted temporarily on the post of Principal Secretary, Higher Education Department till further orders. As well, additional charge of Commissioner, Higher Education is hereby handed over to him."

Mr. Nidhesh Gupta has also referred to the communication dated 02.04.2014 from the CIT (Appeals), Raipur to the Chief Secretary, Government of Chhattisgarh communicating the conclusions in

respect to the searches conducted upon the applicant. Relevant extract of the said communication reads as under:

“2. In this connection, it is brought to your knowledge that searches u/s. 132 of the Income-Tax Act, 1961 culminate in assessments u/s.153A and in the case of Shri Agrawal the assessments were completed after thorough investigation and examination of all facts and evidences found during search and substantive demand of only Rs.13,464/- was raised. Shri Agrawal has filed statutory appeals before me and they were allowed on 31.05.2012 after considering the facts and submissions made and the demand was reduced to nil. The Commissioner of Income-Tax, Raipur has also held in his report submitted to the Income-Tax Settlement Commission, Kolkata in other related cases where searches were simultaneously conducted, that no direct evidence was found in search against Shri B. L. Agrawal. The other allegations in the reports were only unverified and needless to say that no valid proceedings under any law can be sustained on the basis of unverified facts. Thus, there is no violation of Income-Tax provisions in his case. Incidentally, it is made clear that there is no provision in the Act for submitting such preliminary reports and said reports being sent at rudimentary stage of the proceedings cannot be said to have any evidentiary value and it is only the assessment orders and appeal orders which confirm outcome of the search.

3. In view of the above, I am of the considered opinion that various proceedings which commenced on the basis of preliminary reports seems to be of only technical outcome in nature and deserve not to be continued to the detriment of substantial justice. It is, therefore, requested to please take these facts on record and recommend dropping of various proceedings initiated on the basis of preliminary reports of search referred above.”

Based upon this documentary evidence, it is sought to be impressed upon this Tribunal that the entire exercise of ordering compulsory retirement of the applicant is based upon no material, non-application of mind and contrary to the service record of the applicant. Mr. Nidhesh Gupta's further submission is that registration of FIRs by CBI cannot and should not be the basis for compulsory retirement in terms of rule 16(3) of the Rules of 1958. If the applicant is guilty of any such offence, the respondents were/are entitled to prosecute him in criminal cases, where the evidence is to be evaluated by the competent criminal court. As a matter of fact, the charge-sheet in one case has been filed, in another case writ petition is pending in the Hon'ble High court of Delhi wherein arrest of the applicant is stayed, whereas in third case, even the charge-sheet has not been filed. Even in the case where the charge-sheet has been filed, no charge has been framed against the applicant, and thus no *prima facie* case is made out. All income tax searches and raids resulted in exoneration of the applicant, rather the money seized from his house which was *bona fide* and accounted for, has been returned with interest under the directions of the appellate authority. Even the total demand raised for the last six years was only Rs.13,464/-, which cannot be termed as disproportionate to the known sources of income of the applicant. The suspension of the

applicant has already been revoked and the departmental proceedings dropped. His submission is that the respondents have not placed on record any material to substantiate the basis for taking such harsh decision of compulsory retirement, which is definitely stigmatic in nature.

19. Mr. Gyanendra Singh, learned counsel appearing for the respondent No.1, referred to paras 1.1 and XII to XVIII of the counter-affidavit. It is sought to be argued that various actions were initiated against the applicant. He referred to allegations made in para 1.1. We have carefully perused para 1.1. These allegations have not been established in any departmental or criminal proceedings. The DOP&T while declining the vigilance clearance has merely referred to the reports submitted by the Income Tax Department and the CBI. All proceedings initiated by the Income Tax Department have miserably failed in their own forums. The Income Tax Department had to face embarrassment as it could not substantiate or justify the searches or raids and admittedly all proceedings have been dropped. The Enforcement Directorate also initiated proceedings at the instance of the Income Tax Department and finally submitted a closure report. The proceedings stand closed. Assuming there are some allegations, these allegations can be conveniently enquired into by the respondents by initiating departmental action against the

applicant. Recourse to rule 16(3) of the Rules of 1958 is impermissible where departmental action is the prescribed mode of action against the delinquent official.

20. The only conclusion of the review committee is that the “mentioned facts cast grave doubt on the integrity of the officer”, and no other ground has been mentioned by the review committee. The review committee merely relied upon the FIRs and vague allegations and no other material. It is pertinent to mention that the review committee has not considered the APARs of the applicant and the entire service record at all, which is in gross violation of rule 16(3) of the Rules of 1958 and the Government guidelines, as also the law laid down by the Apex Court. In the report of the review committee merely the allegations have been reproduced and without recording any reasons whatsoever, the recommendations have been made. Even the recommendations are based upon ‘grave doubts’ on the integrity of the officer. From the conjoint reading of rule 16(3) of the Rules of 1958 read with instructions dated 28.06.2012, it can be safely concluded that mere doubt cannot be the basis for passing order for compulsory retirement. The report of the review committee suffers from the vice of arbitrariness and is based upon mere assumptions and presumptions. Such recourse is beyond the scope of rule 16(3). The action is totally arbitrary and without application of mind, as

admittedly the entire service record, particularly the APARs of the applicant have not been considered by the review committee. There is no mention of the same in the report of the review committee. Thus, the report of the review committee is based upon no material.

21. In *State of Gujarat v Umedbhai M. Patel* (supra), the Hon'ble Supreme Court held as under:

“11. The law relating to compulsory retirement has now crystallised 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.”

In *State of Uttar Pradesh v Chandra Mohan Nigam & others* [1977] 4

SCC 345], the Apex Court observed/held as under:

“26. The learned Single Judge held the instructions of the Ministry of Home Affairs as statutory and as such binding, on a concession made in the counter-affidavit submitted before him by the Under Secretary of the Personnel Department (Cabinet Secretariat). According to the counter-affidavit these instructions were made by the Government by Rule 2 of the All-India Services (Conditions of Service – Residuary Matters) Rules, 1960. It is not necessary to go into this aspect in detail in this case as to whether the instructions can be elevated to the status of statutory rules or even constitutional directions as found by the learned Single Judge. It is sufficient for our purpose that these instructions do not violate any provision of the Act or of the rules. Rule 16(3), being a rigorous rule vis-a-vis a government servant not himself willing to retire under Rule 16(2), has to be invoked in a fair and reasonable manner. Since Rule 16(3) itself does not contain any guidelines, directions or criteria, the instructions issued by the Government furnish an essential and salutary procedure for the purpose of securing uniformity in application of the rule. These instructions really fill up the yawning gaps in the provisions, and are embedded in the conditions of service. These are binding on the Government and cannot be violated to the prejudice of the Government servant (see also *Sant Ram Sharma v. State of*

Rajasthan [(1968) 1 SCR 111] and *Union of India v. K.P. Joseph* [(1973) 2 SCR 752]).

27. Whether all the aforesaid instructions issued by the Government are mandatory or not do not call for a decision in these appeals. Some of them may not be mandatory. Not that every syllable in the instructions is material. Some of them may be described as prefatory and clarificatory. However, one condition is absolutely imperative in the instructions, namely, that once a Review Committee has considered the case of an employee and the Central Government does not decide on the report of the Committee endorsed by the State Government to take any prejudicial action against an officer, after receipt of the report of the committee endorsed by the State Government, there is no warrant for a second Review Committee under the Scheme of Rule 16(3) read with the instructions to reassess his case on the same materials unless exceptional circumstances emerge in the meantime or when the next stage arrives. 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 rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government. Although a faint attempt was made before the learned Single Judge that fresh facts were available for the purpose of the second Review Committee, the High Court did not accept the position nor do we find any reason to differ from that opinion. It is, therefore, clear that the respondent's order of termination was made not as a result of the report of the first Review Committee in accordance with the instructions but on the recommendation of the second Review Committee which could not have taken up his case, as it was, on the self-same materials prior to his reaching the age of 55 years.

29. The correct position that emerges from Rule 16(3) read with the procedural instructions is that the Central Government, after consultation with the State Government, may prematurely retire a civil servant

with three months' previous notice prior to his attaining 50 years or 55 years, as the case may be. The only exception is of those cases which had to be examined for the first time after amendment of the rule substituting 50 years for 55 years where even officers, who had crossed the age of 50 years, even before reaching 55, could be for the first time reviewed. Once a review has taken place and no decision to retire on that review has been ordered by the Central Government, the officer gets a lease in the case of 50 years upto the next barrier at 55 and, if he is again cleared at that point, he is free and untrammelled upto 58 which is his usual span of the service career. This is the normal rule subject always to exceptional circumstances such as disclosure of fresh objectionable grounds with regard to integrity or some other reasonably weighty reason.

35. While purity in administration is certainly to be desired, the security and morale of the Service have also to be maintained. It is because of these high considerations that the Government has issued appropriate and reasonable instructions to guide the authorities in passing orders for premature retirement. The instructions clearly show that "having arrived at an assessment in favour of further continuance in service at the age of 54½ years or so, there would ordinarily be no occasion for changing the assessment during the next three years, so that an annual review would serve little practical purpose". The principle behind this instruction is that the sword of Damocles must not hang over the officer every six months after he attains the age of 50 years.

36. The learned Solicitor General next submitted that the High Court was not right in going behind the order of compulsory retirement and delving into the files of the Government to see for itself whether the order could be sustained. We find that the records of service of the respondent and other papers were produced by the learned Advocate-General before the High Court without any objection and without claiming any privilege with regard to those documents. That being the factual position, we are not

inclined to consider whether the course adopted by the High Court in this case is open to objection. It will, however, be proper to observe that when an order of compulsory retirement is challenged as arbitrary or mala fide by making clear and specific allegations, it will then be certainly necessary for the Government to produce all the necessary materials to rebut such pleas to satisfy the court by voluntarily producing such documents as will be a complete answer to the plea. It will be for the Government also to decide whether at that stage privilege should be claimed with regard to any particular document. Ordinarily, the service record of a government servant in a proceeding of this nature cannot be said to be privileged document which should be shut out from inspection.

37. The impugned order of compulsory retirement, as found above, was made on the recommendation of the second Review Committee and that is in the teeth of the conditions of service flowing from the instructions of the Home Ministry and hence cannot be sustained. The High Court was right in quashing the said order.”

22. The manner in which rule 16(3) is to be applied has been laid down by the Government itself vide instructions dated 28.06.2012, referred to hereinabove. The first object of rule 16(3) is to weed out the deadwood in order to maintain a high standard of efficiency and initiative in the services, as held by the Apex Court in case of *Union of India v M. E. Reddy* (supra). The applicant has earned gradings between 8.05 and 9.5 out of 10 in the last five years, which is equivalent to ‘very good/outstanding’. There is no adverse entry about his integrity, rather the pen picture quoted hereinabove

clearly reveals that the applicant is one of the efficient officers in the State of Chhattisgarh. Therefore, in the garb of weeding out the deadwood, the applicant has been punished, which is contrary to the entire service record of the applicant. The instructions are based upon two judgments of the Apex Court, i.e., *Union of India v M. E. Reddy* (supra) and *State of Gujarat v Umedbhai M. Patel* (supra). In case of *Umedbhai M. Patel*, in para (iii) extracted hereinabove, it is specifically held that the order under rule 16(3) can be passed only after having due regard to the entire service record of the officer. Admittedly, no adverse service record of the applicant has been projected either in the impugned order or even in the counter-affidavit filed. What is mentioned is only within the realm of allegations without being substantiated by any material on record. In para (vi) of the Government instructions it is recorded that the order of compulsory retirement shall not be a short cut to avoid departmental proceedings when such course is more desirable. In para (vii) it is also mentioned that if the officer was given a promotion, despite adverse entries made in confidential records, that is a fact in favour of the officer. In para (viii) it is noted that compulsory retirement shall not be imposed as a punitive measure. The impugned order/action is contrary to the mandate of the instructions adopting the judgments of the Hon'ble Supreme Court.

The allegations, at the most, call for a departmental inquiry. In one case departmental inquiry was initiated but dropped. In no other case departmental proceedings have been initiated. The State Government conveyed to DOP&T that there is no material to initiate any disciplinary proceedings against the officer. This fact is admitted by respondent No.1 in para XXX(iii & iv) of the counter. In cases of criminal proceedings no charge has yet been framed, and in the other it is just at the stage of investigation. The respondents have specifically mentioned in their counter affidavit that FIRs are not the sole basis for initiating action, meaning thereby that there must be some other material, but no such material has been placed on record. There is no answer to the specific averment in the OA that the applicant has been promoted. Promotion order has been placed on record, which is not disputed or denied. It is also pertinent to note that the promotion was made on 30.07.2015 retrospectively w.e.f. 27.07.2012. Thus, the entire period of allegations is deemed to have been considered when the applicant's promotion was made. Above all the applicant was reviewed on completion of 25 years of service by a competent, duly constituted high level review committee, which approved retention of the applicant on consideration of not only the APARs but the entire service record, integrity, efficiency and other related credentials of the applicant. There is a clear prohibition in the

instructions issued by the Government for a second review. The entire action seems to be in violation of these instructions which are based upon the judgments of the Hon'ble Supreme Court referred to hereinabove.

23. In the totality of the circumstances, we are of the considered opinion that the applicant having been considered for review on completion of 25 years of service and on attaining 50 years of age by the first review committee on 15.10.2015, approved for retention, and in fact retained in service, cannot be subjected to second review in absence of any exceptional circumstances, and for reasons to be recorded. No exceptional circumstances have been shown/narrated nor the reasons for second review have been indicated. The recommendations of the second review committee, apart from being impermissible, also suffer from the vice of arbitrariness. Merely reproducing the allegations and without due application of mind, the recommendations merely on the basis of doubt and without considering the entire service record, particularly the APARs of the applicant, are against the mandate of law. The review committee's recommendations and consequential order of compulsory retirement also stand vitiated. The respondents have adopted recourse to the provisions of rule 16(3) of the Rules of 1958 in gross contravention of the mandatory guidelines issued by the

Government. The order of compulsory retirement is thus punitive in nature and is not sustainable in law.

24. This OA is accordingly allowed of with the following directions:

- (i) Impugned orders dated 09.08.2017 and 11.08.2017 are hereby quashed.
- (ii) As a consequence of quashment of the impugned orders, the applicant is directed to be reinstated in service immediately.
- (iii) The applicant shall be entitled to consequential benefits, including arrears of salary.
- (iv) The quashment of the impugned orders will not be an impediment for initiating appropriate disciplinary proceedings, if so desired by the competent authority.

25. All ancillary applications also stand disposed of.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/