

(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2079/96
T.A. No.

199

DATE OF DECISION 17.11.97

Dr. Surendra Kumar Shukla

Petitioner

Shri G.K. Aggarwal

Advocate for the Petitioner(s)

Versus

Secretary, Deptt. of Defence
and ors.

Respondent

Sh. M. K. Gupta

Advocate for the Respondent

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The Hon'ble Shri K. Muthukumar, Member(A)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench: New Delhi

OA 2079/96

New Delhi this the 17th day of November 1997.

Hon'ble Mrs Lakshmi Swaminathan, Member (J)
Hon'ble Mr K.Kuthukumar, Member (A)

Dr Surendra Kumar Shukla
B-1/131, Janakpuri
New Delhi - 110 058. ...Applicant.

(By advocate: Mr G.K.Aggarwal)

Versus

Union of India through

1. Secretary
Department of Defence
Research & Development &
Scientific Advisor to Defence
Minister & Director General
Research Development
South Block, DHQ PO
New Delhi - 110 011.
2. The Internal Screening Committee
to review Confidential Performance
Appraisal Reports on Scientists-B
to E through
Additional Secretary (R&D)
Deptt. Defence Research Development
B-Wing, Sena Bhawan, DHQ PO
New Delhi - 110 011.
3. The Director
Defence Science Centre
Metcalf House
Delhi - 110 054. ...Respondents.

(By advocate: Mr M.K.Gupta)

O R D E R (oral)

Hon'ble Mrs Lakshmi Swaminathan, Member (J)

The applicant has sought a number of reliefs in the main application. In MA 483/97, he has sought a direction to the respondents to consider the applicant's service record and allow him to continue in service beyond 29.09.1996 till 30.09.1998 on which date he attains the age of 60 years, if found fit, after taking

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him back in service, with full wages and benefits for ~~and~~
~~for~~ the period upto 30.09.1998 and such other reliefs as
deemed fit.

2. This application was filed on 26.09.1996 and as
per the then extant orders, the respondents had retired
the applicant from service on attaining the age of
superannuation at 58 years, w.e.f. 29.09.1996. Shri
G.K. Aggarwal, learned counsel for the applicant relies on
the judgement of the Supreme Court in U.O.I. Vs.
O.P. Gupta (Civil Appeal No. 4488/90 alongwith connected
cases) decided on 20.11.1996. He has submitted that
since the Hon'ble Supreme Court ~~in 1985~~ had set aside the
proviso in the impugned Office Memorandum dated 24th
December 1985 as being discriminatory and violative of
Articles 14 & 16 of the Constitution, the relief prayed
for by him in para 8 (2) in the OA has already been
granted. He further submits that in the light of the
judgement of the Supreme Court in UOI Vs. O.P. Gupta's
case, he does not wish to press the reliefs sought in
sub-paragraphs (3) to (6) of para 8 of the O.A. He,
however, presses relief sought in sub para 7 of para 8,
namely, a direction to the respondents to carry out
special assessment in the office of the applicant to
consider his fitness as Scientist for superannuation at
the age 60 years instead of 58 years and give him similar
benefits as granted to other similar scientists by the
respondents.

3. Respondents have filed their replies¹² to the OA and MA and we have also heard Mr M.K.Gupta, learned counsel for the respondents. The main stand of the respondents is that the benefit of the judgement of the Supreme Court in O.P.Gupta's case (Supra) has been given only to the petitioners in the appeals dealt with by the Apex Court and not to other similarly situated persons as per the decision taken by the Government. It has been submitted that since the applicant was not a party in the petition decided by the Tribunal earlier which has been upheld by the Supreme Court in the judgement dated 20.11.1996, the benefits cannot be extended to the applicant. They have also submitted that continuation of Scientists in service beyond the age of 58 years is not automatic and is subject to a special assessment by a Review Committee of eligible scientists. It is seen from the reply filed by the respondents that the applicant has not been considered for extension as he did not fulfil the conditions laid down in the proviso to the Ministry of Defence's O.M. dated 24th December 1985 for Scientists-D. The learned counsel also relies on O.M. dated 16th June 1997 on the subject of enhancement of age of superannuation of scientific personnel. In this OM, it has been stated that in the case of Scientists 'B', 'C' & 'D', they are eligible for retention in service upto 60 years of age as per rules with notional benefits and they will be entitled to consequential benefits only from the date they are on duty.

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4. We have considered the pleadings and submissions made by the learned counsel for the parties. From the facts given above, it can be seen that the respondents have not seriously disputed the fact that similarly situated scientists as the applicant have been granted the benefits, including superannuation at the age of 60 years in accordance with the judgement of the Supreme Court in O.P.Gupta's case (Supra). In this case, the Supreme Court has struck down the proviso to the Office Memorandum dated 24.12.1985 as discriminatory. The Supreme Court has stated as follows:

"There is nothing shown by the Union of India either before the Tribunal or before us to justify the making of such an exception which results in denial of the benefit of enhancement of age only to some scientists like the present respondents. The basis indicated in the proviso for making this classification has no rational nexus with the object of enhancing the age of superannuation. The proviso is clearly discriminatory and, therefore, violates Articles 14 and 16 of the Constitution as rightly held by the Tribunal. We do not find any ground to take a different view."

The appeals filed by Union of India and another were, therefore, dismissed.

5. The respondents have submitted that they have extended the benefits of the judgement in O.P.Gupta's case only to the petitioners/respondents before the Supreme Court. However, from the portion quoted above, it is seen that the benefits of striking down the proviso in OM dated 24.12.1985 would be applicable to other similarly situated scientists, like the applicant in the present case. The Supreme Court has held that there was nothing shown by the Union of India either before the

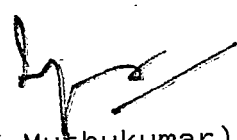
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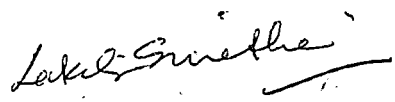
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Tribunal or before them to justify the making of such an exception which resulted in denial of the benefit of enhancement of age only to some scientists like the present respondents. Since the impugned OM dated 24.12.1985 has been struck down by the Supreme Court as being discriminatory, irrational and violative of Articles 14 and 16 of the Constitution, we are of the view that ^{similar} ~~the~~ benefits given to the respondents by the Supreme Court would also be applicable to the applicant in the present case. It is also relevant to note that the applicant filed this application on 26.9.1996 i.e. before his date of retirement on superannuation at the age of 58 years.

6. In this view of the matter, the relief in para 8 (2) having already been granted by the Supreme Court, the prayer in para 8 (7) is also entitled to partly succeed. We accordingly direct the respondents to carry out a special assessment/review of the records of the applicant to assess his suitability to be continued upto the age of 60 years and give him consequential benefits flowing therefrom in accordance with the rules and instructions. In view of the fact that this application was already pending before this Tribunal, the assessment shall be completed expeditiously, and in any case, not beyond four weeks from today. As regards arrears of pay for the period from 30.9.1996, respondents shall pass appropriate orders within the said period.

The OA is disposed of as above. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)