

IN THE NATIONAL TRIBUNAL FOR THE
ARRESTED SOLDIERS, NEW DELHI.

Applicant (1) O.A. 1513/90
(2) O.A. 1537/90

Date of Hearing : 12.4.1991.

(1) O.A. 1513/90

Lt. Col Komal Chandra O.A. ... Applicant

Vs.

U.O. through the ... Respondent
Secretary, Min. of Defence
and another

(2) O.A. 1537/90

Maj. H.S. Bhatia ... Applicant

Vs.

U.O. through the ... Respondent
Secretary, Min. of Defence
and another

For the applicants in
(1) & (2) above ... in para.

For the respondents in
(1) & (2) above ... in para.

ORDER

THE HON'BLE MR. P.N. KAPUR, VICE CHAIRMAN(3)

THE HON'BLE MR. S.H. CHAKRABORTY, JUDGE(1)

- Whether reporters of local papers may be allowed to see the Judgment? *Yes*
- To be referred to the reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.N. Kapur, Vice Chairman(3),

The applicants in these two applications are ex-servicemen who have been employed in the National ... while in service. Their grievance is that the superannuation applicable to them is 55 years *against a* ... 30 years in the case of other civilian employees ... the Fundamental-Rule.

... the subject, to be ... Tribunal

had occasion to consider the age of superannuation of two NCC Officers. The Patna Bench of the Tribunal in case No.8-98 of 1986 (Maj. Yudhishtar Singh Vs. The Government of India, Ministry of Defence and Another) and the Bangalore Bench in CA 41/86 (G. Ramanujam Vs. the Secretary, Ministry of Defence and Another) had considered the matter. In the Patna case, no relief was given to the applicant on the ground that he had suppressed the fact of having exercised an option according to which the age of superannuation will be 55 years. The Bangalore Bench partly allowed the application and directed the respondents to consider the question of liberalisation of the service conditions, taking into account the provisions in the CCS(Pension) Rules, 1972 for addition upto 5 years to the period of service actually rendered.

3. We have carefully gone through the aforesaid rulings of the Patna Bench and the Bangalore Bench and we feel that the ^{main} issue raised in the two applications before us has not been considered by the Patna Bench or the Bangalore Bench in its proper perspective.

4. The facts of the case are not in dispute. The applicants are ex-servicemen and were employed in the NCC after due selection. Neither the NCC Act, 1943 nor the rules made thereunder contain any specific provision regarding the age of superannuation of the persons governed by the said Act. The appointment of the applicants in the NCC on whole time basis was in accordance with the

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provisions of the Government of India, Ministry of Defence letter No.5431/NCC/PMIS(D)/773-III/D(33-III) dated 21.12.1960 which deals with the procedure for grant of NCC Commission with a view to employment on full time basis. In Appendix I. to the said letter, it has been stipulated that "officers will ordinarily hold commission until reaching the age of 35 years". However, "an officer may be granted extension upto 37 years of age or may be discharged earlier, if his services are not required". The applicants were appointed to the NCC on the basis of the aforesaid stipulations.

5. On 23.5.1960, the Ministry of Defence informed the Director General, NCC that the terms and conditions of service of NCC whole time officers, who have been granted permanent commission, will be those set out in Appendix I. to the said letter. The terms conditions of service, inter alia, provide that the officers, if otherwise not found unfit, will be eligible to serve till 35 years of age and their service will be governed by the CCS(Pension) Rules, 1971.

6. It may be stated that the NCC whole time officers were granted permanent commission for the receipt of option certificates from them in which they opted to be governed under the terms and conditions.

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which/which the retirement age of 55 years.

7. While the applicants before us are contending that they gave the option under compulsion, duress and coercion, the respondents have contended in their counter-affidavit that they gave the option voluntarily.

8. We have carefully gone through the records of the case and have heard the applicants in person. During the hearing, the applicants stated that they would argue their case in person without the assistance of any counsel who had been engaged by them earlier. Mrs. Raj Kumari Chopra, the learned counsel for the respondents drew our attention to the decisions of the Bench and of the Full Bench of this Tribunal, mentioned above. The applicants also relied upon some rulings of the Supreme Court in support of their contention. We have duly considered them.

9. The respondents have fairly stated in their counter-affidavit that they are not aware of the contention of the petition^{ers} but they have no power.

Cases relied upon by the applicants:

(1) JT 1980(1) 3G 14; (11) JT 1982(9) 3G 270; (111) AIR 1986 3G 1571.

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This has been stated in reply to the contention of the applicants that the representations submitted by them have been forwarded to the competent authority with favourable recommendations. The respondents have also stated that "as far as the question of enhancement of retirement age is concerned, this is already being considered favourably by the Government and the respondents are not averse to the contention of the petitioners".

10. The real issue arising for consideration is whether the option exercised by the applicant and persons similarly situated at the time of grant of permanent commission to them in the MCI is legal and valid.

11. After the applicants have been reemployed on whole time basis in the MCI, they become full-fledged Government servants. The Fundamental Rules apply to all Government servants whose pay is to be debitable to civil estimates (vide R. 2). FR 56 (a) provides, inter alia, that "every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years". The above provision in the Fundamental Rules has been in existence from 5.1.1975. The provision for exercising option is contained only in the administrative

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instructions issued by the respondents. It is well-known that administrative instructions cannot run counter to the statutory rules, such as the Fundamental Rules. This aspect of the matter has not been considered by the Patna Bench or the Bangalore Bench of this Tribunal in the two cases mentioned above. In our considered view, the options exercised by the applicants and those similarly situated were contrary to the provisions of FR 56(a) and on that ground alone ^{were} ~~as~~ ab initio invalid and inoperative.

12. In the light of the above, the applications are disposed of with the following orders and directions:

(1) We hold that the option exercised by the applicants in these two applications and by those who are similarly situated at the time of their reemployment pursuant to the Ministry of Defence letter dated 4.3.1978 is ab initio void and inoperative as it runs counter to the provisions of FR 56(a) which was then in existence and which stipulated that every Government servant shall retire from service at the age of 58 years. Administrative instruction of the nature ~~xx~~ ^{contained in} the letter of the Ministry of Defence dated 4.3.1978 or similar administrative instructions issued on earlier dates will not override the provisions of FR 56(a).

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(ii) The applicants and those similarly situated would be entitled to the benefit of E. 33(a) notwithstanding the option given by them and that they shall retire from service only after they have attained the age of 58 years.

(iii) I, therefore, set aside and quash the impugned order dated 23.5.1980 issued by respondent No.1, the effect of which ^{was} ~~is~~ that the applicants will have to retire at the age of 55 years.

(iv) The respondents shall issue the necessary orders for giving effect to the aforesaid directions within a period of ^{one or 2} ~~three~~ months from the date of receipt of this order.

There will be no order as to costs.

Let a copy of this order be placed in both the case files.

Quashed 12/4/91
(D.K. CHAKRABARTY)
MEMBER (A)

Quashed
12/4/91
(P.K. BANERJEE)
VICE CHIEF JUDGE (C)