(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(16)

OA-672/96
OA-674/96
OA-382/96
C.A./T.A. No. OA-711/96 /19 Decided on: 1.10.96

M.C. Mishra & other connected cases ..... APPLICANT(S)

(By Shrimati Meera Chhibber Advocate)

VERSUS

Lt. Governor of Delhi & Others

..... RESPONDENTS

(By Shri Vijay Pandita Advocate)

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI/SMT.~~/DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes

2. Whether to be circulated to other Benches of the Tribunal ? No

(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

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New Delhi, dated this 1st October, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. O.A. No. 672 of 1996

Shri M.C. Mishra,
S/o Shri K.D. Mishra,
R/o E-973, Saraswati Vihar,
Delhi-110034. .... APPLICANT

(By Advocate: Mrs. Meera Chhibber)

VERSUS

1. Lt. Governor,
   Govt. of NCT of Delhi,
   Raj Niwas, Delhi.

2. The Chief Secretary,
   Govt. of NCT of Delhi,
   5, Sham Nath Marg,
   Delhi.

3. The Secretary (Edu.),
   Govt. of N.C.T. of Delhi,
   Old Secretariat,
   Delhi.

4. The Jt. Secretary (Edu.),
   Directorate of Education,
   Govt. of NCT of Delhi,
   Old Secretariat,
   Delhi.

5. Director of Education,
   Govt. of NCT of Delhi,
   Delhi.

6. Dy. Director of Education (N),
   Directorate of Education,
   Govt. of NCT of Delhi,
   Lucknow Road,
   Delhi. .... RESPONDENTS

(BY Advocate: Shri Vijay Pandita)

2. O.A. No. 674 of 1996

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Shri M.M. Kaushal,
S/o Shri Locha Singh,
R/o A-2/A-11, Adarsh Apartments,
Paschim Vihar,
New Delhi. .... APPLICANT

(By Advocate: Mrs. Meera Chhibber)

VERSUS

1. Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas Marg,
Delhi.

2. Chief Secretary,
Govt. of NCT of Delhi,
Delhi.

3. The Secretary (Education),
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.

4. The Jt. Secretary (Education),
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.

5. Director of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.

6. Dy.Director of Education,
District North,
Directorate of Education,
Govt. of NCT of Delhi,
Lucknow Road,
Delhi. ..... RESPONDENTS

(By Advocate: Shri Vijay Pandita)

3. O.A. No.382 of 1996

Shri R.K. Goel,
S/o Shri Shiv Narayan,
R/o 6359, Block 7,
Street-1, Dev Nagar,
Karol Bagh,
New Delhi-110005. ... APPLICANT

(By Advocate: Mrs. Meera Chhibber)

VERSUS

1. Union of India
through Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas Marg,
Delhi.

2. Chief Secretary,
Govt. of N.C.T. of Delhi,
5, Sham Nath Marg,
Delhi.

3. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi. .... RESPONDENTS

(By Advocate: Shri Vijay Pandita)

4. O.A. No.711 of 1996

Shri R.C. Virmani,
S/o late Shri Duni Chand,
R/o b-217, Saraswati Vihar,
Delhi-10034. ... APPLICANT

(By Advocate: Mrs. Meera Chhibber)

VERSUS

1. Govt. of NCT of Delhi,
through Lt. Governor,
Raj Niwas, Delhi.

2. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi.

3. Dy. Director of Education (North-West),
through Directorate of Education,
Old Secretariat,
Delhi.

4. Administrative Officer (GOC),
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi. .... RESPONDENTS

(By Advocate: Shri Vijay Pandita)

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JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

As these OAs involve common question of law and fact they are being disposed of by this common order.

2. Under Rule 110(2) Delhi School Education Rules where a teacher has obtained a National or State Award for rendering meritorious service as a teacher or has received both National or State Award as aforesaid the period of service of such teacher may be extended by such period as the Administrator may by general or by special order specify in this behalf. In 1984 after the age of superannuation of teachers had been raised from 58 years to 60 years, Ministry of Education, Govt. of India issued a clarification that there was no legal objection to granting extension of service to National/State Awardee teachers even beyond 60 years provided they were of an outstanding merit, were physically fit and mentally alert. Accordingly the Delhi Admn. by their circular dated 8.7.85 took a policy decision that Govt. teachers including Vice-Principals and Principals of schools who were recipients of State or National Awards may be granted extension of service after attaining the age of superannuation. A state awardee could be granted extension beyond the age of superannuation for two years on a year to year basis; while a National Awardee could be

granted extension beyond the age of superannuation for three years on a year to year basis subject to their being physically fit and mentally alert. Further a cash award of Rs.500/- and a medal/merit scroll was also awarded. Subsequently vide respondents' O.M. dated 25/26.7.91 it was clarified that such extensions were admissible only to State or National Awardees who were given such awards upto the year 1989 while those teachers, Vice-Principals/Principals who were recipients of those awards from the year 1990 and onwards would not be entitled for extension of service. Further the cash award was raised from Rs.500/- to Rs.5000/- and a medal from the year 1990 onwards.

3. Applicants in the present OAs before us, all of whom claim to be State/National Awardees before 1990 are aggrieved by the respondents' order in abruptly terminating the extension of service already granted to them in accordance with that policy decision, or in not granting them the extension of service.

4. In OA-672/96 applicant Shri M.C.Mishra, Lecturer (Maths) GMSSS, Ludlow Catle, Delhi who received a State Award in the year 1988 and was granted the first year's extension of service from 4.11.94 to 3.11.95 and the second year's extension of service from 4.11.95 to 3.11.96 is aggrieved by the impugned order dated 27.3.96 abruptly terminating that extension of service vide order dated 31.3.96.

5. Similarly in OA-674/96 applicant Shri M.M. Kaushal, Lecturer (Maths), GBSS-I, Shakti Nagar, Delhi who would normally have retired on 30.9.94, and was a 1984 State awardee was granted first year's extension of service from 20.9.94 to 19.9.95 and the second year's extension of service from 20.9.95 to 19.9.96 is aggrieved by the impugned order dated 27.3.96 abruptly terminating his service w.e.f. 31.3.96.

6. In OA-382/96 applicant Shri R.K.Goel, Principal, GCMCSS-II, Roop Nagar, Delhi who would normally have retired on 29.2.96 and was a 1989 State Awardee, applied for two years extension of service from 1.3.96 to 28.2.98, but his grievance is that despite being found medically fit, no vigilance case is pending against him and his work and conduct is found satisfactory, the respondents have not granted him extension of service.

7. In OA-711/96 applicant R.C.Virmani, PGT and a 1985 State Awardee, who would normally have superannuated on 7.1.95, was granted one year extension of service from 8.1.95 to 7.1.96, subsequently was informed by Memo. dated 8.3.96 (Annexure P) that the Deptt. had taken a decision not to grant extension as per their O.M. dated 12.3.96.

8. After these OAs were filed notices were issued to the respondents to file their reply and meanwhile interim orders were passed in all these cases directing the respondents not to disengage these applicants. These interim orders are continuing, and meanwhile the respondents have filed their replies.

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9. In their replies to these OAs the stand taken by the respondents mainly is that under FR 56-A there is no statutory provision to grant extension of service after the age of retirement and Rule 110(2) DESR, 1973 also does not provide a National/State Awardee is entitled to extension of service as a matter of right. It is contended that the policy decision has been taken vide O.M. dated 12.3.96 whereby no teacher including Vice-Principal/ Principal was to be granted extension of service on the basis of State/National Award given at any time during the service period before or after 1990. However, they would continue to be entitled to the cash award of Rs.5000/- and a medal/merit scroll and these instructions were to supercede all the instructions issued on the subject previously.

10. It is also contended that the policy decision lies outside the scope of judicial review, and various rulings have been cited in support of this contention.

11. We have heard Mrs. Meera Chhibber for the applicants in all these OAs and Shri Vijay Pandita for the respondents.

12. Mrs. Chhibber relies heavily upon CAT judgment dt.22.8.96 in OA-661/96 Usha Rani Verma Vs. UOI. In that O.A. applicant Mrs. Verma who was a school principal and admittedly a 1986 State Awardee and was to retire on superannuation on 31.8.95, had applied for extension of service on 30.3.95 and contended that she was allowed to continue

beyond 31.8.95 on the oral assurance of the respondent that requisite order of the competent authority extending her service would follow. However, she was subsequently informed vide impugned order dated 13.11.95 that her request for grant of extension in service had been rejected and upon her making further representations she was informed vide letter dated 29.11.95 that her request had been rejected. Thereafter she received order dated 29.12.95 stating that she stood retired w.e.f. 31.8.95.

13. She challenged the decision in O.A. 661/96 seeking a direction to grant her extension of service on the basis of Govt. policy in respect of State Awardees and allow her for a period of two years beyond 1.9.95 with all consequential benefits. The respondents in that OA took much the same grounds as they have taken in the OAs presently before us namely that a policy decision of the Govt. was not liable to be interfered by the Tribunal and extension of service was a matter of discretion and could not be claimed as a right, particularly in the background of the policy decision taken on 12.3.96. Respondents had also relied on the Tribunal's judgment in OA-2245/90 J.K.Bactor Vs. L.G., Delhi & Ors. wherein it had been observed that there was no legal or constitutional infirmity in the respondents' decision to do away with extension of service in respect of awardees of

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1990 and beyond, with granting of a cash award of Rs.5000/- in lieu of extension.

14. Rejecting these contentions of the respondents the Tribunal in Usha Rani Verma's case (Supra) held that if a policy decision of theGovt. was found arbitrary or divested a person of a vested right, that decision was not beyond pale of judicial scrutiny. Being a 1986 State Awardee, the applicant had by virtue of Govt. policy acquired a vested right to be considered for extension of service upon her attaining the age of superannuation on 31.8.95, and that vested right could not be abridged retrospectively by a decision taken on 12.3.96 to discontinue further extensions by giving that decision retrospective effect. It was open to the respondents to take any decision with prospective effect, but without affecting the rights vested in an individual retrospectively.

15. Accordingly Usha Rani Verma's prayer was allowed and the respondents were directed to extend her service for one year beyond 1.9.95 with all consequential benefits and pass appropriate orders in regard to extension of service for the second year commencing from 1.9.96.

16. During hearing respondents' counsel Shri Pandita has not shown to us any material to indicate that the said judgment in Usha Rani Verma's case (Supra) has been stayed, set-aside

or modified. We as a coordinate bench are bound to follow that judgment.

17. Applying the ratio of that judgment to the facts and circumstances of the present set of OAs before us what emerges is as follows:

(i) Applicant Shri M.C.Mishra in OA-672/96 who was in a second year of extension when the impugned order dated 12.3.96 was issued, is entitled to continue on extension on existing terms and conditions till the same expires on 3.11.96, and payment of emoluments accordingly.

(ii) Applicant Shri M.M.Kaushal in OA-674/96 who is also in the second year of extension when the impugned order dated 12.3.96 was issued would be entitled to continue on the existing terms and conditions till the second year's extension expires on or about 19.9.96.

(iii) Applicant Shri R.K.Goel in OA-382/96 who superannuated on 29.2.96 i.e. before the issue of the impugned order dated 12.3.96 would be entitled to be considered for two years extension of service from 1.3.96 to 28.2.98 subject to his ~~being~~ fulfilling all the eligibility conditions for such extension. Respondents should complete such consideration for the first year of extension (1.3.96 to 28.2.97) if not already completed and pass appropriate orders within one month from the date of receipt of a copy of this judgment under intimation to the applicant. This applicant's case for extension will not be rejected merely on the

account of issue of the impugned order dated 12.3.96.

(iv) Applicant Shri R.C. Virmani in OA-711/96 who was granted one year's extension of service w.e.f. 8.1.95 to 7.1.96 prior to issue of the respondents' impugned order dated 12.3.96 and had also commenced the second year's extension before the impugned order was issued would be entitled to complete the second year's extension of service, which ends on 7.1.97 on the existing terms and conditions.

All these OAs are disposed of in terms of directions in Para 17 (i) to (iv) above. No costs.

Let a copy of this judgment be placed in each of the four O.As.

(Dr. A. Vedavalli)
Member (J)

(S.R. Adige)
Member (A)

/GK/

Attested
Court Officer
Central Administrative Tribunal
Principal Bench
Patiala
3/10/96