

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

1124/88

O.A. No. 172/88, 667/88, 837/88 and 139/90.
T.A. No. 199

28-

DATE OF DECISION 25.9.90.

DSS Officers' Association and others Petitioner

S/Sri R.Venkatramani, B.S.Srivastav and Sri G.K.Agarwal Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri K.C.Mittal and Shri P.P.Khurana Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.C.Mathur, Vice Chairman(A).

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman(J).

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

B. Nair
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(G.Sreedharan Nair)
Vice Chairman(J).S.P.Singh/
25.9.90.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH : NEW DELHI.
1124/88

D.A.172/88, 667/88, 837/88 and 139/90.

D.S.S.Officers' Association	<u>Applicant in D.A.172/88.</u>
H.S.Chowdhary	...	<u>Applicant in D.A. 667/88.</u>
R.Narayanan	...	<u>Applicant in D.A.837/88.</u>
P.K.Majumdar	...	<u>Applicant in D.A.1124/88</u>
B.P.Sen	...	<u>Applicant in D.A.139/90.</u>
-versus-		
Union of India and others	...	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri B.C.Mathur, Vice Chairman(A).

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman(J).

For the applicants - Shri R.Venkateswara, Advocate in OA 172/88 and OA 837/88.
Shri B.B.Srivastav, Advocate in D.A.667/88 and D.A.1124/88
Shri G.K.Agrawal, in OA 139/90.

For the respondents- Shri K.C.Mittal, Advocate
Shri P.P.Khurana, Advocate

Date of Order - 28 26.9.90.

JUDGMENT AND ORDER :

G.Sreedharan Nair, Vice Chairman :-

These applications were heard together since common issues arise for consideration. They are being disposed of by the same order.

2. The Defence Science Services (for short, the DSS) was formed in 1953 to meet the requirements of research/development and inspection of Defence Stores. The D.S.S.cadre was controlled by the Research/Development (R&D) Organisation and was under the Director General of Inspection (D.G.I.). The D.S.S. was trifurcated into three independent services, namely; -

- (i) Defence Research & Development Services (D.R.D.S.);
- (ii) Defence Quality Assurance Service (D.Q.A.S.);
- (iii) Defence Aeronautics Quality Assurance Service, (D.A.Q.A.S.).

Following the establishment of the separate units, separate Services Rules were issued with respect to each of them. A special protective provision was made in all of them in the following terms :

" The conditions of service of the members of the service in respect of matters not expressly provided for in these Rules, shall mutatis mutandis and subject to any special order issued by the Government in respect of the service, be the same as those applicable to officers (civilians) of corresponding status in similar scientific institutions/ organisations under the Government of India. "

3. The applicant in O.A. 172/88 is the Defence Science Service Officers' Association and it relates to the age of superannuation. The grievance projected is that while the age of superannuation of the scientific and technical personnel of the D.R.D.S. has been raised to 60 years by the Office Memorandum dated 24.12.1985, the benefit has not been extended to the civilian scientists in the DQAS and the Junior Scientific Officers in the Directorate General of Quality Assurance.

4. The applicant in O.A. 139/90 is a member of the D.Q.A.S. while the applicant in O.A. 667/88 and the three applicants in O.A. 837/88 belong to the D.A.Q.A.S.

5. The relief claimed in all these applications is the enhancement of the age of superannuation in respect of the civilian Scientific Officers of the D.R.D.S. should be extended to them also. It is urged that the three units of the D.S.S. were established to realise and contribute to the common object of improved and quality assured Defence Production. According to the applicants, by the statutory provision incorporated in the Service Rules governing the different units, which has been referred to earlier, the continuation of the similarity of treatment in respect of the Civilian Scientific Officers of the three units was recognised, and as such, it cannot be interfered with by an administrative order ^{Only} to the benefit of one only of them.

6. One K.T. Shastri, who was a Deputy Chief Scientific Officer attached to the D.A.Q.A.S., filed an application (O.A. 575/87) before the Hyderabad Bench of this Tribunal seeking parity in the age of retirement with that of the Scientists working in the D.R.D.S. That application was disposed of by a Full Bench of this Tribunal by the order dated 20.3.1988 allowing the claim for enhancement of the age of retirement to 60 years. When the matter was taken up by the respondents in appeal before the Supreme Court in C.A. 4284/88, the appeal was dismissed

by the judgment dated 12.1.1990. The review petition filed by the respondents for review of the said judgment was dismissed by the order dated 6.4.1990.

7. All these applicants have placed reliance on the aforesaid judgment in K.T.Shastri's case in support of the relief claimed.

8. After the judgment of the Supreme Court in K.T.Shastri's case by the Notification issued on 5.7.1988, an amendment was made to the Service Rules governing the D.Q.A.S. and the D.A.Q.A.S. by introducing a provision that in the matter of retirement the officers of the Service shall be governed by FR 56. It was further provided that the amendment shall be deemed to have come into force with effect from 24.12.1985.

9. In view of the aforesaid amendment, the application in O.A. 172/88 was amended by including a prayer for striking down the amendment as unconstitutional and violative of Articles 14 and 16(1) of the Constitution of India.

10.. All these applications are resisted by the respondents. It is stated that as the officers in the erstwhile D.S.S. were employed in three Organisations, namely, D.R.D.O., D.G.Q.A. (erstwhile D.G.I.) and D.T.D.& P (Air), in view of the differences relating to the nature of functions and responsibilities, it was decided to trifurcate the D.S.S. It is pointed out that in the D.R.D.O., the work involves extensive up-to-date literature survey, analysis of existing information and technology and original basic and applied research and designs, while the D.G.Q.A. and the D.T.D&P(Air) are concerned with ^{ICAO} inspection work with a view to ensure the Defence Stores conformed to stipulated standard and defect analysis etc. When the respective Recruitment Rules were made for three services consequent upon the trifurcation, the age of superannuation was governed by the Civil

Services Regulations in respect of all and no specific provision with respect to ~~any~~ age of superannuation was incorporated in any of the Service Rules. Having regard to the specific requirements of the D.R.D.O., the Government considered it necessary to enhance the age of superannuation in respect of the D.R.D.S. officers and, accordingly, the Office Memorandum dated 24.12.1985 was issued. It is specifically stated that such enhancement was not considered necessary in respect of the D.Q.A.S. or the ~~D~~ A.Q.A.S. The respondents have stated that the members of the D.Q.A.S. were given a clear option to opt for either D.R.D.S. or ~~D~~ A.Q.A.S. and, as such, after the exercise of the option the claim for enhancement of age of superannuation which has been specifically allowed only for the DRDS cannot be made by the members of the other two services. It is pointed out that considering the basic functional differences, the other two cannot be said to be similar scientific institutions as the DRDO.

11. The respondents have also contended that these applicants are not entitled to the benefit of the judgment in K.T. Shastri's case.

12. It will be useful to refer, at this stage, to the relevant provisions in the D.A.Q.A.S. Rules, 1979, dealing with the initial constitution of the service. It is as follows :-

" 7. Initial constitution of the Service (1)(a);

All Group 'A' officers in the Defence Science Service and working in the Directorate of Technical Development and Production (air) on the date of promulgation of these rules shall be deemed to have been appointed to the Defence Aeronautical Quality Assurance Service in the posts or grades corresponding to those which they are holding on a regular basis.

(b) Any such officer in the Defence Science Service who is or was working on the above date in any of the offices or establishments under the Defence Research and Development Organisation and the Directorate General of Inspection shall not become a member of the Defence Aeronautical Quality Assurance Service unless he, within three months from the date of promulgation of these rules, opts for the Service and is found fit for appointment thereto, in the manner mentioned in sub-rule(2) below.

(2) The suitability for appointment to the Service in the case of the Defence Science Service Officers serving in the Defence Research and Development Organisation and Directorate General of Inspection who opt for Defence Aeronautical Quality Assurance Service shall be determined by a Screening Committee constituted as under.

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(3) Any officer referred to in sub-rule(1)(a) of this rule who does not, on selection to any grade in the Service, desire to be absorbed in the Service, may continue to hold the post held by him immediately before the selection as if he had not been selected and for this purpose that post shall be deemed to have been excluded from the Service for so long as he continues to hold it. He shall not be considered for any further promotion or confirmation in the Service."

Similar provisions were made in the Rules relating to the two other Services as well.

13. It is evident from a perusal of the final order of this Tribunal in K.T.Shastri's case that the aforesaid provision was not brought to its notice and that the finding that K.T.Shastri was entitled to the benefit of the enhanced age of retirement was arrived at solely on the basis of Rule 12(1) of the DAQAS Rules which ordains that the conditions of service of the DAQAS shall be the same as those applicable to the officers in similar scientific institutions/organisations under the Government of India. Though it was noticed that this is subject to any special order of the Government, it was pointed out that no such special order has been brought to the notice of the Tribunal.

14. A reading of the judgment of the Supreme Court in Civil Appeal No.4284/88, the appeal preferred by the respondents from the decision of the Tribunal in K.T.Shastri's case will make it clear that it proceeds on the premise that no option was given to the employees working in the different units to opt for one or other of the units, when the D.S.S. was trifurcated into three different units.

15. B.Sampath and some other employees of D.A.Q.A.S. filed applications before the Bangalore Bench of this Tribunal for the extension

of the benefit that was allowed to K.T.Shastri, and following the decision of the Tribunal in K.T.Shastri's case, it was allowed by the Bangalore Bench. However, when the respondents took up the matter in appeal before the Supreme Court in Civil Appeal Nos. 3971-73 of 1990, the judgment of the Tribunal was vacated noticing that the opportunity for the exercise of option following the trifurcation into separate units as a result of which the applicants therein were serving in one of the three units wherein the retirement age is 58.

16. M.K.Kulshreetha, an Additional Director in the D.T.D. & P(Air), filed O.A.453/90 before this Tribunal for extension of the benefit of the judgment in K.T.Shastri's case. Since by then, the amendment to Rule 12 of DAQAS was introduced to the effect that the matter of retirement of the officers of the Service shall be governed by FR 56, he had also prayed for quashing the said amendment. That application was disposed of by a Bench of this Tribunal by the order dated 14.9.90 holding that the applicant is not entitled to the benefit of the judgment in K.T.Shastri's case. A copy of the final order was made available by the counsel of the respondents. It is seen that reference has been made therein to the judgment of the Supreme Court in K.T.Shastri's case as well as the subsequent judgment in B.Sampath's case. Detailed reference has been made to the provisions in the Service Rules enabling the members of the Service to exercise option as also the circular letter issued in March, 1979, in that behalf.

17. In view of the foregoing, the stand taken up by the applicants and urged by the counsel of the applicants at the time of hearing that the applicants are entitled to the extension of the benefit granted to K.T.Shastri cannot be sustained.

18. The Service Rules issued in 1979 in respect of the DAQAS, on its constitution, very clearly provides in Clause(b) of sub-rule (1) of Rule 7 that any Group 'A' officer in the D.G.S. who is or was working on the date of promulgation of the Rules in any of the offices or establishment

37

under the DRDO and the DGI shall not become a member of the Service unless within the period of three months he opts for the Service and is found fit for appointment thereto by a Screening Committee. It has also to be noticed that though it was provided in Clause(a) of the Sub-rule that all Group 'A' officers in the D.S.S. and working in the DTD&P (Air) on the date of promulgation of the Rules shall be deemed to have been appointed to the DAQAS on a regular basis, by virtue of sub-rule(3) of the Rules any such officer who did not desire to be absorbed in the Service was enabled to continue to hold the post held by him and to hold the post as if it does not form part of the Service. Thus, after the trifurcation if some of the officers of the DSS became member of the DRDS and others of the other two Services, it is only as a result of their own volition and option. As such, those who are in the other two services cannot claim ^{the benefit of} an alteration of one of the conditions of Service in respect of the officers of the DRDS, brought into effect about 6 years after the tri-furcation and the constitution of the three different Services.

19. Considerable reliance was placed by the counsel of the applicants on the provision contained in sub-rule (1) of Rule 12 of the DAQAS Rules which lays down that the conditions of service of the members of the Service in respect of matters not expressly provided for in the Rules shall mutatis mutandis be the same as those applicable to officers of corresponding status in similar scientific institutions/organisations under the Government. It was stated that the DAQAS and the DQAS are similar scientific institutions as the DRDS and the status of the officers is also the same. This submission has been rejected. The DSS was tri-furcated and the three services were constituted as the nature of the functions and responsibilities of the DRDO and the DQAS of the DTD&P (Air) were different. It has been specifically asserted in the reply of the respondents that while in the former, the work involves extensive up-to-date literature survey, analysis of existing information and technology and original basic, applied research and design,

in the other two branches, the emphasis is on inspection work to ensure that the Defence Stores conform to stipulated standard, defect analysis etc. The Office Memorandum dated 24.12.1985 enhancing the age of superannuation of the scientific and technical personnel(Gazetted) of the DRDS was issued, as indicated by the Office Memorandum itself, having regard to the specialised nature of work carried out by that Unit and taking into account the shortage of talented and experienced personnel in the advanced technology areas. No such enhancement was considered by the Government as necessary in respect of the officers in the DQAS and DAQAS.

20. Looked at from another angle as well, the plea of the applicants cannot be accepted. Sub-rule (1) of Rule 12 of the DQAS Rules is "subject to any special order issued by Government in respect of a Service". It is on record that on 5.7.1988, the amendment has been introduced in the Rules by which a provision has been added after the existing sub-rule (1) of Rule 12 to the effect that "in the matter of retirement of officers of the Service shall be governed by FR 56". Though it was stated by the counsel of the applicants that the provision introduced by way of amendment is illegal and ultra vires in view of Articles 14 and 16(1) of the Constitution of India, and that a prayer has also been made for striking down the same, we are not impressed.

21. From the facts of the case, it is manifest that the amendment was introduced in view of the judgment in K.T.Shastri's case. Based on this premise, it was argued on behalf of the applicants that since the decision of the Tribunal in K.T.Shastri's case was upheld by the Supreme Court, ~~was~~ and as the judgment of the Supreme Court was subsequent to the aforesaid amendment, it has to be held that the amendment is illegal and unenforceable. It was also pointed out by the counsel that a reference to the amendment was made issued by the respondents in the petition filed by them for review of the judgment of the Supreme Court and since the review petition was dismissed, ^{any} the amendment cannot have operation. We have the least hesitation in repelling this submission- The judgment of the Supreme Court does not at all

indicate that a pronouncement in respect of the validity of the amendment was called for by either of the parties, or was, in fact, made. On the other hand, from the question as posed in para 6 of the judgment, it is clear that the issue was confined to the benefit of the Office Memorandum dated 24.12.1985 enhancing the retirement age in respect of the DRDS. It was held that the denial of the benefit of the enhanced superannuation of the members of one unit while the same is granted to the members of the other units amounts to discrimination, violative of Article 16 of the Constitution of India.

22. At this juncture, we have to recall the final order passed by this Bench of the Tribunal in Kulshrestha's case (O.A.453/90, decided on 14.9.90) referred to earlier. The aforesaid amendment was challenged in that case also. That in K.T.Shastry's case, the Supreme Court did not "in terms" refer to the amendment to Rule 12 made on 5.7.1988 has been referred to by the Bench. It is to be pointed out that the prayer for quashing the amendment not having been allowed has to be considered as rejected by the decision in Kulshrestha's case.

23. It follows that no relief can be granted to the applicants. These applications are dismissed.

In 80
28.9.90
(G.Sreedharan Nair)
Vice Chairman(J)

B.C.Mathur
28.9.90
(B.C.Mathur)
Vice -Chairman(A).

S.P.Singh/
25.9.90.

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