

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: **182/97**

Date of Decision: **23-4-97**

K.D.Dhavse

.. Applicant

Shri S.P. Saxena

.. Advocate for
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri R.R.Shetty for Shri R.K.Shetty

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble **Shri B.S.Hegde, Member(J)**

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

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

MR Kolhatkar

(M.R.KOLHATKAR)
M(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.182/97

Pronounced this the 23rd day of April 1997

CORAM:

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

K.D.Dhavse,
Reader,
National Defence Academy,
Khadakwasla,
Pune - 411 023.

By Advocate Shri S.P.Saxena

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Defence,
DHQ PO,
New Delhi - 110 011.
2. The Director General of
Military Training,
General Staff Branch(MT 7)
Army Headquarters,
DHQ PO, New Delhi - 110 011.
3. The Commandant,
National Defence Academy,
Khadakwasla,
Pune - 411 023.
4. The Principal,
National Defence Academy,
Khadakwasla,
Pune - 411 023.

By Counsel Shri R.R.Shetty for
Shri R.K.Shetty

.. Respondents

- : O R D E R :-

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

In this O.A. the applicant has sought a declaration that he would superannuate at the age of 60 years(instead of 58 years) and to quash and set aside the impugned Part-II order No.02 dt. 17-1-1996 retiring the officer w.e.f. 31-3-1997 and to award all consequential benefits.

2. The applicant is a civilian employee working as Reader in the Department of Mathematics in the National Defence Academy, Respondent No.3 & 4.

The same is affiliated to Jawaharlal Nehru University which had agreed to give affiliation to the NDA as a recognised teaching college/institution provided the rules and conditions of service for teaching faculty in various colleges/institutions prescribed by the University Grants Commission are also adopted/made applicable to the NDA. The respondents have accepted the above requirements and have given affiliation in respect of various courses. Respondent No.1 i.e. Ministry of Defence extended the UGC pay scales to the teaching faculty of NDA by their letter dt. 2-4-93 at annexure A-5. In para-4 of the letter the then existing recruitment rules for appointment to posts of Lecturers, Readers and Professors stood superseded to the extent the same were inconsistent with those prescribed under the UGC package after 1-1-1986. The applicant contends that it is clear from the above that the UGC package/rules without any modification became effective to NDA teachers w.e.f. 1-1-86. According to applicant prior to 1-1-86 the service conditions of the applicant and other teaching faculty were governed by the recruitment rules framed by respondent No.1 according to which the age of superannuation for the applicant and other teaching faculty was 58 years. According to the applicant the UGC package which is contained in Ministry of Human Resource Development (Department of Education) letter No, F.1-21/87-U.1 dt. 22-7-1988, which is not annexed but which was produced at the time of argument and about which there is no dispute contains in para 24 the following provision as to superannuation and re-employment.

"24. The age of superannuation for teachers should be 60 years and thereafter no extension in service should be given. However, it will be open to a University or College to re-employ a superannuated teacher according to the existing guidelines framed by the UGC, upto the age of 65 years."

According to the applicant the UGC package means the package as contained in the above letter of Ministry of Human Resources Development including the age of superannuation. Moreover para-5 of the Ministry of Defence letter dt. 2-4-93 referred to above specifically stated that UGC package without any modification will be adopted by NDA/IMA in future. The applicant therefore contends that not only the pay scale but the age of superannuation prescribed by UGC is also applicable in terms of letter dt. 2-4-93 to the teaching faculty of the NDA. According to the applicant, however, the respondents are under erroneous belief that the applicant's age of superannuation remains 58 years even after the change over by the NDA to the conditions/requirements prescribed as precondition for affiliation by Jawaharlal Nehru University. According to applicant UGC is a statutory body created by an Act of Parliament and its package has the sanctity of law ^{when} adopted by any college/institution. However, when the applicant addressed a representation first on 6-3-1995 to the President of India, Annexure A-2, requesting for issue of an order raising the age of superannuation of NDA civilian officers to 60 years and subsequently a further representation

dt. 26-8-1996 to the Defence Minister it appears that the matter was examined and the representation was rejected by letter dt. 5-12-95 as referred to in Annexure A-4 vide communication dt. 6-9-1996. The letter dt. 5-12-95 is not on record but the fact that the representation stood rejected is clear from the impugned order which superannuated the applicant after completion of 58 years of age. Hence this O.A.

2. The respondents have opposed the O.A. According to them the applicant is fully aware that his age of retirement is 58 years and in view of the rejection of his representation by letter dt. 5-12-95 () in fact he has accepted the position in his letter dt. 24-2-97 at Ex.R-1 in which he has sought permission to retain the accommodation for 4 months beyond the date of superannuation. According to respondents the terms and conditions of the service of the applicant including age of superannuation are governed by Central Civil Service Regulations framed under Article 309 of the Constitution. So far as the affiliation to Jawaharlal Nehru University and adoption of UGC pay scales is concerned it is stated that NDA has been affiliated to the JNU in 1973 without extending UGC pay scales to its teaching staff till 1986. In 1983 UGC pay scales were given to civilian academic officers including the applicant. However, finding IVth Pay Commission recommendations more attractive the academic staff opted back for IVth Pay Commission pay scales. Subsequently revised UGC pay scales were found more attractive and the same were extended to the staff ()

by letter dt. 2-4-1993. This has the effect of change of recruitment rules and has no bearing on the age of superannuation. The recruitment rules are being revised as per recruitment qualification prescribed by the UGC.

3. According to the respondents the issue is no longer res-integra because the same issue was agitated by academic staff of Indian Military Academy before the Principal Bench of the Tribunal in O.A. 1345/93 decided on 19-4-1994 vide Dr. I.C. Sharma vs. U.O.I. & Ors. The respondents have enclosed extracts of the judgment as Ex.R-2 and the full judgment was also produced before us. The Tribunal considered whether the UGC package covered terms and condition of service, other UGC pay scale and recruitment rules, whether the UGC package could be called mandatory or directory and whether the action of the Ministry of Defence is in violation of Articles 14 and 16 of the Constitution as was alleged by the applicant in the O.A. The Tribunal also considered whether the Tribunal could direct the Ministry of Personnel/Ministry of Defence to change the age of superannuation in respect of academic staff of NDA/IMA to 60 instead of 58. The Tribunal negatived all the contentions of the applicant in that O.A. and dismissed the same. The reasoning of the Tribunal is contained in para 13 and 14 as below :

"These (the terms and conditions including retirement age) fall within the domain of Ministry of Personnel, Public Grievances and Pensions. Fixation of retirement age is a major policy decision to be taken by the Union Cabinet. This Hon'ble Court has no jurisdiction to look into the major policy decision like

M

determination of retirement age of the civil employees of Government of India. There is no violation of Article 14 & 16 of the Constitution as alleged by the applicant in the O.A. since the superannuation age of 58 years is prescribed in the F.R. 56(a) and CSR 459(a), these provisions contained therein are mandatory in nature and hold good for all civil employees working under Government of India of which ⁱⁿ the applicant is one."

"As directed by this Tribunal vide its letter dt. 29-6-93, the respondents considered the anomaly pointed out by the applicant and informed him that the age of superannuation in the case of the applicant cannot be 60 years since he is governed by CSR 459 and FR 56. The application has also become infructuous as the applicant has already retired. He has gone on the Pension Establishment of Ministry of Defence, Govt. of India w.e.f. 1-7-1993.

14. Administrative instructions issued by Government of India, Ministry of Human Resource Development in consultation with the Ministry of Finance dated 22-7-88 are merely directory in nature for adoption of only pay scale. It is beyond the scope of administrative instruction to change the mandatory provisions of the rules framed under proviso to Article 309 of the Constitution. In the fact of the mandatory provisions contained in F.R. 56 and CSR 459, a circular of a general nature issued by Ministry of Human Resource Development has no relevance. When there is a conflict between the mandatory provisions contained in the statutory rules and circular of a general nature, the former will prevail."

4. As against the above judgment the counsel for the applicant has produced before us the judgment of the division bench of the Bombay High Court in the case of Association of Maharashtra

M

Education Service Class II Officers and Others vs.

State of Maharashtra and others, 1990 Mah.LJ 161.

In that case the main issue with which the High Court was concerned was whether the Govt. could make a distinction in the matter of age of retirement as ~~between~~ teachers of Govt. Colleges(Petitioners) who were stated to be governed by Rule 161 of Bombay Civil Services Rules(BCSR) as to the age of retirement and the University and non-Govt. College teachers.

In respect of the former the Govt. retained the age of retirement as 58 but in respect of the latter the age of retirement was fixed at 60 in accordance with the UGC scheme. The only justification given by the Govt. for continuing the age of superannuation for Govt. college teachers ~~as 58~~ years was that teachers in Govt. colleges, being the Govt. employees would have to retire from Govt. service at the age of 58 years only, and it was not possible to entertain the request for raising the age of superannuation to 60 years available to the teachers in non Govt. colleges. The petitioners in that writ petition had raised the plea of discrimination. The respondents in that petition had countered the plea of discrimination by relying on the mandatory character of BCSR and the advisory nature of UGC package which the Govt. was free or not free to adopt. The writ petition was allowed by the High Court and the reasoning of the High Court is contained in paragraphs 26 and 33. In para 26 after having dealt with on the principles about the applicability of Article 14 in Shri Ram Krishna Dalmia vs. Shri Justice S.B. Tendolkar, AIR 1958 SC 538 ~~In re~~ The Special Courts Bill, AIR 1979 SC 478, and Air India vs. Nargesh Meerza

AIR 1981 SC 1829 the High Court observed in para 26 as below:

"26. If regard is had to the totality of the attributes and the common features applicable to teachers as a class in the Resolution dated 27-2-1989, it would be apparent that there is no distinction, except in the matter of the age of superannuation in the Government teachers and other teachers. In the face of this Government Resolution, we would expect more material from the State to show why the Government teachers were regarded as a class apart from the other teachers when they have so much in common with the others who were the subject of that Resolution, and to show that there were such similarities between the teachers and other classes of Government servants who are governed by Rule 161 of the BCSR, which would outweigh the considerations in Government Resolution dated 27th February 1989. Apart from saying that the Government servants are a class apart, no material was placed before us to show that the Government teachers are similarly circumstanced with the other categories of Government servants to whom Rule 161 of the BCSR applies."

After referring to the value to be attached to the like UGC opinion of the expert bodies, the High Court referred of S.C.in to the observations in State of UP vs. J.P.Chaurasia AIR 1989 SC 19 the High Court observed in para 33 as below :

"33. Even if it were to be recognised that before formulation of the schemes by the UGC and their application by the Government of India and the Government of Maharashtra, the Government teachers might have fallen into a different category which could be treated like the others who were governed by Rule 161 of the BCSR in view of the revision of pay scales and other measures taken for improving the standards of teaching

for the fulfilment of the Constitutional responsibility for co-ordination and maintenance of standards in higher education, the line of demarcation between the Government teachers and the other Government servants gradually vanished. It was not possible for the learned Special Government Pleader for the Government to indicate to us the points of similarity which could be found in all cases other than those accepted by Rule 161 of the BCSR and the Government teachers. The object to be achieved by the Government Resolution dated 17th June 1987 is to be found in the National Policy of Education, 1986, which envisaged efforts to reach the desirable objective of uniform emoluments, service conditions and grievance removal mechanism for teachers throughout the country. That Policy visualised the creation of an open participative and data based system of teacher evaluation for achieving the higher goal of the maintenance of standards in higher education. We tried hard to find out the nexus between the retention of the age of 58 years in respect of the Government teachers and the achievement of these objectives and what valid differentia there could be for distinguishing between the Government teachers and the other teachers in the matter of the age of superannuation. The return filed by the State of Maharashtra is silent on this point and apart from what we have stated above no grounds came forward in the course of the arguments by the learned Special Counsel for the respondent No.1 who frankly stated that he could not say more than saying that the different treatment was necessary because the petitioners were Government teachers. We are afraid this cannot be the basis for classification in the present case."

The High Court thereafter referred to the Full Bench judgment of the Bombay High Court in Chandrakant Sakharan Karkhanis vs. State of Maharashtra AIR 1977 Bom 193

wherein it is laid down that Circulars, Orders or Resolutions or parts thereof laying down the rules of principles of general application, which have to be observed in the recruitment or fixation of seniority of Government servants generally or a particular class of them and which have been duly authenticated by a signature under the endorsement "By order or in the name of the Governor of Maharashtra" and intended to be applicable straightway can amount to rules framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution, although the said Circulars, orders or Resolutions do not expressly ~~not~~ state that the same are made or issued in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India and are not published in the Government Gazette.

5. In our view the judgment of the division bench of the Bombay High Court discussed above has great applicability to the present case. In that case also the reliance was placed on mandatory nature of Bombay Civil Service Rules whereas reliance is placed in the present case on the mandatory nature of the Civil Service Regulations/FR's which prescribe 58 years as age of retirement. In that case the plea of discrimination was raised and the High Court accepted that in the context of a package prescribed by an expert body like UGC which carries weight on all India level the teachers in Govt. colleges cannot be considered to be a class distinct from teachers in non Govt. colleges and Universities. It was considered that a Govt. resolution accepting the UGC package has also the force of rules made under proviso to Article 309 whereas the present applicant has also sought a correct reading of the term package and reading of the para 5 of the

letter dt. 2-4-93 appropriately. It is seen from para-8 of the same that the letter is issued in concurrence with the finance division and therefore carries the authority of the Govt. The issue of discrimination has been examined at great length whereas in the judgment of the Principal Bench cited before us the issue has not been dealt with at all. There is one more aspect of the matter which needs to be noted. In the O.A. before the principal bench there was no averment relating to affiliation of Indian Military Academy to a central University. In the present case however there is an admission that NDA is affiliated to JNU which is admittedly a central university. It is not disputed that the UGC package including age of superannuation applies to teaching staff of Central Universities. Therefore prescription of age of retirement different in respect of NDA which is an educational institution affiliated to JNU also mounts to discrimination between academic staff of one institution of JNU, a central university and other institutions affiliated to JNU where the age of retirement is 60 years.

6. In the light of quotations from the Bombay High Court judgment and the above discussion we are inclined to follow the judgment of the Bombay High Court. We note that the Judgment of the Bombay High Court though delivered on 24-7-1989 was not cited before the principal bench. While taking a final view we also keep in view the observations of the Hon'ble Supreme Court in the judgment of L.Chandra Kumar v. U.G.I. Civil Appeal No.481 of 1989, JT 1997(3)SC 589 dt. 18-3-1997 to the effect

that all decisions of the Tribunal (decisions other than those relating to vires of statutes creating them) rendered in various cases will, be subject to scrutiny before a DB of the High Court within whose jurisdiction the concerned Tribunal falls. In view of this judgment we are bound to attach weight to the DB judgment of the Bombay High Court. This is only one of the factors and the main reason as mentioned above is that we agree with the reasoning contained in the judgment of the Bombay High Court rather than the reasoning of principal bench judgment.

7. In the light of the above discussion the O.A. must succeed. We, therefore, allow the O.A. and direct that para-5 of the letter dt. 2-4-93 so far as it relates to academic staff of the NDA viz. Lecturers, Readers, Professors would be read to have the effect of incorporation therein of the para 24 of the UGC packages dt. 22-7-88. We also quash and set aside the notification dt. 8-1-96 so far as it relates to superannuation of the applicant on 31-3-97. To the extent respondents have already superannuated the applicant in terms of the above office order the respondents are directed to reinstate the applicant and not superannuate him till he attains the age of 60 years.

8. This judgment should be taken to apply not only to the applicant but also to all academic staff of the NDA and the respondents should avoid the contingency of the individual members of the academic staff approaching the Tribunal and should strictly comply with the directions of the Tribunal regarding the correct reading of letter dt. 2-4-93 annexure A-5 as mentioned above.

11

9. O.A. is disposed of at the admission stage with the above directions with no orders as to cost.

MR.Kolhatkar

(M.R. KOLHAT KAR)
Member(A)

B.S.Hegde

(B.S. HEGDE)
Member(J)

M

Per Tribunal

Date: 29/8/97

Applicant in person by Mr. Sascena

Advocate / Respondent by Mr. R.K. Shetty

Counsel for went to the

The matter adjourned to 29/8/97
for notice a C.P.

Dy. Registrar

Dated: 29-8-97 (58)

Sh. S. P. Sascena, Counsel for
the applicant. Sh. R. K. Shetty,
Counsel for the respondent

Original letter no.

D.O. 10391/98, dt 20/06/98
sent from High court,
Alipore road side, mumbai
returned to H.C. on
08/07/98 (W.P. 3102/97)

08/07/98.

Applicant has filed C.P.
39/97 for implementation of the
judgement. The learned counsel
for the applicant states that
the respondents have already
complied with the order of the
Court. In the circumstances
nothing survive in the C.P.
C.P. 39/97 is discharged.

V.S/10

dd. 29/8/97

order/Judgement despatched
to Applicant/Respondent(s)
on 18/9/97

23/9/97

(A.P. Srivastava)

m(A)

B.M.K.
(B. Shinde)
m(J)

DR.

Appeal against C.M. 12
dt 23/6/97, petition, is
dismissed for non- prosecution.
W.P. No. 3102/97 is disposed
of by the High court order
dt 27/11/98. (W.P. No. 3102/97)

10/10/98