

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW.

Lucknow this the 20th day of September 2001.

Original Application no. 268 of 1991.

Hon'ble Mr. Rafiq Uddin, Judicial Member
Hon'ble Maj Gen KK Srivastava, Administrative Member

R.K. Tripathi,
C-24 ('Ka'), J Road,
Mahanagar Extension,
LUCKNOW.

....Applicant.

C/A Sri R. Lal

V E R S U S

1. The Secretary,
Department of Research & Development,
& Director General of Research and Development
Defence Research & Development Organisation,
Ministry of Defence,
Government of India,
B-Wing, Sena Bhawan,
DHQ PO NEW DELHI-110011.

2. Directory

DMSRDE
DMSRDE Post Office,
G.T. Road Kanpur.

....Respondents.

C/Rs Sri A.K. Chaturvedi.

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O R D E R

Hon'ble Mr. Rafiq Uddin, Member-J.

The applicant, who was working as Scientist 'D' in the Defence Research & Development Organisation (DRDO), Ministry of Defence, retired on 30.6.1991. It is stated that till December 1995 the age of superannuation of all the scientific & technical personnel (Gazetted) of the DRDO was 58 years. Vide OM no. 7(3)/85-D(R&D) dated 24.12.1985 age of superannuation of all scientific & technical personnel (Gazetted) was raised to 60 years except in respect of a few scientists like the applicant. The applicant has challenged the ~~validity~~ of proviso of the aforesaid OM which reads as under :

"...provided they have been promoted to the grades they are holding at the time of attaining the age of 58 years within the preceding 5 years."

R. Lal
The applicant also seeks declaration ~~of the fact~~ that the scientists B, C & D are entitled to go upto the age of 60 years without any condition including the condition mentioned in the proviso and the applicant is entitled to go up to the age of 60 years without any condition including the contention mentioned in the aforesaid proviso with all consequential benefits. The applicant has also sought declaration of the result of assessment board 1990 null and void.

2. We have heard Sri R. Lal learned counsel for the applicant & Sri A.K. Chaturvedi learned counsel for the respondents and perused the records.

3. So far as the questions of the validity of the aforesaid *R. Lal* amendment and the age of ~~age~~ of superannuation of the scientist to grade B, C & D are concerned the decision of the Apex Court in Civil

appeal no. 4186/91, 76/92, 3498-99/92 Union of India and others Vs OP Gupta decided on 20.11.1996 has settled this controversy by struck down the aforesaid proviso in OM dated 24.12.1985 as discriminatory. The Apex Court has also held that the age of superannuation of the scientist of all the categories should be 60 years. Besides, in pursuance of this decision the Govt. of India, Ministry of Defence has also issued OM dated 16.6.1997 whereby the age of superannuation of the scientist and technical (Gazetted) DRDO has been enhanced from 58 to 60 years and the impugned proviso has also been deleted from the OM dated 24.12.1985. Consequently, the learned counsel for the applicant has not pressed these reliefs on behalf of the applicant. Learned counsel for the applicant has, however, contended on the basis of decision of the apex court in Civil Appeal No.4284/1998 Union of India Vs. K.T. Shastri dated 12.1.1990, that the applicant is also entitled to the benefit of the aforesaid judgment of the Apex Court and he should have been retired after attaining the age of 60 years. In this connection the learned counsel for the applicant has drawn our attention to the observation of the Apex Court contained in Para-6 of the K.T. Shastri's (Supra) judgments, which reads as follows:-

"We are informed that inspite of the decision of the Tribunal and even pending this appeal when no stay was granted, the Appellant-Union of India retired the respondent at the age of 58 years. We have been unable to understand this indefensible action on the part of the Appellant nor could the learned counsel for the appellants explain it to us. We, therefore, direct the Appellants to reinstate the respondent in service within one week of this Order and to pay to him all his emoluments from the date of his arbitrary retirement till the date of his re-instatement in service as if he had not been retired. We further direct that he would continue in service till he attains the age of 60 years, unless of course for some other legal reasons, it becomes necessary to discontinue his service before that date."

4. On the other hand it has been contended that the applicant is not entitled to the relief on the basis of the judgment of the apex court because at the time of filing the present O.A. he had been retired and The Principal Bench of this Tribunal in Shanta Gautam (Km) Vs. Union of India and Others dated 20.11.1996 passed in OA 2703/1997 has held that the decision of the Hon'ble Supreme Court in O.P. Gupta's case (Supra) is prospective and not retrospective. The applicant in that OA has already been retired on the date of filing of the OA. The benefit of the Supreme Court decision could not be given to her with retrospective effect. We also find force in the contention of learned counsel for the respondents because in the present case also the applicant had already retired when he filed the present OA and no benefit available to him on the basis of decision in O.P. Gupta's (Supra) case. So far as the case of Shanta Gautam's (Supra) is concerned, we find that in that case the order of the Tribunal was not stayed by the Hon'ble Supreme Court and the applicant K.T. Shastari was party in that case. In the other words the judgment was ~~not~~ ⁱⁿ personam. The present applicant was not the party in O.P. Gupta's case and the benefit of judgment in rem cannot be granted to the present applicant with retrospective effect. We also agree with the view expressed by the Principal Bench of Central Administrative Tribunal in Shanta Gautam's (Supra) case.

5. As regards the relief sought by the applicant for cancellation of the result of the assessment board 1990, it is an admitted position that the matter has already ^{been} decided in T.A. 3/1996 (OA 1076/89) filed by the present applicant for this very relief. It is, therefore, not necessary to ~~dismiss~~ ^{discuss} this matter in the present OA.

6. For the reasons stated above we do not find any merit in the present O.A. and the same is dismissed accordingly.

There shall be no order as to cost.



MEMBER (A)



MEMBER (J)