

Central Administrative Tribunal
Principal Bench: New Delhi

11

OA No.782/97

New Delhi, this the 10 day of ^{March} ~~January~~, 1998

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri N. Sahu, Member (A)

Harmaya Datta Sharma,
C-2/101A, MIG, Keshavpuram,
Delhi.

....Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

Union of India through

The Secretary,
Department of Defence Research &
Development and Scientific Adviser
to Rakshi Mantri and Director-General
Research Development,
Ministry of Defence, DHQ PO
New Delhi.

...Respondent

(By Advocate: Shri M.K. Gupta)

O R D E R

Dr. Jose P. Verghese, Vice-Chairman (J) -

The petitioner in this Original Application is seeking a declaration to treat the applicant as having continued in service as Scientist-D in DRDS in DRDO till 31.07.1988 and pay him the arrears of pay, allowances for the period 14.01.1987 to 31.07.1988. The case of the petitioner is that his date of birth being 6.7.1928, he attained the age of superannuation at the end of 58 years on 6.7.1986. Subsequently by the New Bombay Bench of this Tribunal in the matter of O.P. Gupta Scientist-D (Retd.) vs. Union of India, the retirement age was declared under the rules to be 60 for all scientists and the proviso added to the said rule by way of exception has been set aside.

to be raised from 58 years to 60 years except in the case of a few scientists like the petitioner. This exception resulted from the proviso inserted in the said Memo reads as under:-

".....provided they have been promoted to the grades they are holding at the time of attaining the age of 58 years within the preceding years".

The validity of this proviso was challenged before the New Bombay Bench of this Tribunal because of which he was denied the enhancement of age of superannuation and New Bombay Bench had accepted the said challenge and struck down the above proviso contained in the Office Memorandum dated 24th December, 1985 as discriminatory and violative of Articles 14 & 16 of the Constitution of India.

The only question now to be considered is whether in view of the final decision of the Hon'ble Supreme Court dated November 20, 1986 in Civil Appeal No. 4488 of 1990 etc. in the matter of Union of India vs. O.P. Gupta, the petitioner is also entitled to continue in service upto 31.7.1988 or not. We are of the considered opinion that the New Bombay Bench of this Tribunal had set aside the said proviso on 15.9.1989 by which time the petitioner had already retired and as such the directions given by the said Tribunal as well as by the Hon'ble Supreme Court subsequently based on the ratio laid down by the same court, cannot be said to have retrospective

124-
application. It was argued on behalf of the petitioner that the ratio of these decisions are binding since the declaration of law by the Hon'ble Supreme Court is binding on all courts under Article 14 and as such the relief given to the petitioners therein, shall also be made applicable to the petitioner in this OA as well. We are of the considered view that even though the law declared is a binding precedent under Article 14, it is only the ratio of the decision that is binding and the reliefs granted to the petitioners therein, not being the ratio of the decision, are not the law declared under Article 14 and as such it is not binding on this court vis-a-vis the subsequent petitioners unless the said decision on the face of it indicates to have retrospective application. We have perused the orders of both the New Bombay Bench of this Tribunal as well as that of the Hon'ble Supreme Court and we find that the reliefs granted in the said petition is not applicable retrospectively rather they are only prospectively applicable. In view of this, this OA merits rejection.



(A. Sahu)
Member (A)

naresh



(Dr. Jose P. Verghese)
Vice-Chairman (J)