

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of NOVEMBER 2002.

Original Application no. 1673 of 1999.

Hon'ble Maj Gen KK Srivastava, Member A
Hon'ble Mrs Meera Chhibber, Member J

Jai Ram Kamalvanshi, S/o Late Sri Chhedi Lal,
R/o 128/813-D 'K' Kidwai Nagar, Kanpur.
Superannuation from 28.2.1998 as a Senior Scientific
Assistant from Controllerate of Quality Assurance
Materials, Kanpur, Ministry of Defence.

... Applicant

By Adv : In person

Versus

1. Union of India through Secretary,
Defence Production, Ministry of Defence,
South Block, New Delhi.
2. Director General of Quality Assurance,
Department of Defence Production,
Ministry of Defence, South Block,
New Delhi.
3. Director of Quality Assurance (Stores),
Department of Defence Production, G-Block,
New Delhi.

... Respondents

By Adv : Sri P Mathur

O R D E R

Hon'ble Mrs. Meera Chhibber, JM.

By this OA, filed under section 19 of the A.T. Act,
1985, the applicant has sought following reliefs :-

- i. issue an order or direction in this nature of mandamus commanding these respondents to pay the recommendations of 5th Pay Commission including extention of age benefit from 58 years to 60 years irrespect of discrimination because all other 11 government servants who are also

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involved in the same case but they are getting all the benefits of 5th Pay Commission including benefit of age also.

- ii. Issue a writ, order or direction in the nature of certiorary to pay the benefit of 5th Pay Commission including benefit of age too.
- iii. Award the cost of application or any other benefits as deemed fit to the applicant.

2. The grievance of the applicant in this case is that even though 5th Pay Commission had recommended that age of Superannuation should be enhanced from 58 to 60 years w.e.f. Sept. 1997 alongwith certain other recommendations though the Govt. accepted all other recommendations given by 5th Pay Commission, as far as the question of enhancement of the age of superannuation from 58 to 60 years was concerned, the Minister and the Prime Minister decided the cut off date as 30.5.1998 arbitrarily without taking Union, Federation or various Associations of the employees into confidence or without consulting the matter with them. Therefore, according to the applicant, the decision of the Govt. to raise the age of superannuation from 58 to 60 years w.e.f. 30.5.1998 is also absolutely illegal, unjustified, arbitrary and discriminatory. According to him this enhancement of age should have been made effective either from September 1997 as recommended by 5th Pay Commission or with effect from 1.1.1998 i.e. from the begining of the Calender Year, so that all those who were due to retire in the meantime could have got the benefit of the recommendation given by 5th Pay Commission. Thus he has prayed for the relief as mentioned in Para 1 above.

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3. The O.A. has opposed by the respondents who have stated that these policy matters which were taken by the Govt. and the Court cannot interfere in the said matters. More over the

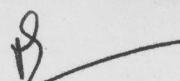
decision was taken by the Cabinet in its meeting and pursuant to which the OM dated 13.5.1998 was issued where by it was made clear that the recommendation made by 5th Pay Commission relating to the age of retirement for Central Govt. Employees have been examined carefully and the President has ^{been} pleased to direct as under:-

"a. Except as otherwise provided specifically, every Government servant whose age of retirement is currently 58 years shall now retire from service on the afternoon of the last day of the month in which he/she attains the age of sixty years. However, Government servants whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years;

b. There shall be complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years. Officers connected with budget work and full-time Members of the Committees likely to be wound up shortly may be given extension in service for a maximum period of three months in public interest, on a case to case basis.

3. These orders will come into force with effect from the date of Notification of amendment to the relevant rules and regulations etc and will be applicable to all Central Government employees except those who have already retired in accordance with the earlier rules those who are on extension in service on the date of issue of these orders or those who are governed by specific rules and/or regulations. An Amendment to the FR 56 has been issued separately today (Copy enclosed)."

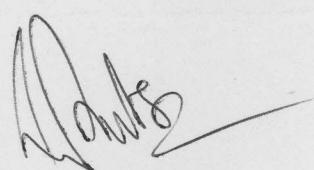
4. A perusal of this OM shows that not only this OM was issued with the consent of the ^{President} ~~person~~, but even FR 56 was also amended on the same date i.e. 13.5.1998. Admittedly, the applicant had superannuated on 28.2.1998, therefore, he cannot be given the benefit of enhancement in age for superannuation



superannuation from 56 to 60 years. There cannot be two opinions about it that these are definite policy matters and are required to be decided by the Govt. keeping in view various factors and Court cannot decide as to when the order would be given effect to. If the applicant was aggrieved by the decision taken by the Government, he ought to have been challenged the O.M. dated 13.5.1998, where it was specifically mentioned that these order will come into force with effect from the date of notification of the amendment of the relevant rules and regulations and FR 56 was stated to have been amended on the same date. The applicant has not challenged this OM dated 13.5.1998 at all. Therefore, according to us the relief sought by the applicant cannot be given to him. Even otherwise this controversy has already been looked into by the various Courts and it has also been held by the Hon'ble Delhi High Court also that there is no illegality in the orders passed by the respondents. Accordingly, there is nothing really that requires adjudication in the matter as far as we are concerned because we are bound by the orders passed by Hon'ble High Court. Accordingly, we find no merit in this O.A. and the same is dismissed with no order as to costs.

B

Member J



Member A

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