

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

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O.A.No.1345 of 1993

Dated New Delhi, this the 19th day of April, 1994

Hon'ble Mr Justice S. K. Dhaon, Vice Chairman(J)

Hon'ble Mr B. K. Singh, Member(A)

Dr I. C. Sharma

S/o Late Sh Shive Charan

Lall Sharma, 144 Indira Nagar Colony

Dehradun

... Applicant

By Advocate: Shri Mahesh Srivastava

VERSUS

1. Union of India
(Through Secretary)
Ministry of Defence
South Block
New Delhi-110011

2. Indian Military Academy
(Through its Commandant)
Dehradun-248904

3. Army Headquarters
(MT-7)
DHQ PO New Delhi-110011

... Respondents

By Advocate: Non present

ORDER

Hon'ble Mr B. K. Singh, M(A)

This O.A. has been filed against the order dated 4th June, 1993 whereby respondent No.2 served a notice on the applicant to retire on 30th June, 1993(AN) on completion of 58 years of age.

2. The material averments are that the notification dated 22nd July, 1988 has been issued with the concurrence of the Ministry of Finance whereby the U.G.C. pay scales were made applicable to the civilian ^{teaching} staff of the National Defence Academy, Khadakwasla and Indian Military Academy, Dehradun along with other Universities.

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The revision of pay scales of teachers in Universities and Colleges were accompanied by certain measures for maintenance of standards of higher education as would be evident from letter No.F.1-21/87-U.1 dated 22nd July, 1988 issued by Ministry of Human Resource Development (Department of Education). This letter modifies the Scheme which had been introduced in Education Secretary's letter of even number dated 7th September, 1987. In the previous letter there was no mention of Selection Grade for Lecturers. In this letter of 22nd July, 1988, a new scheme for career advancement along with fresh Recruitment Rules laying down qualifications for Lecturers, Readers and Professors was introduced. This superseded the previous Recruitment Rules. The revision of the pay scales were to be accompanied by higher educational qualifications in order to maintain higher level of standard in education. The State Governments which had already implemented the revision of pay scales of teachers were requested to review the orders already issued in the light of Government of India's letter dated 22nd July, 1988. The revised pay scales and the relevant conditions of service relating to recruitment, qualification and career advancement approved by the Government of India, were also enumerated in the Scheme. The Scheme also envisaged acquisition of higher qualifications, self-assessment and appraisal of performance of the Teachers, Readers and Professors. The pay scales were made effective w.e.f. 1.1.1986.

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3. In case of Central Universities/Institutions financed by the Central Government, the DA was to be sanctioned at the same rate as was applicable to Central Government employees drawing the corresponding pay. They were also sanctioned other benefits like House Rent Allowance, House Building Advance, Medical facilities, Pension and other benefits, Leave Travel Concession, Group Insurance etc. on the pattern of similar benefits available to corresponding categories of Central Government employees. The State Governments were left free to evolve their policies in this regard. This is clear from para 27 and para 28 of the aforesaid Scheme. From these instructions, it is absolutely clear that the State Governments and other agencies were left free to evolve their own policies in regard to DA and other facilities. The HRD's letter has relevance only to Central Universities. The retirement age was also to be determined by State Governments and other agencies. Other Ministries under Government of India were also left free to determine retirement age etc. In pursuance of decision of Government of India, a letter was issued by the Ministry of Defence, No. PC 47020/Misc/GS/MT-7/838/D(Civ.1) dated 2nd April, 1993 whereby they extended the UGC pay scales to the civilian teaching staff of the National Defence Academy, Khadakwasla and the Army Cadet College Wing, Indian Military Academy, Dehradun. This letter of Ministry of Defence dated 2nd April, 1993 refers to nothing but extension of UGC pay scales only. Para 4, 5 & 7 of this letter are quoted below:

Para-4: "The existing Recruitment Rules for appointment to the vacant posts of Lecturers, Readers and Professors will stand superseded to the extent they are inconsistent with the qualifications and method of recruitment as prescribed under

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the UGC package after 01.01.1986. The Recruitment Rules for the post of Lecturers/ Readers/Professors shall provide for Direct Recruitment on All India basis at each level, and the Recruitment qualifications will also be strictly the same (without any modification) as approved by UGC at these levels.

Para.5: The UGC package without any modification will be adopted by NDA/IMA in future.

Para.7: The pay of teachers will be fixed in the revised scale on 01.01.1986, in accordance with formula given in Annexure-2 to Appendix-1 to the Ministry of Human Resources Development (Department of Education) letter No.F.1.21/87-U.1 dated 22 July '1988. The pay and allowances drawn by the teaching staff w.e.f. 01.01.1986 shall be adjusted while paying arrears under the present orders."

The letter dated 4th June, 1993 (Annexure 'A' to OA) refers to the date of retirement as 30th June, 1993.

In May, 1993, IMA, Dehradun vide its letter No.095279/Est-5(Civ) categorically states in para 2:

"Army HQ has confirmed that the age of super-annuation of CGOs of ACC Wing will remain 58 years even after implementation of UGC pay scale."

4. The reliefs sought by the applicant are:

- a) to set aside the order dated 4th June, 1993 (Annexure 'A');
- b) to direct the respondents to implement the policy decision of the Government of India regarding UGC package dated 22.7.1988;
- c) to set aside the order dated 27.5.1993 (Annexure 'B'); and
- d) pass any other order which this court may deem fit.

5. A notice was issued to the respondents who contested the application and opposed the grant of relief prayed for by the applicant.

6. Heard the learned counsel at great length. No one was present on behalf of the respondents.

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7. The learned counsel vehemently argued that the UGC package which was to be adopted from a future date also included the retirement age of 60 years and that the various agencies were asked to adopt it without any modification.

8. In the case of NDA, Khadakwasla and IMA, Dehradun, the pay package and other benefits of Central Government were to be implemented by the Ministry of Defence. The Army HQs in consultation with the Ministry of Defence, kept the retirement age of teaching staff at 58 years, since all the benefits admissible to Central Government employees were applicable to the teaching staff of the Academy. This decision has been further clarified by the Ministry of Defence in their letter No.47020/Misc/IMA/GS/MT-7/1836-3/D(DG-II)II dated 20th September, 1993 (Annexure A-IX of the Reply). In this it has been reiterated that the age of superannuation consequent to implementation of the UGC scales of pay will remain 58 years and this letter has been written to Dr I.C. Sharma.

9. The material averments in the counter reply are that the applicant attained the age of superannuation on 30.6.93 since his date of birth was recorded as 1.3.1935 and as such his date of retirement was accordingly notified vide order No.5/CGO/91 dated 4.3.91 (Annexure-III of the Reply).

10. Government of India, Ministry of Defence vide their letter no.47020/Misc/GS/MT-7/838/D(Civ.1) dated 2nd April, 1993 and No.47020/Misc/GS/MT-7/1057/D(Civ.1)

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dated 20th April, 1993 received vide Army HQs' letter No.47020/Misc/GS/MT-7 dated 27th April, 1993 (Annexure -IV-V of the Reply) sanctioned UGC pay scale w.e.f. 1.1.1986 to the teaching staff who fulfilled the required qualifications and experience as prescribed by the UGC for their Universities/Colleges. The Army HQs clarified vide their Signal No.333208/G/MT-7 dated 24.5.93 (Annexure VI of the Reply) that the age of superannuation of the teaching staff will remain 58 years even after implementation of UGC pay scale. Dr I. C. Sharma, the present applicant was also informed about this decision by Army HQs vide letter dated 27.5.93 (Annexure VII of the Reply). This decision of the Ministry, Army HQs and IMA, is based on the fact that the Government letter mentioned in para-8 relates to the grant of UGC pay scale, career advancement and recruitment qualifications for which the UGC package has to be adopted without modification. For all other service conditions, the Academic staff was to be governed by the rules and regulations applicable to the civilian employees of the Defence services as applicable to other Central Civil Service employees. Thus, the argument of the learned counsel that with the introduction of pay package, the age of superannuation would be automatically 60 years, is not correct as stated in the mandatory provisions of CSR 459(a) and F.R.56(a) because civilian employees of the Defence Establishment are governed by the same regulation, C.S.R.459(a) and F.R.56(a). Age of superannuation of Central Government Employees including the civilian employees of the Defence Services

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is a policy decision within the domain of Government of India. This is regulated by Article 459 of CSR and Rule 56 of the F.R. Article 459(a) reads:

"Except as otherwise provided in this Article, every Government servant shall retire on the day he attains the age of sixty years."

F.R.56(a) reads as follows:

"Except as otherwise provided in the rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years."

Thus, the retirement age has to be determined by Civil Service Regulation 459(a) and F.R.56(a) and not by any scheme evolved by Ministry of Human Resource Development.

11. The applicant attained the age of superannuation of 58 years on 30.6.93 and accordingly the date of retirement was notified vide IMA, Dehradun D.O. part-II Order No.5/CGO/91 dated 4.3.91 (Annexure-III of the Reply). There is a general practice in the Army that officers and staff proceeding on retirement are invited for interview by the Commandant/Deputy Commandant of the IMA during the last month of their service and a gift is given in token of appreciation of the service rendered by them. The IMA's letter dated 4.6.93 (Annexure-X of the Reply) was issued only for the purpose and it was not a notice for retirement as alleged by the applicant. The letter dated 27.5.93 (Annexure-VII of the Reply) is the statement issued in connection with the decision communicated by Army HQs on the application of the Ex-Principal, Dr R. N. Roy wherein Army HQs clarified that the age of superannuation of CGOs of ACC Wing will remain 58 years even after implementation of the UGC pay scale.

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12. After going through the pleadings and after hearing the arguments advanced by the learned counsel for the applicant and taking a synoptic view of the facts and circumstances of the matter and the Rules, F.R.56(a) and CSR 459(a) and the various clarifications issued by the Ministry of Defence and Army HQs, it is evident that the letter issued on 22.7.88 pertains to pay scales of the teachers of the Universities/Colleges and it does not relate to the teaching staff working under the Ministry of Defence, Government of India and that is the reason why a separate Memo was issued by the Ministry adopting the pay scale vide letter dated 20th April, 1993 (Annexure-V of the Reply). The other Signal of 27.4.93 issued by Army HQs vide their Signal No.47020/Misc/GS/MT-7 also refers only to grant of UGC pay scale to CGOs of National Defence Academy, Khadakwasla and ACC Wing, Indian Military Academy, Dehradun. This is also contained in their letter addressed to the Chief of the Army Staff and it also refers only to extension of UGC pay scales to the civilian teaching staff of the National Defence Academy, Khadakwasla and the Army Cadet College Wing, Dehradun. It does not refer to other terms and conditions of the Scheme like age etc. since it is presumed that the civilian employees including the teaching staff would be governed by F.R. 56 and CSR 459.

13. The Finance Department is not at all concerned with the terms and conditions of recruitment, qualifications or determination of the age of employees. Thus, the concurrence of Ministry of Finance to which the learned counsel repeatedly referred has no relevance regarding the retirement age. These falls within the domain of Ministry of Personnel, Public Grievances and Pensions.



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Fixation of retirement age is a major policy decision to be taken by the Union Cabinet. This Hon'ble Court has no jurisdiction to look into the major policy decision like determination of retirement age of the civil employees of Government of India. There is no violation of Article 14 & 16 of the Constitution as alleged by the applicant in the OA, since the superannuation age of 58 years is prescribed in the F.R.56(a) and CSR 459(a), these provisions contained therein are mandatory in nature and hold good for all civil employees working under Government of India of which the applicant is one and Dr Roy is another whom the communications were made by the Ministry of Defence that the age will continue to be 58 years even after the introduction of UGC pay scale for the teaching staff. The teachers of Universities/Colleges are totally different from the academic staff of National Defence Academy, Khadakwasla and ACC Wing, Dehradun. They are all governed by the rules and regulations applicable to the Central Government employees/Defence civilian employees for whom the prescribed age of superannuation is 58 years. As directed by this Tribunal vide its letter dated 29.6.93, the respondents considered the anomaly pointed out by the applicant and informed him that the age of superannuation in the case of the applicant cannot be 60 years since he is governed by CSR 459 and F.R.56. The application has also become infructuous as the applicant has already retired. He has gone on the Pension Establishment of Ministry of Defence, Government of India w.e.f. 1.7.1993.


14. Administrative instructions issued by Government of India, Ministry of Human Resource Development in




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consultation with the Ministry of Finance dated 22.7.88 are merely directory in nature for adoption of only pay scale. It is beyond the scope of administrative instruction to change the mandatory provisions of the rules framed under proviso to Article 309 of the Constitution. In the face of the mandatory provisions contained in F.R.56 and CSR 459, a circular of a general nature issued by Ministry of Human Resource Development, has no relevance. When there is a conflict between the mandatory provisions contained in the statutory rules and circular of a general nature, the former will prevail.

15. In the light of the aforesaid observations, the O.A. is dismissed as devoid of any merit or substance, leaving the parties to bear their own costs.


(B. K. Singh)
Member (A)


(S. K. Dhaon)
Vice Chairman (J)

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