

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 270/93
T.A. No. --

198

DATE OF DECISION 10 - 3 - 94

K.C. Chattopadhyay

Petitioner

Mr. S. P. Saxena

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Mr. V. S. Masurkar

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.R. Kolhatkar, Member(A)

The Hon'ble Mr. Smt. Lakshmi Swaminathan, Member(J)

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

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
M(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.270/93

K.C.Chattopadhyay,
Qr.No.P-36/7, CQA(EE)
Colony, Aundh Camp,
Pune - 411 027.

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Dept. of Defence Production &
Supply,
Ministry of Defence, DHQ P.O.
New Delhi - 110 011.
2. The Director General of
Quality Assurance,
Directorate General of Quality
Assurance DHQ PO
New Delhi - 110 011.
3. The Scientific Advisor
Ministry of Defence,
DHQ P.O.
New Delhi - 110 011.
4. The Director General of
Research Development,
Ministry of Defence,
DHQ P.O., New Delhi 110 011.
5. The Controller,
Controllerate of Quality
Assurance(EE)
Aundh Camp,
Pune - 411 027.

.. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Hon'ble Smt.Lakshmi Swaminathan,
Member(J)

Appearances:

1. Mr.S.P.Saxena
Advocate for
Applicant.
2. Mr.V.S.Masurkar
Counsel for
Respondents.

JUDGMENT: Date: 10-3-94
(Per Smt.Lakshmi Swaminathan, M(J))

The applicant filed this application
u/s. 19 of the Administrative Tribunals Act, 1985
claiming that he is entitled to the benefit of

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enhanced age of superannuation of 60 years on the ground that he had exercised his option and continues to be governed by Defence Research and Development Service (DRDS)Rules, 1978 and not governed by Defence Quality Assurance Service(DQAS) Rules,1979.

2. The brief facts of the case are that in 1979 a decision had been taken to trifurcate the unified Defence Science Service(DSS) on functional basis into the following:

- (a) Defence Research and Development Service(DRDS) for Defence Research and Development Organisation(DRDO);
- (b) Defence Aeronautics Quality Assurance Service(DAQAS) for Directorate of Technical Development and Production(Air); and
- (c) Defence Quality Assurance Service(DQAS) for the then Director General of Inspection (DGI) now Directorate General of Quality Assurance(DGQA).

The applicant joined in R & D E (Engrs) and was confirmed as S.S.O. II with respondent No.2 under the DSS. Under Rule 7 of the Defence Quality Assurance Service(DQAS)Rules,1979 all group 'A' officers in the Defence Science Service and working in the Directorate General of Inspection were deemed to have been appointed to the Defence Quality Assurance Service unless they had exercised an option within three months from the date of ^{the} promulgation of rules and he is found fit for

appointment to the other service in the manner ^{Shri} mentioned in sub-rule (2). The applicant ^{Shri} K.C. Chattpadhyay, had exercised his option for DRDO, but he did not opt in the prescribed form and stated in his option the following conditions:

"As the form drafted and forwarded by the Administration is humiliating and deliberately meant to hurt my feelings, I am not filling the same. The provision of Screening Board in the DRDO is illegal and against the spirit of natural justice and as such may not be made applicable."

The DG(I) (Now DGQA) took the decision that another opportunity may be given to the officers who had earlier given conditional option to give their option on the prescribed proforma. According to the applicant the letter dt. 10-7-80 giving him a second chance to opt whether he would like to be absorbed in DRDO, which option he was to exercise latest by 8-8-80 did not reach him as the letter was sent to his Bangalore office, whereas at that time he had already been transferred to Ambazari, Nagpur. The learned counsel for the applicant in fact stated that till the written statement ^{was} of the respondents ^{was} filed in this case on 28-5-93, the applicant was not at all aware of the fact of the second chance being made available to the officers who had earlier exercised a conditional option. Therefore the applicant's contention is that since he did not receive the necessary intimation later on to exercise another option, the earlier option given by him on 25-1-80 may be treated as a valid option whereby he had indicated

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that he would like to be absorbed in DRDO.

3. According to the counsel for the respondents the applicant did not exercise any further option after the conditional option exercised by him in January, 1980 which was not in the prescribed format. Hence he was deemed to have been absorbed in the DQAS cadre. From the extract of the service record submitted by the applicant, it is also seen that the applicant was promoted as SSO-I in DQAS on 17-3-81 and he continued in that service till date and never raised the issue of option after 1980 till he filed this application in the Tribunal on 26-3-93. The respondents further stated that while the members of the DQAS would retire on attaining the age of 58 years, due to the peculiar nature of Research and Development tasks and in order to retain experienced Scientists for a longer period, a decision was taken to enhance the retirement age of DRDO officers to 60 years fulfilling certain conditions. This decision to enhance the retirement age in DRDO was taken six years after the decision to trifurcate the DSS during which period the applicant continued his service in the DGQA and also earned further promotion. The learned counsel for the respondents, therefore, has submitted that in the circumstances of the case the applicant's request for absorption in the DRDO is an afterthought and is time barred as his request for absorption in the DRDO is very much belated. The applicant has attained the age of superannuation of 58 years in February this year, whereas according to

his claim he would get another two years in service, if his option exercised earlier is accepted at this stage.

4. Both the counsels have referred us decision of the Supreme Court in Union of India & Ors. vs. K.T. Shastri decided by the Supreme Court on 12-1-90 and Union of India & Ors. vs. B. Sampath & Ors. decided on 17-8-90 and certain other decisions of this Tribunal (Copies of the decisions are placed at pages 40 to 63 of the reply).

5. The main point for consideration in this case is whether the option exercised by the applicant on 25-1-80 can be considered valid or alternatively, as claimed by him, he should be given another chance to opt. There is no doubt that the view taken by the respondents that his option is conditional is correct because he had not given his option in the prescribed proforma. Thereafter the decision of the department taken in consultation with the UPSC on 10-7-80 was addressed to all DGI Establishments (as per standard list) with copies to all Tech¹ies at DGI HQ. On the facts, therefore, in the normal course this letter would have reached the concerned officers, including the applicant, at their places of posting in all DGI Establishments. Since the applicant was very much in service it would be reasonable to expect that he would have been anxious to follow up his earlier option exercised by him in January, 1980 and to know the further developments resulting from the trifurcation of the DSS. In the circumstances we find no merit in the claim of the applicant, after a period of 13 years, that

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he should be given another option or that the earlier conditional option exercised by him in 1980 should be treated as valid. This is not a case where the respondents in any way discriminated against the applicant. As provided under the relevant rules at that time he ~~should~~ could have exercised the option when the services were trifurcated.

6. In the case of Union of India vs. K.T. Shastry, Civil Appeal No.4284/89 decided by the Supreme Court on 12-1-90 and relied upon by the appellants, the Supreme Court held that at the time when the Defence Research service was constituted into three different services in 1979, admittedly no option was given to the employees working in the different units to opt for one or the other of the units. This case does not apply to the facts of the present case since the applicant had been given an option to opt for one of the other units. We are, therefore, of the opinion that the judgment of the Supreme Court in Union of India & Ors. vs. B.Sampath & Ors. (supra) would be applicable to the facts of this case. In B.Sampath's case the Supreme Court vide its judgment dt. 17-8-90 (in which two ^{of} the learned Judges were also members in K.T.Shastry's case) held that ".....in the claim petition filed by the respondent before the Tribunal he has categorically admitted that he was given an opportunity to exercise option and as a result of the exercise of option, he was put into one of the trifurcated services where retirement age is 58. In such circumstances respondent is not entitled to the benefit of the judgment delivered by this court in K.T.Shastry's case. We accordingly allow the appeal....." There is no doubt that the

applicant had been duly given an opportunity to exercise option in January, 1980, which he exercised with certain pre-conditions which were not acceptable to the respondents. Since the applicant was very much in service when the respondents had decided and given all the concerned officers an opportunity to exercise option for the second time in July, 1980 there appears to be no reason why the letter would not have been sent to the Nagpur office where he was posted at that time. In the circumstance of the case it would be reasonable to presume that he would have received this letter. Even assuming that he has not received this letter, as argued by the learned counsel, he has sought to agitate the question of exercising the option after thirteen years of delay on the eve of his superannuation at the age of 58 years by filing this O.A. in 1993. The fact that he had also earned promotions in the DQAS service after 1980 is also relevant which also shows that the option he had exercised to opt for the DRDO service had not been diligently followed up by him and, therefore, we are unable to accept his plea. If, as claimed by the applicant, he is now allowed to opt for the DRDO service, he would get an added benefit of two years service taking his retirement age from 58 years to 60 years, which he is otherwise not entitled to under the DQAS Act and Rules.

7. We have also considered the other arguments and decisions relied upon by the learned counsels.

8. For the reasons given above we are unable to accept the contentions of the applicant as

there is no merit in the application. The same is dismissed. There shall be no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

Review Petition No.54/94
in
Original Application No.270/93

K.C. Chattopadhyay. .. Applicant.
Vs.
Union of India & 4 Others. .. Respondents.

Coram : Hon'ble Shri M.R. Kolhatkar, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

TRIBUNAL'S ORDER IN REVIEW PETITION
BY CIRCULATION

Dated : 25-4-1994

(Per : Hon'ble Smt. Lakshmi Swaminathan, Member (J))

This review application is filed against the order/judgment dated 10.3.1994 in O.A.No.270/93, rejecting the applicant's claim that he is entitled to benefit of enhanced age of superannuation of 60 years. We have carefully gone through the grounds raised in the review application. No new grounds have been raised in the petition which could/have been raised at the time when the application was heard in support of the original application. The applicant's grievance is that the order dated 10.3.1994 is erroneous that ^{not} ~~2~~ ^{a ground} ~~ground~~ cannot be for review of the order. The application for review is therefore dismissed.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J).

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).

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