

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 1937/92

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New Delhi this the 10th day of November 1993

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. B.K. SINGH, MEMBER (A)

Major M.L. Duggal,
Son of Shri S.L. Duggal,
Resident of P/22 Kirby Place,
Delhi Cantt 110 010
(By Advocate D.C. Vohra) ... Petitioner

Versus

Union of India through
The Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi-110 011. ... Respondents

(By Advocate M.L. Verma)

O.A. No. 1940/92

Major (Mrs) Sita Devi
Wife of Shri R.S. Sharma,
Resident of 5/7 BI Lines,
Red Fort,
Delhi-110 006. ... Petitioner

Versus

Union of India through
The Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi-110 001 ... Respondents

MP No. 1381/93

Major S.P. Khanduri,
Son of late Shri B.D. Khanduri,
3-B, Station Road,
Meerut Cantt. Petitioner
(By Advocate B.B. Raval)

Versus

Union of India ... Respondents
(By Advocate M.L. Verma)

MP No. 1380/93

Lt. Col. S.S. Bhandari
Son of Late Shri Dayal Singh
5/8 B.I. Lines,
Red Fort, Delhi-110 006.

ORDER

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Hon'ble Mr. J.P. Sharma, Member (J)

Since the common question of fact and law are involved in the aforesaid OAs, they are dealt with together in OA No. 1940/92, MP 1380 and 1381 of 1993 were filed by Major S.P. Khanduri and Lt. Col. S.S. Bhandari with the prayer that they may also be allowed to join as applicants by the order dated 3.6.1993, the MP was allowed to join as Co-applicants in OA No. 1940/92. The relief prayed for in the MP was also the same and for all purposes the case of these two petitioners Major Khanduri and Lt. Col. Bhandari is to be governed by the decision of the main OA No. 1940/92.

In OA No. 1937/92 the facts are that Major M.L. Duggal was appointed as Block Level Extension Officer in Government of Punjab on 26.12.59. On 21.12.1963 the respondents for employment of whole time NCC Officers and fixed up retirement age of such officers at 55 years extendable to 57 years. On 4.8.1978 the presidential sanction for grant of permanent commission to such NCC officers was issued. On 23.5.1990 the respondents issued revised terms and conditions of service for NCC whole time officers for grant of permanent NCC commission subject to exercise of option and the retirement age was fixed at 55 years. On 29.10.1990 the respondents declared that the applicants shall retire on 31.1.1992.

In O.A. No. 1940/92 Major (Mrs) Sita Devi was earlier a teacher at MIGZ School at Ambala, Government of Punjab (later on Government of Haryana). The applicant applied in pursuance of the terms and conditions issued by the Government for employment of

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whole time NCC officers by the Memo dated 21.12.1993 and the age of retirement was 55 years extendable to 57 years. On 4.8.1978 presidential sanction for grant of permanent commission to NCC officers employed on whole time basis under the terms and conditions notified on 21.12.1963 was issued. On 23.5.1980, the respondents issued new terms and conditions for service for NCC whole time officers for grant of permanent NCC commission by the Memo dated 1.11.1988. The respondents declared that applicants shall ~~stand~~ retire on 31.10.1991. Lt. Col. S.S. Bhandari joined the Government service as a teacher under Government of Punjab in the year 1961 when the emergency was declared in 1962., the petitioner was called for service in the Army. He was relieved from the Army with effect from 16.4.1968. He was absorbed in the NCC and given a permanent commission in the rank of Captain in the year 1968. By the order dated 1.11.1988 issued by DG, NCC the date of superannuation of the applicant was declared as 31.5.1991.

Major S.P. Khanduri joined the service of ONGC in 1960 as a Sr. Assistant and subsequently joined OTS for pre commission training. The applicant joined the Army in 1964 and served the Indian Army upto 31.7.1988. He was subsequently absorbed in NCC and given a permanent commission in the rank of Captain in the year 1968. By the Order of the DG, NCC dated 1.11.1988, date of superannuation of the applicant was declared as 31.9,1991.

The relief claimed in O.A. No: 1937/92 is for the direction to the respondents to quash the order dated 29.10.1991 to the extent that it retires the applicant at the age of 55 years

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with the further declaration that the applicants shall retire at the age of 58 years. The relief claimed in O.A. No. 1940/92 is also the same as claimed by the applicant of O.A. No. 1937/92.

The relief claimed by Lt. Col. S.S. Bhandari and Major S.P. Khanduri is almost the same as claimed by the above named applicants.

We have heard the learned counsel of the parties at length and Shri B.B. Raval adopted the arguments advanced by Shri D.C. Vohra. He himself highlighted certain points. The counsel for the applicant as well as Shri B.B. Raval for the newly added applicants Lt. Col. Bhandari and Major Khanduri only restricted the claim of the age of superannuation upto 57 years. The first contention of the learned counsel for the applicant is that one Major R. Lamba filed a write petition in Bombay High Court whereby an interim direction was issued to the respondents to continue Major R. Lamba till he attains the age of 57 years i.e. till 31.10.1985. In the said interim direction the High Court of Bombay has not at all considered the judgement given by the Hon'ble Supreme Court in the case of Union of India Vs. Lt. Col. Komal Charan and another in Civil Appeal no. 2449/50 of 1992 reported in AIR 1992 SC P 1479. Since it is a service matter and Major R. Lamba is being paid from the Civil Defence Estimate whether the High Court has jurisdiction in such matters or not is not free from doubt. The jurisdiction of the High Court has been taken away in the service matter of Central Government employees by the order 1985 and that upheld by the Hon'ble Supreme Court in the case of S.P. Sampat Kumar Versus Union of India and others 1987 (1) ATR P 34. It has been held that Administrative Tribunal is a substitute of a High Court. It is further held that ATC 1985 including the jurisdiction of the High Court under Article 226 and 227 in respect

of service matters and vesting such jurisdiction in the administrative tribunals can pass the test of constitutionality as being within the ambit and coverage of clause (2)(d) of Article 323(a) Thus, firstly the interim order passed by the Bombay High Court has no binding force and secondly it does not give any reason whatsoever and does not discuss the decision of Hon'ble Supreme Court in the case of Lt. Komal Charan and another (Supra).

The main attack of the learned counsel of the applicant has been that the applicant Major M.L. Duggal as well as the other applicants Major (Mrs) Sita Devi Sharma were not under the employment of State of Punjab and Haryana respectively and at the time when they joined service in other states on different posts, the age of superannuation for them was 58 years. However 9 applicants have applied for employment of whole time officers in the NCC in pursuance of the Notification dated 21.12.1963 they cannot get any benefit regarding the age of superannuation of the previous service rendered under the State Government. This is a fresh appointment given to them on the terms and conditions specifically laid down in the Notification dated 21.12.1963. Thus the arguments of the learned counsel of the applicants have no force.

The Notification dated 21.12.1963 issued by the Ministry of Defence in the Appendix A is specifically lays down that the Officers ordinarily hold commission until reaching the age of 55 years provided that an officer may be granted extention upto the 57 years of age may be discharged earlier if their services are not required. The contention of the learned counsel is that the applicants should have been given the extention of their service upto the age of 57 years. In fact, the applicant came before the

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Tribunal through a MP in OA No. 1253/91 for stay against retirement which was granted and continued till 31.7.1992. The applicants filed the present application on 23.7.1992. On 28.7.1992, the learned counsel for the applicant pressed for ex parte grant of interim relief prayed for in para 9 of the application. On 3.11.1992 the interim relief was granted to the extent that the ^{house} occupied by the applicant shall not be evicted from them for a period of 14 days. No interim relief was granted to the petitioners to further continue in service after 30/31.7.1992. There is no evidence on record that the case of the applicant was ever considered for extention and their services beyond the age of 55 years for continuing them till they attain the age of 57 years. After 1963 another Notification was issued by the Ministry of Defence on 4.8.1988. This Notification lays down that the officers granted NCC permanent commission while working as whole time NCC officers under Government of India by order dated 21.12.1963, will be scrutinised by the Board of Officers and thereafter will be approved by the Ministry of Defence for the grant of NCC permanent commission. Such officers granted NCC permanent commission, if otherwise not found unfit will be eligible to serve till 55 years of age. The provision of extention for further two years has not been provided for. The Ministry of Defence has issued another Notification dated 23.5.1980 which provided that such of the serving whole time officers who are granted NCC permanent commission on the recommendation of the screening Board and approved by the Ministry of Defence will be governed by the terms and conditions of service laid down in Appendix A to this letter. Para 5 of the said Notification is regarding the age of superannuation which is reproduced below:

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"These officers, if otherwise not found unfit, will be eligible to serve till 55 years of age"

The Ministry of Defence issued Notification dated 24.5.1980 showing the names of the officers who have been granted NCC permanent commission and the name of Major (Mrs) Sita Devi Sharma appears at Serial No. 422. The Ministry of Defence issued another Notification dated 15.10.1980 on the terms and conditions of service NCC whole time officers, granted NCC permanent commission. It was provided that for the purpose of discipline NCC permanent commission officers will be subject to the NCC Act XXXI of 1948 and NCC Rules 48 as amended from time to time with effect from the date of the grant of NCC permanent commission and NCC permanent commission officer(Female) will be subject to NCC Act XXXI of 1948 and NCC (Girls) Division Rules 1949 as amended from time to time. The contention of the learned counsel for the applicants continue to be governed by the original Notification issued by the Ministry of Defence dated 21.12.1963 cannot be accepted. The Notification dated 4.8.1978 and further Notification dated 23.5.1980 also governs the terms and conditions of the service of the applicants is not called for any option from the applicants in the light of Notification of the Ministry of Defence dated 23.5.1980. However, it is not so. A representation was made by the applicant Major M.L. Duggal on 1.7.1992 and by the other applicants in OA No. 1940/92 Major (Mrs) Sita Devi Sharma on 3.7.1992. In para 5 they have unconditionally admitted this fact

"you are, therefore, requested to please examine this point and let me continue in service in the light of the facts sated above till the age of 58 years as provided in the original Rules of the parent Department of the Govt. of Punjab because age of

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Superannuation cannot be changed to my disadvantage not with standing my consent to your terms and conditions as set out in the App. A to your letter No. 5431/DGNCC/PC/TCS/MS(B)/1130/A/D (GS-OV) dated 23.5.1980. In this connection, I also refer to CSR Article 459 of Civil Service Regulations which are not

This argument of the learned counsel is also to distinguish the judgement passed by the Hon'ble Supreme Court in the case of Union of India Vs. Lt. Col. Komal Chandra wherein he referred to the following paragraphs:

"It was considered desirable that before a person was granted N.C.C. permanent commission in terms of the above letter an opportunity should be given to him to consider the terms and conditions of the appointment and then indicate his choice by exercising his option in the form prescribed in Appendix B to the letter. The relevant order in clear terms lays down the age of superannuation at fifty-five years with a further provisions of extension to the age of fifty-seven years. The respondents exercised their option and were accordingly granted whole-time N.C.C. commission".

However, in view of the clear admission of the main applicants in the O.A. No. 1937/92 and 1940/92, the case cannot be distinguished from that of the petitioner Lt. Col. Komal Charan of Civil Appeal No. 2449/50 of 1992.

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The learned counsel for the applicant cannot distinguish the judgement of Lt. Col. Komal Charan and another (Supra) on any other ground. The case of ~~The~~ facts of the case of Lt. Komal Charan and others were almost similar to the facts of the present applicants in both the OAs. Lt. Col. Komal Charan was granted permanent NCC commission under the provisions of NCC Act 1948, the rules framed therein and the letter of Ministry of Defence dated 23.5.1980. The applicants have also been considered under the aforesaid provisions. NCC has been established under Section 3 of the N.C.C. Act. Section 9 of the Act authorises the Central Government to provide for the appointment of officers from amongst the members of the staff and university or school or otherwise. Section 13 of the Act authorises the Central Government to make rules to carry out the objects of the Act and without prejudice to the generality of this power to lay down the manner in which and the conditions subjects to which a person or class of persons may be enrolled under the Act. The Central Government has therefore full authority to appoint persons on such terms and conditions as it may choose to prescribe. When the applicants have accepted those terms and conditions they cannot now ~~repudiate~~ the same and claim any additional benefit which they are not entitled to any rule of law.

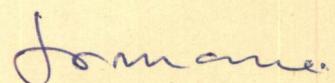
In view of the above facts we find that the present case ~~is~~ fully covered by the decision of the Hon'ble Supreme Court in the case of Lt. Col. Komal Charan and the applicants are not entitled to any extension of service beyond the age of 55 years.

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Both the applications and Miscellaneous Petition numbered above are totally devoid of merit and are dismissed leaving the parties to bear their own costs. The Interim Order if any continuing is vacated. Parties to bear their own costs. A copy of the judgement be placed on the other file.


(B.K. Singh)
Member (A)

Mittal


(J.P. Sharma)
Member (J) 10.11.95