IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20436 of 2019

With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 20436 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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MOHBATSINH BALUSINH ZALA
Versus
STATE OF GUJARAT

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Appearance:
RAHUL SHARMA(8276) for the Petitioner(s) No. 1,2,3
SUBODHKANT B PARMAR(10133) for the Petitioner(s) No. 1,2,3
MR. KURVEN DESAI, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 30/08/2022

CAV JUDGMENT

1 The petitioners who were working as Armed

Assistant Sub Inspectors of Police in the State Reserve Police Force, Group-15, at Mehsana, have challenged the orders dated 31.05.2019, by which, the petitioners have been prematurely retired under Rule 10(4) of the Gujarat Civil Services (Pension) Rules, 2002.

2 Facts in brief would indicate that the petitioners had joined the SRPF in the year 1991 as Armed Constables. They were then transferred to the newly created SRPF, Group-15, Mehsana. On 29.11.2011, they were promoted to the post of Armed Assistant Sub Inspectors of Police.

2.1 It is the case of the petitioners that on 21.03.2013, an FIR was registered against them being CR No. I-53 of 2013 with Sector 21 Police Station, Gandhinagar, under Sections 465, 466, 471, 474, 120(B) and 114 of the Indian Penal Code. It was alleged in the FIR that the petitioner – policemen had produced forged certificates in support of their passing the CCC Examinations. The charge sheet in respect of the criminal case has been filed and the case is

pending before the competent court.

2.2 A departmental charge sheet was served on the petitioners on 24.11.2015 in respect of the allegation of producing forged certificates in support of their passing the CCC Examination. After completion of the disciplinary proceedings, the petitioners were inflicted with the penalty of stoppage of one increment for one year with future effect by order dated 23.11.2017. The penalty was imposed subject to the outcome of the criminal proceedings. By the impuged orders, the petitioners have been prematurely retired under the provisions of Rule 10(4) of the Pension Rules, 2002, on the ground that they have been found to have been of doubtful integrity, and therefore, Rule 10(4) of the Pension Rules, 2002, have been invoked prematurely retiring the petitioners.

3 Mr.Rahul Sharma, learned counsel for the petitioners would submit that the impugned orders retiring the petitioners amounts to subjecting them to

double jeopardy. He would submit that for the misconduct as aforesaid, the petitioners have already been penalized by orders of penalty dated 3.11.2017 by which a punishment of stoppage of increment with future effect has been enforced.

4 Mr.Sharma, learned counsel, would submit that it is settled law that “premature reitrement etc., cannot serve as a camouflage for dismissal on the ground of misconduct.” The orders of premature retirement are stigmatic. He would therefore submit that the orders be quashed and set aside. In support of his submissions that the order of premature retirement is stigmatic, Mr.Sharma, learned advocate, would rely on the following decisions:

(i) ***State Bank of India vs. Palak Modi.***, reported in ***2013(3) SCC 607.*** He would rely on paras 18, 23 and 25 of the said decision.

(ii) ***Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & Anr.,*** reported in ***2002 (1)***

SCC 520. He would rely on para 21 of the said decision.

(iii) ***Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar & ors.,*** reported in ***2015 (15) SCC 151***.

(iv) ***Allahabad Bank Officers' Association & Anr vs. Allahabad Bank & Ors.,*** reported in ***1996 (4) SCC 504***.

(v) Lastly, Mr.Sharma, would rely on a decision in the case of ***State of Gujarat vs. Umedbhai M. Patel,*** reported in ***2001 (3) SCC 314***.

4.1 He would submit that these decisions would indicate that when the order of compulsory retirement is stigmatic, the same deserves to be quashed and set aside.

5 Mr.Kurven Desai, learned Assistant Government Pleader, would rely on the affidavit in reply filed by the State. He would submit that if the Circular dated 28.07.1987 is perused, which is annexed to the reply, it would indicate that Rule 161 of the BCSR, now Rule 10(4)

of the 2002 rules, empowers the government to retire a government servant from government service prematurely on his attaining the age of 50 or 55 years, if the government is satisfied that it is necessary to do so in public interest.

5.1 He would submit that it is well settled that the order of premature retirement is not a penalty and therefore the argument of the learned counsel for the petitioners that the order amounts to double jeopardy is misconceived.

5.2 Mr.Desai, learned AGP, would submit that the penalty of stoppage of one increment for one year with cumulative effect was imposed looking to the misconduct. Taking into consideraton that the petitioners had produced forged CCC Certificates and had tried to obtain departmental promotion, it was a misconduct and therefore, it was found necessary that they be retired prematurely on attaining the age of 55.

6 It is in this light that the submissions of the learned counsels for the respective parties need to be considered.

7 Perusal of the impugned dorder would indicate that the recitals in the order of premature retirement indicates that the petitioners had obtained CCC Certificates which were found to be forged, and therefore, giving of such forged certificates amounted to an act of doubtful integrity. The order further recites that a departmental inquiry was carried out pursuant to a charge sheet and thereafter, a penalty of stoppage of one increment with future effect was imposed. The order therefore indicates that taking into consideration this order of penalty, the authorities had thought it fit to invoke Rule 10(4) of the Pension Rules, 2002, and prematurely retiring the petitoners.

8 In the case of **Palak Modi (supra)**, paras 18, 23 and 25 of the decision read as under:

"18. In Samsher Singh v. State of Punjab (1975) 1 SCR 814, a seven-Judge Bench considered the legality of the discharge of two judicial officers of the Punjab Judicial Service, who were serving as probationers. A. N. Ray, CJ, who wrote opinion for himself and five other Judges made the following observations:
"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may, in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case, the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside".

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23. In Chandra Prakash Shahi v. State of U.P. (2000) 5 SCC 152, the Court considered the correctness of the order passed by the High Court which had allowed the writ petition filed by the State and set

aside the order passed by U. P. Public Services Tribunal for reinstatement of the appellant.

The competent authority had terminated the appellant's service in terms of Rule 3 of the U. P. Temporary Government Servants (Termination of Service) Rules, 1975. It was argued on behalf of the appellant that the order by which his service was terminated, though innocuous, was, in fact, punitive in nature because it was founded on the allegation that he had fought with other colleagues and used filthy and unparliamentary language. In the counter affidavit filed on behalf of the respondents, it was admitted that there was no adverse material against the appellant except the incident in question. The original record produced before the Tribunal revealed that the appellant's service was terminated on account of his alleged involvement in the quarrel between the constables. After noticing various precedents, this Court observed:

"The whole case-law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi case that there was a conflict of decisions on the question of an order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of "motive" and "foundation" was always kept in view.

The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of

probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

"Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

Applying these principles to the facts of the present case, it will be noticed that the appellant, who was recruited as a Constable in the 34th Battalion, Pradeshik Armed Constabulary, U.P., had

successfully completed his training and had also completed two years of probationary period without any blemish. Even after the completion of the period of probation under para 541 of the U.P. Police Regulations, he continued in service in that capacity. The incident in question, namely, the quarrel was between two other Constables in which the appellant, to begin with, was not involved. When the quarrel was joined by few more Constables on either side, then an inquiry was held to find out the involvement of the Constables in that quarrel in which filthy language was also used. It was through this inquiry that the appellant's involvement was found established. The termination was founded on the report of the preliminary inquiry as the employer had not held the preliminary inquiry to find out whether the appellant was suitable for further retention in service or for confirmation as he had already completed the period of probation quite a few years ago but was held to find out his involvement. In this situation, particularly when it is admitted by the respondent that the performance of the appellant throughout was unblemished, the order was definitely punitive in character as it was founded on the allegations of misconduct." (emphasis supplied)

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25. The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However,

if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."

9 Albeit, this decision is in the context of termination of a probationer, the legal point would therefore be applicable to the facts of the case. What is held by the Supreme Court is that if the competent authority holds an inquiry for judging the suitability of the candidate who is a probationer or for his further continuance in service, or suitability, if the services are terminated on the basis of an allegation of misconduct, that constitutes a foundation and it is therefore violative of the principles of natural justice.

9.1 In the case of **Pavanendra Narayan Verma (supra)** para 21 of the decision reads as under:

"One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct (c) which (c) culminated in a finding of

guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

9.2 Reading the said paragraph would indicate that the Hon'ble Supreme Court held that one of the judicially evolved test to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale enqiry (b) into the allegations involving moral turpitude or misconduct which (c) culminated in the finding of guilt. If all the three factors are present, the termination is held to be punitive.

9.3 Perusal of this order under challenge in this petition would indicate therefore that there is a reason to believe that the order of compulsory retirement though treated as premature retirement and dead wood is an order of penalty which has been imposed on the petitioners after having once undertaken an inquiry and imposed a penalty of stoppage of one increment with future effect.

9.4 Even in the case of **Ratnesh Kumar Choudhary (supra),** paras 18 and 19 read as under:

> *"18. On that basis, the Court proceeded to opine thus:-*
>
> > *"In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad."*
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> *19. After stating the said principle, the Court traced the history and referred to Anoop Jaiswal vs. Govt. of India[10], Nepal Singh vs. State of U.P.[11] and Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena[12] and opined as follows:-*
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> > *"33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or*

material to initiate a regular departmental enquiry. It has been so decided in Champaklal case. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed — if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur case and in Benjamin case. In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a

> *definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee — even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases."*

9.5 In the case of **Choudhary (supra),** the Hon'ble Supreme Court has referred to paragraphs 28 and 29 of the decision in the case of ***Chandraprakash Sahi vs. State of Uttar Pradesh.,*** reported in ***2000 (5) SCC 152.*** Paras 28 and 29 have been reproduced in paras 18 to 21 of the decision, which read as under:

" *"18. On that basis, the Court proceeded to opine thus:-*

> *"In other words, it will be a case of motive if the master, after gathering some prima facie*

facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad."

19. After stating the said principle, the Court traced the history and referred to Anoop Jaiswal vs. Govt. of India[10], Nepal Singh vs. State of U.P.[11] and Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena[12] and opined as follows:-

"33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply

obtained, and an enquiry officer is appointed — if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur case and in Benjamin case. In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular

> *departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee — even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases."*

20. Appreciating the facts of the said case, the Court set aside the judgment of the High Court and restored that of the tribunal by holding that the order was punitive in nature.

21. In Chandra Prakash Shahi vs. State of U.P. and Others[13] after addressing the history pertaining to "motive" and "foundation" and referring to series of decisions, a two-Judge Bench had held that:-

> *"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the*

> *basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".*
>
> *29. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry."*

9.6 Having discussed the important principles on the concept of Motive and Foundation, the Court has held that if the order is founded on allegations of misconduct, the same are punitive in nature, and therefore, must be set aside.

10 All these decisions, albeit are in the case of the concept of whether the termination of a probationer is stigmatic based on the concept of "Motive" and "Foundation" the same principle of law will apply to the facts of the present case.

10.1 In the case of **Allahabad Bank Officers' Association (supra),** the Hon'ble Supreme Court was considering the power to compulsorily retire a government servant, it observed that the object of compulsory retirement is to weed out dead wood in order to maintain efficiency and initiative in the service and also dispense with the services of persons whose integrity is doubtful to preserve the purity of administration. While considering the issue, the Court considered the aspect of stigma. Para 7 of the judgement of the Hon'ble Supreme Court, reads as under:

> *"7 It will, therefore, be necessary to first consider what is meant by stigma and also the cases wherein the orders have been regarded as stigmatic. Stigma, according to the dictionary meaning, is something that detracts from the character or reputation of a person, a mark, sign etc. Indicating that something*

is not considered normal or standard. It is a blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame and mark or label indicating deviation from a norm. In the context of an order of termination or compuslory retirement of a government servant stigma would mean a statement in the order indicating his misconduct or lack of integrity."

10.2 It was a case where no formal inquiry was completed and the order of premature retirement was passed. The Court observed that where orders have been passed which indicate blemish, disgrace, disrespute etc., and in that context if an order of termination or of compulsory retirement is seen, the same would amount to stigma by virtue of a statement made in the order.

11 The order of premature retirement in the facts of the case on hand indicate such a statement made in the order and therefore on that ground also the same is stigmatic.

12 In the case of **Umedbhai Patel (supra),** the question before the Hon'ble Supreme Court was considering the law relating to compulsory retirement

which was summarised in para 11 of the decision which reads as under:

> *"11 The law relating to compulsory retirement has now crystallised 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 compulsority retired for the sake of public interes.*
> *(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 nore 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."*

12.1 Reading para 11 of the decision would indicate that the order of compulsory retirement shall not be passed in a short cut to avoid departmental inquiry when such a

course is more desirable. In the facts of the present case it is found that a departmental inquiry was undertaken, the petitioners were punished by imposing a penalty of stoppage of one increment with future effect, having done that for the same ground as is reflected in the order impugned herein, the petitioners have been treated as dead wood and retired prematurely. This not only amounts to a stigmatic order of premature retirement, but also a double jeopardy inasmuch as, once having inflicted a penalty for the same cause the petitioners though prematurely retired which cannot be termed as a penalty, based on the aspersion cast on the petitioners, the order is stigmatic too.

12.2 In the question of double jeopardy, the Hon'ble Supreme Court in the case of ***2004 (13) SCC 342***, ***Lt. Governor vs. H.C.Narender Singh*** has held as under:

> *"1. Head Constable narinder Singh, for short the respondent, was appointed a constable in the Delhi Police on 22.12.1982. He was promoted out of turn under Rule 19(ii) of the Delhi Police Promotion and Confirmation Rules, 1980 for showing outstanding devotion to duty. Subsequently, in the year 1990*

disciplinary action was initiated against him for dereliction of duty which culminated in the imposition of penalty of reduction of pay by one stage without cumulative effect. Appeal against the said order was dismissed. Thereafter, the appointing authority issued a second show-cause notice on 8-1-1992 proposing to remove his name from the promotion list to which he was brought under the above Rules.

2. Aggrieved by the proposed action the respondent filed an application before the Central Administrative Tribunal, for short the Tribunal, seeking quashing of the show-cause notice. The Tribunal allowed the petition and held that second sho-cause notice would amount to double punishment based on the same cause of action and accordingly quashed the show-cause notice. The Delhi Administration has come up in the appeal.

3. Counsel for the parties have been heard.

4. Reading of the show-cause notice suggests as of it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned sho-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule.

5. For the reason stated above, we do not find any merit in this appeal and dismiss the same with no order as to costs."

13 During the course of submissions, perusal of the civil application filed by the petitioners would indicate that

pending the petitions, the petitioners have attained the age of superannuation on 30.06.2022.

14 Having held that the orders impugned dated 31.05.2019 in the case of the petitioners being stigmatic and also illegal on the ground of the principle of double jeopardy, the orders of premature retirement in case of the petitioners are quashed and set aside. In view of the fact that the orders so made are quashed and set aside, the petitioners shall be treated to have served till their age of superannuation upto 30.06.2022.

15 Accordingly, since the petitioners have to be treated as superannuated on the date of their retirement of 30.06.2022. They shall be entitled to all terminal benefits which otherwise is available to a regularly retiring employee. The petition is allowed. The orders of premature retirement are quashed and set aside. The respondents are directed to extend the benefits of pension and other terminal benefits to the petitioners as

if the petitioners retired on superannuation with effect from 30.06.2022 in regular course. All such terminal benefits and consequential benefits that the petitioners are entitled to, shall be paid within a period of 12 weeks from the date of receipt of copy of this order.

In view of the main matter being allowed, no orders need be passed on the civil application. Civil application accordingly is disposed of. Direct service is permitted.

(BIREN VAISHNAV, J)

BIMAL