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CAT/J/12

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 168 of 1990  
T.A. No.

198

DATE OF DECISION 08.06.1990Shri P.T.Marathe PetitionerMr.S.B.Repale Advocate for the Petitioner(s)

Versus

Union of India & ors. RespondentMr.S.R.Atree for Mr.P.M.Pradhan Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. D.Surya Rao, Member (J)

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

*AB*

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.168/90

P.T. Marathe

.. Applicant

vs.

Union of India & Ors.

.. Respondents

Coram: Hon'ble Member(J) Shri D. Surya Rao

Hon'ble Member(A) Shri M.Y. Priolkar

Appearances:

1. Mr. S.B. Repale  
Advocate for the  
Applicant.
2. Mr. S.R. Atre for  
Mr. P.M. Pradhan  
Advocate for the  
Respondents.

JUDGMENT:  
(Per D. Surya Rao, Member(J))

Date: 8-6-1990

The applicant herein is a retired employee under the Controller of Quality Assurance, Controllerate of Quality Assurance, Kirkee, Pune, a unit under the Director General, Quality Assurance, Department of Defence Production, New Delhi. His grievance in this application is that he was compelled to retire at the age of 58. He claims that he has a right to continue upto the age of 60 years in service. Before dealing with the contentions raised it would be necessary to deal with the historical facts pertaining to the service to which the applicant belongs.

2. In the Defence Ministry there are three organisations viz. (i) Defence Research and Development Service (DRDS), (ii) Defence Quality Assurance Service (DQAS), and (iii) Defence

Aeronautical Quality Assurance Service(DAQAS).

They constitute three wings of the Defence Science Services. Prior to 1979 DRDS was known as Defence Research and Development Organisation(DRDO), DQAS was known as Directorate General of Inspection(DGI) and DAQAS was known as Directorate of Technical Development and Production(Air), (DTD&P(Air) ). The Defence Science Services comprise<sup>four 10</sup> categories of employees viz. category A,B,C and D. Till 1979 there were common service rules for Group A & B officers of the Defence Science Service viz. the Defence Science Service Rules of 1967. They are contained in SRO 51 dtd. 25th January,1967. Group C or Class III officers of the three wings on the other hand never formed one homogenous group. The non-gazetted officers of the Directorate General of Quality Assurance(erstwhile D.G.I) were distinct from non-gazetted officers of the other two wings viz. DRDO and D.T.D.P(Air) even prior to trifurcation. The non-gazetted officers of the D.G.I. to which organisation the applicant belonged were governed by the Department of Defence Production (D.G.I.) Class III non gazetted(Technical,Scientific and Non-Ministerial)Recruitment Rules of 1964. In 1974 the nomenclature of the three organisations/wings was changed viz. DRDO to DRDS,DGI to DQAS and DTDP(Air) to DAQAS. Along with the change in nomenclature three separate and distinct rules were issued for Group A services. In so far as Group B services(Jr.Scientific Officers)while prior to trifurcation they were governed by

the ~~Defence~~ erstwhile D.S.S.Rules(1967) along with Group A officers, separate rules were framed for them in each of the three organisations, but this was in 1982. For J.S.Os in the DQAS(erstwhile DGI) the rules framed were the Directorate General of Inspection (D.G.I.) Organisation(J.S.O)Rules 1982 published as S.R.O. 36. Thus the rule position ~~by 1982~~ was that Non-gazetted Technical employees other~~n~~ than Ministerial <sup>of the three organisations</sup> employees always had separate and distinct rules prior to and after trifurcation in the three organisations. Group A and Group B employees in the three organisations who were governed by one common set of rules till 1979 were trifurcated into three separate services and separate rules framed for Group A and Group B employees in each of the three organisations. Despite these changes the conditions of service in so far as age of superannuation was the same for the employees of the three organisations both immediately prior to and after trifurcation. However, in 1985 by a memorandum No.7(3)/85-D(R&D), Ministry of Defence Research and Development Dt. 24.12.1985 sanction was given to Group E employees and above and also for those in the lower grades to whom the flexible complementary scheme was applicable to retire at the age of 60 years instead of 58 years. This benefit was available only to employees working in the DRDS and not those in the other two wings viz. DQAS and DAQAS. By a subsequent OM No.7(3)/85-D(R&D) dt. 10-2-86 the

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benefit was extended to all Scientific and technical personnel of the DRDS. Thus the age of superannuation of DRDS was 60 years while that of employees in the other two services was 58 years. It is this change which has given rise to a series of applications in various Tribunals including the present one by the applicant herein.

3. The applicant was a Foreman at the time of trifurcation. He was promoted as a Junior Scientific Officer in the year 1988. It is contended in his application that Foreman in the three organisations constituted one feeder category to the post of J.S.O and that on promotion they were liable to work in any one of the three organisations. Similarly Junior Scientific Officers from all the three organisations were eligible for promotion as Scientific Officers Grade II (the lowest in the hierarchy of Gr.A officers) and were entitled to be posted in any one of the three organisations i.e. whenever the vacancy arose. Though after trifurcation interchangeability was not permissible among Group A and Group B officers of the three wings and though right to promotion to posts of Foreman and Junior Scientific Officers from one wing to another was not lost, since conditions of service were common the applicant and others in the DQAS (DGI) had no cause for grievance.

The learned counsel for the applicant Shri Repalke

however contends that since better conditions of service were granted to the employees in the DRDS the same should be extended to the applicant. It is argued by him that prior to trifurcation the applicant and his counterparts in the DRDS hail from the same common stock that they formed one homogeneous category of employees both for promotion as Foreman and Junior Scientific Officer and that conditions of service including the age of superannuation were common. He therefore contends that the applicant also is entitled on the principle of equality before law and equal protection of laws as enshrined in Article 14 of the Constitution to be given the benefit of continuing in service upto the age of 60 years as in the case of Foreman and JSOs in the DRDS. The right to equality according to him would apply at all stages of the service and not merely at the stage of entry. The second ground which Shri Repalle puts forth is that by virtue of Rule 12(1) ~~DRMS~~ which is common to the DRDS rules, DQAS rules and the DAQAS rules the applicant is entitled to continue in service. The said Rule reads as follow:

"12. Other conditions of Service

(1) The conditions of service of the members of the Service in respect of matters not expressly provided for in these Rules, shall mutatis mutandis and subject to any special orders issued by the Government in respect of the Service, be the same as those applicable to officers (Civilians) of

corresponding status in similar scientific institutions/organisations under the Government of India."

Shri Repalle relies upon a Full Bench decision of the Hyderabad Bench of the Tribunal in K.T.Sastry v. Union of India reported in ATR 1988(2)CAT 37 and the consequent decision of the Supreme Court in appeal therefrom and reported in 1990(1)Scale 7(Union of India v. K.T.Sastry) confirming the decision of the Full Bench. In the Full Bench decision rendered by the Hyderabad Bench it was held that the rules for the three services are silent regarding the age of superannuation and that the applicant therein Shri K.T.Sastry was entitled by virtue of Rule 12 to the benefit of continuing in service till 60 years as in the case of his counterparts governed by the DRDS rules. In so far as the Supreme Court decision is concerned it is contended by Shri Repalle that the Supreme Court had upheld the Full Bench decision of the Hyderabad Bench not merely on the ground of Rule 12 to the rules but also on the ground that Article 16 of the Constitution had been violated. Shri Repalle would seek to contend that the facts in K.T.Sharma's case are similar to the facts of the present case and that consequently failure to extend the rule/instructions regarding age of superannuation to employees of the DQAS irrespective of what category they belong to Group A or Group B or Group C will be violative of the equality provisions of the Constitution.

4. On behalf of the respondents a

counter has been filed denying ~~the~~ <sup>the</sup> ~~versions~~ <sup>versions</sup>,

contentions and claims put forth by the applicant.

On the basis of the counter filed, ~~by~~ <sup>the</sup> ~~Shri Atre~~ <sup>Shri Atre</sup>

Advocate on behalf of the respondents contends that

the Group C employees of the three organisations

DRDS(DRDO), DQAS(DGI) and DAQAS(DTDP(Air)) never

constituted one homogeneous group. In regard to

Junior Scientific Officers also it is contended

that after 1982 separate rules were issued

governing the conditions of service of Junior

Scientific Officers in the three organisations.

The rules governing JSOs in the Directorate General

of Quality Assurance are the Directorate General of

Inspection(DGI) Organisation (JSO) Recruitment Rules,

1982. It is therefore contended that neither prior to

1979 nor after 1979 the applicant was governed by

common rules common to employees of the three

organisations. It is further contended that reference

to Rule 12 or Rule 13 of the rules relating to the

three services viz. DRDS,DQAS and DAQAS is not relevant

as these rules are applicable only to Group'A' employees

and not to Group'B' or Group'C'. Since in 1979 the

conditions of service of the applicant were not

altered no question of ~~for~~ giving an option arose.

It is contended that reference to K.T.Sastry's case

disposed of by the Full Bench of Tribunal at Hyderabad

or the Supreme Court is not relevant as these cases are not applicable to the facts of the present case since the said Shri Sastry was a Group 'A' employee unlike the applicant. It is further contended that the applicant if aggrieved by any change in his conditions of service as result of passing separate service rules for the Group A officers and Group B officers of the three organisations should have ~~made~~ moved the court and agitated the matter then itself in 1979 or 1982. His failure to do so bars the present application ~~in~~ view of the provisions of S.21 of the Central Administrative Tribunals Act, 1985. Shri Atre relies on the decision of the Bangalore Bench of the Tribunal dtd. 1-3-1990 rendered in Application Nos. 1096 to 1100/1988 (K.N. Gopalakrishna & Ors v. Union of India) wherein in regard to similarly placed employees the Bangalore Bench had held that S.12 of the Rules will not ~~save~~ them and that the decisions rendered by the Full Bench of the Tribunal at Hyderabad or the Supreme Court in K.T. Sastry's case would have no application. In so far as the pleas regarding Article 16 of the constitution are concerned it is contended that the applicant ~~was~~ was and is governed by independent and separate rules while working in the category of Group C and <sup>not</sup> even on promotion to Group C ~~when compared~~ <sup>he is governed by</sup> separate rules as compared to ~~the~~ <sup>with</sup> ~~he~~ <sup>he</sup> with his counterparts in the DRDS and ~~therefore~~ <sup>he</sup> cannot claim equal treatment with the later. It is contended that the Govt. is competent to frame separate rules

for the employees in the three organisations, that in doing so no principle of equality is violated as the functions of the organisations are different - the DRDS being a research organisation whereas DAQAS and DIAS are only inspecting organisations. It is contended that both prior to 1979, the areas of functions and responsibilities of these two organisations were different, though civilian officers governed by the DSS Rules of 1967 were eligible for posting to any of the three organisations, and that trifurcation was resorted to as work in the DRDO(DRDS) relates to basic and applied research, literature survey, analysis and applied technology whereas emphasis in the inspection organisation is limited to inspection of defence stores/equipment to ensure quality. Due to these basis differences and the consequent difficulties in effecting transfers, postings and career planning trifurcation was ordered. As a result of issue of three different sets of rules the methods of promotion and retirement in the research organisation viz. DRDS was different from that in the Quality & Inspectorate organisations. This <sup>is</sup> another reason put forth for justifying a higher age of superannuation for DRDS employees. Such a benefit was necessary in view of shortage of talented and experienced personnel in the sphere of advanced defence technology.

For these reasons it is contended that the application is liable to be dismissed.

5. We will first take up the first contention raised on behalf of the applicant <sup>as</sup> ~~by~~ Mr. Repale, that by virtue of Rule 12 of DQAS Rules the applicant is entitled to continue in service till the age of 60 years. The Rule ~~has~~ already extracted supra discloses that where no specific rules are provided in respect of any matter, the rules applicable to officers (civilians) in similar scientific institutions/organisation under the Govt. of India would apply. It is contended that since there is no age of superannuation prescribed in the DQAS rules or in the Directorate General of Inspection (DGI) JSO Rules, 1982 the benefit of Rule 12 should be made available to the applicant.

This contention is obviously untenable. Rule 12 ~~provides~~ when no express provision is made in the rule the <sup>is</sup> provides on the premise that conditions of service of ~~of~~ Group 'A' service shall be the same as those applicable to officers corresponding status.

(Emphasise laid by us). The DRDS Rules, the DQAS Rules and the DAQA Rules ~~and~~ rules governing the service conditions of Rule 12 of Group A officers in the three ~~of~~ organisations. They have no application whatsoever to Group 'C' officers or Group 'B' officers as laid down by the Bangalore Bench of the Tribunal in Gopal Krishna and Ors. v. Union of India and Ors.

(Application Nos.1098 to 1100 of 1988). Since the ~~and since the benefit of Rule 12 of the DRS rules cannot be extended to him~~ applicant ~~do~~ not belong to any Group A service ~~the~~ <sup>dicta of the Full Bench rendered by Hyderabad Bench of the Tribunal in Shastri's case does not automatically apply to the case of the applicant.</sup>

6. The next question is whether the applicant is entitled by virtue of the ~~Full Bench~~ decision of the Supreme Court in Union of India v. K.T.Shastri (1990(1) SCALE Page 7) <sup>to the benefit of continuing</sup> to benefit upto 60 years. Learned counsel for the applicant relies on the following observations of the Supreme Court in the said decision:

"The question is whether the respondent was also entitled to the benefit of the power so exercised in the facts and circumstances of the case. The admitted facts are that in 1966 when the respondent was recruited to the Defence Science Service, the three units belonged to the said Service and the employees were recruited initially to that service and then sent to different units. The service conditions of the employees belonging to the three units ~~where~~ were the same and their services were interchangeable between the three units. The Service Rules which applied to all the three units were also common, viz. Defence Science Service Rules. The three units, therefore, belonged to and constituted one single service. It is later in the year 1979, that the Defence Research Services was reconstituted into three different services as stated above. However, at that time, admittedly no option was given to the employees working in the different units to ~~p~~ opt for one or the other of the units. It appears that those who were already working in either

of the three units were deemed to belong to the respective newly constituted service. This being so, their service conditions will have to run parallel and no discrimination can be made between them by an unilateral action."

Shri Repale on the basis of this decision seeks to contend that all the employees whether Group 'A' or Group 'B' are entitled to the same benefits ~~as~~ in the three organisations as ~~they~~ their service conditions will have to run parallel and no discrimination can be made between members of one organisation and the other. This contention is also in our view untenable.

In K.T. Shastry's case the Supreme Court was dealing service conditions of Group 'A' employees belonging to the three services. The services of these Group 'A' employees were inter-changeable within the three organisations <sup>and</sup> ~~and~~ <sup>organisation A</sup> units, the employees of the three units prior to trifurcation were governed by one single set of service rules viz. Defence Science Service Rules, <sup>was affected</sup> ~~when introduction of trifurcation no option~~ <sup>to</sup> ~~was given to~~ despite <sup>being</sup> ~~and there was~~ interchangeability between the three units. In the instant case the applicant who originally belong to the Group 'C' service in the DGI organisation was not governed by the same rules as his counter part in the other two organisations viz. DRDO or DTDP(Air). It has been specifically averred in the counter affidavit that there was no

interchangeability between the Group C employees of the three units. This has not been denied.

In Gopal Krishna's case, decided by the Bangalore Bench, it has been clearly mentioned that Group C employees of the three units were homogeneous and were never interchangeable. It is on this ground that the Bangalore Bench has held that the Supreme Court's decision in Shatry's case would not apply since <sup>the question of</sup> employees in the Directorate General of Quality Assurance "running parallel" with those of their counterparts in the other two organisations does not arise. Applying the dicta of the Bangalore Bench in Gopal Krishna's case it would follow that the applicant cannot claim that he is entitled to continue upto 60 years since <sup>Q</sup> he was never a member of <sup>the</sup> Group 'A' service.

¶. We will now take up the question whether the equality provisions as enshined in Article 14 & 16 of the Constitution have been violated. Before these Articles could be invoked and the action of the Govt. in prescribing a different age of superannuation to employees in the DRDS as compared to those in the DAQAS is questioned, the applicant must establish that the employees in the two services form one class, <sup>and</sup> that they are governed by the same service rules, that they are identical in all respects. In our view the applicant has failed in all respects to establish these similarites. The employees of the two organisations do not form one class in that they are governed by different rules and they are required to perform different duties. To bring out these differences we

could do no better than to extract the reasoning of the Bangalore Bench in Gopal Krishna's case where in it was observed,

"It was explained on behalf of the respondents that the duties of officials in DRDO were qualitatively different from those of officials like the applicants in the Directorate General of Quality Assurance. The former are engaged in the work of research and development which demand creative and innovative skills. The latter have to inspect equipment meant for the armed forces at each stage of manufacture to ensure that they are upto the requisite standards. Inspection of equipment does require a high degree of skill but unlike research and development it does not require a high degree of creative or innovative ability. Creative or innovative skills are considered superior to routine skills: the former are comparatively rare to come by. In any case when the respondents have taken the view that those engaged in research and development are qualitatively different from those engaged in inspection, it is not for us to substitute our own opinion in the matter for that of the respondents. In STATE OF UTTAR PRADESH V. J.P.CHAMASIA (AIR 1989 SC 19) the Supreme Court observed while considering the rule of "equal pay for equal work" that " The equation of posts or equation of pay must be left to the Executive Government... They would be the best judge to evaluate the nature of duties and responsibilities of posts.... the Court should normally accept it... unless it is shown that it was made with extraneous consideration." This ruling would equally apply to classification of posts as routine or innovative and provision of a higher retirement age to the latter so that Government retains the services of talented and creative persons for a longer period than others. Such a classification of posts into innovative and routine is based on an intelligible differentiation and has a reasonable nexus with the object sought

to be achieved viz., retention of talented and creative officials in Government service longer than others in the public interest."

While respectfully concurring with the above observations we would hold that the applicants have not made out any case of discrimination.

8. It was finally <sup>contended</sup> ~~conferred~~ by the learned counsel for the respondent that at one stage of their career <sup>the</sup> applicant and similarly placed employees in the ~~D.S.S.~~ <sup>three organisations</sup> could ~~all~~ aspire for the <sup>promotion</sup> ~~same posts~~ in any one of the three organisations i.e. foreman could be promoted as J.S.O. <sup>whenever</sup> ~~the~~ the vacancies arose and a J.S.O. in his turn would be promoted as a Gr. II Scientific Officer <sup>in any one of the three organisations</sup> ~~as~~ <sup>or a</sup> a Group A post. He contends that the foreman and J.S.O. is working in the quality and inspection organisation could on promotion go over to the research organisation and vice versa. He therefore, contends that when employees of one organisation get any benefit by way of amendment of the rules or issue of instructions then the same benefit should be extended to the employees of the other organisations. This contention suffers from a basic infirmity. The applicant lost the right to go into any one of the three organisations by introduction of independent rules for the three organisations in 1979. As a result rights available under the D.S.S. rules of 1967 of Group C officers for appointment as J.S.O.'s in any one of the three organisations was lost. Again in 1982 independent rules were framed where by separate rules were framed <sup>for</sup> from JSO's in the D.G.I. <sup>subsequently</sup> ~~whereby~~ Organisation whereby Group 'C' employees like the applicant could be appointed as J.S.O.'s only in the D.Q.A.S. organisation. If the applicant was aggrieved and if any of his rights were lost he should have questioned the vires of the

rules issued ~~in~~ either in 1979 or 1982. He cannot therefore complain in 1990 that right available to him <sup>long ago</sup> were lost. In any event even on merits we find that no valid case has been out. If the ~~agreed~~ arguments of the learned counsel for the applicant are to ~~be~~ accepted it would mean that Government cannot trifucate or bifurcate ~~our~~ existing service despite employees doing widely disparate jobs, that Government cannot recognise that certain employees do <sup>more</sup> ~~none~~ important jobs and that it cannot separate those doing creative or innovative <sup>a</sup> jobs from those doing routine jobs and give the former ~~a~~ better deal. In effect this would mean that Government has no power to amend rules. Such a stand would be contrary to the established principles laid down by the Supreme Court that Government can vary the service conditions of its employees from time to time. This contention is also therefore rejected as wholly untenable.

For the reason given above we are unable to accept ~~any~~ <sup>contentions</sup> of the arguments put forth by the applicant in support of his plea that he has a right to retire at the age of 60 years on par with employees in the D.R.D.S. In view <sup>lunaf</sup> ~~itself~~ the application is dismissed. The parties shall bear their own costs.

*M.Y. Priolkar*  
(M.Y. PRIOLKAR)  
MEMBER (A)

*D. Surya Rao*  
(D. SURYA RAO)  
MEMBER (J)