

(2018) 10 CHH CK 0025

In the Chhattisgarh High Court

Case No : Service Writ Petition No.3361 Of 2018

Union Of India @APPELLANT@Hash K. C. Agarwal

Date of Decision : 10-10-2018

Acts Referred:

All India Services (Death-cumRetirement Benefits) Rules, 1958 — Rule 16(3)
Constitution of India, 1950 — Article 311

Citation : (2018) 10 CHH CK 0025

Hon'ble Judges : Ajay Kumar Tripathi, CJ;Parth Prateem Sahu, J

Bench : Division Bench

Advocate : B Gopa Kumar, Rajeev Shrivastava, UNS Deo

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. Original Application No.200/00699/2017 filed by respondent- 1 as an applicant has been allowed by the Central Administrative Tribunal, Jabalpur

Bench, Jabalpur (for short, 'the Tribunal'), vide order dated 01.02.2018. The Tribunal set aside the decision of the Union of India to retire him

compulsorily under Rule 16 (3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 (for short, '1958 Rules'), on the ground that there

are no materials and evidences to show that compulsory retirement of the private respondent was warranted as he had become a deadwood.

3. Respondent- 1 was appointed as Deputy Superintendent of Police on 28.10.1985 after he was successful in the examination conducted by Madhya

Pradesh Public Service Commission. He came to be allotted Chhattisgarh State after bifurcation and inducted into the Indian Police Service vide

notification dated 02.09.2011. The year of allotment for him was 2002. He was granted selection grade vide order dated 24.01.2015 and also grade of

a DIG on 21.01.2016. Police Medal for meritorious service was conferred on him

on the occasion of Republic Day in the year 2010 but still he came to be retired by invoking powers under Rule 16 (3) of 1958 Rules. The legal battle, therefore, started by filing of the Original Application.

4. It seems that the original records were also called by the Tribunal, and were examined quite meticulously and the Tribunal did not find any adverse

entry in his service record. The respondent has earned his promotions when it was due. All his annual reports from 2010 to 2016 are either

'outstanding' or 'very good' and no aspersions have been cast on his integrity. Appreciation letters for his work have been issued right up till

08.03.2016, till the decisions dated 03.08.2017 and 05.08.2017 were taken to retire him compulsorily without any ingredients available.

5. So far as finding of facts are concerned in relation to the track and field record of service of private respondent, obviously the same could not have

been denied by the State of Chhattisgarh. The service record, therefore, does not establish that the ingredients which are required for compulsory

retirement of the Officer under Rule 16(3) of 1958 Rules were made out.

6. The Court would like to reproduce the findings as well as the requirements to make the Rule applicable to the case of the private respondent in the

words of the Tribunal itself. Paragraphs 9 to 20 of the order of the Tribunal are reproduced here below:

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

reproduced below:- 1.4. That, the Respondent No.2 vide their letter No. 01-01/2001/2-Home/IPS dated 26.04.2017 informed Respondent No.1

that Review Committee had held a meeting on 20.04.2017 for review of service records of IPS officers under Rule 16(3) of All India Services

(Death-cum-Retirement Benefits) Rules, 1958. After the review of service records of the petitioner, the committee had not recommended the

petitioner to be returned in the service.

1.5 That, the Respondent No.1 considered the recommendation of review committee and taking into consideration the relevant provisions of Rule

16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 and the rationale of the provisions, the Competent Authority in this Ministry

approved for premature retirement of the Applicant under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958.

1.6 That, as per provisions of Department of Personnel & Training letter dated 28.06.2012, the Respondent No.1 sent a proposal for premature

retirement of petitioner under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 vide Office Memorandum No.

30012/01/2016-IPS. II dated 30.05.2017 to the Department of Personnel & Training for approval of Appointments Committee of the Cabinet.

1.7 That, the Appointments Committee of the Cabinet after careful consideration vide their letter No.6/11/2017 -EO(SM-I) dated 02.08.2017 approved

the proposal of Respondent No.1 for premature retirement of petitioner in public interest under Rule 16(3) of All India Services (Death-cum-

Retirement Benefits) Rules, 1958 with immediate effect by giving three months pay and allowances in lieu of notice.

1.8 That, the Respondent No. 1 after obtaining the approval of Appointments Committee of the Cabinet issued order No.30012/01/2016-IPS.II dated

03.08.2017 vide which Applicant was retired in public interest with immediate effect by giving three months' pay and allowances in lieu of notice under

Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. A copy aforesaid order dated 03.08.2017 is annexed hereto and

marked as Annexure R-4(sic).

10. Respondent No. 1 has further averred in Para 5 of the reply that : 5. That, the Respondent 1 has followed all the necessary

rules/regulation/guidelines issued by the Department of Personnel & Training in the matter. Respondent No.2 has not recommended to retain the

applicant in service. The matter was considered by Respondent No.1 and after taking approval of the Competent Authority, petitioner was

prematurely retired in public interest under Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958.

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

costs.

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

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

(ii). O.M. No.30012/01/2016-IPS II dated 30.05.2017 from Respondent No. 1 to

Department of Personnel & Training (DOPT) (Annexure A/15).

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

14. Government of India has brought out detailed guidelines for intensive review of records as per Rule 16(3) of the Rules 1958 on 28.06.2012

(Annexure R/3). These guidelines have relied upon the judgments of Hon'ble Apex Court in the cases of Union of India vs. M.E. Reddy (AIR 1980

SCC 563) and State of Gujarat Vs. Umedbhai M.Patel (2001) 3 SCC 314.

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

8. It is seen that in some cases the overall grade or assessment given on the performance of a member of an All India Services is 'average'.

To describe a member of an All India Services as average is not complimentary. While it may not be an adverse remark, it is nevertheless a reflection

upon his work or conduct and should be taken to indicate output, which is ordinary and routine. Remarks like 'Adequate' and 'Satisfactory'

over a period of 5-7 years, without mention of any notable achievement, would also indicate that the member has reached a plateau. Similarly, it is

found that in some cases, a member of an All India Service receives a lukewarm or equivocal certificate of integrity. Such an entry would indicate

that there is some doubt in the mind of the Reporting/Reviewing authority about the integrity of the member. In all such cases, it would be quite

appropriate for the Government to examine the matter thoroughly in order to decide whether action under Rule 16(3) of AIS(DCRB) Rules, 1958

would be warranted.

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

IV: MATTERS TO BE KEPT IN MIND WHILE EVALUATING THE EFFICIENCY 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.â??

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 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 recommendation 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 â?" Ministry of Home Affairs and (c) for the Indian Forest Service â?" the Ministry of Environment and Forests.â??

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

15.1 While the applicant was awarded Police Medal on 26.01.2010, his ACRs of previous 10 years would have been taken into account which should

have been VG or above. Also, verification by IB/CBI/Vigilance Clearance/Cadre

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

15.2 The applicant was promoted to Selection Grade on 24.01.2015 (Annexure A/8) and DIG Grade on 21.01.2016 (Annexure A/9). Prior to granting

these promotions, the respondent-department would have considered the guidelines issued by the Respondent No.1 on 15.01.1999 (Annexure A/10),

which places high priority to integrity and all the entries of confidential reports to be considered as per para 4.3, 6.1 and 7.1 of the General Principles

annexed with Annexure A/10.

15.3. Learned counsel further highlights that the appraisal in the ACR/APARs for the years 2010-11 to 2015-16, copies of which have been placed at

Annexure A/11 (colly.), is of high level and there is no doubt about his integrity.

15.4. Further, the learned counsel submits that while the Review Committee proceedings (Annexure A/14) mentions that there is one anonymous

complaint pending about misuse of power and corruption, the OM prepared in the office of Respondent No.1 (Annexure A/15) states in Para 5 that

the Review Committee has noticed a number of complaints against the applicant regarding misuse of office and corruption. How a single anonymous

complaint, which should have been ignored as per prevailing guidelines, have been converted into many complaints has not been explained in any

documents. Even the Vigilance status in this OM mentions "clear from Vigilance Angle".

16. Learned counsel for Respondents No.2, 3 and 4 submits that the Review Committee had recommended the applicant to be kept under watch

(Annexure A/14). Further, Respondent No.1 has taken decision as per powers vested with them as per rules.

17. Learned counsel for Respondent No.1 submitted that the decision to retire the applicant as per Rule 16(3) of the Rules, 1958 has been taken by

the competent authority based on the fact that the Review Committee of Chhattisgarh State had not recommended the applicant to be retained in

service.

18. We perused the ACRs/APARs of the applicant (Annexure A/11 colly.) and found nothing in it which suggests that his integrity is doubtful.

Regarding an anonymous complaint against him, the Review Committee has not mentioned what is being done about the same. The instructions dated

29.06.1999 (Annexure A/17) by Central Vigilance Commission are extracted

below :-

6. It is, therefore, ordered under powers vested in the CVC under para 3(v) of the DOPT Resolution No.371/20/99-AVD.III dated 4th April 1999

that with immediate effect no action should at all be taken on any anonymous or pseudonymous complaints. They must just be filed.

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

19. We are in agreement with the averments made by learned counsel for the applicant that office of Respondent No.1 has erred in preparing the

O.M (Annexure A/15) where aspersions have been cast on the integrity of the applicant without any basis. Instead of asking the State Government as

to why a mention has been made of an anonymous complaint, respondent No.1 modified it to "number of complaints".

20. The gradings of the applicant in the ACRs/APARs for the period 2010 to 2016 (Annexure A/11) are of high order, and does not indicate that he

has become a liability to the Department. In fact, for the period 01.4.2015 to 20.01.2016, the grading is 9.50, 9.50 and 9.50 by the Reporting,

Reviewing and Accepting Authorities respectively. The pen picture by the Reporting Authority reads as under :

"The officer is sincere hard-working and dedicated to his job entrusted upon him. He established basic training school on radio for the operators

where in service training is also conducted. His contribution to establish good radio network in naxal affected range of Bastar is quite laudable. He

efficiently looked into office administration work and visited units timely to conduct required inspections. He ensured provision of equipments and

spares to the units which helped in smooth functioning of wireless system of the police in the state. He is always ready to take up additional

responsibilities whenever given to him and conducts them effectively.

7. Taking into consideration the background of the factual position in relation to the service record of the private respondent, the Tribunal relied on the

decision of the Hon'ble Apex Court in the case of State of Gujarat Vs Umedbhai M.Patel reported in (2001) 3 SCC 314, which broadly laid down the

parameters under which the law relating to compulsory retirement was crystallized. The principles underlying that decision has also been extracted by

the Tribunal in its decision.

21. Extracts from the judgment of the Hon'ble Apex Court in Umedbhai (supra) are as below:-

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

(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.

8. The decision of the respondents, State of Chhattisgarh or the Union of India, somehow does not in any manner meet the requirements as laid down

by the Hon'ble Apex Court in the case of Umedbhai (supra). The service record of the private respondent is not adverse. Neither any reflection

emerges about integrity or competence of the Officer which could be a pointer with regard to his incompetence or incapability to continue in service.

If the Officer did not carry a good reputation or was otherwise inefficient or incompetent, his ACRs or APARs would have been otherwise and not

'Outstanding' or 'Very good'. In fact, the Review Committee of the State while considering the case of the private respondent takes note of the fact

that the private respondent has been posted in the Head Quarter for a long time and has not been given any significant responsibility. But then that has

not been made the basis for a recommendation for compulsory retirement. The

recommendation of the Review Committee was, to keep him under watch. How such an opinion took the turn of a recommendation for compulsory retirement is not emerging from the records.

9. The Court would also like to observe that posting of an Officer on a particular station is the complete discretion of the Masters. No employee has any discretion or leeway as to where he would like to get posted or remain posted. Even if for the sake of argument it is accepted on the face value that the private respondent remained posted in the Police Head Quarter for a significant period of time because of some reason, then, the last five years' ACRs do not reflect that he needed to be kept under watch by keeping him at the Police Head Quarter because his ACRs should have matched his reputation if they were of adverse kind.

10. In these circumstances, if the Tribunal has taken a decision that despite nothing adverse having been recorded or reflected from the career graph of the private respondent, the decision to compulsorily retire him under Rule 16 (3) of 1958 Rules cannot be justified to be an objective decision, so taken by the respondent authorities. Obviously, the decision had been taken for reasons which are not explainable or which do not meet the eye.

11. Keeping in view the factual decision and the law laid down by the Hon'ble Apex Court in Umedbhai (supra), the decision of the Tribunal to quash the impugned orders dated 03.08.2017 and 05.08.2017 which were Annexure-A/1 and A/2 to the Original Application cannot be said to be erroneous or illegal in any manner.

12. Even at the level of the writ application, nothing new seems to have been produced either by the State or by the Union of India to compel this Court to take another view contrary to the reasons and the findings recorded by the Tribunal.

13. The writ application, therefore, has no merit since there is no infirmity emerging from the decision of the Tribunal which requires interference.

14. Writ Application is dismissed.

15. The respondents are directed to restore the private respondent on his post and position forthwith without any further delay and pay him all the benefits which he is entitled to, as if he was never retired compulsorily.