

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.203/00931/2017

Jabalpur, this Friday, the 27th day of September, 2019

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

A.M. Jury Son of
 Shri K.M. Jury
 aged about 57 years,
 posted as Assistant Inspector General,
 Police Headquarter Project & Planning Raipur,
 Tahsil and District
 Raipur (C.G.) 492008-
 Mobile No.9424255400

-Applicant

(By Advocate-**Shri A.V. Shridhar**)

V e r s u s

1. Union of India, Through the Secretary Ministry of Home Affairs (Police-I Division) North Block New Delhi 110001
2. State of Chhattisgarh, Through the Secretary, Home (Police) Department Mahanadi Bhawan, Mantralaya New Raipur Tahsil and District Raipur (C.G.)
3. Under Secretary, Home Department Government of Chhattisgarh Mahanadi Bhawan, Mantralaya New Raipur Tahsil and District Raipur (C.G.)
4. Director General of Police Police Head Quarter, Chhattisgarh, New Raipur Distt- Raipur (C.G.) - Respondents

(By Advocate-**Shri Vivek Verma for respondent-Union of India**
Shri Ajay Ojha for respondent-State of C.G.)

(Date of reserving the order:-01.02.2019)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the order dated 03.08.2017 whereby the applicant Member of Indian Police Service has been retired in public interest by giving three months pay and allowances in lieu of notice while exercising the powers under Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

2. The applicant has prayed for the following reliefs:-

“8.1 That, this Hon’ble Tribunal may kindly be pleased to set aside the order dated 03.08.2017 (Annexure A/1).

8.2 That, this Hon’ble Tribunal may further kindly be pleased to direct the respondents to grant all consequential benefits flowing from quashing of impugned order dated 03.08.2017 (Annexure A/1).

8.3 That, any other relief/order which deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given.”

3. The applicant was initially appointed on the post of Deputy Superintendent of Police on 10.04.1983. The

applicant thereafter had been promoted /awarded to Indian Police Service w.e.f.2000 and posted as Assistant Inspector General of Police in the year 2011. The applicant was issued a charge sheet and departmental enquiry was contemplated against him. Inquiry officer submitted enquiry report before the disciplinary authority and on perusal the applicant was discharged/exonerated from the charges leveled against him vide order dated 01.10.2008 (Annexure A/2). During pendency of the said departmental enquiry the meeting of promotion committee was constituted and in spite of coming under the zone of consideration, the applicant was not considered for promotion on account of pending departmental enquiry. The juniors to the applicant had been promoted to the next higher post. After completion of the said departmental enquiry, the applicant was again served with the charge sheet vide letter dated 17.03.2012 with list of witnesses on the basis of same charges. Since the applicant had already faced the departmental enquiry and on completion of full

fledged departmental enquiry on the same allegation, had been discharged/exonerated from allegations, therefore initiation of subsequent departmental enquiry on the same set of charges was double jeopardy and in clear violation of Article 20(2) of the Constitution of India, which provides right to the person that No person shall be prosecuted and punished for the same offence more than once. The applicant filed representations on 04.08.2015 and 24.08.2015 (Annexure A/3 colly.), but no response was received from the respondents. The matter was put before the Law Department, Government of Chhattisgarh for opinion regarding initiation of second departmental enquiry against the applicant on the same charges and the note sheet was prepared. The Chief Secretary, Law Department recommended that since earlier on the same charges, the applicant had faced prolong departmental enquiry and he has been discharged from allegations on merits, therefore the aggrieved person may file appeal against the order of acquittal and there is no provision of

suo-moto revision or reopening of proceedings of departmental enquiry on the same charges. The applicant obtained the said note sheet dated 09.06.2014 (Annexure A/4) under Right to Information Act. Thereafter no communication was made regarding further proceedings and after more than 3 years from serving charge sheet on 18.06.2015, the Assistant General of Police (Administration) Police Headquarter, Chhattisgarh Raipur sent a letter to the applicant stating that he has been appointed as Presenting Officer and Inspector General of Police, Training/Rail/Traffic/Recruitment/ Radio had already appointed as inquiry officer. Vide memo dated 18.06.2015 (Annexure A/5) the applicant was directed to appear on 26.06.2015 at Police Headquarter, New Raipur for giving statement. The applicant submitted an application on 22.06.2015 (Annexure A/6) whereby he has not been informed about appointment of presenting officer and inquiry officer and directly he has been informed for giving statement. Therefore the applicant asked the order

of appointment of presenting officer and inquiry officer and further requested for providing relevant documents on which the charges are based. But no order and relevant documents on which the charges are based were provided to him. The representation of the applicant was rejected without providing any reasons and no copy of the said order has been supplied to the applicant and the same was thereafter obtained under RTI on 08.03.2016. The applicant filed Writ Petition (S) No.797/2016 and the same was withdrawn on 07.04.2016 with liberty to file Original Application before this Tribunal. The applicant filed Original Application No.589/2016 before this Tribunal and the same was disposed of 19.08.2016 with a direction to decide the representation of the applicant. The respondents rejected the representation of the applicant on 03.12.2016. Against which the applicant again approached this Tribunal by filing O.A. No.61/2017 for grant of stay to the departmental proceeding. This Tribunal on considering the legal issues involved in the continuation of the

departmental enquiry directed that the respondents may continue with the departmental enquiry however the final order shall not be passed. During continuation of the departmental enquiry the respondents have exercise the powers under the Rules 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. Hence this Original Application.

4. The respondents Nos.2, 3 and 4 have filed their reply. It has been submitted by the respondents that a compliant was made against the applicant by his own wife so it would not be proper on the part of the applicant to say that it was made with an ulterior motive so as to terminate the services of the applicant. It is submitted that by a communication dated 01.10.2008 addressed to the Director General of Police, State of Chhattisgarh, it was informed that the disciplinary proceedings be closed. So the said letter dated 01.10.2008 cannot be termed as an order. The applicant was given due opportunity to appear and defend this case and all materials were provided to him to defend

himself in the said departmental enquiry. It is further submitted by the respondents that Original Application No.203/00061/2017 was filed by the applicant before this Tribunal whereby vide order dated 19.04.2017 (Annexure R-2 to 4/2) an interim direction was given that the respondents shall not finalise the enquiry till the next date of hearing. However, they are permitted to continue the said enquiry and the matter was posted for the next date of hearing on 08.09.2017. Vide order dated 23.08.2017 (Annexure R-2 to 4/3) the said O.A. was dismissed as infructuous and it was further stated by the Tribunal that in view of the dismissal of the Original Application the interim order stands vacated and in no way have bye passed the order passed by this Tribunal. It is submitted by the respondent-department that there was no order of this Tribunal to restrain the respondents from finalizing the enquiry. In so far as the allegations with regard to passing of the impugned order is concerned it is made clear that the applicant is a Member of All India Police Service (IPS)

is governed by the service rules in which the decision with regard to his benefits or his detriment are finally taken by the Government of India, i.e. respondent No.1.

5. The respondent No.1 has filed his reply wherein it has been stated that the applicant is an IPS officer of 2000 batch and was allotted the Cadre of Chhattisgarh. As per Rule 16(3) of All India Services (Death-cum-retirement Benefits) Rules, 1958 (Annexure R-1), 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 months' previous notice in writing or three month's pay and allowance 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.

6. The Department of Personnel and Training vide their letter dated 28.06.2012 (Annexure R-2) has issued guidelines for intensive review of records under 16(3) of All India Services (Death-cum-Retirement Benefits), 1958. Respondent No.2 vide their letter dated 26.04.2017 stated 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. In case of applicant after examining the records, the Review Committee has not found the applicant fit to be retained in the service but suggest for keeping further watch on their activities. As per records available, departmental enquiry is pending against the officer (09.07.2014). Government of Chhattisgarh vide their letter dated 21.02.2012 has issued him a charge sheet under Rule 8 of AIS (D&A) Rules, 1969 on the allegation

of violation of Rule 3(i) (iii) Chhattisgarh Civil Service Conduct Rules, 1965. 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.

As per provisions of Department of Personnel and Training letter dated 28.06.2012, the answering respondents sent a proposal for premature retirement of applicant under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 vide Office Memorandum dated 30.05.2017 to the Department of Personnel and Training for approval of Appointment Committee of the Cabinet. The appointment Committee of the Cabinet after careful consideration vide letter dated 02.08.2017 approved the proposal of answering

respondent for premature retirement of applicant 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 and was accordingly retired vide order dated 03.08.2018 (Annexure R/3). The respondent No.1 has relied upon the judgment of Hon'ble Supreme Court in the matter of ***State of Gujarat vs. Umedbhai M. Patel***, reported in (2001) 3 SCC 31.

7. We have heard the learned counsel for both the parties and have also perused the pleadings and documents annexed with the O.A. No rejoinder has been filed by the applicant controverting the facts mentioned in the reply of the respondents.

8. From the pleadings it is an admitted fact that the applicant was initially appointed on the post of Deputy Superintendent of Police on 10.04.1983 and thereafter he was promoted/awarded to Indian Police Service w.e.f.2000 and was posted as Assistant Inspector General of Police in

the year 2011. It is also further admitted fact that the charge sheet was contemplated against the applicant and the inquiry officer had submitted enquiry report to the disciplinary authority and on the perusal of the said, the disciplinary authority had discharged/exonerated the applicant from the charges leveled against him vide order dated 01.10.2008 (Annexure A/2). It is also admitted fact that during the pendency of the said departmental enquiry the meeting of Departmental Promotion Committee was constituted and despite the fact that the applicant was within the zone of consideration, he was not considered for promotion on account of pending departmental enquiry. So, the juniors to the applicant had been promoted to the next higher post. Further, it is also an admitted fact that the applicant was again served with the charge sheet vide letter dated 17.03.2012 on the same charges on which earlier the applicant was discharged/exonerated.

9. The applicant had submitted representations against the said charge sheet on the ground that subsequent

departmental enquiry on the same set of charges amounts to double jeopardy and against which there is constitutional protection under Article 20(2) of the Constitution of India. Despite representations filed by the applicant on 04.08.2015 and 24.08.2015 (Annexure A/3 colly.), no response was received from the respondents. The applicant was called upon to appear before the inquiry officer. The applicant had made application seeking documents which were not provided to the applicant along with the charge sheet. The representation of the applicant was rejected without providing any reasons. Earlier Writ Petition No.979/2016 was filed before the Hon'ble High Court of Chhattisgarh which was withdrawn with liberty to approach Tribunal. The applicant filed Original Application No.589/2016 before this Tribunal and the same was disposed of vide order dated 19.08.2016 with a direction to decide the representation of the applicant. The respondents rejected the representation of the applicant on 03.12.2016. Against the said rejection the applicant filed

O.A. No.61/2017 before this Tribunal but during pendency of said O.A., the respondents have invoked the provisions under Rules 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 whereby the applicant was premature retired.

10. The main contentions put forth by the learned counsel for the applicant are that the impugned order dated 03.08.2017 has been passed when the O.A. No.61/2017 was pending before this Tribunal. It has been further contended that the applicant was discharged/exonerated after full fledged departmental enquiry done by the respondent-department and on the same incidence there cannot be second charge sheet against which O.A. No.61/2017 was pending which amounts to double jeopardy and against which constitutional protection is provided under Article 20(2) of the Constitution of India. Furthermore, the respondent-department has not even complied with the guidelines issued by the Department of Personnel and Training (DoPT) vide circular dated

28.06.2012 for intensive review of records before passing any orders under rules 16(3) of the All India Services (Death-cum-Retirement Benefit) Rules, 1958 which has been issued by the DoPT on the basis of the judgment passed by Hon'ble Apex Court in the matter of ***State of Gujarat vs. Umedbhai M. Patel*** (2001) 3 SCC 314. Further submission of the counsel for the applicant is that the applicant has an excellent record specially in past five years of service and the applicant had been awarded grading more than 9 points which has been mentioned in Para 5.3 of the Original Application. It has been further argued by the counsel for the applicant that when the second charge sheet on the same grounds was issued, on which earlier the applicant was discharged/exonerated, the opinion of Department of Law was sought and as per Annexure A/9, the second enquiry is not permissible especially in view of the law settled by Hon'ble Apex Court in the matter of ***State of Assam and another vs. J.N. Roy Biswas*** reported in AIR 1975 SC 2277.

11. On the other side, the contentions of the respondent-department are that on the compliant of wife of applicant, the matter was inquired and the applicant was given due opportunity to appear and defend the case and against which the applicant had earlier filed O.A. No.61/2017 and the respondents were directed not to finalize the disciplinary proceedings. However, the respondents had invoked the provision under Rules 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 and have compulsory/premature retired the applicant. It has been specifically argued by the counsel for the respondents that mere closure of the earlier proceedings does not amount to any order for setting the issue at rest. The counsel for respondent No.1 has argued that the case of the applicant was reviewed with the other IPS officer of 2000 batch and the Central Government in consultation with the State Government concerned and retired the applicant in public interest as per DoPT letter dated 28.06.2012 (Annexure R/2), as the review committee has

not found the applicant fit to be retained in the service but suggest for keeping further watch on their activities as the departmental enquiry was pending against the applicant and charge sheet was issued under Rule 8 of AIS(D&A) Rules, 1969 on the allegation of violation of Rule 3(i) (iii) of the Chhattisgarh Civil Services (Conduct) Rules 1965.

12. The applicant has put reliance on the judgment passed by Hon'ble Apex Court in the matter of *J.M. Roy Biswas* (supra) to the fact that once the delinquent is exonerated after having the full fledged enquiry the chagrined Government cannot restart the exercise in the absence of specific power to review or revise, vested by rules in some authority. Further the applicant has also relied upon the order dated 01.02.2018 passed by this Tribunal in Original Application No.200/699/2017 (*K.C. Agrawal vs. Union of India and others*), as the instant case is fully covered by the facts and circumstances of *K.C. Agrawal's* case.

13. After considering the verdict of the Hon'ble Apex Court in the case of ***J.M. Roy Biswas*** (supra), we are of the affirmed view that the case of the applicant cannot be reopened especially when the case of the applicant was closed after having a full fledged inquiry and the applicant was exonerated/discharged from all charges. It is clear from Annexure A/4 whereby it has been indicated that the matter cannot be reopened especially when the matter was closed after having a full fledged enquiry.

14. In the present case the impugned action Annexure A/1 has been issued under Sub Rule 3 of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. The learned counsel for the applicant had relied upon the order passed by this Tribunal in ***K.C. Agrawal's*** case and also the law settled by the Hon'ble Apex Court in the matter of ***Umedbhai M. Patel*** (supra) and submitted that the respondent-department has not complied with the said settled position of law.

15. From the pleadings it is very clear that earlier the disciplinary proceeding was initiated which was culminated into final submission of the inquiry report and the disciplinary authority has closed the proceedings. Meaning thereby the applicant has been exonerated/discharge from the charges leveled against the applicant. Moreover, in view of the law settled in the matter of ***J.M. Roy Biswas*** (supra). It is clear that the second charge sheet cannot be there on the same event if the earlier charge sheet has been dropped after having full fledged inquiry. We do not agree with the reply filed by the replying respondents that the simple closure of disciplinary authority does not mean that the persons have been exonerated as such argument putforth by the replying respondents is not sustainable in the eye of law.

16. 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 A/7 and R/2). 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. The relevant Para 8 from Annexure A/7 and R/2 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.”

17. Further the relevant paras of the Annexure of this communication (Annexure R/2) 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.”

18. The Hon'ble Apex Court in the matter of ***Umedbhai M. Patel*** (supra) had laid down the guidelines which are as under:-

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

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

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

19. The DoPT has also issued the guidelines after coming up of the judgment in the matter of ***Umedhai M. Patel*** (supra) which is annexed as Annexure A/7. It is also relevant to indicate that in Annexure A/7 further guidelines for review under Rule 16(3) of All India Service (Death-cum-Retirement Benefit) Rules, 1958 has been spelt in Para 10 of these guidelines. The relevant Para is as under:-

“10. The State Government are required to carry out a review in respect of :-

(i) All officers who have completed 15 years of qualifying service;

(ii) All officers who have completed 25 years of qualifying service or attained the age of 50 years, whichever is earlier, subject to the following conditions;

a) An officer should have completed minimum 15 years of qualifying service;

b) In the case of the State Service Officers appointed to any All India Service by promotion or by selection, they should have completed a minimum of 5 years of actual service in the respective All India Service.

20. In the instant case the applicant was earlier belongs to State Police Service in the year 1983 and subsequently

indicated into Indian Police Service and thereafter was posted as Assistant Inspector General of Police in the year 2011. As the charge sheet was issued against the applicant on 01.10.2008 and during the pendency of such disciplinary enquiry the Departmental Promotion Committee was constituted for promoting his juniors to the next higher post, but the applicant was not considered due to the fact that the departmental enquiry was pending. It is relevant to say that in the said Departmental Enquiry after receiving the inquiry report the applicant was exonerated/discharge from the charges leveled against him and the case of the applicant was closed. It is also admitted fact that on 17.03.2012 the applicant was again charge sheeted on the same charges regarding which the applicant had made the representation and as per Annexure A/4 dated 09.06.2014 it was spelt out that on the same charges the second charge sheet cannot be issued. Despite this fact the second charge sheet has been issued which was challenged before this Tribunal. But during the course of

this, the respondents has a note the provision under 16(3) of the All India Service (Death-cum-Retirement Benefits), Rules, 1958 (Annexure R/1) and the applicant has been premature retired as per Annexure A/1 which is under challenge in this Original Application.

21. In the instant case it is pertinent to mention that in reply of the replying respondent it has been indicated that the respondent-state has considered the law settled by the Hon'ble Apex Court in the matter of ***Umedbhai M. Patel*** (supra) and as per instructions Annexure A/7 /Annexure R/2 issued by DOPT, the respondent-state has followed the procedure. In reply to Para 4.6 in O.A., the respondents have submitted that the communication dated 01.10.2008 addressed to the Director General of Police, State of Chhattisgarh, it was informed that the disciplinary proceedings be closed. So the said letter cannot be termed as an order and was part of an earlier disciplinary proceeding which has been closed in view of the inquiry report submitted by the inquiry officer. It has been further

come in record that the second charge sheet on the same event which originated on the compliant of the wife of the applicant was initiated by the respondent-department, against which the O.A. No.203/61/2017 has been filed by the applicant but during the pendency of said O.A., the respondents have invoked the provision of 16(3) of All India Service (Death-cum-Retirement Benefits) Rules, 1958 and due to that fact O.A. No.203/61/2017 has become infructuous. As per reply putforth by the replying respondents that in addition to invoking the provision of 16(3) of All India Service (Death-cum-Retirement Benefits) Rules, 1958, the inquiry against the applicant in the second charge sheet is initiated. Though the applicant has taken the one of the ground in this O.A. that on the same charge sheet on which the applicant has been exonerated/discharged earlier, the second charge sheet cannot be issued which amounts to double jeopardy against which there is a constitutional protection under the Constitution of India. In addition to this as per Annexure

A/8 letter dated 24.07.2017, the inquiry report has been submitted by the inquiry officer whereby the inquiry officer has recommended for exoneration/discharge of applicant on the basis that the charge has not been proved. Being so, it is crystal clear that as per second inquiry report Annexure A/8 the complaint which was made by the wife of the applicant has not been proved. So, the main basis of the replying respondents is that the second charge sheet pending is also frustrated.

22. In addition to that we have perused the ACRs as per para 5.3 of the O.A. The applicant made chart on the basis of ACRs annexed with this O.A. from Page 39 to Page 126 (Part of Annexure A/7). If these ACRs are perused the applicant has been graded more than 9 points. From these annexures it is clear that applicant has been graded very high. We have also gone through the performance appraisal report which annexed from Page 30 to Page 126 of paper book.

23. We have also gone through the APAR annexed at Page 39-126 and observed that as per Column 8 (integrity), the reporting officer has reported as ‘Beyond Doubt’ and even “Maintained high level of integrity”. So from this angle also the applicant has been rated as man of integrity. The reviewing and accepting authority has also, agreed to the reporting officers’ assessment.

24. We have perused the pen pictures given by the reporting officers for the following periods from 05.09.2011 to 31.12.2011 (at Page 47), 01.01.2012 to 31.03.2012 (at Page 59), 01.04.2012 to 30.11.2012 (at Page 70), 01.12.2012 to 31.03.2013 (at Page 81), 01.04.2013 to 31.10.2013 (at Page 92), 01.11.2013 to, 31.03.2014 (at Page 104), 06.06.2014 to 23.02.2015 (at Page 116) and 01.04.2015 to 31.03.2016 (at Page 124).

After pursuing the Pen Picture in Column No.9 of APARs’ we find that applicant has been assessed as non controversial, person of great depth, trustworthy, maintained excellent relation with public/seniors/

subordinate staff, outstanding officer with optimistic approach. From these Pen Pictures it is very clear that the reporting officers have assessed the work of the applicant as excellent that is why the applicant has been graded very high i.e. more than 9 points. As per perusal of the APARs annexed with this O.A. from Page 39 to 126 we find that there is no adverse entry regarding the integrity of the applicant, rather the applicant has been graded higher i.e. more than 9 points in APARs.

25. We do not find any adverse/negative reporting by any authority including the reporting authority, reviewing authority and accepting authority. So, there is no occasion for the respondent-department to assess the applicant which negates the continuity of the applicant in service. From circumstances itself, there is no public interest for issuing the impugned order. The main ground for invoking Rule 16(3) of the All India Services (Death-cum-Retirement Benefit) Rules, 1958, that some inquiry is pending. It is relevant to mention that as per Annexure R/8

the inquiry officer has specifically concluded that there is no evidence for proving the charges concerned.

26. As per reply filed by the respondent No.1 it has been submitted that as per Annexure R/1 which are All India Service (Death-cum-Retirement Benefits) Rules, 1958, the Central Government has invoked the provision of 16(3) of the said rules. It has been specifically submitted by the replying respondent No.1 that 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 months' previous notice in writing or three month's pay and allowance in lieu of such notice. It has been further submitted that the Review Committee vide letter dated 26.04.2017 stated that Review Committee meeting was held on 20.04.2017 and has reviewed the service record of IPS officers under Rule 16(3) of All India Service (Death-cum-Retirement Benefits) Rules, 1958. The case of the applicant after examining the records, the

review committee has not found the applicant fit to be retained in the service but suggested for keeping further watch on their activities. The respondent No.1 has passed the impugned order for premature retirement of the applicant. It has further been submitted by the respondent No.1 that the Ministry after going through the minutes of the review committee found that the applicant has been involved in extra-matrimonial affairs and there are departmental enquiries pending against him and the officer is not cooperating in the enquiry and the Government of Chhattisgarh vide letter dated 21.02.2012 has issued the charge sheet under Rule 8 of AIS (D&A) Rules, 1969 on the allegation of violation of AIS (Conduct) Rules, 1968 of 3(1) and Chhattisgarh Civil Service (Conduct) Rules, 1965 of Rule 3(i)(iii).

27. It is pertinent to mention that the replying respondent No.1 has not seen Annexure A/8 which has been annexed with the Original Application, which is the inquiry report submitted by the inquiry officer whereby the inquiry

officer has held that the charge under sub rule 3(1) of All India Services (Conduct) Rules 1968 has not been proved. By filing the reply by the respondent No.1 has overlooked this Annexure A/8.

28. In view of the above position, we are of the affirmed view that respondents has not acted as per the guidelines settled by Hon'ble Apex Court in the matter of *Umedbhai M. Patel* (supra) and the guidelines issued by DOPT thereon.

29. In view of the above, it is very clear that the provision of Rule 16(3) of All India Service (Death-cum-Retirement Benefits) Rules, 1958 has not been applied properly in the case of applicant.

30. Accordingly, this Original Application is allowed. Impugned order dated 03.08.2017 (Annexure A/1) is quashed and set aside. Respondents are directed to grant the applicant all consequential benefits. No order on costs.

**(Ramesh Singh Thakur)
Judicial Member**

**(Navin Tandon)
Administrative Member**

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