

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION No. 333/1992

H.K. Banca

Applicant.

versus

Governing Body C.S.I.R. and

another

Respondents.

Shri P.K. Khare Counsel for Applicant.

Shri A.N. Trivedi Counsel for Respondents.

Counsel:

Hon. Mr. Justice U.C. Srivastava, V.C  
Hon. Mr. K. Upadhyay, M.M. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

retired on 31.7.92  
The applicant, who was during the pendency

of the case, was a member of the Administrative side  
of the C.S.I.R. (Council of Scientific and Industrial  
Research) and posted as Senior Financial Accounts  
Officer(SG), C.S.I.R., a constituent of the same, has  
challenged the age of retirement of administrative  
category which is 58 years while the age of retirement  
of scientific and technical staff is 60 years, after  
approaching the department against this alleged discrimination  
in the age of retirement the applicant has approached  
this Tribunal stating that 97.5% of the employee's are  
entitled to retire at the age of 60 years while only 2.5%  
are to retire at the age of 58 years, even though all  
the set of employees of the society are governed by  
the same set of service rules on discipline, conduct

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benefits like HRA, CCA, CEA, L1U, pension U.P., pay fixation etc. The 2.5 percent of employees who retire at the age of 58 years are in the service in the Finance Stores and Purchase, Administrative and legal side in the gazetted capacity, whereas 97.5% of the employees who retire at the age of 60 years are Librarians, Electricians, Catalogues, Artists, Doctors, Library Officers, Field Assistants, Civil Engineers, Assistant Surgeons, Nursing Sisters, P.R.O.s, Translators, Assistant Information Officer, Overseers etc. The employees of the C.S.I.R. were under the scheme of contributory provident fund but they were subsequently brought under pension scheme through notification dated 23.1.1962. The Council runs 39 Laboratories which have scientists and Bench level scientists acting as line functionaries and there is a controller of administration who is overall incharge Initially of all administrative functions. The age of scientists for superannuation was 60 years whereas all the other categories were to retire at the age of 58 years except Gr. I staff for which Central Govt. rule was made applicable. As per averments made by the applicant, for the last 32 years the Support Services Staff in Technical, Auxiliary Administrative and Ministerial cadres has been agitating for parity in retirement age and the committees which met, given their recommendations and high ranking officers and Civil Service's committee recommended that the disparity of age in C.S.I.R. may be removed and over time expert

committee headed by the ex. Secretary to the Govt. of India, Dr. P. C. Khosla, was appointed by Chairman Governing Body of C.S.I.R. vide dated 26.4.39 to examine and make the recommendations on 'grant of uniform retirement age'. According to the applicant since 1956, the concession of higher retirement age was available only to Group D employees and the scientific employees engaged in research, has been extended to 'Auxiliary Technical Employees aiding research' employees 'aiding' research in gazetted administrative services and providing support services to scientists and Bench level scientists are also and thereby 'aiding' research to them. These employees cannot be treated differently from Auxiliary Technical employees and deprived of the higher age of superannuation. The applicant has challenged the said discrimination on the grounds that the same is violative of Article 15 of the Constitution of India as well as against the decision of the Supreme Court which has declared law in this behalf and the other ground is that chosen group of employees constitute 98% of the total number of employees of CSIR is, malafide and it does not satisfy the objective test and lastly would not satisfy any responsible man in place of authority competent to grant this release in respect of all but 2% of total number of employees.

2. The respondents have refuted the claim of the applicant and have contended that apart from preliminary objections, regarding non-maintainability of the application stating that no application can be filed against C.S.I.R. which has its head office at Delhi and it can sue or

can be sued through its Joint Secretary(Admn.) and as such the present U.A. filed against the governing body CSIR through its Chairman and Director General is not maintainable and that the Tribunal has no jurisdiction with regard to the employees of the Society. According to the respondents, as a matter of fact, it is incorrect to say that 97.5% of the employees of CSIR retire at the age of 60 while 2.5% employees retire at 58 years which fact has also been mentioned in the Khosho committee report referred to by the applicant himself. The discontinuation of extension upto the age of 60 years was withdrawn on receipt of directives from the then Prime Minister dated 31.1.83, ex officio president of the Society, and the D.G. CSIR with the approval of the then Vice President, CSIR who exercised the power of the President vide his letter dated 19.2.83 issued orders for implementing the aforesaid decision. The governing body in its meeting held on 6.10.78 examined the recommendations made by various expert bodies and decided to classify the staff in CSIR and its National Labs/Instts into three categories viz. scientific, technical and administrative categories based on the functions performed by them on the recommendations of an expert committee. This classification was done on the recommendation of the expert committee which was competent to do so. It has also been pointed out that not only in CSIR and ICAR but also in B.A.R.C., D.R.D.O., I.C.M.R., & the age of retirement in respect of scientific staff is 60 years and that of administrative staff is 58 years. The applicant's plea that the Khosho committee's recommendations should also

be accepted has also been refuted with the contention that the applicant is not entitled to pray for such a direction and the same is unwarranted and uncalled for. There being no disparity in the administrative category of staff which is a category by itself, there will be no violation of Article 16 of the Constitution of India as the classification is based on rational grounds and there is no such ground for discrimination and it cannot be said a case of discrimination.

3. We have heard the learned counsel for both the parties. Shri A.N. Trivedi appearing on behalf of CSIR stated that the applicant's application is not maintainable as the Society has got its head office at New Delhi and it cannot be sued in the manner the applicant has filed the O.A. The society, undoubtedly has its head office at Delhi but it has got office in various parts of the country including at Lucknow and the applicant is residing at Lucknow and is working at Lucknow office of society and has a right to file the application at Lucknow Bench and this Bench has jurisdiction to entertain the same. Rule 6 of the Procedure Rules, 1987 provides that an application shall be filed by an applicant with the Registrar of the Bench within whose jurisdiction (i) the applicant is posted for time being, or (ii) the cause of action wholly or/part has arisen. In the instant case both the conditions

are satisfied. The C.S.I.R. is a registered society and governing body has been sued through its Director General and C.S.I.R. has also been made part and as such it cannot be said that the application suffers from any jurisdictional error and consequently, the preliminary objection is over ruled. Similarly the objection raised including the case of Sabhajeet Tewari in respect of jurisdiction of the High Court to entertain the writ petition of C.S.I.R. within the meaning of Article 12 of the Constitution of India was considered and, it was contended that the C.S.I.R. is not the State and the Tribunal has no jurisdiction to entertain the application against it. Section 14 of the Administrative Tribunals Act provides for the jurisdiction, power and authority of the Central Administrative Tribunal. Section 14(b) provides "all service matters concerning

(i) .....

(ii) .....

(iii) .....and pertains to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government."

Sub section 2 provides that the Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government. In exercise of the powers under provisions referred to above, certain societies have been specified which include C.S.I.R. vide notification dated 6.2.1987, in respect of the Tribunal, which will have jurisdiction in service matters of the employees as such of the Society (CSIR) and this objection also deserves to be over ruled and the same is over ruled.

4. The learned counsel for the appellant at S.ri P.K. Kulkarni contented that the different ages of retirement one for majority of employees prescribing the age of superannuation as 60 years and for minority, only 55 years, is arbitrary and discriminatory as the contented as held that in the case of Rai Soni vs. C.I. Officer In-charge Administration and another (1990 J.C. (L.S.) 466) the age should have been the guiding factor and age of retirement for 2.5% of the employees which according to the contented is 17%, are also beyond 60 years of age. It is to be noted that there is no much difference in time categories and difference is only of work which they actually perform, i.e. scientific

and non scientific &. in scientific category, everyone is not scientist & in the category makes the apply clear. In Rafi Soni(suva) it was held that the management has not produced any rules or bye-laws either framed by the management itself or otherwise to show that there was any uniform provision for retirement of teachers at the age of 58 years. The averments of the petitioners that section 208 of the Delhi Education Code was being followed and the teachers were superannuated at the age of 50 years have not been specifically denied and rather these averments have tacitly been admitted. The court observes: "Every otherwise every institution must frame and follow a uniform rule for superannuating its employees. The age of superannuation cannot be left to the whims of the employer to enable him to retire different employees at different ages. In the absence of any regulation, bye-laws or policy decision by the respondent-management regarding the age of superannuation, we accept the contention of the petitioners that prior to the coming into force of the Act and the rules the management was following the Delhi Education Code which provided 60 years as the age of superannuation for the school teachers. In that view of the matter under rule 110 of the rules, the petitioner being an existing employee was entitled to be retired at the age of 60 years."

The facts of the case of Rafi Soni(suva) were quite different as in the instant case a policy/framed

after taking into consideration the various reports and decision of the authorities and in the instant case the respondent/management have pointed out the practice in the past and in the present also. It is true that there should be uniform age of retirement, things being equal but classification or categorisation is always possible in case there is reasonable nexus with the objects sought by which in that event it will neither be discriminatory nor arbitrary. The Hon'ble Supreme Court in the case of N. Ramnath Pillai vs. State of Kerala (A.I.R. 1973 S.C. 2641) held that the power to create, continue and abolish any civil post is inherent in every sovereign government. It is a policy decision exercised by the executive and dependent on exigencies of circumstances and necessities. The same view was taken in the case of General Manager, South Central Railway vs. N.V.R. Srichanti (A.I.R. 1974, S.C. 1755). Similar observations were made in the case of Umapati Chandra Gupta vs. P.N.C. (A.I.R. 1989, S.C. 29) wherein it was observed: "The nature of work and responsibilities of the posts are matters to be evaluated by the management and not for the court to determine by relying upon the averments in the affidavits of interested parties." In the case of C.S.I.R. vs. K.C.S. Bhattacharya and another (A.I.R. 1989 S.C. 1972) which was a case of stagnation in the matter of promotion, in as much as the persons belonging to scientific and technical categories were provided with the benefit of promotion, the Supreme Court although observed that the decision of the Tribunal was erroneous but also observed:

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"a person who is not engaged in the scientific work, therefore, stands excluded from the bye-law. In other words, it has no application to the staff who are doing administrative work. Under the categorisation of jobs, respondent, fall under the 'administrative' category and, therefore, is ~~excluded~~ from bye-law 71(b) (iii)." In the case of Smt. Yashoda another vs. The Chief Manager, Central Bank of India and others (A.I.R. 1987, SC 1706) the two sets of rules were prescribed, one for those who entered the service before nationalisation and those who entered the service thereafter. Justifying the same the court observed: "At the time of nationalisation the corresponding new banks did not have their own employees to run the vast business taken over under the Act. There was, therefore, necessity to secure the services of the employees of the former banking companies without causing much dissatisfaction to them. There was also need for standardising the conditions of service of all such employees belonging to the 14 banks. The government of India took the advice of the Pillai Committee and the Study Group of Bankers and after due deliberation evolved a uniform form of conditions for the transferred employees keeping in view the conditions of the service of the employees prevailing in the majority of the Banking companies which were nationalised. In so far as the employees recruited after nationalisation were concerned the Government applied the rules generally applicable to all its employees in other <sup>own</sup> spheres of Government service." The further observed: "the classification of the employees into two categories

i.e. those falling under rules 1 and 2 of the Rules for Age of Retirement and those falling under the rule 3 thereof satisfies the tests of a valid classification laid down under Articles 14 and 16 of the Constitution. We do not, therefore, find any ground to declare rule 3 of the Rules for Age of Retirement which is impugned in this case, as unconstitutional."

5. In this background, thus, it is to be seen there are justifiable and valid reasons for keeping two different ages of retirement, one for scientific and other for non scientific side, the work of the two sides though interlinked with each other, is quite different. The study of concentration, and the time devoted are the time factors which are taken in performance of the duties which is not redundant on the work of the scientific side and obviously somewhat different of the non scientific side and the categorisation or classification was done as reasonable nexus of the jobs to be achieved and the object is scientific development in the country in which scientists are engaged. In these circumstances, the categorisation and the classification cannot be said to be arbitrary or illegal. There appears to be no justification or ground for interfering in the age of retirement so fixed which has been fixed after taking into consideration the reports and taking into consideration the controversy elsewhere also. The observations made in the case of Kaj Soni(supra) are not applicable in the present case where there is a distinct

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policy and background and accordingly we find no  
force in this application and the same is hereby  
dismissed. No order as to costs.

*Shivayogi*  
Adm. Member.

*S*  
Vice Chairman.

Lucknow: Dec. 6/1933.

Shivayogi