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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.1384/92

DATE OF DECISION: 4.1.93

D.D.S.Kulpati

... Applicant.

Versus

Union of India &

others

... Respondents.

Sh.M.A.Hussain

... Counsel for the applicant

Mrs.Raj Kumari Chopra

... Counsel for the

respondents

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice
Chairman(J)

The Hon'ble Sh.I.P.Gupta, Member(A).

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

✓ 2. To be referred to Reporter or not?

yes

J U D G E M E N T

(Delivered by Hon'ble Sh.Justice Ram Pal Singh, V.C(J))

The applicant, by this application under
Section 19 of the Administrative Tribunals Act, 1985
has prayed for the following reliefs:-

- i) To quash the order dated 29.2.92, by which
the applicant has retired on attaining the
age of superannuation.

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- ii) A direction to respondents to treat Maulana Azad Medical College Faculty at par with Delhi University with regard to the age of superannuation.
- iii) To restrain the respondents from negating the recommendations of Tikku Committee Report.

2. The applicant was appointed as Medical Superintendent in Lok Nayak Jayprakash Hospital, Delhi by order dated 28.2.91. According to him this post is a prestigious one and the applicant has made multi-dimensional contribution to the field of Medical Science. According to him Dr.P.K.Kakkar was also holding the post of Medical Superintendent in the said Hospital who was to retire on 28.2.90. But on attaining the age of 58 years Dr.Kakkar according to the applicant, was granted continuation in the service for one year after attaining the age of 58 superannuation. He, therefore, contends that as Dr.Kakkar continued for one year even after attaining the age of 58 years applicant should also be continued in service even after attaining the said age. According to the applicant the Tikku Commission was appointed to go into the matter for determining the age of retirement of service of the Doctors.

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According to the applicant in para 6 of the report the following recommendations were made which is being reproduced::

"We have carefully examined the demand of the service doctors. On merits of the demand considered in isolation we recommend increasing the age of retirement of doctors to 60. However, we leave it to the Government to take a decision in the matter in the context of the general policy of the Government. In the event of the Govt. not increasing the age of retirement of service doctors we recommend that in the case of service doctors extension of service beyond the age of 58 upto 60 may be permitted in deserving cases".

3. The case of the applicant is that on this recommendation the age of the superannuation of the applicant should be deemed to be 60 years and not 58 years. In this O.A. the applicant has also contended that as Dr.Kakkar has continued for one more year after the date of his retirement, the applicant should also be equally treated and should be permitted to continue in service for one year by the respondents as they have done with regard to Dr.Kakkar. By filing several documents the applicant wanted to show that he is a distinguished Doctor in the field of medicine and is a specialist etc. etc.

4. The respondents, on notice, appeared and filed their counter. They have opposed the contents of the O.A. and inter-alia contended that Dr.Kakkar was only given an extension of one year on account of

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administrative exigencies. They deny the contention of the applicant that the age of retirement of Dr. Kakkar was increased from 58 years to 59 years. On the contrary they contend that he was given only an extension for one year, according to rules, which does not amend the enhancement of the superannuation of the Doctors. Respondents also contend that the High Power Committee (Tikku Committee) on service Doctors had made recommendations to the Government of India in office O.M. dated 14.11.91 (annexure R-1). According to para 16 of this report it was held by the respondents that the question of increasing the age of superannuation of Doctors from 58 years to 60 years is referred for more detailed examination by the department of Personnel & Training regarding its implications and repercussions. Thus, the question is being examined and the respondents shall take a decision upon it after consultations with other departments. It was on the ground of administrative convenience and in public interest that Doctor Kakkar was given one year's extension of service and the applicant cannot demand that extension as a matter of right. They have also taken the stand that the Joint Action Council of Service Doctors Organization have approached the Supreme Court demanding the implications of Tikku Committee's recommendation and the respondents informed the Supreme Court about the

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Government decision dated 14.11.91. They further contend that the Supreme Court did not pass any order on the demands of J.A.C.S.D.O.

5. We have heard Sh.M.A.Hussain, counsel for the applicant and Mrs.Raj Kumari Chopra, counsel for the respondents. There is no dispute on the fact that the retirement age of Central Health Services (C.H.S.) Officers is 58 years. This age of retirement is applicable to all the C.H.S.Officers even those who are working in the teaching institutions like J.I.P.M.E.R.M, Pondicherry, Lady Harding Medical College, Gobind Ballabh Pant Hospital etc. It is also observed that the faculty of Maulana Azad Medical College also forms part of Central Health Service. Thus the age of superannuation of all the Doctors working under Central Health Service is 58 years and not 60 years. It is also observed that the Tikku Committee Report is only a recommendation which is under active consideration of the respondents. Over and above the reply of the respondents, we have also observed that Doctor P.K.Kakkar was given the extension of one year as Medical Superintendent, Lok Nayak Jaiprakash Hospital, New Delhi for a period of one year beyond the date of his superannuation on 28.2.90 (A-5). The

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date of the retirement of Dr.Kakkar was not increased by one year but it was extended, which was granted by the respondents, according to rules. If an extension is granted by the employer to a particular employee the other employees cannot claim it as a matter of right and they can also cannot claim that as one employee has been given an extension he should also be treated in the similar manner. While granting extension to an employee the employer applies his mind, evaluates his performance, his contribution in the field of public interest and national interest, if such an extension, in the opinion of the employer is necessary in the public interest or in the interest of the administration. Other employees cannot claim the extension as a matter of right.

6. The applicant also claims, as per documents that he is a distinguished Doctor and an expert in the field of Tuberculosis. He also contends that his services have been appreciated by the Indian Council of Medical Research, by Maulana Azad College and by the Delhi University. He also contends that he has been delivering lectures in the Delhi University where the age of superannuation of the Delhi University teachers is 60 years and not 58 years. The Delhi University has been created by a statute and is governed by a separate act where the

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age of superannuation for teaching class has been separately provided and they retire on attaining the age of 60 years. The applicant is not an employee of Delhi University. The applicant is an employee of C.H.S. where the date of superannuation is 58 years and not 60 years. Admittedly no evidence has been produced by the applicant that he is an employee of Delhi University and is governed by the statute of Delhi University. On this ground also the applicant cannot claim that he should be retired at the age of 60 years and not at the age of 58 years.

7. The applicant also prayed by an M.P. No.3640/92 to call for the records from the respondents and examine for the fact that Dr.Kakkar was permitted to continue due to recommendation of Tikku Committee Report. The applicant also contended in this M.P. that in the case of Dr.Kakkar the respondents have accepted the Tikku Committee report and hence, the perusal of the record will show that the respondents are taking a different stand. From the side of the respondents an additional affidavit has been filed by R.C.Sharma, Under Secretary of Ministry of Health and Family Welfare. In this affidavit he has specifically stated that the extension was granted to Dr.Kakkar for one year , beyond 28.2.90 vide letter dated 16.3.90 and this

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decision of granting one year extension for Dr.Kakkar was not based on the recommendations of the High Power Committee (Tikku Committee). On the face of this additional affidavit the contention of the applicant has to be rejected that Dr.P.K.Kakkar was granted extension as a result of the acceptance of the recommendations of the High Power Committee (Tikku Committee). Furthermore the respondents have specifically taken the stand that it was an extension of one year under the rules and not according to High Power recommendation. The Tikku Committee Report has not yet been accepted by the respondents *on this particular aspect of age.*

8. The learned counsel for the applicant Sh.M.A.Hussain places reliance in A.,I.R. 1983 Delhi 434, A.I.R. 1959 S.C.65, A.I.R.1979S.C. 1628, A.I.R.1973 S.C.1088. By citing these case laws the applicant has argued on the scope of issuing a writ of certiorari, calling the records of the respondents and for production of those papers. He has also contended that there was an understanding between the agitating Doctors working in C.H.S. that the Government had appointed this High Power Committee and when this Committee has submitted its report, the respondents should be directed to implement it. The case of the Airport Authority A.I.R. 1979.S.C.1628 has no application to the facts of this case. These

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cases do not pertain to the question at hand, raised in the O.A. The sole question is whether the applicant should retire at the age of 58 years or 60 years. In the admitted position it is the age of 58 years which is superannuation age for a Doctor working in Central Health Service and not the age of 60 years. Delhi University is statute applicable to the Teachers of that University and its provisions cannot be extended to the applicant nor he can be said to be governed by the Delhi University Act. The extension of one year granted to Dr. Kakkar does not confer any right upon the applicant to claim the same benefit as a matter of right from the respondents. The recommendations of the Tikku Committee Report is only recommendatory, which has not yet been accepted by the respondents but is being studied interdepartmentally.

9. The applicant had prayed for the interim relief when he filed his O.A. that his retirement should be stayed and he should be permitted to work till the age of 60. This prayer for interim relief was rejected by the Bench. The interim order which was given in favour of the applicant was that the applicant should not be evicted from his residential accommodation. The applicant is still in continued

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possession of his official residence even after the expiry of four months from the date of his superannuation.

10. We are of the view that this O.A. has no merit and it is, therefore, dismissed with no order as to costs. The interim order passed by an earlier interim order automatically stands vacated.

I.P. Gupta 4/1/93
(I.P. GUPTA)

MEMBER(A)

Ram Pal Singh 4.1.93
(RAM PAL SINGH)

VICE CHAIRMAN(J)