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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 03.11.2000.

O.A. No. 114/1998

R.K. Chopra son of Shri B.D. Chopra aged about 59 years retired Scientist 'C' Defence Laboratory Research and Development, Ratanada Palace, Jodhpur, at present resident of 93, Abheygarh Scheme, Opposite Kendriya Vidyalaya No.1, Air Force, Ratanada, Jodhpur.

... Applicant.

v e r s u s

1. Union of India through the Secretary, Ministry of Defence (Department of Defence & Research Development), Government of India, New Delhi.
2. The Scientific Adviser to the Ministry of Defence & Director General, Research & Development Organisation, Ministry of Defence, South Block, New Delhi.
3. The Under Secretary to the Government of India, Ministry of Defence, South Block, New Delhi.
4. The Director, Defence Laboratory, Ratanada Palace, Jodhpur.

... Respondents.

Mr. H.K. Purohit, Counsel for the applicant.

Mr. S.K. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Mr. Justice B.S. Raikote)

This application is filed for a declaration that the applicant would be deemed to have retired from service with effect from 31.05.98 (A.N.) instead of 31.05.96 at the age of 60 years and his pay and pension and other retirement benefits should be refixed as if he retired on 31.05.98, with all other consequential benefits.

2. The applicant's case is that he retired as Scientist 'C' on



31.05.96 (A.N.) on attaining the age of 58 years. But vide Office Memorandum dated 16.06.97, the retirement age has been enhanced to 60 years, after the proviso to Office Memorandum dated 24.12.85 was struck down by the New Bombay Bench of the C.A.T vide its judgement/order dated 15.09.89 in T.A. No. 521/86 [O.P. Gupta vs. Union of India & Ors.], and thereafter, upholding the said judgement/order by Hon'ble the Supreme Court vide judgement dated 20.11.96 in Civil Appeal No. 4488 of 1990 [Union of India Anr. vs. O.P. Gupta]. Learned counsel for the applicant submitted that according to the said O.M., the Scientists 'B', 'C' and 'D' are eligible for retention in service upto the age of 60 years with notional benefits. Therefore, the applicant was eligible for retention in service upto the age of 60 years and his retirement on 31.05.96 after attaining the age of 58 years, was illegal. The applicant further stated that he made a representation vide Annexure A/8 dated 26.07.97 to the respondent No.2 stating that he was forced to retire on 31.05.96, and suitable instructions may be issued to the Director, Defence Laboratory, Jodhpur, to allow him to resume his duties again. The applicant stated that thereafter, he sent reminders vide Annexures A/9 and A/10 dated 28.08.97 and 29.09.97, respectively. They are acknowledged by the department for taking necessary action. Thereafter, the applicant got issued a notice for demand of justice vide Annexure A/12 dated 21.10.97. But the respondents have not responded to his representation, inspite of acknowledging those letters. Hence, he has approached this Tribunal for the reliefs, as prayed for in this application.

3. The respondents have filed a detailed reply denying the case of the applicant. They have stated that the applicant joined the Defence Research and Development Organisation as Junior Scientific Assistant I in April, 1962, but he failed to earn promotion to the next higher grade, i.e. Scientist 'D' within the preceding 5 years of attaining 58 years of age, and he retired from service at the age of 58 years. It is stated that the service conditions of Scientists of Defence Research and

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Development Services, which is Group 'A' services, are governed by DRDS Rules, 1979, as amended from time to time. In terms of those rules, the applicant did not have three consecutive outstanding ACRs during the years 1983, 1984 and 1985, and he was considered for promotion to the grade of Scientist Grade 'D' in the year 1987 for the first time and since then, he was considered for promotion by each Assessment Board held upto 1985, but not found fit for promotion by any of these Assessment Boards. It is stated that suitability of Scientists for promotion was based on record of service and his performance in the interview, but the performance of the applicant in the interview was not found to be upto the mark during 1987 to 1995 by the Assessment Boards, held during those years, and therefore, he could not be promoted to the post of Scientist 'D' till his retirement. They stated that in terms of Ministry of Defence letter No. DRDO/76210/RD/MPD-2/319-S/D(R&D) dated 23rd September, 1992, an additional condition was laid down for retention in service upto 60 years of age, subject to a special assessment at the age of 58 years based on record of service and achievements of the gazetted and non-gazetted personnel with a proviso that such assessment is not below 'very good'. It was further provided that either they fail to get promotion during the last five years of service before attaining the age of 58 years or are not found fit as per the above provisions, they shall retire at the age of 58 years. They have further stated that all other persons could retire at the age of 60 years, subject to the special review at the age of 58 years. They have also stated that in similar case in T.A. No. 521/86 [O.P. Gupta vs. Union of India & Ors.], decided on 15.09.89, the Mumbai Bench of the C.A.T. had quashed the said proviso prescribing promotion during the five years, preceding attaining the age of 58 years, for retention in service upto the age of 60 years and that judgement/order was upheld by Hon'ble the Supreme Court.

4. The respondents have further stated that the Office Memorandum dated 16.06.97 of the Ministry of Defence has not been given retrospective effect, therefore, no benefit accrue to the Scientists, who

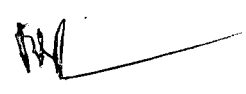


had already retired from service on or before 20th November, 1996, and as such, the contention of the applicant that he was eligible for retention in service upto the age of 60 years in terms of Office Memorandum dated 16.06.97 is not correct. They have further stated that the Office Memorandum dated 16.06.97 was issued by deleting the proviso contained in O.M. dated 24.12.85, in view of the judgement/order passed by the Mumbai Bench of the Tribunal in T.A. No. 521/86 and the judgement of Hon'ble the Supreme Court dated 20.11.96 in Civil Appeal No. 4488 of 1990. The applicant had retired before rendering this judgement and accordingly, the applicant is not entitled to the benefit of the said judgement. Accordingly, they prayed for dismissal of this O.A.

5. Heard the learned counsel for the parties.

6. We find from the pleadings as well as the arguments addressed at the Bar that certain facts are not disputed by the applicant. It is not disputed that the applicant retired from service at the age of 58 years on 31.05.96. By that date, the proviso to the Defence Ministry's Office Memorandum No. 7(3)/85-D(R&D) dated 24.12.85 was struck down by the Mumbai Bench of the C.A.T and the same was confirmed by Hon'ble the Supreme Court vide judgement dated 20.11.96 in Civil Appeal No. 4488 of 1990 [Union of India & Anr. vs. O.P. Gupta]. Therefore, as on 31.05.1996 (the date of retirement), the said O.M. dated 24.12.85 was struck down and if the applicant was entitled to continue in service, he should have challenged his retirement order, retiring him with effect from 31.05.1996, contending that he should have been retired only at the age of 60 years, but not 58 years. That he has not done. Even in this case, he has not challenged the retirement order. The only relief prayed for in this application is that the applicant should be continued in service till he attains the age of 60 years. This relief cannot be granted unless we quash the retirement order.

7. As per his own case, the applicant retired on 31.05.96 and within



one year, he should approach this Tribunal in terms of Section 21(a) of the Administrative Tribunals Act, 1985. According to this Section, one has to approach this Tribunal within one year of which the final order has been passed. The order of retirement dated 31.05.96 is a final order and the applicant should have approached this Tribunal on or before 31.05.1997. We find that there is no application even for condonation of delay. In these circumstances, prima facie, we have to hold that the application is barred by time. As per the averments in the application, the applicant made his first representation on 26.07.1997, stating that he was forced to retire on 31.05.96. Even this representation itself was made after one year from the date of his retirement on 31.05.96. Ofcourse, there were further reminders thereafter. Hon'ble Supreme Court in 1999 SCC (L&S) 251 [Union of India & Anr. vs. S.S. Kothiyal and Others], has clearly laid down that repeated representations do not save limitation. As we have already stated in this case that even his first representation was made after the period of one year from the date of his retirement, therefore, his other representations after the cause was barred by time, would not have any consequence and such filing of subsequent representations cannot either save or extend the limitation.

8. If the applicant wants to take the assistance of Office Memorandum dated 16.06.97, by which the Government deleted the proviso prescribing securing of promotion during the 5 years preceding attaining the age of 58 years for retention in service upto the age of 60 years, but this O.M. has not been given retrospective operation. In other words, the said O.M. would apply only to those persons retired on or after 16.06.97, but the applicant had already retired one year back. In similar circumstances, the C.A.T., Principal Bench, New Delhi, in OA No. 1419/97, decided on 20.02.98, held that the judgement of Hon'ble the Supreme Court dated 20.11.96 passed in Civil Appeal No. 4488 of 1990 cannot have any retrospective effect. The applicant had retired earlier to the said judgement on 31.05.96. Moreover, the Office Memorandum No. DRDO/7632/RD/MPD-2/182/SD(R&D) dated 16.06.97 of the Ministry of Defence




was also issued subsequent to the retirement of the applicant. Therefore, the applicant is not entitled to the benefit of the said O.M. dated 16.06.97.

9. As we have stated above, the applicant has made his first representation on 26.07.97 after his retirement on 31.05.96, nearly after one year, and in these circumstances, this application is barred by time. However, the learned counsel for the applicant relied upon the judgement dated 06.01.98 of Hon'ble Rajasthan High Court passed in D.B. Civil Special Appeal No. 377/96, but the said judgement does not apply to the facts of the case, in which Hon'ble High Court held that the persons similarly situated may be given relief even they did not approach the Court for redressal of their grievances. But that was a case for fixing up of pay scale and the increments during the period they were serving on temporary capacity before regularising their services. But in the case on hand, the applicant had retired before 2 years of his filing of the present application on 21.04.98 and there is no application for condonation of delay. Section 21(i)(a) is mandatory and the application should be filed within one year of passing final order, and in case of not filing the application within the said period, the applicant may satisfy this Tribunal and show sufficient cause by filing an application for condonation of delay under Section 21(3) of the Administrative Tribunals Act, 1985. The applicant did not file any such application for condonation of delay. In similar circumstances, Hon'ble the Supreme Court in 1997 (3) Supreme 555 [Hukam Raj Khinvasara vs. Union of India & Ors.], held that unless the applicant makes out sufficient cause by filing an application under Section 21(3) of the Act, the Tribunal could not have entertained the application. In view of this law declared by Hon'ble the Supreme Court, this application is liable to be dismissed on this ground also. Moreover, the Bangalore Bench of the C.A.T. in O.A. No. 167/2000, decided on 8.9.2000, dismissed the case of a similar applicant, who had approached for the same relief, after the period of

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Impress



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Part II and III destroyed
in my presence on 2-5-102
under the supervision of
section officer [Signature] as per
order dated 10/1/102

Section officer (Signature)

[Signature]
7-11-20