

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
OA No.986/1995

New Delhi, this 16th day of June, 1995

Hon'ble Shri P.T.Thiruvengadam, Member(A)

Shri L.P. Sharma  
s/o late Shri B.L. Sharma  
C-68, Lohia Nagar, Ghaziabad  
By Shri B.B. Raval, Advocate .. Applicant

versus

Union of India, through

1. Secretary  
M/Human Resources Development  
Shastri Bhawan, New Delhi

2. Chief Secretary  
NCT of Delhi, Delhi

3. The Principal  
GB Pant Polytechnic  
Okhla, New Delhi .. Respondents

By Shri Shri S.K. Gupta, proxy for Shri  
B.S. Gupta, Advocate

ORDER

Prayer for interim relief was taken up today.

This OA has been filed challenging the order of retirement of the applicant on completion of 58 years and praying for a direction to the respondents to allow the applicant to serve till he ~~reaches~~ superannuation of 60 years i.e. upto 31.12.1996. Interim relief has been prayed for restraining the respondents from relieving the applicant on completion of the extension of 5 months granted to the applicant.

2. The learned counsel for the applicant relies on the orders of the respondents enhancing the age of retirement of school teachers to 60 years (Annexure A-9 dated 13.9.83). It is admitted that these instructions apply to the teachers including Lab. Assistants, Librarians, Principals and Vice-Principals working in schools in Delhi under the control of Directorate of Education, Delhi. It is the case of the applicant that

he was appointed as Senior Physical Training Instructor in pursuance to the offer of appointment dated 23.2.72 (Annexure A-2) and was posted to the Technical Higher Secondary School at Narela. It is not disputed that sometime thereafter, he was transferred to the Technical Higher Secondary School, Kashmere Gate as Physical Training Instructor(Senior). A decision was taken to transfer the Technical Higher Secondary School at Kashmere Gate from the Administrative control of Directorate of Technical Education to the Directorate of Education, vide order dated 31.1.77 (Annexure A-4). In pursuance of the decision taken in the meeting held under the chairmanship of the Lt. Governor on 25.10.82, regarding review of the functioning of the school, the Lt. Governor ordered that the administrative control of the schools will remain with the Directorate of Training and Technical Education upto 30.4.83 and would be transferred to the Directorate of Education with effect from 1.5.83. Thus, it is argued that the applicant became the employee of the Directorate of Education because of the above decision and any subsequent transfer to Polytechnic at Okhla, from where the applicant was retired, can not take away the right of the applicant to retire at the age of 60 years, the age applicable to the teachers under the Directorate of Education.

3. The applicant had also given representations on 10.10.94(Annexure A-10) and 10.5.95 (Annexure A-12). In these representations, he has claimed that he had been transferred to the Directorate of Education by virtue of the take-over of the school, in which the applicant was working, by this Directorate. It is also brought out

that his subsequent transfer to Okhla Polytechnic should not be held against him as quite a few of his juniors who continued in the school under the Directorate of Education are being allowed to work upto 60 years of age. It is also argued that the Principal of the Polytechnic had agreed with the contents of the representations and forwarded the same for favourable consideration.

4. The learned counsel for the respondents met the above arguments by bringing out that the applicant had been transferred on 30.4.83 to College of Pharmacy, which is under the control of Directorate of Technical Education (Annexure A-6). On 1.5.83, when the Technical Senior Secondary School at Kashmere Gate was taken over by the Directorate of Education, the applicant was not serving in this school. Subsequent to 30.4.83, the applicant had been continuously functioning under the control of Directorate of Technical Education and at the time of retirement, he was working in Okhla Polytechnic. Instructions regarding enhancement of retirement age are only applicable to Delhi schools under the Directorate of Education and accordingly the applicant has no case for retention beyond 58 years.

5. For the purpose of grant of interim relief, what is required to be examined is whether there is any *prima facie* case. It is not disputed that at the time of retirement, the applicant was not working under the control of Directorate of Education. The issue as to whether the applicant was an employee of the Directorate of Education and how and when he got transferred to various institutions under the control of Directorate of

Technical Education and what would be the impact of such transfers are matters to be gone into, in detail, at the time of final disposal of the OA. *Prima facie*, the instructions for retention upto 60 years which are applicable to Delhi schools do not seem to apply to the applicant.

6. In addition to the above, an interim order can be passed only when there will be an irreparable damage. This is not a case where non-grant of interim relief will result in such a situation. If the OA is allowed, consequential benefits would naturally be considered. Again, balance of convenience would not warrant issue of interim relief as prayed for, since the continued retention of the applicant may affect the chances of promotion/recruitment of other candidates, and it will lead to irreparable damage to them, if the OA is ultimately dismissed.

7. The learned counsel for the applicant argued that the respondents have committed an irregular act by retiring the applicant on 31.5.95 because according to Section 19(4) of the Administrative Tribunals Act, 1985, when the Tribunal is seized of the matter, action by the respondents abates. It is not necessary for me to go into this aspect as a decision regarding interim relief is not linked with this. I have already held that there is no *prima facie* case for granting interim relief.

8. In the circumstances, the prayer for interim relief is rejected.

*P.T.Thiruvengadam*

(P.T.Thiruvengadam)  
Member(A)

/tvg/