

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/00205/2015

Dated this Wednesday the 26th day of April, 2017

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Ms.B. Bhamathi, Member (A).**

Dr.Kiran Jadhav, IPS,
Age 52 years, S/o.Dattatraya Jadhav,
working as DIG of Police,
Uttar Pradesh (under resignation),
residing at 2604, Garden Court,
MMGS Road, Dadar (East),
Mumbai - 400 014. .. Applicant.

(By Advocate Shri S.V. Marne).

Versus

1. Union of India, through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi 110 001.
2. The Secretary, Home
Government of Uttar Pradesh,
Lal Bahadur Shastri Bhawan,
Lucknow - 226 001.
3. Director General of Police,
Government of Uttar Pradesh,
1, Tilak Road,
Lucknow - 226 001. ..Respondents.

**(By Advocate Shri N.K. Rajpurohit for R-1
By Advocate Shri V.S. Masurkar for R-2 & 3).**

**Order reserved on : 08.03.2017
Order delivered on : 26.04.2017.**

O R D E R

Per : Arvind J. Rohee, Member (J)

The applicant who was working as Dy.
Inspector General of Police (for short DIG) in Uttar

Pradesh, since aggrieved by impugned Notification/Order dated 16.12.2014 (Annexure A-1) by which it is directed that he is deemed to have been retired from the Indian Police Service (for short IPS), approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

"a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the Notification dated 16.12.2014 issued by Respondent No.1 with all consequential benefits.

b. This Hon'ble Tribunal may further be pleased to direct the Respondents to reinstate the Applicant in service with effect from 16.12.2014 with all consequential benefits.

c. This Hon'ble Tribunal may further be pleased to direct the Respondent to regularize the period of absence of the Applicant from 19.09.2007 till 16.12.2014 as extraordinary leave and / or any other leave admissible.

d. In the alternative, the Applicant be treated to have retired voluntarily w.e.f. 16.12.2014 Rule 16(2) of All India Services (Death cum Retirement) Rules, 1958 and he be paid pension and other admissible retirement benefits.

e. Costs of the application be provided for.

f. Any other and further order as this Hon'ble Tribunal deems fit

in the nature and circumstances of the case be passed."

2. The applicant belongs to 1991 Batch of IPS and was allotted Uttar Pradesh Cadre. The applicant joined the post of Assistant Superintendent of Police in Government of Uttar Pradesh on 15.09.1991. He was promoted to the post of Superintendent of Police in the year 1996 and thereafter to the post of Dy. Inspector General of Police in the year 2006. Prior to that in the year 2002 while the applicant was working as Superintendent of Police, he was sent on deputation to Central Bureau of Investigation, where he continued till 07.04.2007. After repatriation he joined his parent cadre in Uttar Pradesh in June 2007.

3. The applicant's wife, his parents and son reside at Mumbai. He applied for grant of Earned Leave to visit his family at Mumbai during the period from 10.09.2007 to 19.09.2007 and since he was to look after his ailing parents and son also. However, after availing leave he could not resume duty on 20.09.2007 on account of continued illness of father and son.

4. It is stated that due to illness of parents, the applicant felt it extremely difficult to leave Mumbai and hence he tried to pursue the

respondents to allow him to work at Mumbai. However, since nothing was heard, out of frustration he forwarded a letter dated 24.09.2007 (Annexure A-2) to respondent No.2 tendering his voluntary resignation from service and requested to relieve him.

5. On 29.04.2008, the respondent No.3 forwarded letter (Annexure A-3) to the applicant calling upon him to clarify the date from which resignation submitted by him is to be accepted. He replied the said letter on 10.06.2008 mentioning reasons for his absence due to illness of his parents and son, and for tendering resignation. Thereafter there was no communication. It is stated that in the year 2009, the applicant's son aged 14 years was diagnosed with Chronic Myeloblastic Leukemia and he was required to undergo number of tests and finally Bone Marrow Transplant surgery in Jerusalem (U.K.), on medical advice. The applicant's son was required to stay at Jerusalem for follow-up treatment for a period of about one year. Due to this exigency the applicant could not response to the letters dated 07.05.2009, 10.07.2009, 01.10.209 and 22.10.2009 (Annexure A-4 colly.) sent by the respondent No.3, by which he was again asked to submit date of acceptance of his

resignation.

6. Unfortunately, the applicant's son developed further complications and he required constant medical attention including regular follow-up treatment and various tests during the period from 2009 to 2012.

7. The Inspector General (Personnel) U.P. Government issued a letter dated 23.05.2013 (Annexure A-5) again to the applicant calling upon him to submit explanation regarding his alleged unauthorised leave from 18.11.2007. This was on account of the fact that the applicant applied for medical leave for the period from 20.09.2007 to 18.10.2007 and again from 19.10.2007 to 17.11.2007 and in the intervening period he submitted resignation letter dated 24.09.2007 (Annexure A-2).

8. The applicant vide communication dated 20.07.2013 (Annexure A-6) responded to the above letter dated 23.06.2013 by which he withdrew his resignation and requested for sanction of Extra Ordinary Leave to him for the period of his absence till 31.11.2013. In the meantime the applicant again received letters dated 12.08.2013 (Annexure A-7) and 11.12.2013 (Annexure A-8) from Inspector General of Police (Personnel) U.P. seeking explanation for his alleged unauthorised leave.

This was followed by issuance of a show cause notice dated 19.05.2014 (Annexure A-9) by respondent No.2 informing him that his letter dated 24.09.2007 submitting his resignation was forwarded to Government of India for approval which is under consideration. By this letter it was also acknowledged that respondent No.3 received the letter dated 20.07.2013 (Annexure A-6) through D.G.P., U.P. by which the applicant has withdrawn his resignation citing family circumstances with a request to grant him Extra Ordinary Leave for the period of absence upto 30.11.2013 on which date he will resume duty. It is also stated that the applicant did not join the duty on 30.11.2013. Since the period of more than 5 years has lapsed from submitting representation for voluntary retirement/resignation, it is informed that the applicant was given one more opportunity to review voluntary retirement/resignation from I.P.S. By the said show cause notice the applicant was also called upon to pay Government dues viz. Computer Advance of Rs.17,500/- and Rs.80,000/- as Transport Allowance before acceptance of his resignation. It is informed that the decision for grant of Extra Ordinary Leave and other leave will be taken after acceptance of resignation. The applicant was called

upon to submit his reply to the above show cause notice to the Government of Uttar Pradesh within 21 days about voluntary retirement/resignation and the date from which the resignation should be made effective.

9. The applicant replied the above referred show cause notice vide communication dated 19.06.2014 (Annexure A-11) requesting time till 30.04.2015 to join duty and withdrawing his voluntary resignation once again.

10. Thereafter, the applicant again received similar show cause notice dated 16.07.2014 which he replied on 17.07.2014 (Annexure A-12).

11. It is stated that on 18.02.2015 the applicant had a telephonic talk with Inspector General of Police (Personnel), U.P. expressing his desire to resume duty. It was then revealed that the respondents have taken a decision to treat the case of the applicant as deemed resignation. The applicant then received Email from the Inspector General (Personnel) forwarding three letters i.e. dated 25.02.2015 (Annexure A-14) addressed to him by which copy of Government letter dated 20.01.2015 and 04.02.2015 were forwarded to him. By letter dated 20.01.2015, the respondent No.1 forwarded to Respondent No.3 a Notification dated 16.12.2014

(Annexure A-1) signed by Dy. Secretary (Police), Ministry of Home Affairs, Government of India conveying the pleasure of the President that the applicant is deemed to have resigned from I.P.S. With effect from 19.09.2007 in terms of Rule 7(2)(a) of the All India Services (Leave) Rules, 1955 (hereinafter referred to as Leave Rules). The applicant received hard copies of letters dated 25.02.2015, 28.01.2015 and Notification dated 16.12.2014 by post on 03.03.2015. Thereafter, he approached this Tribunal for seeking the reliefs referred in Para 1 above.

12. The reliefs sought are based on the following grounds as mentioned in Para 5 of the O.A. The same are reproduced here in verbatim for ready reference:-

"a) The impugned notification dated 16.12.2014 is absolutely illegal and is in total violation of provisions of Rules 7(2)(a) of the All India Services (Leave) Rules, 1955.

b) Rule 7(2)(a) of the All India Services (Leave) Rules, 1955, cannot be invoked unless a reasonable opportunity is given to the officer concerned to explain the reasons for absence. In the instant case no such reasonable opportunity was given to the Applicant before invoking provisions of Rule 7(2)(a).

c) The show-cause notice dated 19.05.2014 can, by no stretch of

imagination, be treated as a notice under proviso Rule 7(2)(a). The said show cause-notice dated 19.05.2014 did not call upon the Applicant to explain reasons for his absence nor expressed the intention on the part of the Respondents to invoke provisions of Rule 7(2)(a).

d) The reasonable opportunity envisaged under proviso of Rule 7(2) or the show cause notice has to be given by the authority competent to pass order under said Rule. Therefore such show cause notice/reasonable opportunity ought to have been given by Respondent No.1. However in the instant case such show cause notice was given by Respondent No.2. Therefore this is one more reason why the show cause notice dated 19.05.2014 cannot be treated as a reasonable opportunity envisaged under proviso Rule 7 (2).

e) The said Show-cause Notice dated 19.05.2014 called upon the Applicant to consider opting for voluntary retirement or tendering resignation. The said Show-cause Notice nowhere stated that failure to tender explanation or inadequate justification for absence would invite declaration of deemed resignation under Rule 7(2)(a). All that the said Show-cause Notice dated 19.05.2014 stated that the applicant was being given one more opportunity to reconsider opting for voluntary retirement or tendering resignation. The Applicant was even asked to deposit some amount before tendering such resignation. The contents of Show-cause Notice dated 19.05.2014 show that the Government of Uttar Pradesh did not want to invoke provisions of Rule 7(2)(a) and instead directed the Applicant to consider opting for voluntary retirement or tendering resignation. Therefore it cannot be stated that

any reasonable opportunity was given to the Applicant before invoking provisions of Rule 7(2) (a).

f) On account of violation of proviso to Rule 7(2), the impugned notification dated 16.12.2014 is ab-initio void and deserves to be quashed and set aside.

g) It was more important for Respondent No.1 to give reasonable opportunity to the Applicant before declaring deemed resignation under Rule 7(2) (a). The Applicant had valid justification for his absence which was apparently was not in the knowledge of Respondent No.1. Though Respondent No.3 was aware of the reasons for Applicant's absence, there was nothing on record to show that Respondent No.3 appraised Respondent No.1 about reasons for absence. Thus it can safely be assumed Respondent No.1 was not at all aware about the sickness of Applicant's son before issuance of notification dated 16.12.2015. If Respondent No.1 had issued Show-cause Notice to the Applicant under proviso to Rule 7(2), the Applicant would have explained all the circumstances to Respondent No.1 which forced him to remain absent from duties.

h) Grant of reasonable opportunity under Rule 7(2) is not an empty formality. Rule 7(2) (a) attracts severe civil consequences and has the effect of virtually terminating the service of All India Services officers. Ordinarily, absence from service is treated as misconduct and disciplinary proceedings are initiated under the provisions of All India Services (Disciplinary Appeal) Rules. The officer, against whom disciplinary proceeds are initiated, concerned gets full opportunity of defending himself as principle of natural

justice are inbuilt in the provisions of Disciplinary Appeal Rules. On the contra, Rule 7(2) is a special provision to be exercised under special circumstances where the competent authority gets a license to terminate services / remove officers from service without holding any disciplinary enquiry. However this special power is subject to an important caveat that the officer concerned must get a reasonable opportunity of explaining his absence. In such circumstances, Respondents ought to have been extremely cautious and followed the procedure prescribed in the proviso of Rule 7(2) before invoking such special provision. However in the instant case the Respondents have acted in a casual and cavalier manner and have breached the provisions of Rule 7 with impunity. The impugned notification dated 16.12.2014 therefore deserves to be quashed and set aside.

i) The Applicant had valid justification for his absence from duty. The circumstances through which the Applicant and his family members went after 2008 onwards are already explained hereinabove. There is voluminous medical record and treatment of Applicant's son in India as well as in Israel. The Applicant's son was suffering from critical illness and Doctors both in India and Israel had told the Applicant the success rate and survive period after bone marrow transplant surgery were extremely low. The Applicant and his family were under great mental trauma. Period of more than 6 years was spent by Applicant and his family running from one hospital to another. On account of extraordinary efforts taken by the Applicant and his family, Applicant's son has survived with the grace of God. His BCR/ABL

Translocation Assay performed on 14.10.2014 yet reveals the ratio of 0.017 indicating that he is not fully cured and requires monitoring of BCR/ABL Translocation Assay at regular intervals. These are exceptional circumstances which ought to have been taken note of by Respondent No.1 before invoking provisions of Rule 7(2)(a). Though the medical records relating to Applicant's son are voluminous, the Applicant is producing herewith some of the important papers as Annexure A-15 colly. However since Respondent No.1 failed to issue Show-cause Notice to the Applicant declaring intention of invoking provisions of Rule 7(2)(a), the Applicant did not get an opportunity to explain the circumstances and to produce the said medical papers. Looking into the special facts and circumstances of the present case, it is necessary in the interest of justice that the impugned notification dated 16.12.2014 be quashed and set aside.

j) The Applicant is ready and willing to serve with the Government of Uttar Pradesh. The Applicant has so far rendered 24 years of service (including absence of 7 years). The applicant still has 8 years of service left to his credit. On account of extraordinary circumstances and critical health of his son, the Applicant did not think about the stage up to which his colleagues and batch mates have reached. The batchmates of the Applicant have reached to the position of Inspector General of Police and are waiting for further promotion to the post of Additional Director General. If taken back in service, the Applicant may retire on the post of Director General of Police. The Applicant has rendered meritorious service with the State of Uttar Pradesh. During his

illustrious career, Applicant served at United Nation Peace Keeping Mission at Bosnia. The Applicant was also selected and nominated to be a member of DNA Monitoring Expert Group of Interpol, Lyon, France, which comprise of codifying Disaster Victim Identification DNA Data base. The Applicant possesses M.B.B.S. Degree and has also served in Seth G.S. Medical College as a Lecturer in Forensic Medicines. The Applicant thus possess expertise in Forensic investigations. The Applicant is therefore deployed in almost all cases of exhumation including Godhra incident while in CBI. Thus the Applicant continuance in service would be a great assistant to Government of Uttar Pradesh. The Applicant was unable to attend his service on account of health of his son. However since his health is improved (though not fully cured), the Applicant is willing to take up the responsibility of his post and to discharge the same to the satisfaction of the government. In such circumstances, rather than losing such a meritorious officer, continuing him in service would be an asset to the Government of Uttar Pradesh.

k) Under Rule 16(2) of All India Services (Death Cum Retirement) Rules, 1958, a member of service can retire from service after giving 3 month's previous notice in writing on the date on which such member completes either 30 years of qualifying service or attains 50 years of age. The Applicant attained the age of 50 years on 10.10.2013, his date of birth is 10.10.1963. Therefore without prejudice to whatever stated hereinabove and in alternative to the prayer for setting aside the Notification dated 16.12.2014, the Applicant ought to be given an opportunity to seek

voluntary retirement under the provisions of Rule 16 (2) of All India Services (Death Cum Retirement) Rules, 1958. If the resignation of the Applicant is treated as absolute as per notification dated 16.12.2014, the Applicant would get nothing for qualifying service of more than 16 years rendered by him (excluding the period of absence). On the other hand if Applicant is granted voluntary retirement under provisions of Rule 16(2) he would at least get pension and other retirement benefits. Therefore as an alternate relief the notification dated 16.12.2014 be set aside at least for the purpose of enabling the Applicant to seek voluntary retirement under provisions of Rule 16(2) or else the Applicant be treated as deemed to have voluntarily retired w.e.f. 16.12.2014 under the provisions of Rule 16(2) and he be granted pension and retirement benefits also."

13. On 27.03.2015, when the matter was considered for admission, notice was issued to the respondents returnable on 12.06.2015. In pursuance thereof the respondent No.1 vide reply dated 14.10.2015 resisted the O.A. by denying all the adverse averments, contentions and grounds raised therein. It is stated that in pursuance of the request made by the applicant, he was granted medical leave from 10.09.2007 to 19.09.2007. The respondent No.2 also informed the respondent No.1 vide letter dated 17.05.2012 that the applicant applied for grant of commuted leave on medical ground for the further period from 19.09.2007 to

17.11.2007. However the leave period was not extended and in the meantime the applicant submitted application for voluntary retirement/resignation from service and since then had not reported back on duty.

14. It is stated that by letter dated 10.06.2008, the applicant sought approval of Respondent No.3 for taking up the assignment with the Mumbai International Airport GVK Pvt. Limited under Rule 6(2)(2) of I.P.S. (Cadre) Rules, 1954. The applicant also informed that decision on his request for voluntary retirement from service be deferred till a decision of respondent No.2 is communicated to him on his request seeking permission to join the said assignment. He also informed that he may be provided an opportunity to reconsider and review his decision on his voluntary retirement from the service. He also informed the respondent No.3 that he could not resume his duty immediately due to some personal compulsions. Copy of the said letter dated 10.06.2008 is produced on record at Annexure R-3.

15. By another letter dated 13.11.2008 (Annexure R-4) the applicant informed the respondent No.3 that the post offered to him by GVK Pvt. Ltd. International Airport has been filled up by hiring

services of ex-serviceman and as such now the applicant did not want permission from respondent No.2 and 3 for joining the said assignment. He further stated that as per U.P. Government Service Rules he was eligible to apply for voluntary retirement on attaining the age of 45 years, which he had attained on 10.08.2008, but as per All India Service Rules prescribed age for seeking voluntary retirement is 50 years. He further requested to examine the issue so that the applicant gets the benefit of pension if eligible. He further made it clear that if no benefit could be granted to him, he would prefer to be relieved from service on resignation at the earliest.

16. It is stated that the respondents did not accept the resignation of the applicant with effect from 24.09.2007 since he subsequently vide his letter dated 10.06.2008 (Annexure R-3) requested to provide him opportunity to rethink and review his decision of resignation. Moreover, the applicant's request dated 13.11.2008 for resignation was conditional and order of recovery of Rs.97,500/- was passed against him. Hence his resignation from 13.11.2008 could not be accepted as per DOP&T guidelines dated 16.08.2011.

17. It is stated that the respondent No.2 and

3 did not grant commuted leave on medical ground from 19.09.2007 to 17.11.2007 and as such this period was treated as unauthorized absence from duty. In response to the letter dated 17.05.2012 of Respondent No.2, the Respondent No.1 vide communication dated 06.06.2012 informed that in terms of Rule 7(2)(a) of Leave Rules a member of the service shall be deemed to have resigned from service if he is absent without authorisation for a period of one year from the date of expiry of sanctioned leave, provided that reasonable opportunity to explain the reason for such absence is given to the Member of All India Service, before the aforesaid provisions are invoked. The respondent No.1 also requested respondent No.2 to serve a show cause notice on the applicant for his unauthorized absence under Rule 7(2)(a) of the Leave Rules, copy of the said letter dated 06.06.2012 is marked as Annexure R-5.

18. Respondent No.2 in reply to the aforesaid letter dated 06.06.2012 vide communication dated 06.03.2013 stated that the applicant vide his letter dated 10.06.2008 and 13.11.2008 requested for acceptance of his request for voluntary retirement and as such they were of the view that the acceptance of the applicant's resignation letter

dated 24.09.2007 would be appropriate. Copy of the said communication dated 06.03.2013 is at Annexure R-6. In response to the said letter of the State Government the respondent No.2 vide communication dated 10.05.2013 (Annexure A-7) informed that the applicant was unauthorisedly absent with effect from 19.07.2007 (more than 5 years) and as such in terms of proviso to Rule 7(2)(a) of the Leave Rules, member of All India Services is required to be given a reasonable opportunity to explain the reasons for such absence before provisions of the said Rule are invoked. Respondent No.1, therefore, again requested respondent No.2 to issue a show cause notice under Rule 7(2)(a) of the Leave Rules to the applicant. By another letter dated 14.11.2013 (Annexure R-8) and 26.12.2013 (Annexure R-9), the respondent No.1 again requested the respondent No.2 to serve a show cause notice on the applicant before invoking the provisions of deemed resignation and send a copy of the notice to respondent No.1. One such request was again made vide letter dated 04.02.2014 (Annexure R-10).

19. The respondent No.2 vide letter dated 21.10.2014 informed respondent No.1 that the applicant had applied for medical leave for 60 days from 19.09.2007 to 08.10.2007 and further from

19.10.2007 to 17.11.2007, which was not sanctioned to him. Hence the applicant was unauthorizedly absent from duty with effect from 19.09.2007 which was more than 7 years. The respondent No.2 then issued show cause notice on 19.05.2014 to the applicant to which he replied on 17.07.2014 and informed that his son and father still require follow-up treatment at Mumbai and hence he was compelled to stay back and hence need further time to join duty. He, therefore, made a request that he may be allowed to remain absent till 30.04.2015. Dissatisfied with the aforesaid reply and by invoking provisions of Rule 7(2) (a) of the Leave Rules impugned order was passed treating his absence as deemed resignation with effect from 19.09.2007. Copy of the said letter dated 21.10.2014 of respondent No.2 is marked as Annexure R-11 and copy of show cause notice dated 19.05.2014 is marked as Annexure R-12. Copy of the reply dated 17.07.2014 of the applicant to the aforesaid show cause notice is marked as Annexure R-13.

20. The respondent No.1 after getting approval from the Competent Authority, issued impugned Notification/Order dated 16.12.2014 in terms of Rule 7(2) (a) of the Leave Rules, by which the applicant was deemed to have resigned from IPS with effect

from 19.09.2007.

21. It is stated that the applicant was given sufficient opportunities to resume duty and in absence of cogent explanation for his absence, the provisions of Rule 7(2)(a) of the Leave Rules are rightly invoked. The applicant remained unauthorizedly absent from duty with effect from 19.09.2007. He also failed to resume duty on 20.07.2013 or 01.12.2013 as informed by him. It is stated that it is not the prerogative of the Government servant to take leave or to join duty according to his wishes. It is also stated that the Competent Authority in the Ministry of Home Affairs has taken final view in the matter of applicant after examining the case record and taking into consideration the facts and circumstances of the case, since reasonable opportunity was given to the applicant to show cause about his absence and since explanation given was found to be unsatisfactory the provisions of Rule 7(2)(a) of Leave Rules were invoked. It is stated that the period of unauthorized absence was from 19.09.2007 to 16.12.2014 and the medical record submitted by the applicant in respect of treatment of his son Master Dhruv revealed that after 2009 his son was taken to Tata Memorial Hospital on 09.06.2009, 26.07.2010,

26.08.2010, 28.12.2010, 03.03.2011, 29.07.2011, 04.11.2011, 09.11.2011, 16.03.2012, 01.07.2012, 08.11.2012 and 12.11.2013. This shows that there was a regular gap of 3-4 months in two visits and during this period the applicant could have resumed the duty, but he failed to do so. The applicant's wife is posted at Mumbai as Sr. Medical Officer, in Central Government Health Scheme. As such she was capable of taking care of ailing son and the applicant could have conveniently resumed duty. Since the applicant has also prayed for voluntary retirement, although has not completed 50 years of age, he had no desire to serve in State Government of Uttar Pradesh. He completed 50 years of age 10.08.2013. The applicant's prayer for regularization of his unauthorized absence to qualify for voluntary retirement and consequential pensionary benefits cannot be allowed to sustain. In the light of above facts and circumstances, the O.A. is liable to be dismissed.

22. The applicant then filed rejoinder to the reply of respondent No.1 on 05.11.2015 and denied the adverse averments and contentions made therein. The grounds stated in the O.A. are reiterated. It is further stated that the respondent No.2 although stated that a show cause notice dated 19.05.2014 was

issued to the applicant for invoking provisions of Rule 7(2)(a) of the Leave Rules, still the respondent No.1 has not bothered to check the contents of the show cause notice. It is obvious that the said show cause notice has not been issued under the provisions of Rule 7(2)(a) of the Leave Rules and on the contrary the alleged show cause notice granted one more opportunity to the applicant to reconsider his decision to opt for voluntary retirement/resignation. It was also assured that on acceptance of resignation, a decision to treat the period of absence either as Extra Ordinary or any other kind of leave will be taken. Hence by no stretch of imagination it can be considered that the said show cause amounts to give intimation to the applicant that the provisions of Rule 7(2)(a) of the Leave Rules intended to be invoked by the respondent No.1 and/or the applicant was put to the notice that he would be deemed to have resigned from service. In response to the said show cause notice the applicant informed by referring to his earlier letter dated 29.07.2013 that he had withdrawn his request for voluntary retirement/resignation and expressed desire to join service on 30.04.2015 vide communication dated 19.06.2014. But in the meantime the impugned notification dated 16.12.2014 was

issued.

23. Regarding regular gap of 3-4 months during the check-up period of applicant's son at Tata Memorial Hospital, it is stated that for the sake of brevity the applicant has produced only some of the documents pertaining to medical treatment of his son essentially to show that his son was under continuous treatment from 2009 onwards. It is, therefore, denied that there were sufficient intervals in the medical check-ups and/or for treatment during which the applicant could have resumed the duty. Considering the nature of illness of applicant's son it was impossible to predict when applicant's son would be required to be hospitalised/subjected to medical treatment. On account of replacement of Bone Marrow, the immunity of applicant's son was suppressed for a long duration thereby exposing him to frequent infections. He also suffered from Chronic Graft Versus Host Disease (GVHD) which is usually caused by bone marrow graft on account of mismatch between the DNA of the donor with the host. Therefore, it is highly imaginary on the part of the Respondent No.1 to conclude that the applicant could have easily managed family obligations with the help of his wife while discharging his duties in Uttar

Pradesh. The applicant being a Graduate in Medicines himself had not only appreciated the whole situation but was also in a position to take care of developing situation from time to time. Hence applicant's presence at Mumbai was absolutely necessary to protect the life of his son.

24. It is denied that the applicant was not interested to serve in the State Government. The applicant was required to remain on leave on account of extra ordinary circumstances, which the respondents are required to appreciate other than raising the baseless contentions that the applicant remain unauthorisedly absent or that he intends to get the period of unauthorised absence regularized to lay a claim for voluntary retirement or consequential pensionary benefits. The O.A. is, therefore, liable to be allowed by rejecting the contentions of the respondents.

25. The respondent Nos.2 and 3 by a separate reply dated 07.12.2015 resisted the O.A. by denying all the adverse averments, contentions and grounds raised therein. A preliminary objection was raised regarding jurisdiction of this Tribunal to entertain the present O.A. on the ground that when the applicant is IPS Cadre Officer and was allotted Uttar Pradesh Cadre, the cause of action arose there

and not at Mumbai. As such C.A.T., Lucknow Bench has territorial jurisdiction to try and entertain the present O.A. A specific reference is also made to the decision rendered by the Hon'ble Supreme Court in **Union of India Vs. M.K. Sarkar, (2010) 1 SCC (L&S) 1126** in which it is stated that accrual of cause of action at a place gives jurisdiction to the Tribunal located there. The O.A. is, therefore, liable to be dismissed for want of territorial jurisdiction.

26. It is also stated that the applicant has deserted his service as IPS Officer since the year 2007 and hence the present O.A. having been filed on 23.03.2015 with a prayer to reinstate in service at the belated stage clearly suffers from delay and laches. Number of decisions on this point are relied upon as mentioned in Para 6 of the reply. Latest decisions of Hon'ble Supreme Court in **Esha Battcharjee Vs. Management Committee of Ragnathpur Nafar Academy, 2014(1) SLJ (SC) 20** and **State of Uttarakhand Vs. Sri Shiv Charan Singh Bhandari, 2014(2) SLR 688 (SC)** are also relied upon on the point of limitation.

27. It is stated that it is obvious from applicant's pleadings itself that he has tendered unconditional resignation from service vide letter

dated 24.09.2007 and there was nothing in it regarding illness of the applicant's son or his father as reason for submitting the resignation. The applicant for the first time in his letter dated 20.07.2013 (Annexure A-6) stated about illness of his son. However, no documentary evidence in support of the illness is submitted. It is thus obvious that from 24.09.2007 to 20.07.2013 the applicant did not approach the respondents with any grievance. The O.A. is, therefore, liable to be dismissed.

28. The applicant has not replied several letters issued by Respondent No.2 calling upon him to clarify the date from which the resignation is to be accepted. The O.A., therefore, lacks merit and hence liable to be dismissed on the ground of delay and laches and also on suppression of material facts.

29. It is stated that action taken by the respondents is strictly in accordance with law. A show cause notice was given to the applicant as required and he replied the same quoting reasons for illness of his son and father. He also seeks indulgence to permit him to join the service after 30.04.2015. It is stated that the applicant has taken it granted that Government should function as per his desire and not as per law. The impugned

order was passed before the applicant resumed the duty, since the respondents are not satisfied with the reasons given for absence.

30. It is stated that the applicant was granted Leave for the period from 10.09.2007 to 19.09.2007. He sought medical leave of 60 days in two spells with effect from 19.09.2007 to 18.10.2007 and from 19.10.2007 to 17.11.2007. However, the said leave was not sanctioned to him, since the application was not in prescribed format. Hence those applications were returned to him. His request for resignation was duly accepted by the Competent Authority and hence the impugned order calls for no interference.

31. It is stated that the applicant was posted in the office of Special Investigation, Cooperative Department. The Additional Director General of Police, Special Investigation, Cooperative Department vide his letter dtd 05.09.2007 informed that the applicant has been sanctioned Earned Leave for the period from 08.09.2007 to 17.09.2007 with permission to leave headquarters for going to Mumbai. Thereafter the applicant submitted representation for grant of medical leave in two spells for 60 days as stated earlier. His request for deputation to Mumbai International Airport

Private Limited was not considered favourably, since it was not feasible to do so, as the applicant anyhow intended to stay at Mumbai and had no desire to come back to Uttar Pradesh to resume duty. The O.A. is, therefore, liable to be dismissed.

32. It is stated that the applicant failed to respond any of the letters issued by the Inspector General of Police (Personnel) calling upon him to inform the effective date of resignation. Instead of replying those letters, the applicant vide letter dated 29.07.2013 informed about the serious illness of his father and son and treatment being continued in Tata Medical Centre, Mumbai and by the same letter he requested for taking back resignation and for sanction of Extra Ordinary Leave for the period of his absence from 19.09.2007 to 31.11.2013. He also made a request to permit him to join duty after 31.11.2013. However, he failed to do so. It is stated that under Rule 7 of the Leave Rules no member of All India Services shall be granted leave of any kind for a continuous period exceeding 5 years and since the applicant remained absent for period exceeding 5 years he is deemed to have resigned from service. The impugned order is, therefore, perfectly right and the O.A. is liable to be dismissed.

33. On 27.01.2016 the respondent No.1 filed additional affidavit i.e. sur-rejoinder (reply to rejoinder submitted by the applicant) and denied all the adverse averments, contentions and grounds raised therein. Certain documents at Annexure R-1 to R-5 which is official correspondence is also annexed with this sur-rejoinder. It is specifically denied that the show cause notice is not in accordance with Rule 7(2)(a) of the Leave Rules as alleged by the applicant. The same is fully in accordance with Leave Rules which is also replied by the applicant. A show cause notice was issued by Respondent No.2 in compliance of the direction issued by Respondent No.1.

34. On 08.03.2017, when the matter was called out for final hearing, we have heard Shri S.V. Marne, learned Advocate for the applicant and the reply arguments of Shri N.K. Rajpurohit, learned Advocate for respondent No.1 and that of Shri V.S. Masurkar, learned Advocate for respondents No.2 and 3.

35. We have carefully gone through the entire case record of O.A. including the pleadings of the parties and various documents produced on record and relied upon by them in support of their rival contentions.

36. In pursuance of the direction issued the representative of Respondent No.1 produced original official record concerning the claim. We have carefully perused the same also.

37. We have given our thoughtful consideration to the oral submissions advanced before us by the learned Advocates for the parties.

FINDINGS

38. Before proceeding to consider the rival contentions of the parties on merit, we would like to deal with preliminary objection raised by the official respondent No.2 and 3 regarding jurisdiction of this Tribunal to entertain the present O.A. In this respect the learned Advocate for the respondent No.2 and 3 submitted that the applicant admittedly belonged to Uttar Pradesh cadre and was serving there as an IPS Officer. He has no official dealing with Mumbai, although it has come on record that his wife and other family members are residing at Mumbai, where she is serving in CGHS. The learned Advocate for the respondents No.2 and 3 had invited our attention to the provisions of Section 14 of the Administrative Tribunals Act, 1985 which prescribes jurisdiction, power and Authority of the Tribunal. A dispute pertaining to the recruitment and matters concerning

the recruitment to any All India Services and all service matters concerning a members of All India Services comes within the jurisdiction of C.A.T.

39. Shri V.S. Masurkar, learned Advocate for the respondent No.2 and 3 has also invited our attention to the provisions of Rule 6 of C.A.T. (Procedure) Rules, 1987, which prescribes place of filing application under Section 19 of the Administrative Tribunals Act for seeking necessary redress. It is specifically prescribed that an application shall ordinarily be filed by applicant within whose jurisdiction he is posted for the time being or the cause of action wholly or in part has arisen. Admittedly the applicant is posted in Uttar Pradesh and hence C.A.T., Lucknow Bench has jurisdiction to entertain the present O.A. at the first instance, in view of Rule 6(1) of C.A.T. (Procedure) Rules. It is also stated that there is no question of cause of action wholly or in part having arisen within the jurisdiction of this Tribunal simply because applicant's native place is Mumbai. It is also obvious from proviso appended to Rule 6 above that with the leave of Chairman, C.A.T., Principal Bench, New Delhi, the application may be filed in the Principal Bench and subject to the orders under Section 25 such application on the

request made may be transferred to any other Bench. In the present case obviously the application has not been filed in the Principal Bench nor it was received on transfer to this Bench. In view of this it is submitted by learned Advocate for the respondents that this Tribunal has no jurisdiction.

40. However, in this respect in para No.3, of the O.A. it is stated as under:-

"Jurisdiction- Though the Applicant is allotted to Uttar Pradesh cadre of Indian Police Service, the impugned notification is issued by Respondent No.1 at New Delhi. The impugned notification has the effect of termination of Applicant's service. The Applicant has been residing along with his family in the city of Mumbai. The applicant has no other residence in the state of Uttar Pradesh. The Applicant's son requires constant medical treatment, monitoring and follow-up action in Mumbai. On account of medical condition of his son and wife's posting at Mumbai, the Applicant is settled/ordinarily resides in Mumbai. Therefore in accordance with the Rule 6 of the Central Administrative Tribunal (Procedure) Rules 1987, the present Original Application is filed in Mumbai Branch of this Hon'ble Tribunal."

41. Further in this respect Rule 6 (2) of C.A.T. (Procedure) Rules, 1987 reads as under:-

"(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his

option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

42. On the basis of the aforesaid provision the learned Advocate for the respondent No.2 and 3 vehemently submitted that since by the impugned order, the resignation submitted by the applicant is accepted its effect will be that from the date of impugned order he ceased to be in service. Hence according to him the provisions of Rule 6(2) are not attracted in this case.

43. As against this, the learned Advocate for the applicant submitted that acceptance of resignation amounts to termination of service of a Government servant and hence although the word 'resignation' is not specifically mentioned in Rule 6(2), it presupposes that acceptance of resignation amounts to termination of service. The words retirement, dismissal or termination used in Rule 6(2) also implies that the Government servant ceased to be in service on his retirement, dismissal or termination. For these reasons the effect of acceptance of resignation will also be same as termination of service, except that on retirement the Government servant gets the pension whereas on

dismissal or termination of service, Government servant is not entitled to any pension. It is obvious that at the time of filing this O.A. the applicant was residing at Mumbai and by the impugned order since his resignation is accepted, we are of the considered view that it amounts to termination of his service and hence as per the provisions of Rule 6(2) of the CAT (Procedure) Rules, this Tribunal is vested with the jurisdiction to entertain such a claim, in addition to Lucknow Bench of C.A.T. or Hon'ble Principal Bench, which have also jurisdiction to entertain the claim. We, therefore, reject the contention of learned Advocate for the respondents that this Tribunal has no jurisdiction to entertain present O.A.

44. So far as the objection of limitation is concerned, we do not find any force in this contention, since it cannot be said that the cause of action arose for the applicant to approach this Tribunal after his request for further commuted leave was rejected. In fact since there was no adverse order as such passed against the applicant till issuance of the impugned order, it can safely be said that cause of action first arose when the impugned order was passed. The present O.A. having been filed within a period of one year from the

accrual of cause of action, it cannot be said that it is barred by limitation within the meaning of Section 21 of the Administrative Tribunals Act, 1985. We, therefore, reject the contention of learned Advocates for the respondents that the O.A. is hit by limitation.

45. Now turning to merit of the case, the impugned order/Notification dated 16.12.2014 (Annexure A-1) is reproduced here for ready reference:-

"No.24020/310/1999-IPS-II
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi-1
Dated the 16th Dec., 2014

NOTIFICATION

The President is pleased to direct that Dr.Kiran D. Jadhav, a member of the Indian Police Service, borne on the Cadre of Uttar Pradesh (Batch-1991) is deemed to have resigned from the Indian Police Service with effect from 19.09.2007, in terms of Rule 7(2)(a) of the All India Services (Leave) Rules, 1955.

(G.C. Yadav)
Deputy Secretary (Police)".

46. It is obvious from perusal of the impugned order that it was passed only on account of prolonged absence of the applicant from duty exceeding 5 years right from the year 2007 till

passing of the said order. It has reference to Rule 7(2)(a) of the Leave Rules. For the sake of convenience and ready reference the entire text of Rule 7 is reproduced here:-

"7. Maximum period of absence from duty- (1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.

(2) A member of the Service shall be deemed to have resigned from the service if he -

(a) is absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission, or

(b) is absent from duty for a continuous period exceeding five years even if the period of unauthorized absence is for less than a year, or

(c) continues of foreign service beyond the period approved by the Central Government:

Provided that a reasonable opportunity to explain the reason for such absence or continuation of foreign service shall be given to the member of the Service before the provisions of this sub-rule are invoked."

47. It is obvious from perusal of the above provision that member of All India Services viz. I.A.S., I.P.S., I.F.S. and I.R.S. etc. are governed by the Leave Rules. A ceiling on grant of maximum leave is prescribed for such members, which shall

not normally exceed five years in continuity. The consequences of absence for a period exceeding five years would be that it will be presumed that member is not interested to resume duty and hence his absence is treated as if he had resigned from the service, in case he has not applied for resignation from the said post and failed to account satisfactorily about his absence. However, in the present case it is obvious that after availing short term leave for a period from 10.09.2007 to 19.09.2007 which was sanctioned to the applicant, he could not resume duty, since was held up at Mumbai on account of illness of his father and serious illness of his son, although from the year 2009. Thereafter, the applicant applied for extension of commuted leave till 17.11.2007. However, it is obvious that the same was not granted to him, obviously for the reason that in the intervening date on 24.09.2007 he applied for voluntary resignation vide communication Annexure A-2 and further that his application for grant of commuted leave was not in prescribed format. Perusal of said communication shows that no reason is given for submitting the resignation and hence it is styled as "unconditional resignation from service". It is only in the year 2013 in reply to show cause notice

the applicant disclosed that this was on account of illness of his father and son. One more reason is given in the O.A. that applicant tried to secure deputation to International Airport Mumbai on the equivalent post held by him in Uttar Pradesh. However, that attempt failed. In any case, it is obvious that the applicant is absent from duty from 20.09.2007 and did not resume at any time till the impugned order was passed.

48. The record further shows that since no specific period is prescribed under rules for issuance of a notice seeking voluntary resignation the Respondent No.2 made several communications with the applicant during the said period between 29.04.2008 to 10.06.2008 seeking clarification from the applicant regarding effective date of resignation. It is stated that the applicant submitted a reply to communication dated 29.04.2008 (Annexure A-3) on 10.06.2008 (which is not on record) explaining the reasons for submitting the resignation. It is obvious that he, however, could not resume the duty on account of serious illness of his son who was required to undergo a critical surgery in U.K. and follow-up treatment there for a period of one year and then in Mumbai for couple of years. It is obvious from record that during the

period from 07.05.2009 to 22.10.2009 (Annexure A-4 colly.) the respondent No.2 again tried to obtain clarification regarding effective date of resignation. It is only when the applicant was called upon to explain his alleged unauthorized absence from 18.11.2007 vide letter dated 23.05.2013 (Annexure A-5) from Inspector General (Karmik), he replied the said letters on 20.07.2013 (Annexure A-6) thereby withdrawing his resignation letter dated 24.09.2007. It is obvious from record that till withdrawal of resignation no decision was taken by the respondents on his voluntary resignation by communication dated 24.09.2007. However, in the meantime there was continuous absence from duty for a period exceeding five years which resulted in issuance of the impugned order. It may be mentioned here that since no effective date of resignation is given in the letter dated 24.09.2007, it is presumed that it is to be made effective with immediate effect. However, respondents did not take any decision on it till it was withdrawn. Obviously on withdrawal of resignation, it was not required to take any decision on it. However, in spite of withdrawal of resignation, applicant did not resume duty.

49. It is obvious from perusal of the

provision of Rule 7 of the Leave Rules that before taking a decision on deemed resignation by the member of All India Service, a show cause notice is required to be issued to him for giving a reasonable opportunity to explain the reason for such absence. The record further shows that the applicant replied the show cause notice dated 19.05.2014 (Annexure A-9) on 19.06.2014 (Annexure A-11) again withdrawing his previous resignation, and has given details of the circumstances for which he could not resume the duty on account of serious illness of his father and son.

50. In this respect the learned Advocate for the applicant submitted that Annexure A-9 cannot strictly be said to be a show cause notice under Rule 7(2)(a) of the Leave Rules and further it was not issued by Respondent No.1 who alone can issue being the Appointing Authority of the applicant. It is, however, made clear by Respondent No.1 himself in his reply that he directed and authorised respondent No.2 and thereby delegated power to issue show cause notice to the applicant on his behalf, which was accordingly issued after prolonged communication on 19.05.2014. It is obvious that the said show cause notice was issued as provided under Rule 7(2)(a) read with proviso. For the sake of

convenience and ready reference the entire text of the show cause notice and the reply given by the applicant to it are reproduced here:-

"Government of Uttar Pradesh
Home (Police Services) Section-2
No.GI-239/CH/Pu.Se.-2-14-522(18)/08
Lucknow-Date 19 May, 2014

Show Cause Notice

Dr.Kiran D. Jadhav
IPS,
2604, Garden Court, MMGS Road,
Dadar (E), Mumbai - 400 014
(Ph.No.022-22026680)

Through - Director General of Police U.P.Lucknow

In the year 2007 when you were posted as Deputy Inspector General, SIT, Lucknow, you had requested to Director General of Police to sanction the medical leave for the period 19.09.2007 to 17.11.2007. In the meantime on 24.09.2007 you have made application for voluntary retirement and since then you are absent unauthorizedly. Thereafter on 10.06.2008 and 13.11.2003 you sent applications for approval of voluntary retirement or acceptance of resignation. Your application dated 24.09.2007, 10.06.2008 and 13.11.2008 for voluntary retirement have been forwarded to Government of India, and which are under consideration. In the meantime your representation dated 29.07.2013 was received through DGP UP in which you had withdrawn your resignation citing family circumstances and requested to approve Extra Ordinary Leave for the period of absence upto 30.11.2013. As also informed that you will join duty after 30.11.2013 but you have not joined duties or taken up charge.

2. In letter dt. 6.06.2012 sent by Ministry of Home Affairs, Government of India referred to the time limit of one year laid down to take decision on the application for voluntary retirement/resignation as per para (2) All India Services (Leaves) Rules 1955. More than 5 years period has elapsed since your representation for voluntary retirement/resignation from Indian Police Services. You are given one more opportunity to review your voluntary retirement/resignation from Indian Police Service as per above rules.

3. It is also mentioned that before

resignation you will have to pay dues to the Government like computer advance of Rs.17500/- and Rs.80,000/- as transfer advance in full. Decision on approval of Extra Ordinary Leave and other leaves will be taken after acceptance of your resignation.

4. You are therefore advised to send a reply to the Government of U.P. within 21 days of receipt of this letter about voluntary retirement/resignation and the date of resignation from Indian Police Services.

Enclosed-As stated

Anil Kumar Gupta
Principal Secretary.

No.GI - 239(1), Ch.P.S.-2-14 dated:

Copies for information and necessary action are sent to

(1) To Under Secretary, Ministry of Home Affairs, Govt. Of India, North Block, New Delhi, with reference letter No.24020/310/99-IPS-II dated 06/12/2013 is sent to inform that the application for leave shall be considered after accepting of application for Voluntary retirement/resignation.

(2) Director General Of Police, U.P. Lucknow with request to sent two copies to Dr.Kiran Jadhav, IPS, Deputy Inspector General of Police.

(3) Dr.Kiran D. Jadhav, IPS, 2064, Garden Court, MMGS road, Dadar (E), Mumbai - 400 014 (Ph.No.022-22026680).

(4) Guard File / Individual Copy

As per Order

(Kamal Kishor Shrivastav)
Special Executive."

"Date: 19th June 2014

To

The Director General of Police
Uttar Pradesh,
Lucknow.

Ref- (1) Letter no.: -GI-239/C.P.S.2-14-522
(18)/08 Lucknow dated 19th May 2014

(2) Letter no.: -DG-1/86-92 dated 24th May 2014

Dear Sir,

On 10th June 2014 I received your above referred letters, requiring me to reply within 21 days of receipt of the said letters.

With reference to above, I request you to refer my letter dated 29th July 2013 wherein I had appraised you about my compulsions of accompanying my family for the tragic treatment of grave cancer suffered by my son Master Dhruv Kiran Jadhav and also by my father and to stay at Mumbai forced on me.

My son and father still require close follow up at Mumbai due to the same I have been forced to remain absent and I still require some more time. I therefore request you to allow me period of at least upto 30th April 2015, for which I will be extremely thankful and obliged of you good selves.

I reiterate the contents of my letter dated 29th July 2013 of withdrawal of my voluntary resignation.

I therefore request you to allow me period of at least upto 30th April 2015, for which I will be extremely thankful and obliged of you good selves.

Yours sincerely

Kiran Jadhav
2604, Garden Court
MMGS Road, Dadar (E),
Mumbai-400014."

51. It is obvious from perusal of the text of the show cause notice that although it refers to absence of the applicant from duty with effect from 19.09.2007, still it also called upon him to review his decision of voluntary retirement/resignation from I.P.S. and also pay the dues outstanding

against him. It does not contain in specific words that applicant is called upon to explain reasons for his prolonged absence from duty, nor it is mentioned that Respondent No.1 intended to take action under said Rule 7(2)(a) of Leave Rules. We, therefore, find substantial force in the contentions of the learned Advocate for the applicant that tenor of the show cause notice does not in fact attract the provisions of Rule 7(2)(a) since it refers to calling upon the applicant to review his decision for voluntary resignation and thereby indirectly calling upon him to resume duty for which applicant has already expressed his desire to do so. It is needless to say that Rule 7(2) is a special provision which does not refer to submission of resignation in writing as such by the member of All India Service.

52. In the present case as stated earlier applicant has submitted his resignation which was subsequently withdrawn by him twice vide communication dated 18.10.2007 and 29.05.2013. This was for the reason that no decision was taken by respondents on the voluntary resignation submitted by the applicant. As such it is obvious that he was at liberty to withdraw the same. Since he has withdrawn request for resignation there is no

question of granting it as stated earlier. However, inspite of withdrawal of resignation it does not prevent the respondents from taking action under Rule 7(2) of Leave Rules for the reason that period of absence from duty exceeded maximum period of five years, for which leave can be granted to member of All India Service. Hence it cannot be said that respondents were not entitled to invoke provisions of Rule 7(2)(a). However while doing so, due care is not taken as stated in preceding paras which resulted in violation of principles of natural justice and for this reason the impugned order cannot be allowed to sustain, since it is settled law that violation of principles of natural justice amounts arbitrary exercise of power and hence it is vitiated.

53. From the above discussion it is obvious that there is substantial force in the contention of learned Advocate for the applicant that impugned order does not sustain since provisions of Rule 7(2) cannot be said to be attracted or applied in the present case. The record further shows that the applicant once again withdrew the resignation in reply to the show cause notice. The impugned order, therefore, cannot be said to be legal, proper or correct in the peculiar facts and circumstances of

the case, especially when in the reply to the alleged show cause notice the applicant has given details regarding the reasons for which he could not resume the duty. The respondents are, therefore, not justified in saying that the applicant has not submitted reasons for remaining absent from duty for a period exceeding five years or that those were not convincing or reliable. In any case the applicant deserves to get main relief of quashing of the impugned order.

54. Before concluding it may be mentioned here that the record further shows that the applicant was at fault since he did not resume duty for a continuous period of over 5 years and even after recovery of his son from major illness to some extent. There were sufficient number of opportunities available to him to resume duty, since on couple of occasions he has declared his intention to do so, but failed and in the meantime impugned order was issued. It is also obvious that the respondents are also equally responsible to keep pending for couple of years, without taking any decision on the request for voluntary resignation. Instead of doing so, it appears that the respondents intended that the applicant's case should be covered under Rule 7(2) of Leave Rules, for his continuous

absence from duty for more than 5 years. In any case as stated and discussed above, since show cause notice itself was found to be not in accordance with law, its ultimate benefit goes to the applicant, especially when no reasons are attributed by the respondents for failing to take a decision on request for voluntary resignation. Further, in this respect it may be mentioned here that no departmental proceeding was initiated against the applicant for unauthorised absence for couple of years. In fact it was not required to ask him to clarify the effective date of his resignation since he did not specify any date in his request. In any case blame lies on both the parties. However, the ultimate gain will go in favour of the applicant.

55 (a). In the result, the O.A. is partly allowed. The impugned order / Notification dated 16.12.2014 issued by Respondent No.1 treating absence of applicant from duty for a period exceeding five years as deemed resignation is quashed and set aside as illegal, improper and incorrect. Consequently the applicant is continued in service.

(b). The respondents are, therefore, directed to consider and grant leave admissible to the applicant for the period from 20.09.2007 onwards till he reports for joining. As per original record

produced by respondents, applicant is having 300 days Earned Leave and 356 days Half Pay Leave to his credit as on 01.09.2007. After adjusting leave due as above, rest of the period of absence shall be treated as Leave Without Pay/Extra Ordinary Leave.

(c). So far as alternative prayer for treating the applicant to have been retired voluntarily from 16.12.2014 as per Rule 16(2) of All India Services (Death cum Retirement) Rules, 1958 is concerned, the applicant will be at liberty to make fresh representation to the respondents in this behalf, if so desires, which will be considered in accordance with law.

(d). In view of above, the applicant is at liberty to resume the duty and the respondents shall allow him to report for joining by completing necessary formalities, within a period of two months from the date of receipt of certified copy of this order.

(e). It is made clear that the applicant will not be entitled to receive salary for the period of his absence, except for which leave admissible to him is granted.

(f). The period of absence, however, shall not be counted as qualifying service for considering applicant for further promotions.

(g) . In the facts and circumstances of the case, the parties are, however, directed to bear their respective costs of this O.A.

(h) . Registry is directed to expedite issuance of certified copy of this order to both the parties.

(Ms.B. Bhamathi)
Member (A)

(Arvind J. Rohee)
Member (J) .

H.

