IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(10)

Regn.Nos.(1) OA 2197 of 1989 Date of decision: 10.10.1991.
(2) OA 2523 of 1989
(3) OA 2524 of 1989
(4) OA 2534 of 1989
(5) OA 337 of 1990
(6) OA 695 of 1990
(7) OA 1401 of 1990
(8) OA 1528 of 1990
(9) OA 532 of 1991
(10) OA 677 of 1991
(11) OA 828 of 1991
(12) OA 1630 of 1991

(1) OA 2197 of 1989 **with MP.No.2546/91**

Shri B.D. Bahuguna ....Applicant

Vs.

Union of India & Others ....Respondents

(2) OA 2523 of 1989

K.P. Raizada ....Applicant

Vs.

Union of India & Others ....Respondents

(3) OA 2524 of 1989

Shri S.K. Shukla ...Applicant

Vs.

Union of India & Others ....Respondents

(4) OA 2534 of 1989

Smt. Usha Sharma ....Applicant

Vs.

Union of India & Others ....Respondents

(5) OA 337 of 1990 **with MP.No.2589/91**

Shri Karam Chand Sharma ....Applicant

Vs.

Lt. Governor & Another ....Respondents

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(6) OA 695 of 1990 **with MP.No.2545/91**

Shri J.N. Goel ....Applicant

Vs.

Lt. Governor & Another ....Respondents

(7) OA 1401 of 1990 **with MP.No.2588/91**

Dr. J.C. Gaur ....Applicant

Vs.

Lt. Governor & Another ....Respondents

(8) OA 1528 of 1990 **with MP.No.2586/91**

Mrs. D.R. Unnithan ....Applicant

Vs.

Union of India & Others ....Respondents

(9) OA 532 of 1991 **with MP.No.2594/91**

Mrs. Janak Bhatnagar ..Applicant

Vs.

Lt. Governor & Another ....Respondents

(10) OA 677 of 1991

Miss S. Rajpal ....Applicant

Vs.

Lt. Governor & Another ....Respondents

(11) OA 828 of 1991 **with MP.No.2587/91**

Shri B.D. Suran ....Applicant

Vs.

Delhi Administration & Others ....Respondents

(12) OA 1630 of 1991 **with MP.No.2660/91**

Shri N.S. Verma ....Applicant

Vs.

Lt. Governor and Another ....Respondents

For the Applicants in (1), (2) & (8) ....Shri G.D. Gupta, Counsel

For the Applicant in (3) above ....In person

For the Applicant in (4) above ....Shri R.P. Sharma, Counsel

For the Applicants in (5), (6), (7), (9), (10) and (12) above ....Shri S.K. Bisaria, Counsel

For the Applicant in (11) above ....In person

For the Respondents in (1), (2), (3), (4), (5), (6), (7), (9) & (11) above ....Mrs. Avnish Ahlawat, Counsel

For the Respondent in (8) above ....Ms. Ashoka Jain, Counsel

For the respondents in (9) above ....Shri Dinesh Kumar, Counsel

For the Respondents in (10) above ....Mrs. Geetha Luthra, Counsel

For the Respondents in (12) above ....Shri T.S. Kapoor, Counsel

(12)

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporters or not? yes

JUDGMENT

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

The question for consideration in these applications is whether the applicants who belong to the teaching line in the Delhi Administration are entitled to retire at the age of 60 years like other teachers after their promotion to supervisory or administrative posts of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director of Education in the Directorate of Education, Delhi Administration or whether they would retire at the age of 58 years like those who belong to the administration line. There had been one round of litigation in the Tribunal and in the Supreme Court on this issue by Shri R.S.S. Shishodia and Shri Sita Ram Sharma. A Review Petition filed in Civil Appeal No.3191 of 1991 arising out of SLP(Civil) No.2562 of 1990 in the matter of Shri R.S.S. Shishodia Vs. The Administrator of Union Territory of Delhi and Others, is stated to be still pending. This is another round of litigation in the Tribunal by the applicants befoie us who are also similarly situated. As the issues involved are common, it is proposed to deal with them in a common judgment.

2. Eight of the applicants are working as Deputy Directors of Education (applicants in OA at S.Nos. 1, 2, 4, 6, 8, 10, 11 and 12), two as Supervisors, Physical Education (applicants in OA at S.Nos. 5 and 9), one as Assistant Director (Science)(applicant in OA at S.No.7) and one as Additional Director, Education(Schools)(Applicant in OA at S.No.3). All of them belong to the teaching stream where the retirement age is 60 years and they were promoted to the administration stream where the retirement age is 58 years. The dates on which they complete the age of 58 years and 60 years are indicated in the comparative chart below:-

Applicants at S.Nos. above	Date of retirement at 58 years	Date of retirement if it is 60 years
Applicant in 1	31.10.1989	31.10.1991
Applicants in 2 & 3	30.6.1988	30.6.1990
Applicant in 4	31.12.1989	31.12.1991
Applicant in 5	28.2.1990	28.2.1992
Applicant in 6	30.4.1990	30.4.1992
Applicants in 7 & 8	31.7.1990	31.7.1992
Applicant in 9	28.2.1991	28.2.1993
Applicant in 10	30.4.1991	30.4.1993
Applicant in 11	31.5.1991	31.5.1993
Applicant in 12	31.7.1991	31.7.1993

3. It will be seen from the above that all the applicants have attained the age of 58 years. They have continued in service thereafter by virtue of the stay orders passed by the Tribunal. The respondents have filed Miscellaneous Petitions praying for vacating the stay orders in the light of the orders and directions given by the Supreme Court in Shishodia's case and Sita Ram Sharma's case and that is how these applications came up for hearing on the continuance of the stay and the merits.

4. The learned counsel for both sides have taken us through the pleadings in the first round of litigation before the Tribunal and the Supreme Court and the orders passed by the Tribunal and the Supreme Court. Both sides have sought from them support for their respective contentions. The stand of the the applicants is that they would retire from service at the age of 60 years on the ground that their service on the administration side is an extension of their service in the teaching line. The stand of the respondents is that as the applicants, on their own, accepted promotion to the administration line where the age of retirement is 58 years, they would retire at the age of 58 years.

5. We have gone through the records of the case carefully and have considered the rival contentions. We have also heard some of the affected persons appearing in person who are expecting promotion on the administration side if the stay orders passed by the Tribunal are vacated. Mrs. Avnish Ahlawat, the learned counsel for the respondents contended that the matter stands concluded by the orders passed by the Supreme Court on the appeals filed by S/Shri Shishodia and Sita Ram Sharma against the judgments delivered by the Tribunal, which will be discussed hereinafter. The learned counsel for the applicants

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argued that the issues arising out of the judgments of the Tribunal dated 29.1.1990 in OA 2005/1989, R.S.S. Shishodia Vs. The Administrator, Union Territory of Delhi & Others and dated 8.2.1990 in OA No.153 of 1990 in Dr. Sita Ram Sharma Vs. Union of India & Others have been left undecided by the Supreme Court. According to Shri S.K. Bisaria, the learned counsel appearing for some of the applicants, the aforesaid orders of the Supreme Court are only orders in personam and not orders in rem. He further submitted that the issues raised in these applications had been considered by another Bench of this Tribunal in its judgment dated 20.10.1987 in OA No.858/86 in B.N. Mian Vs. Delhi Administration and Others which is in their favour and that in the event of our taking a different view, the matter should be referred to a larger Bench for consideration. Shri G.D. Gupta, the learned counsel appearing for some other applicants argued that the aforesaid orders of the Supreme Court in Shishodia case and Sita Ram Sharma's case have not adjudicated upon the merits and that they have merely regulated the period of service rendered by Shri Shishodia and Dr. Sita Ram Sharma on the post of Deputy Director.

6. The judgment of the Tribunal in Dr. Sita Ram Sharma merely follows the earlier judgment in Shishodia's case and, therefore, we may discuss only the judgment in Shishodai's case.

7. In Shishodia's case, the applicant was appointed as Principal on 29.7.1960 in the Directorate of Education. He was promoted as Education Officer in 1976, Deputy Director of Education in 1984 and Joint Director of Education in 1988. He was confirmed as Principal. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ He was not confirmed on the post of Education Officer and his subsequent promotion as Deputy Director and Joint Director were purely on ad hoc basis. He challenged the order passed by the respondents to the effect that he would stand retired from Government service on 30.9.1989 on attaining the age of 58 years. He had prayed that he was entitled to be granted extension in service upto the age of 60 years. The Tribunal expressed the view that supervisory work by a person on promotion who has acted as a Principal is in the nature of an extension of the work as a Principal but covering a wider area, which may involve several schools or zones. In the operative part of the judgment, the Tribunal, however, observed as follows:-

> " We are, however, of the view that if this relief cannot be granted to all those promoted officers to the rank of Education Officer/Asstt. Director/Deputy Director/Joint Director and Additional Director who come from the rank of Principal of a School under the Delhi Administration, they must be given an option to revert back as Principals in Schools and continue till the age of superannuation/retirement viz., 60 years. It goes without saying, if they exercise the option of reversion, they would be entitled to the pay, allowances and pesnion commensurate to the rank of Principal. They will not be entitled to the pay and allowances of the higher promotional posts. It is, however, made clear that during the period they held the promotional posts, they would be entitled to pay and allowances of the post. We further direct that the applicant in the present case will also be asked to exercise his option as to whether he would like to revert as Principal and if he gives his option to do so, he would be reposted as Principal and continued till the age of 60 years".

8. On appeal filed against the aforesaid judgment by Shri Shishodia, the Supreme Court passed the following order on 16.8.1991 in civil appeal No.3191 of 1991:-

" Special leave granted.
Having heard the learned counsel for both the parties, we find that the appellant has only about one month to complete 60 years. We do not, therefore, propose to decide the issue arising from the impugned judgment of the Tribunal. So far as the appellant's continuance on the post of Joint Director is concerned, it is always open to the authorities to allow him to continue on that post or to revert him to his post of Principal.
The appeal is accordingly disposed of".

9. IA No.2 filed by him in the said Civil Appeal was disposed of by the following order dated 25.9.1991:-

" After hearing learned counsel for the parties and having regard to this Court's order dated 16.8.91 and the special facts and circumstances of the case we direct that the appellant shall be retired as a Principal on his attaining the age of 60 years, without any prejudice to his right to salary or allowances paid to him while he was working as a Joint Director of the Education. The appellant is entitled to retiral benefits as Principal. The order of reversion will, however, stand.
The IA is disposed of accordingly".

10. On a persual of the aforesaid order dated 16.8.91, it appears to us that the Supreme Court after taking into account the facts and circumstances and without deciding the issues arising from the said judgment, disposed of the appeal with the observation that it was always open to the authorities to

allow the appellant to continue on the post held by him in the administration line or to revert him to his post of Principal. An identical order was passed on 16.8.1991 in the case of Dr. Sita Ram Sharma. Thereafter, the respondents passed an order on 23.8.1991 purporting to relieve Shri Shishodia and Shri Sita Ram Sharma of their duties with effect from 16.8.1991, the date of the orders passed by the Supreme Court. It was further added that in case they were interested to seek reversion to the post of Principal, they might submit their option within 24 hours of the receipt of the order so that it could be considered on merit and that their option for reversion should be from the date prior to the date of superannuation at the age of 58 years. On 26.8.1991, the respondents passed an order directing that Shri Shishodia shall stand retired from Government service on 30.9.1989.

11. The orders dated 23.8.1991 and 26.8.1991 were challenged by Shri Shishodia in IA No.2 of 1991 which was disposed by the Supreme Court on 25.9.1991. Having regard to the special facts and circumstances of the case, the Supreme Court directed that Shri Shishodia shall be retired as Principal on his attaining the age of 60 years without prejudice to his right to salary or allowances paid to him while he was working as a Joint Director of Education and that he would be entitled to retiral benefits as Principal. The Supreme Court did not find any illegality in the orders passed by the respondents on 23.8.1991 and

26.8.1991. The appellant's right to retire as Principal on his attaining the age of 60 years and his right to salary and allowances paid to him while working as a Joint Director of Education were, however, upheld.

12. The decision of the Tribunal dated 20.10.1987 in Mian's case relied upon by Shri Bisaria was based on the order dated 28.3.1987 made by the Lt. Governor, Delhi. During the hearing, the learned counsel of the respondents produced before us copy of an order dated 25/26-4-1988 whereby the aforesaid order dated 28.3.1987 was cancell and withdrawn. In that case, the applicant who was employed as Guidance Counsellor in the Directorate of Education, Delhi Administration had sought for a direction that he was entitled to the enhancement of age of superannuation at 60 years and higher pay in accordance with the orders issued by the respondents on 6.9.1983 in respect of the Delhi School Teachers enhancing their age of retirement/superannuation to 60 years from 58 years. His contention was that although the nomenclature of the post held by him was Guidance Counsellor but the fact was that he belonged to one of the teaching categories as detailed by the Delhi Administration itself in respect of different non-ministerial and ministerial categories of employees consisting of teaching and non-teaching staff. The contention of the Delhi Administration was that he did not belong to the category of teachers and that he was not declared as such by the

Delhi Administration. It was in this context that the applicant relied upon the order dated 26.3.1987 mentioned above.

13. The decision of the Tribunal in Mian's case is clearly distinguishable. His case was not regarding denial of the age of retirement of 60 years consequent on his promotion from the teaching line to administration line which is in issue in the applications before us. In the instant case, there is no dispute that even after their promotion to the administration line, they continued to be teachers; the only controversy is whether they would retire at the age of 60 years like the other teachers or at the age of 58 years like the others on the administrative stream.

14. In our opinion, there is some anomaly in the situation in which the applicants have been placed. Though they retain the bench mark of being teachers even after their promotion to the administration side, they are denied the benefit of age of retirement of 60 years, as in the case of other teachers. This incongruity was recognised by the Delhi Administration which took up the matter at the highest level with the Central Government. The Central Government has not accepted the views of the Delhi Administration. It is true that so long as the anomaly continues, there may be no incentive to the

teachers to look forward for promotion to the administration stream which in turn might adversely affect the educational system in the Union Territory of Delhi in the long run. This is, however, a policy matter for the authorities concerned to consider and take appropriate action.

15. Shri G.D. Gupta argued that the decisions of the Delhi High Court in Smt. Sheila Puri Vs. Municipal Corporation dated 22.5.1985 and in Banwari Lal Sharma Vs. Municipal Corporation of Delhi dated 27.2.1989 are relevant to the issues arising for our consideration. These decisions were cited before the Tribunal in Shri Shishodia's case and the Tribunal has discussed their relevance in its judgment dated 29.1.1990. In Smt. Sheila Puri's case, the Delhi High Court held that School Inspectress and Senior School Inspectress remain as teachers and, therefore, she was allowed to continue upto the age of sixty years. Even though the matter was taken in appeal to the Supreme Court, the same was dismissed. The Delhi High Court has allowed the Writ Petition filed by Shri Banwari Lal Sharma who was Inspector of Schools taking the view that inspite of his promotion as School Inspector, he remained a teacher, and, therefore, he was entitled to remain in service upto the age of 60 years.

16. In Shri Shishodia's case, the Tribunal observed that an Inspector/Inspectress of Schools is below the rank of Education Officer/Assistant Director/Deputy Director/Joint Director/Additional Director of Education, that all posts of officers in the rank of Assistant Director of Education do not come from the stream of teachers and that there are some persons on deputation from IAS and DANICS in the administration line without any background of teaching experience. The learned counsel for the applicants argued that the above reasoning is not correct.

17. In our opinion, the grievance of the applicants has arisen due to the difference in the ages of retirement on the teaching line and administration line. This is, however, a policy matter on which no mandamus can be issued to the respondents. Prescription of different ages of retirement for various posts with varied levels of responsibility cannot be said to be arbitrary or discriminatory, even though the posts are in the same Department.

18. The applicants have continued in service beyond the age of 58 years on the strength of the stay orders passed by the Tribunal during the pendency of the appeal in Shishodia's case in the Supreme Court. The Supreme Court has finally held that the appellants' age of retirement will be 60 years and that he would be entitled to retiral benefits

as Principal. He would also be entitled to his salary and allowances paid to him while he was working as a Joint Director of Education. In our opinion, the position of the present applicants is similar to that of Shri Shishodia and Dr. Sita Ram Sharma. We have, therefore, to bear in mind the views expressed by the Tribunal and the Supreme Court in these cases while moulding the reliefs which could be granted to them. They have always the option to revert back to their teaching posts and in that case, they would be entitled to retire at the age of 60 years. In case they continue to hold posts in the administration stream, they will have to retire at the age of 58 years like the others belonging to the administration stream. Whether the applicants and those similarly situated who choose to remain on the administration stream, where the age of retirement is 58 years, should be treated as a separate block and whether on that ground their age of retirement should be raised to 60 years, is essentially a matter for the authorities concerned to consider. It is for the applicants to decide whether or not to continue in their promotional posts till they attain the age of 58 years or seek reversion to their respective teaching posts. The claim of the applicants to continue in their promotional posts and insist on retirement at the age of 60 years is not legally tenable. We, therefore,

hold that it is open to the authorities concerned to revert the applicants to their teaching posts which they had held before their promotion. It would not, however, be fair and just to do so with retrospective effect. Having regard to the peculiar facts and circumstances, the applicants should also be given the benefit of pension and other retirement benefits, treating their service as upto sixty years of age. Such benefits should be calculated on the posts held by them in the teaching line.

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

(i) It is open to the respondents to allow the applicants to continue on the respective posts presently held by them or revert them to the respective posts held by them in the teaching line before their promotion. In the event of the authorities taking a decision to revert them to their respective teaching posts held by them before their promotion, such reversion shall be only from a prospective date and not retrospectively.

(ii) In the interest of justice and equity, the applicants shall be given all the benefits admissible to a teacher who would have retired on attaining the age of 60 years, had they continued in their respective teaching posts. The retirement benefits would be of the respective teaching post held by them before their promotion to the

administration posts. This should not, however, be treated as a precedent.

(3) The applicants would be entitled to the salary and allowances of the respective posts held by them beyond the age of 58 years till they are reverted to their respective teaching posts before their promotion. 991.

(4) The stay orders passed in these applications are hereby vacated. All MAs filed in these applications are disposed of accordingly.

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

(B.N. DHOUNDIYAL) 10/10/91
ADMINISTRATIVE MEMBER

(P.K. KARTHA)
VICE CHAIRMAN(J)