

708/97

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NOS.: 451/97, 474/97, 601/97,
622/97 AND 708/97.

Dated ¹⁵ the day of ^{Sept} ~~August~~, 1999.

CORAM : Hon'ble Shri Justice K. M. Agarwal, Chairman.
Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

Ramesh Prasad Saxena,
Reader & Head of Dept. of English,
National Defence Academy,
Khadakwasla, Poona 411 023.

(Bungalow No. 107/D-3,
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... Applicant in
O.A. No. 451/97.

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National Defence Academy,
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Residing at 20/3, Shinde
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N.D.A. Road, Poona 411 021.

... Applicant in
O.A. No. 474/97.

S. S. Bhatti,
Ex-Lecturer (S.G.),
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(Residence : C/o. S.N.T.
Associates, Shanta Sadan,
S. B. Road, Poona - 16.

... Applicant in
O.A. No. 601/97.

K. Madhavan,
Lecturer (S.G.),
National Defence Academy,
Khadakwasla,
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... Applicant in
O.A. No. 622/97.

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Dr. Sudhansu S. De,
(Reader/Lecturer-S.G.)
16/5, Shinde Nagar,
Post : Bawdhan,
Pune - 411 021.

... Applicant in
O.A. No. 708/97.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
DHQ P.O., New Delhi - 110 011.

2. The Commandant,
National Defence Academy,
Khadakwasla, Poona - 411 023.

3. The Director General of
Military Training,
General Staff Branch (MT 7)
Army Headquarters,
New Delhi - 110 001.

4. The Principal,
National Defence Academy,
Khadakwasla, Poona - 400 023.

5. The Registrar,
National Defence Academy,
Khadakwasla,
Pune - 411 023.

... Respondents in
all O.As.

... Respondent No. 2
in O.A. 474/97.

... Respondent No.3
in O.A. Nos.
474/97, 601/97 &
622/97.

... Respondent No. 3
in O.A. 708/97.

(By Advocate Shri R. K. Shetty)

ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

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1. These five applications are filed by the respective applicants claiming that they are entitled to continue in service till they attain the age of 60 years. Respondents have filed reply opposing all the applications. All these five applications were earlier heard by a Division Bench of this Tribunal of which one of us was a Member (R. G. Vaidyanatha) but by order dated 31.03.1998 noted two conflicting decisions of two different Division Benches of this Tribunal and therefore referred all these cases to be placed before the Hon'ble Chairman for constituting a larger Bench to decide the conflict in the two decisions of the Tribunal. On the basis of the said reference, the Hon'ble Chairman has constituted the present Full Bench, which has heard Shri S.P. Saxena, the Learned Counsel for the applicants for all these cases and Shri R. K. Shetty, the Learned Counsel for the respondents in all these cases.

2. Few facts which are necessary for the disposal of these applications are as follows :

All the applicants are either Lecturers or Readers working in the National Defence Academy, Khadakwasla, Pune. Their case is, that though as Government servants the age of retirement is 58 years, they are entitled to retire at the age of 60 years in view of the U.G.C. Package approved and accepted by the Government of India vide circular dated 02.04.1993. Now the administration has decided to retire the applicants on completing the age of 58 years, which according to the applicants, is illegal and contrary to the Government Circular dated 02.04.1993. They also heavily

rely on the decision of the Division Bench of this Tribunal dated 23.04.1997 in O.A. No. 182/97 filed by one K. D. Dhavse against the respondents, where it has been held that the teachers in N.D.A. are entitled to retire at the age of 60 years in view of the U.G.C. Package.

As against this, the defence of the respondents is that the applicants are Government servants and they are governed by the Central Civil Service Rules under which they have to retire at the age of 58 years. It is clearly stated that the U.G.C. Package is approved only in part regarding pay scales and recruitment. The U.G.C. Package regarding retirement age has not been accepted by the Government. But under the Service Rules, all Government servants including the applicants, are liable to retire at the age of 58 years. It is also stated that the decision of the Division Bench of the Tribunal in Dhavse's case requires reconsideration. The respondents also strongly rely on a decision of a Division Bench of the Principal Bench dated 19.04.1994 in O.A. No. 1345/93. filed by Dr. I.C. Sharma against Government of India and others.

As already stated, an earlier Division Bench of this Tribunal by order dated 31.03.1998 has referred the question to a larger Bench to resolve the conflict in decisions of two different Benches of this Tribunal in Dhavse's case and Dr. Sharma's case.

Shri S.P. Saxena, the Learned Counsel for the applicant contended that though under the Service Rules the Government servants are liable to retire on the completion of 58 years, it will not apply to the teachers like the applicants who are entitled to retire after the completion of 60 years in view of the U.G.C. Package which has been approved and accepted by the Government of India in the circular dated 02.04.1993. He, therefore, maintained that the decision of the Division Bench of this Tribunal in Dhavse's case is perfectly correct and calls for no reconsideration. He therefore maintained that the decision of the administration to retire the applicants on completion of 58 years is illegal and contrary to the Government circular dated 02.04.1993 and hence the applicants may be allowed to retire at the age of 60 years. On the other hand, the Learned Counsel for the respondents, Shri R. K. Shetty, contended that the applicants are Government servants and therefore, they are governed by the Central Civil Service Rules and Fundamental Rules under which they are liable to retire on completion of 58 years. He vehemently contended that the Government circular dated 02.04.1993 shows only Presidential approval for revising the pay scales of lecturers and teachers, etc. and it does not refer to or apply to the age of superannuation. He sought to support his argument by heavily relying on the decision of the Principal Bench in Dr. I.C. Sharma's case.

2.A. In the light of the argument addressed before us and in view of the conflicting decisions of two Division Benches of this Tribunal, the question for determination by the Full Bench is :

Whether the teachers in the N.D.A. are entitled to retire on completion of 60 years as held in Dhavse's case or they are to retire at the age of 58 years as held in Dr. Sharma's case?

3. As could be seen from the point formulated above, the dispute lies in a narrow campus. There is no dispute that the applicants being Government Servants should normally retire under F.R. 56(a) which reads as follows :

"Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years."

The fact that the applicants are Government servants and Governed by Central Civil Service Rules is not disputed. The fact that the age of retirement for Government Servant is 58 years has not been disputed. We are considering the position as on the date the applications were filed. The applications were filed in 1997. We may take judicial notice that in May, 1998 during the pendency of these O.As. the age of retirement of Government servants has been increased to 60 years, which is not relevant for our present purpose.

4. The applicants are relying on U.G.C. Package as mentioned in Government Circular dated 22.07.1988 issued by the Ministry of

Human Resources Development where it mentions different terms of U.G.C. Package which includes in para 24 about superannuation of teachers as 60 years. This letter in the very nature of its contents is a recommendatory letter. It is left to the State Government to accept the recommendations in the letter or not. Infact, the said circular was considered by the Supreme Court in the case of T. P. George V/s. State of Kerala [1992 (4) SLR 9] where it has been clearly held that the circular is recommendatory in nature and unless the Government accepts the recommendations, it cannot be enforced. In that case, the Kerala Government had accepted the U.G.C. Package as mentioned in the Government circular except the clause relating to superannuation. The Kerala High Court refused to interfere in the matter and it was confirmed by the Supreme Court. Therefore, merely on the basis of the recommendatory circular, the applicants cannot get any benefits.

4. That is how the applicants are placing strong reliance on another Government Circular dated 02.04.1993. Now let us closely examine the contents of the circular dated 02.04.1993. The subject matter of the circular shows that it pertains to "Extension of U.G.C. pay scales to the Civilian Teaching Staff of the National Defence Academy....." Therefore, the very subject shows that it was a circular in respect of extension of U.G.C. Pay scales. Then again in para 1 it is mentioned that the

question of extending the revised pay scales to the civilians teaching staff of N.D.A., etc. was under consideration by the Government. The next sentence is very relevant for our present purpose, which reads as follows :

"The President is now pleased to revise the pay scales of civilian teaching staff in the two Army Institutions w.e.f. 01.01.1986..."

Therefore, the Presidential approval is taken for revision of the pay scales. We are stressing on this point because the Learned Counsel for the applicant contended that the entire circular should be treated as a Presidential Order and the Presidential Order has approved the entire U.G.C. Package and, therefore, it will amount to a rule made by the President under Article 309 of the Constitution of India. In our view, the presidential approval specifically mentioned as above was in respect to revision of pay scales. After mentioning the above presidential approval for pay scales and then different scales of pay are mentioned in para 1. Para 2 refers to again some pay scales. Para 3 refers to career progression scheme.

Para 4 pertains to Recruitment Rules stating that U.G.C. Package will apply after 01.01.1986. Then we come to para 5 which is the crucial para on which strong reliance is placed by the Learned Counsel for the applicant and which reads as follows:

"The U.G.C. Package without any modification will be adopted by NDA/IMA in future."

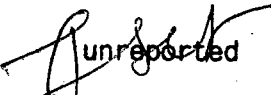
The argument is that, since U.G.C. package has been adopted without any modification, the entire U.G.C. Package as mentioned in the Government circular dated 22.07.1988 which includes the age of superannuation, should be applied to the teacher of N.D.A. In our view, this extreme argument cannot be accepted.

It is true that para 5 refers to adoption of U.G.C. Package without any modification. This para 5 must be read with the subject matter of the letter and the other paras in that circular. If the intention of the Government was to apply U.G.C. Package in toto, then there was no necessity for 7 paras in that letter. One para mentioning application of entire U.G.C. Scale to all teachers in N.D.A. would have been sufficient. The subject of the circular shows that it is about revision of pay scales. Para 1 clearly provides President's approval for revision of pay scale. Then we have two three other paras about career progression scale, recruitment rules, etc. Therefore, in our view, para 5 must be read with the remaining paras in that letter. That means, the terms of the U.G.C. Package like revision of pay scale, recruitment rules, career progression scale, as mentioned in the Government Circular should be accepted in toto without any modification. It cannot refer to all other conditions of U.G.C. Package as mentioned in Government Circular dated 22.07.1988.

5. Even granting for a moment that para 5 of the Government Circular dated 02.04.1983 must be read to include the entire U.G.C. Package including the age of superannuation, it will not help the applicants in any way. The statutory rule is F.R. 56 (a) which provides the age of superannuation as fifty eight years for Government servants. It can be amended by the decision of the Cabinet and after making necessary amendment as provided in rules, it is nobody's case that F.R. 56 (a) has been amended by providing an exception to teachers of N.D.A. retiring at the age of sixty years. But the Learned Counsel for the applicant contended that this letter dated 02.04.1993 must be read as a Presidential order under 309 of the Constitution of India, though it is not styled as such. He, therefore, relied on a decision of a Full Bench of the Bombay High Court reported in [AIR 1977 BOMBAY 193 (Chandrakant Sakharan Karkhanis and others V/s. State of Maharashtra & Others)] where it is observed that the particular Government resolution can be treated as an amendment of Rule under Article 309 even though it is not styled as such by incorporating words like 'By Order and in the name of Government of Maharashtra.' In other words, the Full Bench has observed that it is the substance and not the form which matters. In our view, the presidential approval is only regarding the revision of pay scales which is made clear in para 1 of the Government letter dated 02.04.1993. In other paras there is no such mention that President has given approval for change of age of superannuation or for applying the recruitment rules for

U.G.C. Package in N.D.A. or about applying the entire U.G.C. Package to teachers of N.D.A. The Presidential approval is very clear that it is regarding revision of pay scales and there is no presidential order or presidential approval regarding other matters contained in paras 2 to 8 of the Government circular dated 02.04.1993. At best, it can be said that the directions in paras 2 to 8 in that letter are only executive instructions or executive directions. They do not have the force of law, particularly when there is a statutory provision like F.R. 56(a) holding the field about the age of superannuation.

6. It is well settled and there can be no dispute that one executive instruction or executive direction can be modified or replaced by another executive direction or instructions.

The question has been elaborately considered by a Division Bench of the Principal Bench of this Tribunal in an  unreported judgement dated 19.04.1994 in O.A. No. 1345 of 1994 (I.C. Sharma V/s. Union Of India & Others). The Division Bench has clearly ruled that the circular dated 03.04.1993 does not apply to the age of superannuation. The Division Bench has given number of reasons in support of its finding.

Even granting for a moment that these are executive instructions in the Government letter dated 02.04.1993 applying U.G.C. Package without any modification, the Division Bench has

noticed that a month later, namely in May, 1993, there is an executive instruction in letter no. 95279/Est-5(civ) stating as follows:

"Army H.Q. has confirmed that the age of superannuation of C.G.Os. of ACC Wing will remain 58 years even after implementation of U.G.C. pay scale."

The Division Bench in Dr. I.C. Sharma's case in para 12 of the judgement refers to number of letters and clarifications issued by the Ministry of Defence & Army Headquarters stating that the Government circular dated 02.04.1993 applies only to revision of pay scales. In particular, the Division Bench has referred to the letter of Ministry of Defence dated 20.04.1993, hardly 18 days after the circular dated 02.04.1993 stating that it applies only to U.G.C. pay scales. Again there is a reference to letter dated 27.04.1993 issued by the Army Headquarters stating that the letter dated 02.04.1993 pertains only to revision of pay scales and not regarding date of retirement.

In O.A. No. 622/97, the respondents have produced exhibit R-2 which is a letter dated 11.08.1997, which is a letter from the Ministry of Defence addressed to the Chief of Army Staff asserting and clarifying that adoption of U.G.C. Package without any modification in para 5 of letter dated 02.04.1993 means only with regard to U.G.C. pay scale, career progression and recruitment qualifications as mention in that letter and not to other terms of U.G.C. Package including the age of superannuation.

Therefore, even if we concede that the letter dated 02.04.1993 is treated as executive directions or executive instructions, there are subsequent executive instructions clearly pointing out that the letter dated 02.04.1993 does not pertain to the question of age of superannuation. Those letters clearly mention that the age of retirement even for N.D.A. Teachers is 58 years like other Government servants. As already stated, an executive instruction can be replaced or modified by another executive instruction. Therefore, even if we apply the letter dated 02.04.1993 in favour of the applicants, the instructions contained in that letter are subsequently clarified by subsequent executive instructions stating that it will not apply to the age of superannuation and that the age of superannuation remains like any other Central Government servant. Therefore, in our view, the Division Bench in Dr. I.C. Sharma's case has taken a correct view.

7. The Learned Counsel for the applicants is placing reliance on the judgement of the Division Bench of this Tribunal in K.D. Dhavse's case (O.A. No. 182/97). Nodoubt, the Division Bench in that case has taken the view that the teachers in N.D.A. should also superannuate at the age of 60 years. However, a perusal of the judgement shows that the Division Bench was very much influenced by the observations of the High Court in the case of Association of Maharashtra Education Service Class-II Officers and others V/s. State of Maharashtra and others, 1990 Mah. LJ. 161. In our view, the decision of the Bombay High Court has no

application to the facts of the present case. The question before the High Court was whether Government can make a distinction between Government teachers and Non-Government teachers regarding age of superannuation. The High Court went into the question in detail and observed that such a distinction is hit by Articles 14 and 16 of the Constitution of India and hence not sustainable in law. The whole reasoning of the High Court was purely based on this point, namely - whether there can be distinction between two sets of teachers. In our view, this decision has no application to the point under consideration before us.

We repeatedly asked the Learned Counsel for the applicant whether there is any such discrimination done by the Government of India in the age of superannuation between one set of teachers and another set of teachers or one set of employees and another set of employees. Mr. S. P. Saxena, the Learned Counsel for the applicant, fairly submitted that there is no such case of discrimination alleged by the applicants in these cases. If there is no allegation of discrimination, then the decision of the Bombay High Court in the said case has no bearing on the point under consideration. Therefore, in our view, the Division Bench in Dhavse's case wrongly placed reliance on the judgement of the Bombay High Court and then reached the conclusion that applicants are entitled to continue in service till they attain sixty years. Therefore, in our view, the judgement of the Division Bench in Dhavse's case is not correctly decided and hence it is hereby over-ruled.

8. In view of the above discussion, our view is that the circular dated 02.04.1993 is only executive instructions or executive directions and it cannot by itself amend F.R. 56 (a) which provides the age of superannuation of Central Government Servant as 58 years. Even granting for a moment that executive instruction has changed the age of superannuation from fifty-eight to sixty years, the subsequent executive instructions referred to earlier clearly say that the age of retirement for Central Government servants including M.D.A. teachers is only fifty-eight years. Further, we have pointed out that presidential approval is taken as mentioned in the letter dated 02.04.1993 only for revision of pay scales and not regarding other terms of U.G.C. Package. As far as other terms of U.G.C. Package are concerned, the letter dated 02.04.1993 is only in the form of executive instructions and nothing more. Even if that executive instructions confers some right regarding age of retirement, the said right has been taken away by the subsequent executive instructions.

It is not and cannot be disputed that the Government has the prerogative to fix the age of retirement and to alter the same or modify the same as and when it deems fit. Therefore, even if one executive instruction has raised the age of retirement from fifty-eight to sixty years, it can always be taken away by another executive instruction stating that the age of retirement is only fifty-eight years.

Hence, taking any view of the matter, we cannot accept the applicants' case that age of retirement for N.D.A. teachers should be sixty years. The N.D.A. teachers are Government servants and are covered by F.R. 56(a) which clearly provides the age of retirement as fifty-eight years when these applications are filed.

The only prayer in the O.A. is that the applicants should continue in service till they attain sixty years. But in the view we have taken, the applicants cannot continue beyond ~~fifty-eight~~ years. Since there is no other prayer in the O.A., there is no necessity to remand to the matter to the Division Bench and therefore, we are disposing of all the application by this order itself.

9. In the result, it is ordered as follows :

- i) All the O.As. are hereby dismissed in view of the finding that even N.D.A. teachers are liable to retire at the age of fifty-eight years as provided in F.R. 56 (a).
- ii) The interim orders granted in O.A. Nos. 451/97 and 627/97 are hereby vacated.
- iii) In the circumstances of the case, there will be no order as to costs.

(B.N. BAHADUR)
MEMBER (A)

(R.G. VAIDYANATHA)
VICE-CHAIRMAN

(K. M. AGARWAL)
CHAIRMAN.