

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 661/1996

New Delhi this the 22nd Day of August, 1996

Hon'ble Shri A.V. Haridasan, Vice Chairman (T)

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

Mrs. Usha Rani Verma,
Principal,
Govt. Composit Model Girls
Secondary School, C Block,
Defence Colony,
New Delhi

Applicant

(By Advocate: Applicant appeared in person)

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Government of India,
through
The Secretary (Education),
Government of N.C.T.,
215-216 Old Secretariat,
Delhi.

Respondent

(By Advocate: Shri Vijay Pandita)

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant Mrs. Usha Rani Verma who was Principal, Govt. Composite Model Girls' Secondary School, Defence Colony, New Delhi is aggrieved by the action of the Respondent in not granting her the extension of service 'beyond' the normal age of superannuation inspite of (she) being the recipient of a State Award in the year 1986. The facts, in brief, are as follows:

The applicant received a State Award in the year 1986. As per the policy of the Administration which was in consonance with the provisions contained in Rule 110 of DSER 1973 teachers

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including Vice Principals/Principals of recognised schools who are recipient of State Awardee or National Awardee are entitled to be considered for extension of service for a period of two years on a year to year basis subject to the vigilance clearance, satisfactory work and medical fitness and mental aleretness. On the basis of her date of birth the applicant was to retire on superannuation on 31.8.1995; but as she was a recipient of a State Award of the year 1986, she was entitled for consideration for extension of service. She applied for extention of service on 30.3.1995, was declared medically fit by the Chairman, Medical Board, LNJP Hospital, New Delhi on 5.6.1995; was cleared by vigilance and her work and conduct was excellent. The applicant as stated by her was allowed to continue beyond 31.8.1995 on the oral assurance of the respondent that requisite order of the competent authority extending her service would follow. However, she was shocked and surprised to receive the impugned order dated 13.11.1995 (Annexue A-1) informing her that her request for grant of extension in service had been rejected. She made a further representation to which she got a reply dated 29.11.1995 again telling her that her request has been rejected. Thereafter the order dated 29.12.1995 (Annexure A-3) stating that the applicant stood retired with effect from 31.8.1995 was received by her. It is under these circumstances that the applicant has filed this

application for a direction to the respondent to grant her extension in service on the basis of the Government policy in regard to the State Awardee and allow her to continue in service for a period of two years beyond 1.9.1995 with all consequential benefits. It has been alleged in the application that the respondent has shown hostile discrimination towards the applicant by denying her extension in service while extension of service was given to a similarly situated person Shri B.D. Mittal, Vice Principal, Govt. Boys Secondary School, Kalkaji, New Delhi who also is a State Awardee of the year 1986 and was to retire on superannuation on 31.8.1995.

2. The respondent in its reply has raised a preliminary objection regarding the maintainability of the application on the ground that the policy decision of the Government is not liable to be interfered with by the Tribunal and that the extension in service is not a service matter has been held in the case of S.S. Sharma Versus State of Delhi OA No. T-6/95 decided on 8.1.1996. On merit the respondents contained that extension in service cannot be claimed as of right that in accordance with the policy decision taken on 12.3.1996, the practice of giving extension in service to the recipient of National/State Awards having been dispensed with enhancing a cash award of Rs. 5,000/- and a medal and that beyond 31.3.1996 no extension has been given to any body. It is also

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contended that in Jagdish Kumar Bactor VS. LG and Ors. in OA No. 2245/1990 on a identical issue, this Bench of the Tribunal has observed that there was no legal or constitutional infirmity in the order of the department in doing away with the extension in service in respect of the Awardees and granting a cash award of Rs.5,000/- in lieu of extension in service and that therefore there is no merit in application of the applicant which is liable to be dismissed.

4. We have perused the pleadings in this case and have heard Smt. Usha Rani Verma, the applicant who choose to present her own case and also Shri Vijaya Pandita, the learned counsel for the respondent. That ^{the} applicant is the recipient of the State Awardee of the year 1986 is not in dispute. The allegation in the application that the applicant had submitted her application for extension of service on 30.3.1995 when her date of superannuation was 31.8.1995, that she was declared medically fit by the Chairman, Medical Board, LNJP on 8.6.1995, that in her case vigilance clearance was given and that her work and conduct were excellent as evident from the ACRs are not denied in the reply statement. The preliminary objection that any policy decision of the Government is beyond interference in judicial review does not appear to be tenable because if any policy decision is found to be arbitrary or having

the effect ~~of the effect~~ of divesting a vested right the decision is not beyond the pale of judicial scrutiny. Being a recipient of a State Award of the year 1986 in accordance with the policy decision of the Government, the applicant was entitled for consideration for extension in service for a period of two years on a year to year basis. Though she did not have a vested right for extension in service, she definitely has a vested right for consideration for extension in service. If such a right is taken away by a policy decision, the action cannot be considered not justiciable. The case of the respondent that service beyond the normal age of superannuation cannot be considered as a service matter has also to be mentioned and rejected. A copy of the judgement referred to by the respondents has neither been made available to us nor it is seen that the judgement was reported. The preliminary objection is, therefore, over ruled.

5. The respondents have contended that an identical issue as involved in this case came up for consideration before Principal Bench of the Central Administrative Tribunal in OA No. 2245/90 and that the Tribunal dismissed the application and that therefore this application is devoid of merits. We have perused the copy of the OA 2245/90. The facts and circumstances in that case were totally different from those in this case. The applicant before the Tribunal in that case had obtained a

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State Award on 5.9.1990. Before that date a decision was taken by the Administrator on 25.9.1990 not to give extension in service on the basis of a or National Award State Award with effect from the year 1990 in regard to those teachers and Principals who would be selected for State Award in the year 1990 and that the xxx Awardee would be given a cash award of Rs. 5,000/- in the place of Rs. 500/- (Rupees Five Hundred) and a medal of merit alongwith merit scroll vide order dated 12.3.1990. The applicant challenged the order refusing to grant him extension in service. It was held that it was open for the Government to take any decision in regard to extension of service and as the applicant was given State Awarde only after the decision to dispense with extension in service, he was not entitled to any extention and the policy decision could not be interferred with. In the case on hand the applicant had received a State Awarde in year year 1986. Therefore the policy decision to dispense with the extension in service taken in the month of May 1990 does not apply to her case. Therefore, the arguments based on the decision in OA 2245/90 has no merit at all. The same argument was addressed by the learned counsel for the Delhi Administration in OA No. 2245/90 and the argument was turned down.

6. The reason why the extension in service was not granted to the applicant stated by the respondents in their reply, is that concession of

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extension in service given by the Government for recipient of Awardee having been withdrawn with effect from 12.3.1996 due to change of policy, the applicant's claim for extension in service could not be acceded to. A policy decision taken on 12.3.1995 as contended by the respondents could not have been the basis of the impugned order dated 13.11.1995 (Annexure A-1), (Annexure A-2) or 29.12.1995 (Annexure A-3). According to the instructions which were applicable on the date on which the applicant's case for extention in service was to be considered for granting extention for a period of two years on a year to year basis the incumbent should be physically fit, mentally alert, cleared by vigilance and be possessing commendable record of service. It is evident from Annexure A-5, the letter issued by the Directorate of Education, New Delhi to all the Heads of Institutions that recipient of National/State Awardee upto the year 1989 were entitled for consideration for extention of service for a period of two years on a year to year basis. It was also mentioned in that letter that there had been instances where the process of consideration for extension having been commenced belatedly and teachers continuing in service beyond the age of superannuation without any order of extension which created embarrassment both to the Administation and the incumbents concerned and ~~there~~ specific instructions were given to the Heads of the Institutions to take up the case of those teachers

who are recipients of Awards for extention in service sufficiently in advance. No decision taken by the competent authority dispensing with the practice of considering recipients of Awards prior to 1989 has been brought to our notice. Even if such a decision was taken that would be highly arbitrary because similarly situated teachers who had received State/National Award prior to 1989 would have been given extention in service beyond the age of their superannuation before such decision was taken. The winners of State and National Award have acquired a vested right for consideration for extention of service beyond the age of their superannuation and such a right cannot be divested by a later decision. It is open for the administration to take any decision with ~~perspective~~ effect and without affecting the right vested in an individual. *respectively*

7. In her representation Annexure A-8, the applicant had clearly stated that she was continuing in service without any order on the understanding that order extending her service would be issued in due course. It is also evident that the applicant continued as Principal beyond 31.8.1995 till the impugned order (Annexure A-3) was issued because the impugned order itself describes Smt. Usha Rani Verma as Principal, Govt. Composit Model Girls Secondary School.

8. In the conspectus of facts and circumstances we are of the considered view that the impugned

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orders of the respondent are wholly arbitrary, unjust and unsustainable. In the result the application is allowed and the respondents are directed to issue orders extending the service of the applicant for one year beyond 1.9.1995 to treat that the applicant continued in service beyond 31.8.1995 inspite of the impugned orders, to pay her full salary and allowances for the period and to make appropriate orders in regard to extension in service for the next year that is beyond 1.9.1996 considering that as a State Awardee, she is entitled for being granted extension of service for a period of two years on a year to year basis provided she is physically fit, mentally alert, cleared by vigilance and possesses good service record. Orders as aforesaid shall be passed by the competent authority within a period of one month from the date of receipt of this order and arrears of pay and allowances are also to be paid to her within the said period. There is no order as to costs.


(K. Muthukumar)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

Mittal