

(2023) 04 CHH CK 0056

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 3596 Of 2020, 4793 of 2021

State Of Chhattisgarh

APPELLANT

Vs

A. M. Jury

RESPONDENT

Date of Decision : 26-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 20(2)
All India Services (Death-cum-Retirement Benefits) Rules, 1958 — Rule 16(3)
All India Services (Discipline And Appeal) Rules, 1969 — Rule 8
Chhattisgarh Civil Service Conduct Rules, 1965 — Rule 3(i), 3(ii)

Citation : (2023) 04 CHH CK 0056

Hon'ble Judges : Ramesh Sinha, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : H.S.Ahluwalia, Ramakant Mishra

Final Decision : Dismissed

Judgement

1. Heard Mr. Raghavendra Pradhan, learned Additional Advocate General, appearing for the petitioner {in WPS No. 3596/2020} and for the respondent No. 2 to 3 {in WPS No. 4793/2021} as well as Mr. Ramakant Mishra, learned Deputy Solicitor General for the petitioner {in WPS No. 4793/2021} and respondent No. 2 {in WPS No. 3596/2020}. None appears for the respondent No. 1 {in both the writ petitions}.

2. WPS No. 3596/2020 is preferred by the State of Chhattisgarh and WPS No. 4793/2021 is preferred by the Union of India. In both the petitions, challenge is to the order dated 27.09.2019 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur, (for short, the Tribunal) in Original Application No. 203/00931/2017 (for short, the OA) by which the order dated 03.08.2017 by which the respondent No. 1, who is a member of Indian Police Service, was retired in public interest 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 (for short, the Rules of 1958), has been

quashed and set aside directing the petitioners herein to grant the respondent No. 1 all consequential benefits.

3. In the OA preferred before the learned Tribunal, the respondent No. 1 in these writ petitions (hereinafter referred to as 'the applicant') had 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."

4. The facts, in nutshell, as stated by the applicant is that he was initially appointed on the post of Deputy Superintendent of Police on 10.04.1983. The applicant thereafter was 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 (for short, the DE) was contemplated against him. The Enquiry Officer submitted enquiry report before the Disciplinary Authority and on perusal of the same, the applicant was discharged/exonerated from the charges leveled against him vide order dated 01.10.2008. During pendency of the said DE, a meeting of promotion committee was constituted and inspite of coming under the zone of consideration, the applicant was not considered for promotion on account of pending DE. The juniors to the applicant were promoted to the next higher post. After completion of the said DE, the applicant was again served with a 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 DE and on completion of full-fledged DE on the same allegation, had been discharged/exonerated from allegations, therefore initiation of subsequent DE on the same set of charges was double jeopardy and was 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 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 DE 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 DE 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 DE on the same charges. The applicant obtained the said note sheet dated 09.06.2014 under the

Right to Information Act. Thereafter no communication was made regarding further proceedings and after more than 3 years of 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 was already appointed as Enquiry Officer. Vide memo dated 18.06.2015, 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 stating that he was not informed about appointment of Presenting Officer and the Enquiry Officer and has directly been informed for giving statement. Therefore the applicant asked for the order of appointment of Presenting Officer and the Enquiry Officer and further requested for providing relevant documents on which the charges were based. But no order or the relevant documents on which the charges were based, were provided to him. The representation of the applicant was rejected without assigning any reasons and no copy of the said order was supplied to the applicant which was later obtained under the RTI on 08.03.2016. The applicant filed Writ Petition (S) No.797/2016 before this Court which was withdrawn on 07.04.2016 with liberty to file an OA before the learned Tribunal. The applicant filed OA No.589/2016 before the learned Tribunal which was disposed of 19.08.2016 with a direction to decide the representation of the applicant. The respondents (petitioners herein) rejected the representation of the applicant on 03.12.2016. Against the said order, the applicant again approached the learned Tribunal by filing O.A. No.61/2017 for grant of stay of the departmental proceeding. The learned Tribunal, on considering the legal issues involved in the continuation of the DE directed that the respondents (petitioners herein) may continue with the DE, however, the final order shall not be passed. During continuation of the DE, the respondents (petitioners herein) have exercised the powers under the Rules 16(3) of the Rules of 1958. Accordingly, OA No. 203/00931/2017 came to be filed.

5. The petitioner-State of Chhattisgarh filed its reply before the learned Tribunal stating that a compliant was made against the applicant by his own wife so it would not have been 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. 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 was further submitted by the petitioner-State of Chhattisgarh that the Original Application No.203/00061/2017 was filed by the applicant before the Tribunal whereby vide order dated 19.04.2017, an interim direction was given that the respondents (petitioners herein) shall not finalise the enquiry till the next date of hearing. However, they were 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 the said O.A. was dismissed as infructuous and it was further stated by the Tribunal that in view of the dismissal of the OA, the interim order stands vacated and in no way have by passed the order passed by this Tribunal. It was submitted by the petitioner-State of Chhattisgarh that there was no order of the Tribunal to restrain them from finalizing the enquiry. Insofar as the allegations with regard to passing of the impugned order was concerned, it was made clear that the applicant is a Member of All India Police Service (IPS) 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.

6. The petitioner-Union of India had also filed its reply before the learned Tribunal wherein it was stated that the applicant is an IPS officer of 2000 batch and was allotted the Cadre of Chhattisgarh. As per Rule 16(3) of the Rules of 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. The Department of Personnel and Training (for short, DOPT), vide its letter dated 28.06.2012 had issued guidelines for intensive review of records under 16(3) of the Rules of 1958. The State of Chhattisgarh, vide its 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 Rules of 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 suggested for keeping further watch on his activities. As per records available, DE is pending against the officer (09.07.2014). The Government of Chhattisgarh, vide its letter dated 21.02.2012 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 Union of India considered the recommendation of review committee and taking into consideration the relevant provisions of Rule 16(3) of the Rules of 1958 and the rationale of the provisions, the competent authority in the Ministry, approved for premature retirement of the applicant under Rule 16(3) the Rules of 1958. As per provisions of the DOPT letter dated 28.06.2012, the petitioners sent a proposal for premature retirement of applicant under Rule 16(3) the Rules of 1958 vide Office Memorandum dated 30.05.2017 to the DOPT 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 petitioners for premature retirement of applicant in public interest under Rule 16(3) of the Rules of 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. The Union of India 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. The Tribunal, after hearing learned counsel for the parties, came to the conclusion that the petitioners had 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 and that the provision of Rule 16(3) of the Rules of 1958 were not applied properly and accordingly set aside the order dated 03.08.2017 impugned therein and directed the petitioners to grant the applicant all consequential benefits.

8. Mr. Ramakant Mishra, learned Deputy Solicitor General, appearing for the petitioner-Union of India and Mr. Raghavendra Pradhan, learned Additional Advocate General, appearing for the petitioner-State of Chhattisgarh, would submit that the main question raised before the learned Tribunal was whether the exercise of power under Rule 16(3) of the Rules of 1958 were properly and validly exercise. There was no objection as to the applicability of the said rule or power of the Government to take action under Rule 16(3) of the Rules of 1958. Even in the order impugned, the learned Tribunal has not appreciated and discussed the said issue. There is no categorical finding based on reasons that public interest did not warrant compulsory retirement of the respondent No. 1. The learned Tribunal ought to have considered that Rule 16(3) of the Rules of 1958 is not a punitive measure but such retirement is done in public interest. The recommendations made by the Review Committee of the State and the decision of the Ministry of Home Affairs after consulting the Appointment Committee of the Cabinet, have not been appreciated by the learned Tribunal. Relying on the decision of the Hon'ble Apex Court in K. Kandaswamy v. Union of India, reported in (1995) 6 SCC 168, wherein it is held that there is a very limited scope of judicial review in case of compulsory retirement and it is permissible only on the ground of non-application of mind, malafide or want of material particulars. Power to retire compulsory a government servant in terms of the service rules is absolute and the Court cannot look into the merit of the order.

9. Though, earlier, Mr. A.V.Shridhar had appeared on behalf of the respondent No. 1/applicant, today, neither there is any representation nor any return has been filed on behalf of the applicant.

10. We have heard learned counsel for the petitioners, perused the pleadings and the materials available on record.

11. A perusal of the order impugned herein i.e. the order dated 27.09.2019 passed by the learned Tribunal, it is apparent that the same is a quite detailed order discussing the relevant factual matrix of the case. The disciplinary proceedings which culminated into final submission of the enquiry report and the Disciplinary Authority had closed the proceedings which meant that the applicant

was exonerated/discharged from the charges leveled against him. A second charge sheet on the same event if the earlier charge sheet has been dropped after having full-fledged enquiry cannot be issued. The guidelines for intensive review of records as per Rule 16(3) of the Rules of 1958 have been framed by the Government of India on 28.06.2012 has also been taken care of. The learned Tribunal, after reproducing the relevant paragraphs of the said guidelines and the guidelines laid down by the Supreme Court in the matter of Umedbhai M. Patel (supra), had gone through the chart prepared by the applicant on the basis of the ACRs annexed with the OA, wherein it was found that the applicant was graded more than 9 points, his integrity being found beyond doubt and even high level of integrity, the applicant was assessed to be a non-controversial, person of great depth, trustworthy, maintained excellent relation with public/seniors/suobrdinate staff, and an outstanding officer with optimistic approach. The learned Tribunal did not find any adverse/negative reporting by any authority including the reporting/reviewing or the accepting authority. There was no occasion for the petitioners to assess the applicant which negates his continuity in service. The reason for invoking Rule 16(3) of the Rules of 1958 was that some enquiry was pending.

12. The learned Tribunal, vide para 27 of the impugned order, has specifically observed that the petitioner-Union of India had not seen the enquiry report submitted by the Enquiry Officer whereby the Enquiry Officer has held the charge under sub-rule 3(1) of the All India Services (Conduct) Rules, 1968 as not proved. The Tribunal has further observed that the petitioners had not acted as per the guidelines settled by the Supreme Court in Umedbhai M. Patel (supra) and the guidelines issued by the DOPT.

13. The petitioners have failed to point out any legal infirmity in the findings arrived at by the learned Tribunal. The order passed by the learned Tribunal is just and proper warranting no interference. Both the petitions sans merit and are accordingly dismissed.