

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00699/2017

Jabalpur, this Thursday, the 1st day of February, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

K.C. Agrawal,
S/o Shri M.L. Garg
Aged about 57 years
R/o-H.No.1 Street No.14,
Sector-9, Bhilai
District Durg (C.G.) 490006
9424756360

-Applicant

(By Advocate –**Shri Manoj Sharma**)

V e r s u s

1. Union of India,
Through its Secretary
Ministry of Home Affairs
Police-1 Division North Block
New Delhi 110001

2. State of Chhattisgarh
Department of Home,
Mantralaya Mahandi Bhawan
New Raipur (C.G.) 492002

3. Chief Secretary,
State of Chhattisgarh
Mantralaya Mahanadi Bhawan
New Raipur (C.G.) 492002

4. Director General of Police
Police Head Quarter
New Raipur (C.G.) 492002

- **Respondents**

(By Advocate –Shri D.S. Baghel for respondent No.1,
Shri Ajay Ojha for respondent No.2 to 4)
(Date of reserving the order:24.01.2018)

ORDER**By Navin Tandon, AM:-**

The applicant, a member of the Indian Police Service, is aggrieved that the respondents have retired him under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as “the Rules 1958”). Hence, this Original Application.

2. The brief facts of the case are that the applicant was initially appointed as Deputy Superintendent of Police after clearing Madhya Pradesh Public Service Commission Examination, 1983 and appointed on 28.10.1985 on probation. He was allotted Chhattisgarh State after bifurcation of the State of Madhya Pradesh. He was inducted into Indian Police Service vide notification dated 02.09.2011 (Annexure A/7) with year of allotment as 2002. He was promoted to Selection Grade vide order dated 24.01.2015 (Annexure A/8) and to D.I.G. Grade on 21.01.2016 (Annexure A/9). Meanwhile, he was awarded “Police Medal for Meritorious Service” on the occasion of the Republic Day, 2010 (Annexure A/5). He was retired under Rule 16(3) of the Rules, 1958 by orders dated 03.08.2017 (Annexure A/1) of Union of India and dated 05.08.2017 (Annexure A/2) of Chhattisgarh Government.

3. The applicant has sought for the following reliefs:-

“8(i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.

8(ii) Quash and set aside the impugned order dated 03.08.2017 (Annexure A/1) and 05.08.2017 (Annexure A/2);

8(iii) Command and direct the respondents not to adversely affect applicant in any manner in pursuance to the impugned orders and restore applicant to his original position in the cadre without any brake with all consequential benefits like pay, perks, status and arrears thereof and interest therein;

8(iv) Grant any other relief/s, which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

8(v) Award cost of the instant lis to the applicant.”

4. The applicant has also sought for the following interim relief:-

“Applicant craves leave of this Hon’ble Tribunal to refer to the narrative hereinabove for the purpose of grant of interim relief as well. A bare perusal of the facts make it absolutely clear that the powers conferred under Rule 16(3) of the Rules of 1958 have been incorrectly applied in the case of applicant. The impugned action violates fundamental rights of applicant and is in gross violation of the guidelines pertaining to exercise of said powers, and the impugned orders are clearly perverse. It is, therefore, expedient in the interest of justice that this Hon’ble Tribunal be pleased to stay the effect and operation of the impugned orders dated 03.08.2017 (Annexure A/1) and 05.08.2017 (Annexure A/2), during pendency of the Original Application, in the interest of justice.”

5. Matter was listed for consideration of grant of interim relief on 24.01.2018. However, since the pleadings were completed and all the counsels were ready for arguments, case was heard finally on the same date.

6. The applicant has submitted that he has been posted and served in various capacities in the Police Department, both in the erstwhile State of Madhya Pradesh and, thereafter, in the State of Chhattisgarh. He has also served as Superintendent of Police, Jashpur in the year 2010, which is a Naxalite affected area involving various law and order issues. Based on his entire service career till that date, he was awarded "Police Medal for Meritorious Service" on 26.01.2010. Subsequently, he has been promoted to Selection Grade and D.I.G. Grade on 24.01.2015 and 21.01.2016 respectively. All the Annual Reports from 2010-11 to 2015-16 are either outstanding or very good, with no aspersions on integrity (Annexure A/11 colly.). He has also been given appreciation letters right upto 08.03.2016. Hence, the communication (Annexure A/1, A/2) ordering his retirement are arbitrary, malafide, high handed, vitiated by violation of principles of natural justice and deserve to be quashed.

7. Respondents Nos.2, 3 & 4 (Chhattisgarh State) have not disputed any of the averments made in O.A. except Para 4.17 and 4.19 wherein it is submitted that Rule 16(3) of the Rules 1958 have not been misused and Para 5.6 and 5.7 of the guidelines provide enough safeguards to protect the personnel of All India Service so

that they are not victimized. Hence, the Original Application is without substance and hence deserves to be dismissed.

8. The Annexures in the reply of Respondent No.1 have been referred to as A/1, A/2, A/3 and A/4. To avoid ambiguity they will be referred to as Annexure R/1, R/2, R/3 and R/4 respectively in these orders.

9. Respondent No.1 has submitted the steps involved in application of Rules 16(3) of the Rules, 1958 to the applicant, extracts of which are reproduced below:-

“1.4 That, the Respondent No.2 vide their letter No.01-01/2001/2-Home/IPS dated 26.04.2017 informed Respondent No.1 that Review Committee had held a meeting on 20.04.2017 for review of service records of IPS officers under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. After the review of service records of the petitioner, the committee had not recommended the petitioner to be retained in the service.

1.5 That, the Respondent No.1 considered the recommendation of review committee and taking into consideration the relevant provisions of Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules 1958 and the rationale of the provisions, the Competent Authority in this Ministry approved for premature retirement of the Applicant under Rule 16 (3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958.

1.6 That, as per provisions of Department of Personnel & Training letter dated 28.06.2012, the Respondent No.1 sent a proposal for premature retirement of petitioner under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 vide Office Memorandum No.30012/01/2016-IPS.II dated 30.05.2017 to the Department of Personnel & Training for approval of Appointments Committee of the Cabinet.

1.7 *That, the Appointments Committee of the Cabinet after careful consideration vide their letter No.6/11/2017-EO (SM-I) dated 02.08.2017 approved the proposal of Respondent No.1 for premature retirement of petitioner in public interest under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 with immediate effect by giving three months pay and allowances in lieu of notice.*

1.8 *That, the Respondent No.1 after obtaining the approval of Appointments Committee of the Cabinet issued order No.30012/01/2016-IPS.II dated 03.08.2017 vide which Applicant was retired in public interest with immediate effect by giving three months' pay and allowances in lieu of notice under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. A copy aforesaid order dated 03.08.2017 is annexed hereto and marked as Annexure R-4(sic).*

10. Respondent No.1 has further averred in Para 5 of the reply that:

“5. That, the Respondents 1 has followed all the necessary rules/regulation/guidelines issued by the Department of Personnel & Training in the matter. Respondent No.2 has not recommended to retain the applicant in service. The matter was considered by Respondent No.1 and after taking approval of the Competent Authority, petitioner was prematurely retired in public interest under Rule 16(3) of All India Services (Death-cum-Retirement) Benefits) Rules, 1958.”

11. Respondent No.1 submits that in the light of the facts and circumstances, the O.A. is devoid of any merits and hence deserves to be dismissed with costs.

12. The applicant has obtained the following documents under Right to Information Act and placed it on record:-

(i) Letter No.F01-01/2001/2-Home/IPS dated 26.04.2017 from respondent No.2 to Respondent No.1 (Annexure A/14).

(ii) O.M. No.30012/01/2016-IPS II dated 30.05.2017 from Respondent No.1 to Department of Personnel & Training (DOPT) (Annexure A/15).

13. Heard the arguments from the counsel of applicant as well as respondents.

14. Government of India has brought out detailed guidelines for intensive review of records as per Rule 16(3) of the Rules 1958 on 28.06.2012 (Annexure R/3). These guidelines have relied upon the judgments of Hon'ble Apex Court in the cases of ***Union of India vs. M.E. Reddy*** (AIR 1980 SCC 563) and ***State of Gujarat vs. Umedbhai M. Patel*** (2001) 3 SCC 314.

14.1 The relevant Para 8 from Annexure R/3 is reproduced below:-

“8. It is seen that in some cases the overall grade or assessment given on the performance of a member of an All India Service is “average”. To describe a member of an All India Service as average is not complimentary. While it may not be an adverse remark, it is nevertheless a reflection upon his work or conduct and should be taken to indicate output, which is ordinary and routine. Remarks like “Adequate” and “Satisfactory” over a period of 5-7 years, without mention of any notable achievement, would also indicate that the member has reached a plateau. Similarly, it is found that in some cases, a member of an All India Service receives a lukewarm or equivocal certificate of integrity. Such an entry would indicate that there is some doubt in the mind of the Reporting/Reviewing authority about the integrity of the

member. In all such cases, it would be quite appropriate for the Government to examine the matter thoroughly in order to decide whether action under Rule 16(3) of AIS(DCRB) Rules, 1958 would be warranted.”

14.2 Further the relevant paras of the Annexure of this communication (Annexure R/3) are extracted below for ready reference.

“IV: MATTERS TO BE KEPT IN MIND WHILE EVALUATING THE EFFECIENCY AND EFFECTIVENESS OF AN OFFICER

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

V PROCEDURE FOR REVIEW

5.4 The recommendation of the State Government along with attested copies of proceedings of the Review Committee shall be forwarded to the Department of Personnel & Training in the case of the Indian Administrative Service, the Ministry of Home Affairs in the case of the Indian Police Service and the Ministry of Environment, Forests and Wild Life in the case of the Indian Forest Service.

5.6 Where the State Government have come to the conclusion as a result of the review that a member of the All-India Service should be retired from service in the public interest they should make a proposal accordingly to the Central Government giving full reasons in justification of the proposal. Similarly, where the Central Government are of the opinion that an officer should be retired from service in

the public interest, the Central Government shall seek the views of the State Government concerned.

5.7 The Central Government shall observe the following procedure for processing the recommendations made by the State Government:-

(i) where the State Government have recommended the retention of an officer in service but the cadre controlling authority comes to the conclusion that the officer should be retired from service in the public interest, the case shall be placed before the Appointments Committee of the Cabinet for orders.

(ii) where the State Government have recommended the retirement of an officer in the public interest, the case shall be placed before the Appointments Committee of the Cabinet (whether or not the cadre controlling authority agrees with the recommendation of the State Government or comes to the conclusion that the officer should be retained in service).

Explanation: The cadre controlling authority means, (a) for the Indian Administrative Service-Ministry of Personnel, P.G. & Pensions (b) for the Indian Police Service-Ministry of Home Affairs and (c) for the Indian Forest Service-the Ministry of Environment and Forests.”

15. Learned counsel for the applicant submitted that the applicant has undergone several rounds of scrutiny upto the year 2016 as detailed below.

15.1 While the applicant was awarded Police Medal on 26.01.2010, his ACRs of previous 10 years would have been taken into account which should have been VG or above. Also, verification by IB/CBI/Vigilance Clearance/Cadre

Clearance would have been done as per guidelines (Annexure A/6).

15.2 The applicant was promoted to Selection Grade on 24.01.2015 (Annexure A/8) and DIG Grade on 21.01.2016 (Annexure A/9). Prior to granting these promotions, the respondent-department would have considered the guidelines issued by the Respondent No.1 on 15.01.1999 (Annexure A/10), which places high priority to integrity and all the entries of confidential reports to be considered as per para 4.3, 6.1 and 7.1 of the General Principles annexed with Annexure A/10.

15.3 Learned counsel further highlights that the appraisal in the ACR/APARs for the years 2010-11 to 2015-16, copies of which have been placed at Annexure A/11 (colly.), is of high level and there is no doubt about his integrity.

15.4 Further, the learned counsel submits that while the Review Committee proceedings (Annexure A/14) mentions that there is one anonymous complaint pending about misuse of power and corruption, the OM prepared in the office of Respondent No.1 (Annexure A/15) states in Para 5 that the Review Committee has noticed a number of complaints against the applicant regarding misuse of office and

corruption. How a single anonymous complaint, which should have been ignored as per prevailing guidelines, have been converted into many complaints has not been explained in any documents. Even the Vigilance status in this OM mentions “clear from Vigilance Angle”.

16. Learned counsel for Respondents No.2, 3 and 4 submits that the Review Committee had recommended the applicant to be kept under watch (Annexure A/14). Further, Respondent No.1 has taken decision as per powers vested with them as per rules.

17. Learned counsel for Respondent No.1 submitted that the decision to retire the applicant as per Rule 16(3) of the Rules, 1958 has been taken by the competent authority based on the fact that the Review Committee of Chhattisgarh State had not recommended the applicant to be retained in service.

18. We perused the ACRs/APARs of the applicant (Annexure A/11 colly.) and found nothing in it which suggests that his integrity is doubtful. Regarding an anonymous complaint against him, the Review Committee has not mentioned what is being done about the same. The instructions dated 29.06.1999 (Annexure A/17) by Central Vigilance Commission are extracted below:-

“6. It is, therefore, ordered under powers vested in the CVC under para 3(v) of the DOPT Resolution No.371/20/99-AVD.III dated 4th April 1999 that with immediate effect no action should at all be taken on any

anonymous or pseudonymous complaints. They must just be filed.”

(emphasis supplied by CVC)

Therefore, even to mention about the presence of such an anonymous complaint in the review committee proceedings is against prevalent rules, and could have been avoided.

19. We are in agreement with the averment made by learned counsel for the applicant that office of Respondent No.1 has erred in preparing the O.M. (Annexure A/15) where aspersions have been cast on the integrity of the applicant without any basis. Instead of asking the State Government as to why a mention has been made of an anonymous complaint, respondent No.1 modified it to “number of complaints”.

20. The gradings of the applicant in the ACRs/APARs for the period 2010 to 2016 (Annexure A/11) are of high order, and does not indicate that he has become a liability to the Department. In fact, for the period 01.04.2015 to 20.01.2016, the grading is 9.50, 9.50 and 9.50 by the Reporting, Reviewing and Accepting Authorities respectively. The pen picture by the Reporting Authority reads as under:

“The officer is sincere hardworking and dedicated to his job entrusted upon him. He established basic training school on radio for the operators where in service training is also conducted. His contribution to establish good radio network in naxal affected range of Bastar is quite laudable. He efficiently looked into office administration work and visited

units timely to conduct required inspections. He ensured provision of equipments and spares to the units which helped in smooth functioning of wireless system of the police in the state. He is always ready to take up additional responsibilities whenever given to him and conducts them effectively.”

21. Extracts from the judgment of the Hon’ble Apex Court in ***Umed Bhai*** (Supra) are as below:-

“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.”

22. It is noticed that the guidelines dated 28.06.2012 issued by the Government of India regarding the application of Rule 16(3) (Annexure R/3) has drawn from judgments of the Hon’ble Supreme Court in ***Umedbhai M. Patel’s*** case (supra). The operative para of this judgment has been reproduced in Para 21 above.

23. In the instant case, officer is having a brilliant career in which he has had numerous posting in the field, including naxalite infested areas. While he was working in the Headquarters, he has been commended in providing telecommunication facilities in difficult naxalite infested areas. The entire ACRs/APARs of the last five years rated the officer highly. Regarding integrity, apart from one anonymous complaint, there is no mention of any corrupt practices against him. Therefore, we conclude that there are no doubts on his integrity, as maintained in the official records (“clear from vigilance angle”) and in the perception of his superior officers as reflected in APARs.

24. It would be relevant to note that the Review Committee has stated that the applicant has not been posted in any important responsible post after the year 2011 and have remained in the Police Headquarters of ordinary responsibility. In future also chances of giving any important responsibility to him is very less.

24.1 Learned counsel for the applicant submits that as per information obtained from the respondents through RTI application, there is no classification like ordinary responsibility and important responsibility in classification of the official posts.

24.2 It has also been brought out by the learned counsel for the applicant that while the applicant was in the Headquarters, he was given important assignments when high dignitaries were coming to the State.

24.3 We observed that if at all the applicant has been found lacking in initiative, interest etc., the same should have been reflected in the APARs, which is not the case here.

24.4 The Review Committee has also categorically mentioned that there is no loss of physical capacity of the applicant.

25. The fact that the applicant was awarded Police Medal on 26.01.2010 and granted promotions on 24.01.2015 and 21.01.2016 are going in the favour of the applicant as brought out in

Umedbhai M. Patel's case (supra). High integrity and high level APARs further reinforce the case of the applicant.

26. In view of the above discussions, it is very clear that the application for Rule 16(3) of the Rules 1958 have not been applied properly in the case of the applicant.

27. Accordingly, this Original Application is allowed. Impugned orders dated 03.08.2017 and 05.08.2017 (Annexure A/1 and A/2) are quashed and set aside. Respondents are directed not to adversely affect the applicant in any manner in pursuance to the impugned orders and restore the applicant to his original position in the cadre without any break with all consequential benefits. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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