

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.257/2002

New Delhi this the 28<sup>th</sup> day of February, 2003.

HON<sup>BLE</sup> MR. GOVINDAN S. TAMPI, MEMBER (ADMN)  
HON<sup>BLE</sup> MR. SHANKER RAJU, MEMBER (JUDICIAL)

Dr. S.C. Mehra,  
R/o D-1/50, Vasant Vihar,  
New Delhi.

-Applicant

(By Advocate Ms Sujata Mehra)

-Versus-

1. Union of India, through  
the Secretary, Ministry of  
Health and Family Welfare,  
Nirman Bhawan, New Delhi.
2. Director-General of Health Services,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, New Delhi.

-Respondents

(By Advocate Shri S.P. Singh)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' memorandum dated 15.7.92 where the benefit of added years of service as applicable under Rule 30 of the CCS (Pension) Rules, 1972, as applicable to General Duty Medical Officers Sub Cadre has been denied to him by giving prospective effect to the decision arrived at in pursuance of Tikku Committee recommendations w.e.f. 1.12.91. He impugns respondents' order dated 16.2.2001 where his request for benefit of added service was rejected. He has sought quashment of the same with direction to the respondents to accord him benefit of OM dated 15.7.92 w.e.f. 1.12.87 with all consequential benefits.

2. Applicant lastly posted as Assistant Director General of Health Services. He obtained a MBBS degree in 1951 as well as Post Graduate Diploma in 1953. He retired on superannuation on 30.11.87.

3. Central Health Service (CHS) was constituted on 1.1.63. Their employees were allowed the benefit of Rule 30 of the Rules of the benefit of the added years of qualifying service on account of having Post Graduate qualifications. A High Powered Committee, viz. Tikku Committee was constituted to look into the various aspects of the career improvement and cadre restructuring of the Doctors of CHS which recommended benefit of added service available under Rule 30 of the Rules ibid under Rule 30 of the Rules ibid to be made applicable to GDMO cadre even in respect of MBBS Degree holders by amendment of the rules. Accordingly the government accepted the above recommendations and by an order passed on 15.7.92 benefit of added years of service was made admissible to GDMO sub cadre of CHS but the aforesaid decision was to take effect from 1.12.91. Applicant who retired earlier in 1987 through his representation sought grant of benefit of Rule 30 which was rejected by an order dated 16.2.2001, giving rise to the present OA.

4. Learned counsel for applicant Ms. Sujata Mehra contended that the cut off date as held intra vires by the Apex Court in Dr. V.P. Malik and Others v. Union of India, (1996) 1 SCC 454 shall have no application in the present case as the issue therein was regarding cut off date with respect to promotional avenues. In so far as cut off date is concerned, for retiral benefits placing reliance on a decision of the Apex Court in Union of India and Others v. Dr. Vijayapurapu Subbayamma, (2000) 7 SCC 662 it is contended that where an employee at the time of retirement is entitled to pension under the relevant rules, any subsequent amendment to the relevant rules enhancing

(3)

pension or conferring additional benefit would also be applicable to him. She further placed reliance on the following decisions of the Apex Court to substantiate her plea that the cut-off date on the basis of retirement date in a welfare legislation or provision is arbitrary and cannot be sustained:

i) Subrata Sen & Others v. Union of India, 2001 (6) SCALE 382..

ii) M.C. Dhingra v. Union of India & Others, (1996) 7 SCC 564..

iii) D.S. Nakara v. Union of India, AIR 1983 SC 149..

5. She alleges hostile discrimination, violative of Articles 14 and 16 of the Constitution of India and stated that even if she has retired in 1987, once the provisions of Rule 30 are made applicable the same would apply prospectively from 1.12.91 and accordingly applicant should be given added years of benefit with all consequential benefits.

6. On the other hand, respondents' counsel Sh. S.P. Singh, strongly rebutted the contentions and relying upon the decision of Dr. V.P. Malik's case (supra) contended that once for all purposes the cut off date in OM dated 15.7.92 has been held not to be arbitrary and intra vires applicant who was superannuated on 30.11.97 after qualifying service of 29 years benefit of Rule 30 would be

admissible to those who retired on or after 1.12.91 and as the added years of service cannot be given retrospective effect the claim of applicant is not legally sustainable.

7. In the rejoinder applicant has re-iterated his plea taken in the OA.

8. We have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in Dr. V.P. Malik's case (supra) dealing with the recommendations and cut off date decided by the Government on the basis of recommendations of Tikku's Committee observed as follows:

"4. There is enough merit in the stand taken by the Ministry of Health inasmuch as what has been contained in the Tikoo Committee Report being recommendatory in nature, a decision was required to be taken which of the recommendations could be accepted and which not. As the final decision was taken within about a year of the submission of report, we would not regard the time-lag unjustified, because the recommendations being many in number involving huge financial implications and needing sorting out of some service problems, the period of about one year taken to finally come to a decision has to be regarded as reasonable.

5. As to whether the fixation of the date (1-12-1991) can be regarded as arbitrary, it may be stated that fixation of a cut-off date can be so regarded by court if the same be one about which it can be said that it has been "picked out from a hat", as stated by this Court in D.R. Nim v. Union of India, (1967) 2 SCR 325. A Bench of this Court to which one of us (Hansaria, J.) was a party examined the question of fixation of cut-off date on the touchstone of Article 14 in Union of India v. Sudhir Kumar Jaiswal, (1994) 4 SCC 212. In that case the case of D.R. Nim was noted in para 4, followed by reference to other important decisions on this aspect in paras 5 to 7. We do not propose to reiterate what was stated in Jaiswal case. It would be enough to point out that the observation of Holmes, J. in Louisville Gas and Electric Co. v. Clell Coleman, 277 US 32, that a choice of cut off date can be interfered with if the fixation be "very wide of any reasonable mark" was cited with approval by this Court in Union of India v. Parameswaran Match Works, (1975) 1 SCC 305. It was further added

that a choice of date cannot be dubbed as arbitrary unless it is shown to be capricious or whimsical in the circumstances.

6. In the present case, the date (1-12-1991) having been fixed because of the issuance of the Office Memorandum containing the decisions of the Government on the Tikoo Committee recommendations on 14-11-1991, the cut-off date of 1-12-1991 is far from arbitrary and whimsical; it is really reasonable. It has not been picked out from a hat, but is founded on logic."

9. If one has regard to the aforesaid decision of the Apex Court and as the cut off date of 1.12.91 has been held to be reasonable and being a policy decision, in absence of any malafides we do not find any infirmity in the memorandum issued by the respondents on 15.7.92.

10. In so far as contention of applicant that the cut off date has been held to be intra vires in respect of only promotion cannot be countenanced, as the Tikku Committee's recommendations and more particularly with respect to the prospective date of its effect has been held to be reasonable and this includes not only the promotional avenues but also the recommendations as to applicability of Rule 30 for added service.

11. Moreover, Rule 30 of the Pension Rules is applicable for addition of added years of service only on retirement at superannuation. The contention of applicant placing reliance on a decision of the Apex Court in Subbayamma's case as well as decision in Subrata Sen's case and M.C. Dhingra's case (supra) the ratio laid down is that when at the time of retirement an employee is entitled to pension under the relevant rules, any subsequent amendment in the rules enhancing pension or other benefit would also be applicable to him would have no application

(6)

in the present case as by way of OM dated 15.7.92 what has been applied, i.e., Rule 30 to the GDMO cadre was not admissible to the sub cadre prior to 1.12.91 and there has been no amendment to the relevant rules. What has been made applicable is Rule 30 which cannot be given retrospective effect as the cut off date having been found reasonable by the Apex Court and moreover retrospectivity of application of Rule 30 is bound to involve huge financial implication and administrative chaos. The cut off date which is far from arbitrariness and not malafide taken as a policy decision by the Government though may be harsh upon some of the employees but is to be applied with all its rigour in the administrative exigencies and keeping in view the overall implications.

12. As the rulings cited by applicant would not apply to the facts and circumstances of the present case, we do not find any infirmity in the orders passed by the respondents. Accordingly, the OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

"San."

(Govindan S. Tampi)  
Member (A)