

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA-1133/89 Date of decision: 18.12.1992

Shri Chandravir Singh Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri G.K. Aggarwal, Advocate

For the Respondents Shri P.P. Khurana, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *By*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant has worked as a Scientist 'B' in
the Department of Defence Research & Development,
Ministry of Defence. In the present application, he
is challenging his superannuation at the age of 58 years
instead of 60 years.

2. We have gone through the records of the case and
have heard the learned counsel for both the parties. The
applicant joined office of the respondents in 1952 as
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Technical Supervisor, III and was thereafter promoted to higher posts in due course of time. He was last promoted from Junior Scientific Officer to Scientist 'B' in 1980 and continued as such till the date of the filing of the application in 1989, in Defence Research & Development Service at Defence Electronics Application Laboratory, Dehradun.

3. By office memorandum dated 24.12.1985, the respondents raised the superannuation age from 58 years to 60 years in respect of persons in the rank of Scientist 'E' and above and also in respect of those in the rank of Scientist 'B', 'C' or 'D', who got one promotion between the age of 53 and 58 years. By O.M. dated 10.2.1986, the respondents raised the superannuation age from 58 to 60 years in respect of Scientific/Technical personnel, except those in the rank of Scientist 'B', 'C' or 'D', irrespective of whether they got any promotion at any time or not.

4. It will thus be seen that in the case of Scientist 'B', 'C' or 'D', the superannuation age would be 60 years instead of the 58 years only in respect of those earning promotion between the age of 53 and 58 years. This stipulation contained in the O.M. dated 24.12.1985 was challenged in TA-521/86 (D.P. Gupta Vs. Union of India & Another) before the New Bombay Bench of this Tribunal.

The Tribunal, in its judgement dated 15.9.1989, quashed and set aside the proviso at the end of para. 1 of the O.M. dated 24.12.1985 which reads as follows:-

"Provided, they have been promoted to the grades they are holding at the time of attaining the age of 58 years within the five years." According to the Bombay Bench, such a provision was ultra vires Articles 14 and 16 of the Constitution. It was further held that the applicant would be deemed to have retired on attaining the age of superannuation at the age of 60 years. The pay and pension and other retirement benefits of the applicant were directed to be refixed on that basis.

5. The Union of India filed SLP(Civil) 6509/90 in the Supreme Court against the aforesaid judgement. The Supreme Court passed the following order on 3.9.1990:-

"Special Leave granted. Applicants agree that the order in favour of the respondent will not be disturbed and they further agree that the respondent's cost of the hearing of the appeal will be reimbursed by the Union of India. The Union of India to deposit a sum of Rs.5,000/- towards the initial expenses within two weeks in this Court. In the meantime, the implementation of the judgement will be subject to the further orders of this Court, except in the

case of the respondents. The respondent to be paid the amount payable to him under the order appealed against within three months. Hearing expedited."

6. The applicant before us moved the Hon'ble Supreme Court by way of interim applications 2 and 3/90 in Civil Appeal No.4480/90 (Union of India Vs. O.P. Gupta) for granting this Tribunal the liberty to dispose of DA-1133/89 notwithstanding the order dated 3.9.1990, mentioned above. On 5.3.1991, the Supreme Court passed the following order:-

"The order made by this Court, would not preclude the Central Administrative Tribunal, Principal Bench, New Delhi, from hearing DA-1133/89 pending before it. This disposes of the application for being impleaded."

7. Till December, 1985, the age of superannuation of all scientific and technical personnel (Gazetted) of the Defence Research and Development Service was 58 years. By Office Memorandum dated 24.12.1985, issued by the Department of Defence Research and Development in the Ministry of Defence, the age of superannuation of all these personnel was raised to 60 years except in respect of a few Scientists like the applicant before us and the applicant before the New Bombay Bench. Para.1 of the

said Office Memorandum reads as under:-

"Having regard to the specialised nature of work that is being carried out by the Department of Defence Research and Development and taking into account the present shortage of talented and experienced personnel in the advanced technology areas with which defence science and technology is concerned, Government have had under consideration the question of enhancing the age of retirement on superannuation of scientific and technical personnel of the Defence Research & Development Service. Notwithstanding the provisions of Civil Service regulations, Fundamental Rules or any other rules or orders on the subject, the President is pleased to decide that scientific and technical personnel (Gazetted) of the Defence Research & Development Service in the grade of Scientist 'E' and above shall retire at the age of 60 years provided they have been promoted to the grades they are holding at the time of attaining the age of 58 years within the preceding 5 years."

8. As the above Memorandum did not cover some of the Group 'B' and Group 'C' employees, the respondents issued O.M. dated 10.2.1986, whereby it was decided that the scientific and technical personnel holding the posts listed in Appendix 'A' to the memorandum shall also retire at the age of 60 years, notwithstanding the provisions of Civil Service Regulations, Fundamental Rules or any other rules and orders on the subject. The posts listed in Appendix 'A' are: (1) Junior Scientific Officer, (2) Senior Scientific Assistant, (3) Junior Scientific Assistant (Grade I and II), (4) Foreman, (5) Assistant Foreman, (6) Chargeman (Grade I & II), (7) Supervisor (Technical), (8) Chief Draftsman (9) Draftsman (Grades I, II & III), (10) Commercial Artist, (11) Senior Artist, (12) Artist-cum-Photographer,

(13) Photographer Assistant (14) Photographer (Grades I & II), (15) Chief Glass Blower, (16) Glass Blower, (17) Asstt. Glass Blower, and (18) Laboratory Assistant.

9. The applicant before the New Bombay Bench had prayed for striking down the proviso at the end of the first para of the O.M. dated 24.12.1985 and for declaring that Scientists 'B', 'C', and 'D' are entitled to go upto the age of 60 years without any condition, including the condition mentioned in the said proviso. He had also prayed for a declaration that he was entitled to go up to the age of 60 years with all consequential benefits.

10. The Bombay Bench of the Tribunal expressed the opinion that the classification of Scientists 'B', 'C' and 'D' into those who were promoted to the grades they were holding at the time of attaining the age of 60 years within the preceding 5 years and those who were not promoted to the grades within the preceding 5 years has no rational relation to any of the objects sought to be achieved by the Memorandum. On the contrary, it is likely to have an adverse effect on these objects.

11. After hearing the arguments of both the parties, the Bombay Bench of the Tribunal held that the impugned proviso was ultra vires the Articles 14 and 16 of the

Constitution. The case of the applicant in the present application is also similar. He was denied the benefit of the Memorandum dated 24.12.1985 in view of the proviso occurring at the end of para.1 as he had not earned any promotion between the age of 53 and 58 years. We respectfully follow the decision of the Bombay Bench dated 15.9.1989 in O.P. Gupta's case and hold that the applicant is also entitled to the benefit of the said judgement.

12. The respondents have argued that the applicant has not exhausted his remedies and that the application is also time-barred. With regard to this contention, the learned counsel for the applicant stated that the applicant is challenging the validity of the rules and in such a case, the bar of limitation will not be applicable. We are inclined to agree with this submission made by the applicant.

13. The applicant has already retired from service. In the facts and circumstances of the case, we order and direct that the applicant should be deemed to have retired on attaining the age of superannuation at 60 years w.e.f. 30.1.1991. His pay and pension and other retirement benefits should be refixed on that basis. If he has

received any pension and other retirement benefits on the basis that he has retired on attaining the age of 58 years, then these should be adjusted towards the arrears which he would be entitled to on the basis of his retirement on 31.1.1991.

14. The respondents shall comply with the above directions expeditiously and preferably within a period of three months from the date of communication of this order. There will be no order as to costs.

B.N. Dhadiallal
(B.N. Dhadiallal) 18/12/92
Administrative Member

Armed
18/12/92
(P.K. Karthay)
Vice-Chairman(Judl.)