

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(P)

O.A. No. 453/90
T.A. No.

199

DATE OF DECISION 14.9.1990.

Shri M.K. Kulshrestha Petitioner Applicant
 Shri R. Venkataramani Advocate for the Petitioner(s)

Versus

Union of India through the Respondent
 Secy., Miny. of Defence & Another
 Shri P.P. Khurana Advocate for the Respondent(s)

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

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? / No
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by
 Hon'ble Mr. P.K. Kartha, V.C.)

The applicant, who is working as Additional Director in the Directorate of Technical Development and Production (AIR) (Hereinafter referred to as DTD&P (AIR)), filed this application under Section 19 of the Administrative Tribunals Act, 1985 on 14.3.1990, praying for a direction to the respondents to extend to him the benefit of the judgement of the Supreme Court in the Union of India & Others Vs. K.T. Shastri, J.T. 1990(1) SC 15 decided on 12.1.1990 and to quash the amendment to Rule 12 of the DAQAS Rules, 1979, in view of the aforesaid judgement in Shastri's case.

2. In K.T. Shastri's case, the Supreme Court directed that the Union of India should allow him to continue in service till

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he attains the age of 60 years. Shri Shastri was also holding the post of Deputy Chief Scientific Officer in the DTD&P(AIR) in which the present applicant is also working.

3. The contention of the respondents is that the applicant is not entitled to the benefit of the judgement delivered by the Supreme Court in K.T. Shastri's case. In this context, they are relying upon the order dated 17.8.1990 passed by the Supreme Court in S.L.P. (Civil) No. 6270-720/90 (Union of India & Others Vs. B. Sampath & Others).

4. Thus, both parties before us are relying upon the decisions of the Supreme Court - the applicant on the decision in Shastri's case, and the respondents on the decision in Sampath's case.

5. Before we consider the applicability of the aforesaid decisions of the Supreme Court to the facts and circumstances of the present case, we may briefly recall the background of the two of the decisions of the Supreme Court, mentioned above.

6. Shri K.T. Shastri, who was a Deputy Chief Scientific Officer in the Defence Aeronautical Quality Assurance Service, had filed OA-575/87 in the Hyderabad Bench of this Tribunal claiming, inter alia, for the age of superannuation at 60 years. In its judgement dated 13.3.1988, a Full Bench of this Tribunal allowed his claim that he is entitled for the age of superannuation at 60 years (Vide K.T. Shastri Vs. Union of India & Ors., A.T.R. 1988(2) CAT, 37). The Union of India filed Civil Appeal No. 4284/88 before the Supreme Court against the aforesaid decision of the Full Bench of this Tribunal.

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7. Following the Full Bench decision of this Tribunal in K.T. Shastri's case, the Bangalore Bench of this Tribunal decided a batch of writ petitions on 2nd March, 1990, holding that the age of superannuation of the applicants therein, would be 60 years (O.A Nos. 879, 895, 1065, and 1066 of 1988 - M.N. Dambal & Others Vs. Union of India & Others). The Union of India filed SLPs against the aforesaid decision of the Bangalore Bench of the Tribunal which were allowed by the Supreme Court by order dated 17.8.1990.

8. The judgement in K.T. Shastri's case was delivered by a 3-Member Bench of the Supreme Court (Ranganath Misra, P.B. Sawant, and K. Ramaswamy, JJ) while in Sampath's case the judgement was delivered by a 2-Member Bench (Ranganath Misra and K. Ramaswamy, JJ).

9. We may now come to the facts of the present case in brief and consider which of the aforesaid two decisions would be applicable to the facts and circumstances of the instant case.

10. The applicant joined the Directorate of Technical Development & Production (AIR) as Senior Scientific Officer, Grade I in 1968. At that point of time, the said Directorate formed part of the common Defence Science Service which also consisted of two other establishments, namely, Defence Research & Development Organisation and Directorate General of Inspection. The three establishments were governed by Defence ~~Or~~ the Science Service Rules, 1967.

11. In 1975, the applicant was promoted to the next higher grade of Principal Scientific Officer. In the year 1978-79, the three establishments which hitherto functioned under a common Service, were trifurcated as under:-

"1) Defence Research and Development Organisation (DRDO) was reconstituted as Defence Research and Development Service (DRDS), 2) Directorate of Technical Development and Production (DTP) was reconstituted as Defence Aeronautical Service (DAS).

Assurance Service (DAQAS), and 3) Directorate General of Inspection (DGI) was reconstituted as Defence Quality Assurance Service (DQAS).

Separate service rules were made for each of these establishments. The applicant, who was working in the DTD&P(Air), came to be governed by the Defence Aeronautical Quality Assurance Service Rules, 1979. Similar rules were made in 1979 to govern those who were working in the other two establishments (Defence Research & Development Service Rules, 1979 which were notified on 30th December, 1979, and the Defence Quality Assurance Service Rules, 1979, which were notified on 19th September, 1979).

12. We may briefly refer to the salient features of these Rules, to the extent they are relevant to the present proceedings.

13. The Defence Aeronautical Quality Assurance Service Rules, 1979 provide for the constitution of the Defence Aeronautical Quality Assurance Service. Rule 7, which deals with the initial constitution of the Service, reads as follows:-

"7.1.1 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."

14. Rule 12(1) which deals with the other conditions of service, is as under:-

"12. Other conditions of Service (1) 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 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."

15. Similar provisions have been made in the Rules applicable to the other two Services.

16. It is clear from Rule 7 extracted above that those Group 'A' officers working in the Directorate of Technical Development and Production (Air) on the date of promulgation of the Rules, would automatically be appointed to the Defence Aeronautical Quality Assurance Service in the posts or grades corresponding to those which they were holding on a regular basis by operation of law. Those who were then working in the other two establishments, will not be appointed to the

Defence Aeronautical Quality Service unless they exercise their option in favour of such appointment and unless they are found fit for appointment thereto by a Screening Committee.

17. It is also clear that those who are deemed to have been appointed to the Defence Aeronautical Quality Assurance Service and who do not desire to be absorbed in the said Service, may opt to continue to hold their existing post and 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.

18. Similarly, Rule 7 of the corresponding Rules applicable to the other two Services provides for deemed option, option to get absorbed in one of the other two establishments and option not to get absorbed in the establishment in which an officer was working at the time of the commencement of the Rules. Thus, there is a provision in Rule 7 for deemed option to remain in the establishment and Service where one was working (Sub-rule (1) (a)), a provision for option to the officers of the other two Services to seek absorption in the establishment in which they were not working at the time of deemed option (Sub-rule (1) (b)) and a provision for option to the deemed optee not to get absorbed in the Service he was working (Sub-rule (3)). The applicant before us did not choose to exercise his option to go over to either of the other two Services and thus came to be absorbed in the Defence Aeronautical Quality Assurance Service as a deemed optee. Though he was a deemed optee in the Defence Aeronautical Quality Assurance Service, he could have availed of the opportunity to opt for the Defence Research and Development Service under Rule 7(2) of the Defence Research and Development Service Rules, 1979, but he chose not to do so. In the present application, the applicant has not challenged the validity of Rule 7, mentioned above.

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19. In March, 1979, a circular letter was issued to all Establishments/Detachments under the OTD&P(Air) requesting to bring the Defence Aeronautical Quality Assurance Service Rules, 1979 to the notice of all officers serving in their establishment and asking to forward to the Headquarters by 25.5.1979 the options of those officers who do not wish to be absorbed in the Service. It was also added that in the absence of any such options, all the officers in the OTD&P (Air) will be deemed to have accepted their option in the OTD&P (Air). A specimen form of option was also appended to the circular letter.

20. At the time of trifurcation, the applicant before us, like K.T. Shastri before the Full Bench and the applicants before the Bangalore Bench of the Tribunal, had the option to elect to serve in any of the three services in accordance with the provisions of Rule 7, mentioned above. They did not choose to elect to be absorbed in the other Services and preferred to continue in the same Service to which they were deemed to be appointed at the time of trifurcation. In other words, they chose to remain in the Defence Aeronautical Quality Assurance Service itself.

21. In K.T. Shastri's case, the Supreme Court adverted to the issue of option in para. 6 of its judgement and observed as follows:-

..... However, at that time, admittedly no option was given to the employees working in the different units to opt for one of the other of the units. It appears that those who were already working in either of the three units were deemed to belong to the respective newly constituted service. This being so, their service conditions will have to run parallel and no discrimination can be made between them by an unilateral action.

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The classification made between them further has no rational basis and no nexus of such classification to the object sought to be achieved has been shown to us by Mr. Subba Rao appearing for the appellants. In the circumstances, the denial of the benefit of enhanced superannuation age of the members of one unit while the same is granted to the members of the other unit amounts to discrimination, violative of Article 16 of the Constitution."

22. In Sampath's case, the Bangalore Bench of the Tribunal observed in its judgement dated 2.3.1990 that the applicants opted to go to Defence Aeronautical Quality Assurance Service. In other words, they did not opt to go to either of the two other Services. Adverting to this, the Supreme Court observed in its judgement in Sampath's case as follows:-

".....We find that in the claim petition filed by the respondent before the Tribunal, he has categorically admitted that he was given an opportunity to exercise option and as a result of the exercise of option, he was put into one of the trifurcated services where retirement age is 58. In such circumstances, respondent is not entitled to the benefit of the judgement delivered by this Court in K.T. Sastry's case. We accordingly allow the appeal, vacate the judgement of the Tribunal and dismiss the claim."

23. After the Full Bench of this Tribunal delivered its judgement in K.T. Shastri's case on 13.3.1988 and before the Supreme Court disposed of the appeal filed by the Union of India against the aforesaid judgement on 12.1.1990, the respondents amended Rule 12 of the Defence Aeronautical Assurance Service Rules, 1979 on 5.7.1988, so as to provide that in the matter of retirement, the officers of the Service shall be governed by F.R.56, i.e., at the age of 58 years. In K.T. Shastri's case, the respondents had contended before the Supreme Court that the

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Government had a right to prescribe different conditions of Service for the members belonging to the different units.' The Supreme Court observed that the question involved was not whether the Government had such a power. The question was whether the respondent was also entitled to the benefit of the power so exercised in the facts and circumstances of the case. The Supreme Court observed that no discrimination can be made between them by a unilateral action. The Supreme Court did not, in terms, refer to the amendment to Rule 12 made on 5.7.1988, in its judgement.

24. In Sampath's case, the Supreme Court observed that as a result of the exercise of option, the respondent officer was put into one of the trifurcated Services where retirement age is 58 and in the circumstances, he was not entitled to the benefit of the judgement delivered by the Supreme Court in K.T. Shastri's case. It will be noticed that reference to the retirement age of 58 in the aforesaid observation is a reference to the amendment to Rule 12 which was made on 5.7.1988. The Supreme Court did not find the fixation of the retirement age for the officers of the Defence Aeronautical Quality Assurance Service discriminatory and violative of Article 16 of the Constitution.

25. The learned counsel for the applicant before us argued that the judgement of the Supreme Court is a judgement in rem and sought to distinguish it from the later judgement in Sampath's case which does not override the law laid down in K.T. Shastri's case. The learned counsel for the respondents argued that the judgement of the Supreme Court in K.T. Shastri's case applied to the facts

and circumstances of that case and does not constitute a judgement in rem. According to him, the law laid down by the Supreme Court in Sampath's case will apply to the facts and circumstances of the case. The learned counsel for the applicant drew our attention to the dismissal of the Review Petition filed by the Union of India in the Supreme Court against the decision in Shastri's case and the steps taken by the respondents to file a similar petition against the decision in Sampath's case. We have duly considered these aspects of the matter. Answer to the question whether a judgement of the Supreme Court is a judgement in rem or applies only to the party before the Supreme Court, would depend on the wording of the judgement itself. As far as the Tribunal is concerned, we are bound by the judgements of the Supreme Court in K.T. Shastri's case as well as in Sampath's case. What we have been called upon to do in the instant case is to decide which of the two judgements of the Supreme Court applies to the facts and circumstances of the instant case.

26. In this context, the circumstances which have to be borne in mind are the nature of the options envisaged in Rule 7 and the amendment of Rule 12, mentioned above. The judgement of the Supreme Court in K.T. Shastri's case does not explicitly deal with them though the amendment to Rule 12 had been made before the judgement was delivered and though this fact was apparently brought to the notice of the Supreme Court. In Sampath's case, the Supreme Court has considered the nature of option exercised by the

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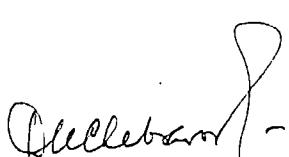
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parties before the Bangalore Bench of the Tribunal and the validity of the amendment of Rule 12 prescribing the retirement age of 58 years in the case of those who chose to remain in the Defence Aeronautical Quality Assurance Service.

27. The Supreme Court's judgement in Sampath's case is later in point of time ^{than} ~~of~~ its judgement in K.T. Shastri's case. Two judges who heard and decided Sampath's case, were also on the Bench which decided K.T. Shastri's case. As the applicant before us also was given an opportunity to exercise option and as he also chose to get absorbed in the Defence Aeronautical Quality Assurance Service like Sampath and others before the Bangalore Bench of the Tribunal, we are of the opinion that the stand of the respondents that he is not entitled to the benefit of the judgement of the Supreme Court in K.T. Shastri's case, cannot be faulted.

28. In the light of the above, we hold that the applicant is not entitled to the benefit of the judgement of the Supreme Court in K.T. Shastri's case. Therefore, the application is disposed of accordingly. The interim order passed on 30.3.1990, is also hereby vacated.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member

14-9-890


14/9/90
(P.K. Kartha)
Vice-Chairman (Judl.)