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**In the Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.264/87

Date of decision: 17.02.1993.

Chandrika Prasad Sharma

....Petitioner

Versus

Union of India through Secretary
Department of Defence Research
Development & Others

....Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.Z. Rasgotra, Member (A)

For the petitioner

Shri G.K. Aggarwal, Counsel.

For the respondents

Shri P.H. Ramchandani,
Senior Counsel.

Judgement (Oral)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri C.P. Sharma has prayed in this Application for a direction to the respondents to treat him as in service as Scientist 'G' in in D.R.D.S. upto 31.8.1987, pay him arrears with interest and consequential retiral and other benefits with retrospective effect, and just compensation for injustice, harm and injury caused to him. The petitioner's case is that he was working as Scientist 'G' as a Director of Defence Electronics Applications Laboratory, Dehradun in Defence Research and Development Organisation. That is the date on which he attained the age of 58 years. He has three grounds in support of his claim that he was entitled to remain in service until he attains the age of 60 years. His contention is that under the relevant rules he is governed by the age of superannuation of 60 years. His second contention is that OM dated 24.12.1985 which

purports to raise the age of retirement from 58 years to 60 years must be regarded as applicable to him as well. The third contention is that he has been discriminated against in the matter of granting extension, after attainment of the age of superannuation.

2. Shri Aggarwal, learned counsel for the petitioner submitted in support of his first contention that the petitioner is governed by the Defence Research Development Service Rules which do not expressly prescribe age of superannuation. Rule 13 of the said rules deals with other conditions of service and reads:

"13. Other conditions of service.-(1) The other 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 orders 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 or organisations under the Government of India."

3. Shri Aggarwal submits that the age of retirement for officers (Civilians) of corresponding status in similar scientific institutions/organisations

under the Government of India is 60 years. He, therefore, maintains that it was wrong on the part of the authorities to retire him on attaining the age of 58 years. In support of his plea the age of retirement in similar scientific institutions/organisations is 60 years. The reliance is placed on paragraph-5 of the reply of Respondent No.1. What paragraph-5 really deals with is the reason for the OM dated 24.12.1985 by which the age of annuation was raised from 58 years to 60 years. It is stated that the serious problems faced by the DRDO due to non-availability of required number of experience man-power resulted in large number of vacancies. It is further stated that it is felt that it is useful to utilise the services of experienced Scientists man-power and for that purpose the necessity was felt to bring the service conditions of scientific and technical personnel of DRDO at par with other scientific organisations such as Department of Atomic Energy and Department of Space. It is in this background, it is stated that the Government decided to enhance the age of retirement of the scientists belonging to the Defence Research and Development Service from 58 years to 60 years. Firstly, it is necessary to point out that the stand taken by the Government is that so far as the petitioner is concerned, he being a Government servant is governed by Article 459 of the Civil Service Regulations which prescribe the 58 years as the date of

superannuation for all Government servants unless otherwise expressly provided. Article 459 of the Regulations provides that except as otherwise provided in the Article every Government servant shall retire on the date he attains the age of 58 years. The petitioner, it is not disputed is a Government servant. It is on the strength of this Article it was maintained by the respondents that the petitioner is governed by the age of retirement of 58 years, there being no provision in the said Article to the contrary on which he can take advantage of. It is, however, maintained by Shri Aggarwal that these regulations do not apply to the petitioner. In support of this submission he invited our attention to the note to Volume-I of the Civil Service Regulations by Shri S.Lakhi Singh Chaudri Satya Chaudri (1986 Edition) at page-1. It says that with effect from the 1st January, 1922, the Regulations relating to salaries, leave other allowances and foreign service etc. contained in these Regulations do not (subject to the provisions of Rules 2 and 3 of the Fundamental Rules) apply to Government servants whose pay is debitable to civil estimates of India. The note by itself does not deal with the conditions of service regulating the age of superannuation. Hence, the note by itself is not sufficient to sustain the petitioner's contention that Regulation 459 governing the age of superannuation is not attracted to the petitioner. As the petitioner is not in a position to demonstrate that

Regulation 459 is not applicable, as he is admittedly a Government servant it is obvious that he is governed by the said provision. So far as the stand taken in the reply to which we have adverted to earlier is concerned, it is necessary to state that if the petitioner is governed by Article 459 of the Civil Service Regulations, as we have found he does, the general submission in the reply cannot come to the aid of the petitioner, to say that the age of superannuation of the petitioner was 60 years on the ground that that was the age of superannuation applicable to civilian officers of corresponding status in similar scientific institutions or organisations under the Government of India. Another circumstance, which supports the view which we have taken is the exercise made by the Government for issuing an order dated 24.12.85 by which the age of superannuation of the members of the staff of the organisation to which the petitioner belongs from 58 years to 60 years. It is not averred by the petitioner that until his retirement other similarly situated like him were all treated as having been governed by the age of superannuation of 60 years. If such was the position there was no need for the exercise of issuing an order dated 24.12.1985, enhancing the age of superannuation to 60 years. On the material placed before us, we are, therefore, inclined to take the view that the age of superannuation of the petitioner before 24.12.1985 was 58 years.

4. The next contention of Shri Aggarwal is that the OM dated 24.12.1985 enhancing the age of superannuation should be regarded as applicable to the petitioner as well. This, it was submitted that the decision which resulted in the issuance of OM dated 24.12.1985 must have been taken to bring it into force from a date earlier to the date of his retirement. All these assertions are based on surmises and conjectures and not on the basis of any material. The OM dated 24.12.1985 says in paragraph-4 that the order shall come into force with immediate effect, meaning thereby prospectively from the date of issuance of the OM dated 24.12.1985.

5. Shri Ramchandani, Senior Counsel appearing for the respondents also placed before us the files on the basis of which a decision was taken. The said files indicate that the said decision was taken in a meeting on 29.10.1985. The proceedings do not indicate that the enhancement was given effect to from any retrospective date. As the order is prospective in nature and was issued on 24.12.1985 the petitioner cannot claim that he is governed by the said OM he having retired long before the said OM was issued.

6. The last contention of Shri Aggarwal is that he has been discriminated against in the matter of granting extension. He invited our attention to the

instructions dated 18.5.1977. Though the proper instruction has not been produced he has alleged that the said instructions have prescribed three guidelines, i) public interest ii) other officers are not enough to take over the job and iii) that the retiring officer has outstanding merit. The matter of extension is not a matter of right. It is not the question of enforcing pre-existing right. The authorities have the power to grant extension, if in public interest such a course of action is warranted. It is in the matter of exercising such discretion that the guidelines issued have to be borne in mind. It is for the authorities to decide as to whether extension is warranted in a particular case. Even assuming that the conditions specified in the guidelines are satisfied it does not give rise to a right in favour of the incumbent to secure an extension. That is a matter of discretion. The principle grievance of the petitioner, however, is that extension has been given to Dr. Nagratnam who is also similarly situate in the sense that he was also holding the post of Scientist Grade 'G', only five days before his retirement. It is further pointed out that he was given extension of two years. All this, is, according to the petitioner is for the reason that respondent No.2 wife's sister was to be married to Dr. Nagratnam's son. Such a marriage took place in January, 1985 is not disputed. The petitioner has also alleged that respondent No.2 attended that marriage. These

allegations have been denied in the reply filed by the respondents, except the allegation that respondent No.2 attended the marriage. We do not consider it necessary to go into the details in regard to these allegations for the reasons to be stated presently. But we must make it clear that if any officer has reason to be interested on account of matrimonial relations like the one alleged in this case the person concerned should disassociate himself from participating in the process of selection or conferring any benefit to such persons. This principle has been recognised and laid down long back by the Supreme Court. It is one of the cardinal principles of natural justice. Hence whatever view we may take on the facts of this case we would like to make it clear that the officers who have reason to be interested one way or other must ensure that they do not participate in such selection process and keep themselves away.

7. Assuming for the sake of argument that Dr. Nagratnam was a beneficiary of certain unjust benefits on account of the alleged interests of Respondent No.2 we fail to see how that would help the petitioner to secure direction in his favour for granting extension. If undeserved benefit is conferred on Dr. Nagratnam it would be a case for depriving of that unjust benefits by quashing the appropriate order or to deprive him of the advantage which he secured. That would not justify the Tribunal issuing a direction of a similar nature to confer an undeserved benefit to the petitioner as well. In the circumstances, we do not propose to probe further into this aspect of the matter. The period for which the

extension could have been granted would have expired by now as also the period granted to Dr. Nagratnam except reiterating the principles to be followed in such cases, we do not propose to say any thing more in this case.

8. For the reasons stated above, this petition fails and is dismissed. No costs.



(I.K. Rasgotra)
Member (A)

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(V.S. Malimath)
Chairman