

Reserved.

Central Administrative Tribunal,
Allahabad Bench, Allahabad,

Dated: Allahabad, This The 10th day of November 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, A.M.

Original Application No. 1039 of 1992.

Hanuman Prasad Mishra,
aged about 60 years
son of Late Ganga Prasad Mishra,
resident of F/T-31, Armapore Estate,
Kanpur,
Previously employed as NIT (HSS)
Ordnance Factory Inter College,
Armapore Kanpur.

. . . Applicant.

Counsel for the Applicant: Sri N.K. Nair, Adv.

Versus


1. Union of India through the Secretary,
Ministry of Defence Production,
Government of India, New Delhi.
2. Chairman, Ordnance Factory Board/Director
General of Ordnance Factories, 10-A Auckland
Road, Clacutta.
3. General Manager, Ordnance Factory,
Kanpur.

. . . Respondents.

Counsel for the Respondents: Sri Ashok Mohiley, Adv.


Order (Reserved)

(By Hon'ble Mr. S. Dayal, Member(A.)

 This application under Section 19 of the

Administrative Tribunals Act 1985 has been filed for setting aside Factory Order Part II No. 3513 dated 22.7.91 terminating the services of the applicant by way of retirement with effect from 24.7.91. The applicant solicits direction to the respondents to continue his services as teacher, Ordnance Factory, Inter College, Kanpur, upto the age of sixty years with consequential benefits.

2. The case of the applicant in brief is that Factory Order Part II No. 3456 dated 11.9.88 provided for his retirement on 31.7.90 on attaining age of superannuation of 58 years. By a subsequent Factory Order Part II dated 27.3.89, the order of retirement of the applicant was withdrawn. By another factory order Part II No. 3052 dated 26.7.90, the date of retirement of the applicant was shown as 31.7.92. This Factory order was served on the applicant on 16.8.90. The applicant continued to work upto 24.7.91 when his services were terminated by Factory Order Part II No. 3513 dated 22.7.91. The applicant was served letter No. 1566/PC/NIE/92 on 30.7.91 in which it was mentioned that the applicant should fill up his pension papers and submit them eight months in advance of his retirement on 31.7.92. It is stated that three teachers who retired on 28.2.91, 31.3.91 and 30.4.91 were given full retirement benefits on the basis of their services upto the age of sixty years. The applicant was, however, retired on 24.7.91 on attaining the age of fifty nine years and was given retirement benefits on the



basis of his service upto 58 years. The applicant is challenging his allegedly premature retirement and denial of benefits on retirement after 60 years on the basis of a judgment of the Apex Court to which he was not a party.

3. We have heard the arguments of Sri M.K. Upadhyay for the applicant and Sri Ashok Mohiley for the respondents.

4. The respondents in their supplementary counter affidavit dated 25.7.99 have mentioned that the Apex Court passed the following interim order in Writ Petition No. 118 of 1987 between B.P. Mishra and Union of India on 2.2.89.

" Pending disposal of writ petition, the respondents shall not retire any of the teachers untill further orders or unless any of the teachers who are still in service untill he attains the age of 60 years ^{whichever} ~~whichever~~ is earlier."

The applicant was given benefit of this interim order. The final judgment in this writ petition was given by the Apex Court on 9.7.91 dismissing the Writ Petition on the Government of India applying the retirement age (by review its policy) of fifty eight years uniformly to all teachers working in Central Government Departments and Organisations including Union Territories. It has also been mentioned in para 5 of supplementary counter affidavit that the Apex Court held that School/Institutions where retirement/superannuation age was at that time fixed at 60 years will stand lowered to 58 years with effect from 1.4.89 with the exception that the teachers who had joined

such school prior to 1.4.89 shall continue to enjoy the existing benefits and superannuation at the age of 60 years. Since the applicant did not belong to such school/institutions, he was retired with effect from 24.7.91 and pay and allowances drawn during excess service of one year were regularised as a special case. It has been mentioned by the respondents that the retirement age for teachers under the Ministry of Defence was always 58 years.

5. The main contention of the applicant is that having changed the retirement age unconditionally to 60 years for teaching staff by order dated 26.7.90, it could not have been varied to his disadvantage later. This contention is not valid because it is quite clear from order dated 26.7.90 that it was passed on account of interim order of the Hon'ble Supreme Court. This interim order of Hon'ble Apex Court has been annexed by the respondents to their counter reply and has been reproduced by us earlier in this order. The applicant's contention that his extension of superannuation is a result of conscious decision of the Government and not due to the interim order is not correct on account of reference to interim order in fixing new date of superannuation.

6. Another contention of the applicant is that he was not a party to the writ petition pending in Hon'ble Supreme Court and, therefore, his retirement on account of dismissal of the writ petition was bad in law. This argument is

also not tenable because having received the advantage of the interim order, the applicant could not escape the consequences of the dismissal of the writ petition by Hon'ble Supreme Court and the extinction of the interim order on account of which the applicant could serve for extra one year fortuitously. The interim order did not confer any right on the applicant to continue till the age of sixty years.

7. The applicant has cited the cases of three teachers viz. Sri N. Pal who was allowed to retire on completion of sixty years of age on 28.2.91 Smt. G.M. Roy who retired on completion of sixty years on 31.3.91 and Sri H.K.N.Dwivedi who retired on completion of sixty years on 30.4.91. He claims hostile discrimination as he was retired before completion of sixty years. These instances cited by the applicant are of those teachers who completed sixty years during the currency of interim order from 2.2.89 till the date of delivery of judgment of Hon'ble Supreme Court on 9.7.91. The applicant was completing sixty years after extinction of the interim order. Therefore, order retiring him dated 22.7.91 cannot be considered to be bad in law. The instances cited by the applicant thus belonged to different class of teachers from the applicant and the retirement of the applicant on account of extinction of interim order cannot be termed as practising hostile


discrimination.

8. The applicant has claimed the benefit of the order of the Supreme Court that the Schools/ Institutions where the age of retirement on superannuation was sixty years, the teachers who joined the institutions/Schools before 1.4.89 were to retire on attaining the age of sixty years. This argument is also not valid because the age of retirement was not changed by the respondents and continued to be fifty eight years. The date of retirement on superannuation of the applicant was shifted by two years in view of currency of interim order of the Hon'ble Apex Court and the original date of superannuation after attaining fifty eight years became operative with immediate effect after the judgment of the Hon'ble Apex Court was delivered and interim order ceased to operate.

9. In effect, we find no merit in the application which stands dismissed.

There shall be no order as to costs.


Member (A.)


Vice Chairman

Nafees.