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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2097/2002

NEW DELHI THIS. 22<sup>nd</sup> DAY OF JULY 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)  
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

O.P. Nigam,  
R/o D-1/63, Satya Marg, Chanakyapuri,  
New Delhi

.....Applicant

(By Shri Shyam Babu, Advocate)

VERSUS

1. University Grants Commission,  
through its Secretary,  
Bahadurshah Zafar Marg, New Delhi
2. Union of India Through its  
Controller General of Accounts,  
Min. of Finance, Deptt of Expenditure  
Lok Nayak Bhavan, 7th floor, Khan Market,  
New Delhi.

.....Respondents

(By Sh. Amitesh Kumar for Respondent No. 1 (UGC) and  
Shri M M Sudan, Sr. counsel for the respondent No. 2  
(UOI) Advocates. )

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

University Grants Commission's ('UGC' or 'Commission' for short) letter No. F.6-1/98(Admn. I/A&B) dated 31.7.2002 directing the relief of the applicant (Shri OP Nigam) from his duties as Financial Adviser (on deputation), in UGC w.e.f. 31.7.2002, is under challenge in this OA.

2. Heard Shri Shyam Babu learned counsel for the applicant and Shri Amitesh Kumar who represented respondent No. 1 (UGC) Shri M M Sudan, learned Sr. Counsel who appeared for Respondent No. 2(UOI).

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3. The applicant born<sup>e</sup> on 5.7.1942 joined Indian Civil Accounts Service (ICAS) in 1974. While he was working in the Sr. Administrative Grade (SAG) in the service, in December 97 he was selected as Financial Adviser in UGC. The order of appointment dated 15.12.97 stated that while the age of retirement of employees in UGC was 58 years, his services after his having attaining the age of 58 years would be utilised for another 2 years under normal terms and conditions to the re-employed personnel in the Government. The applicant was relieved from his parent department on 16.7.98, when also it was indicated that he would <sup>be</sup> till his date of superannuation on deputation to UGC and thereafter and <sup>thereafter</sup> ~~therefore~~ he would have another two years of service on re-employment. The terms and conditions indicated in UGC's Office order No. 29/98 dated 10.2.98 also reaffirmed the position. Ministry of Finance, Department of Expenditure and Controller General of Accounts indicated the same in their letters. Following the upward revision of age of retirement of Central Government employees from 58 to 60 years, the applicant's parent department wrote to the UGC on 2.11.99 and 10.5.2000 seeking whether applicant's services would be required for a period of two years after his superannuation at 60 years. UGC by their Officer Order No. 195/2000 dated 13.9.2000 confirmed the above. Subsequently on 13.9.2000, the terms and conditions, issued on 30.4.98 were also amended to read that the applicant's deputation will be till he attained the age of 60 years and he will thereafter have two more years of service with UG till he attained the age of 62. His terms and conditions of deputation/re-employment were also accordingly amended by UGC on 27.11.2000. Following the letter from the parent department of the applicant on 23.7.2000 indicating

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that the applicant will retire on 31.7.2002, the impugned order has been issued on that date directing his relief from his assignment as Financial Adviser. Hence this OA.

4. Grounds raised by the applicant are that:

- a) as the terms and conditions of his deputation was relatable to the age of superannuation of 58 years with a clause for re-employment for two years following the upward revision of the age of superannuation to 60 years the facility should have been extended in this case as well.
- b) Order dated 31.7.2002 was totally arbitrary and breach of terms and conditions of deputation/re-employment between the applicant and respondents as the date of superannuation having gone up to 60 years, two more years of service on re-employment basis was available to him.
- c) the sudden relief of the applicant from the post of Financial Adviser has resulted in irreparable financial damage;
- d) having taken up the assignment on deputation, on the understanding that he would have two years of extra service after superannuation the respondents action has hit him hard; and
- e) even if the UGC have powers to dispense with the services of applicant the same should have been only after putting him on legitimate notice. period.

In the above circumstances the impugned order deserved to be set aside, pleads the applicant.

5. In the reply filed on behalf of the respondents on 25.10.2002, it is pointed out that the applicant had been offered the post of Financial Adviser in the UGC on 12/15th December 1997, on terms that he would be on deputation till the date of superannuation of 58 years of age and thereafter his services will be utilised for next two years, on re-employment basis. All communications issued by the applicant's parent organisation and the UGC, contained the above provisions. The applicant took up the position as Financial Adviser accordingly. As in the meanwhile, the age

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of superannuation of the Central Government servants was raised from 58 to 60 years, UGC was asked by the Ministry on 2.11.99 as to whether the services of the applicant would be required for further two years. The matter was examined by the UGC, in terms of FR 56(D) when it emerged that no extension beyond 60 years was permissible. In spite of the above, Chairman UGC took a unilateral decision, stating that in view of the commitment made by the UGC along with their acceptance of the terms and conditions adopted, the applicant was permitted to be hold the charge, for two years and beyond the age of superannuation of 60 years. This was also communicated to all contenders and the terms and conditions were also duly amended. In the meanwhile DG AGACR examined the issue as to whether the applicant could have been continued after 60 years, especially as no specific orders regarding the commitment had been given by the respondents and the proposal for extension was not approved by the UGC. Audit note was answered by the applicant himself. On 2.7.2002, the Director (Admn) UGC. examined the entire matter and recommended for reconsideration, of the earlier Chairman's decision. The matter was referred to HRD Ministry who advised that the applicant be relieved of his duties w.e.f. 31.7.2002. Accordingly impugned Officer Order No. 202/2002 was issued superseding the earlier order No. F.6-1/98(Admn./A&B) dated 13.9.2000. It was further pointed out by the respondents that the appointing authority as far as Financial Adviser was concerned, was the Commission and not the Chairman, who in this case had accorded approval for extension/re-employment to the applicant, without obtaining the clearance of the Commission. This was also done nearly a year and 10 months before the applicant's deputation was ordered. The respondents also placed for our perusal the

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notings in their relevant file to prove their case that the entire procedure has been properly gone through and no interference was called for.

6. In the rejoinder it is pointed out by the applicant that his posting as Financial Adviser was in terms of deputation upto superannuation, followed by two years thereafter. The same had been agreed to by the Commission, the applicant and his parent department. Letter dated 30.9.2000 and similar letter issued by the Chairman had been only in pursuance of the above agreement and commitment by the UGC. Further the order dated 31.7.2002 is found to have been signed by the Director (Admn) who was not the appointing authority. It is also feared that he has issued the same without any authority from the Commission. UGC was a the statutory body independent in its operation and it did not have to seek/obtain any opinion from HRD. As the decision to engage the applicant and to indicate the terms/conditions was the Commission's responsibility Director (Admn) could not have acted against the same. Even his initiating the note on 2.7.2002 on the issue was improper and illegal. Further Secretary, Min. of HRD was only a member of UGC in which capacity he was subordinate to the Chairman and therefore could not have issued any directions to the former. The applicant's engagement after his superannuation was neither an extension or re-employment but implementation of a commitment made by the Commission at the time of his original engagement. The applicant also specifically denied all the points raised in the counter affidavit and stated that the termination of his services and relief, much before the expiry of the tenure was a malafide action perpetrated by the Director (Admn), who had misled the subsequent Chairman. The Audit Memo No. 300 dated 30.08.2001 also had been used to prejudice the case of

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the applicant though the Audit were themselves satisfied with the reply given by the organisation and had closed the observation on 29.11.2001. According to the applicant the Director (Admn) was also trying to cast aspersions on the integrity of the applicant by stating that he had worked on an UN assignment while on leave during August 1999 when the fact was that the applicant had obtained permission to take up the said assignment from the Chairman of the Commission before proceeding on leave. Further the Chairman of the Commission had no jurisdiction or authority to review the decision of the earlier Chairman unless specifically permitted by the statutory rule. Therefore the decision action of the subsequent Chairman to seek the advice of the Ministry of HRD, amounted to review of his predecessors action was improper and illegal. In the circumstances of the case, the impugned action which arose, from mischief committed by the junior functionary like Director (Admn) deserved to be set aside to send a message to all concerned for desisting from such improper conduct.

7. Respondents No. 2 only referred to the basic facts of the case.

8. During the oral submissions before us, Shri Shyam Babu learned counsel for applicant forcefully reiterated his pleadings. According to him, the applicant had been engaged as Financial Adviser by the Commission with specific understanding. that he would be entitled to have two years service further after his date of superannuation on attaining the age of 58 years. This was the position before the age of retirement of Central Government employees was raised from 58 to 60 years, by Govt. of India Notification of May 2000. The position then underwent a change and accordingly the action

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was taken by the UGC and they had revised the terms/conditions by indicating that the applicant would have two years of service beyond date of superannuation of 60 years. This was the logical action to take. As his appointment was to be on deputation till the date of superannuation, which stood at 58 years earlier, the same had to be amended, when the age of superannuation was raised to 60 years. This alone had been done and that too correctly Chairman UGC, in this matter had exercised the ministerial functions and the same can not be called in question. Once the above point was settled in the beginning, the respondents action in relieving the applicant on the date of his completing 60 years of age, without giving him the benefit of 2 more years of service was against his legitimate expectations and improper. Shri Shyam Babu further affirmed that the illegal and malafide attitude of the Director(Admn.) had gone against his continuance in UGC. The same was manifest in the impugned order issued by the said functionary, who was not competent to issue the above order. Sh. Shyam Babu also questioned the competence of successor Chairman to call in question the decision taken by the former Chairman, more so as the review has been directed on the basis of advice from Secretary Ministry of HRD who was in no position to advice the Chairman of UGC, his superior. Further the applicant's services have been terminated without putting him on notice. Thus an illegal order, issued by incompetent person without following the principles of natural justice and directly in contradiction to the terms and conditions of his deputation has led the applicant to approach the portals of the Tribunal seeking justice. Tribunal's immediate intervention alone can undo the damage urges Sh. Shyam Babu.

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9. Fiercely opposing the above submissions Shri Amitesh Kumar, the learned counsel for the respondents stated that the applicant was originally engaged by the UGC as Financial Adviser with the specific understanding that he will be on deputation till the date of superannuation of 58 years of age where after he would have two more years service. This order was issued on the basis of the clearance by the Commission. Subsequently following the upward revision of the retirement age of Central Government servant from 58 years to 60 years the Commission issued a communication revising its stand to show the deputation as being upto 60 years with next two years on re-employment basis. This communication was not in fact the decision of the Commission but was only a decision of the Chairman taken on his own without taking into the confidence of the Commission. The same cannot therefore be sustained. The fact that this decision itself was taken by the Chairman somewhat strange in September 2000, much before the date of superannuation of the applicant in July 2002 It was in the circumstances, that the UGC sought the advice of the Ministry of HRD the concerned administrative Ministry, and took action accordingly by directing the relief of individual as soon as he completed 60 years of age on 31.7.2002. This cannot be faulted. Shri Amitesh Kumar also referred to the notification issued by the Ministry of HRD and the Minutes of UGC Meeting on 21.5.98 adopting Govt of India directions for upward revision of the age of the Central Government employees upto 60 years with further directions that no extension thereafter was permissible. The same has become the law for the Commission and no deviation therefrom could have been permitted. The impugned order was totally legal and had to be endorsed. All the insinuation and allegations made by the

applicant were without any basis and did not merit acceptance. Shri Kumar therefore pleaded that the OA be dismissed with exemplary cost.

10. We have carefully considered the matter and perused all the documents brought on record. In this OA, the applicant, an ICAS Officer who was working as Financial Adviser (on deputation) in UGC is aggrieved that he has been relieved of his duties much ahead of the period and tenure which according to him, had been agreed upon at the time of his original engagement. The undisputed facts are that the UGC had offered him the post of Financial Adviser in the pay scale of Rs. 5900 - 6700/- (pre-revised) by do letter No. F. 5-19/97 (Admn. I/A&B) dated 12.12.97 which was followed by their Office Order of the same number dated 10.02.1998, the same reads as below:

"Shri O.P.Nigam, ICAS is appointed as Financial Adviser in the office of the University Grants Commission in the scale of pay of the Rs.18400-22400 plus usual allowance on usual deputation terms and conditions w.e.f. 29th January 1998 (Afternoon).

Shri O.P.Nigam will be on deputation w.e.f. 29.1.1998 (AN) until he attains the age of superannuation as per UGC rules i.e. 58 years. After his retirement he will continue to work in the UGC as Financial Adviser for a period of two years or till he attains the age of 60 years, on normal terms of re-employment.

He will be entitled to the Government residential accommodation on payment of usual licence fee like all UGC employees who are entitled to such accommodation in the general pool.

He will be entitled to the benefits under the Central Government Health Scheme as are admissible to the employees of the UGC.

He will be governed by the Central Civil Services (Leave) Rules 1972 for the purpose of leave and leave salary."

11. The terms and conditions of foreign service of the applicant communicated by letter No. A.19014/1/84/MF.CGA/Gr.A/Per/OPN/231 dated 30.4.1998 also states in the col. "period of foreign service" are as under:-

"Shri O P Nigam will be on deputation w.e. f. 29.01.98 (AN) until he attains the age of superannuation i.e. 58 years. After his retirement he will continue to work in the UGC as Financial Adviser for a period of two years or till he attains the age of 60 years, on normal terms of re-employment".

12. In terms of the above communication the applicant joined UGC and had performed his duties as F.A. <sup>and</sup> worked thereafter. Following <sup>an</sup> upward revision of the age of retirement on superannuation in Central Government, <sup>from 58 to 60</sup> his parent organisation/Department by their letter dated 10.5.2000 sought confirmation from the Commission as to whether the applicant would be required to serve for further period of two years after superannuation. In response, UGC issued order No. F.6-1/98 (Admn. I/A&B) dated 13.9.2000. The same reads as under:

"The undersigned is directed to convey the following orders of the Chairman, UGC:-

"3.9.2000 (File No. 6-1/98 (Admn. I/A&B) pages 19-21/N

Now therefore having examined the matter in detail the following orders are passed:-

In compliance with the UGC's commitment in the appointment letters vide D.O.No.F.5.19/97 (Admn. I/A&B) (2 letters) both dated 12/15.12.97 on pages 61 and 62, appointment office order No.29/98 (F.6.1/98 (Admn. I/A&B) dated 10.2.98 on page 64, UGC's acceptance of the terms and conditions of foreign service on deputation at the time of appointment vide letter no. A.19014/1/84/MF.CGA/Gr.A/PER/OPN/231 of April 30, 1998 of Ministry of Finance, Department of Expenditure, Controller General of Accounts, Govt, of India on pages 76.77 and confirmation of the commitment in the office order

No. A. 35017(2)/97/CGA/Gr. A/760 dated 30.12.97/16.1.98 of Ministry of Finance, Department of Expenditure, Controller General of Account, Govt. of India on Page 74-Mr. O.P. Nigam shall work as Financial Adviser, University Grants Commission on the normal terms of re-employment for a period of two years after his superannuation at the age of 60 years.

This be communicated to Shri O.P. Nigam and also to Controller General of Accounts, Department of Expenditure, Ministry of Finance, Govt. of India in response to their letters in reference - A. 19014/1/84/MF.CGA/Gr. A/1013 dated 2.11.99 and A. 19014/1/84/MF.CGA/Gr. A/PER/OPN/481 on pages 109 and 110."

13. Accordingly his parent department on 16.10.2000 modified the terms and conditions of his service which was carried out, as brought out in letter dated 27.11.2000 issued by Director (Admn.). However on 31.7.2002 by Office Order No. 202/2002 issued by the Director (Admn) the applicant is shown to have been relieved of his duties as Financial Adviser on attaining the age of 60 years and on having retired from Central Government Service from 31.7.2002 which has led to this OA. According to the applicant this was illegal as it was against the terms and conditions of service, agreed to and the commitment made by the Commission at the time of his joining them on deputation while according to the respondents it was not correct as he had only been offered the deputation upto his age of superannuation which was 58 years followed by two years thereafter, and not deputation upto superannuation of 60 years with two years following as is being claimed. The perusal of the first letter dated 12.12.97 makes it clear that the offer has come from the UGC itself, while UGC's letter 13.9.2000 was a communication of the Chairman UGC, issued on his own, without any reference to the Commission in . Perusal of the relevant notings file shows, the issue under consideration, had arisen following the upgrading of the age of superannuation of the Govt.. servants from 58 to 60 years in view of their notification No. 25012/2/97(Estt. (A) dated 18.12.1998 which specifically provided that 'no extension in

service shall be granted beyond the age of 60 years' (emphasise supplied). Hence the communication dated 23.6.2000, we have also seen the detailed noting by the previous Chairman on 13.9.2000 recorded in his own handwriting to the effect that, in terms of UGC commitment in the appointment letter it was being directed that "Mr. OP Nigam shall work as Financial Adviser, University Grants Commission on the normal terms of re-employment for a period of two years after his superannuation at the age of 60 years." It is on the basis of these directions that the Office Order No. 195/2000 dated 13.9.2000 had come to be issued. Respondents argue that the Chairman on his own could not at all have granted this extension and that he should have obtained the concurrence of the Commission before issue of above office order. On perusal of UGC Act 1956 we observe that the Government can make rules to carry out the purposes of the Act, with specific reference to the terms/conditions of service of staff appointed by the Commission while the Commission can make regulations in respect of the above. The are vested only in the Commission and the functionaries of the Commission would be only acting under its directions. While the Chairman is the functional head of the organisation, he is guided by the Commission in performance of his duties and he cannot override the decisions of the Commission. Seen in this backdrop, we observe that the decision taken by the Chairman on 3.9.2000 and communicated on 13.9.2000 by the letter of Director (Admn) for permitting the applicant to work as Financial Adviser UGC on the normal terms of re-employment for a period of two years after he had attained the superannuation age of 60 years, was clearly beyond his competence. Hence the audit objection No. 300/30.8.2001. That the objection was shown as settled, following the reply sent in his own hand, by the applicant does not alter the fact that the Chairman's action was without the concurrence of the

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Commission before or after. The matter was therefore taken up on 2/7/2002 in the UGC office when it was decided by the successor Chairman to refer the same to the Ministry of HRD. The said d.o. reference to the Secretary, HRD reads:

" Dear Shri Tripathi,

Shri O.P.Nigam, Financial Adviser, UGC was appointed in UGC on 29th January 1998 on deputation basis. His appointment letter had the provision of re-employment of two years after his superannuation at the age of 58 years.

The Government of India subsequently revised the age of superannuation to 60 years, but with no provision of any further extension/re-employment. His present organization sought a clarification on 10th May, 2000 (i.e. about two years ago). Whether Shri Nigam will be given re-employment of 2 years beyond the age of 60 years.

Based on this query, the office submitted a file to the Chairman indicating that as per Government of India rules, no re-employment can be given beyond 60 years. The former Chairman Dr. Hari Gautam, at his own level, decided that Shri Nigam will be given re-employment upto the age of 62 years. A copy of the same has also been given to Shri Nigam. This issue was not even placed before the Commission.

Shri O.P.Nigam is to retire on 31st July 2002 after attaining the age of 60 years.

Now I solicit your advise on this issue whether he can be given re-employment upto 62 years. My office has submitted a note, which is self-explanatory. A photocopy of the same is enclosed for your ready reference.

May I kindly request your views so that we can take a decision before 31st July, 2002."

14. Ministry of HRD vide its do letter No. 4-36/2002-UI dated 30.7.2002 advised that Sh. Nigam be relieved of his duties w.e.f. 31.7.02 on his attaining the age of superannuation of 60 years, which resulted in the issue of the impugned order. The applicant's case is that UGC being a independent statutory body should not have asked for and / or accepted any opinion or advice from the Ministry and also that the Secretary of the HRD Ministry was subordinate to

the UGC Chairman. These objections have no basis in law. Section 20(1) of UGC Act 1956 states that "in the discharge of his functions under this Act the Commission shall be guided by such directions of questions of policy relating to national purposes as may be given to it by the central Government and that it is for the Central Government to decide as to what constitute a question of Policy". The upward revision of the date of retirement of central government employees on superannuation from 58 years to 60 years was a matter of national policy and the same had been duly adopted by the UGC in its 376th Meeting held on 21.5.98 and the rules stood amended accordingly providing that all UGC employees whose age was currently 58 years would retire at 60 years and that there shall not be any extension in service beyond the age of superannuation. It is clear that employees of UGC can work upto the age of 60 years and not further and therefore the permission granted by the Chairman to the applicant to continue beyond 60 years was not legal. The applicant therefore could have worked only upto the age of 58 years plus 2 years i.e. upto his attaining the age of 60. At the same time, we observe that a serious error has been committed by the UGC as far as the issue of the impugned order is concerned. Impugned order dated 31.01.03 issued by Director (Admn) nowhere states that the same was being issued under directions of the Commission or the Chairman. This was clearly wrong as the Director (Admn) is a junior functionary in comparison to Financial Adviser, and he could not have issued an order relieving the latter of his duties which should have been done only with the directions of the Commission. It is however seen that this communication had followed the directions of the Chairman, duly endorsed by the Meeting of the Commission which met on 27/12/2002. Thus as the earlier Chairman did not have any authority to extend the period of

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posting of the applicant beyond 60 years <sup>so</sup> the successor Chairman also did not have the authority to direct the relief without obtaining the concurrence of the Commission. That being the case it is clear that while the applicant's relief ordered by the Director (Admn) on 31.7.2002 was not clothed with any authority and has to fail, the same would become operative the day when the same has been endorsed by Commission on 27.12.2002. It would mean therefore that the applicant was entitled to continue in the position as Financial Adviser beyond his date of superannuation on 30.7.02 till that date i.e. from 1.8.2002 to 27.12.2002. This relief has to be accorded to him and nothing further can be granted.

15. In the above view of the matter the OA succeeds partially and is accordingly disposed of. The impugned order dated 31.7.2002 passed by the Director (Admn) UGC is quashed and set aside, with the directions that the termination of the applicant's assignment as Financial Adviser and his relief would stand postponed to 27.12.2002, when the same were approved by the Commission. He is thus deemed to have continued in the said position upto 27.12.2002. As a consequence he would be entitled for getting pay and allowances till that date; which should be released to him by the respondents within three months from the date of receipt of a copy of this order.

No costs.

S. Raju  
(Shanker Raju)  
Member (J)

Patwal/

(Govindan S. Tampli)  
Member (A)