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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.756 of 1999

DATE OF JUDGMENT: *6th* APRIL, 2000

BETWEEN:

Dr.C.SUBBA RAO

.. APPLICANT

AND

1. Union of India rep. by the
Secretary,
Ministry of Human Resources,
New Delhi 110 001,

2. Indian Council of Agricultural Research
rep. by its Director General,
New Delhi 110 001,

3. The Project Director,
Directorate of Rice Research (ICAR),
Hyderabad 500 030.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.C.SURYANARAYANA

COUNSEL FOR THE RESPONDENTS: Mr.V.VINOD KUMAR, Adl.CGSC
Mr. N. L. Durga Rao

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

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JUDGEMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Mr.C.Suryanarayana, learned counsel for the applicant and Mr.N.R.Devaraj, learned standing counsel for the Indian Council of Agricultural Research.

2. The applicant in this OA was recruited as a Statistical Assistant in the Central Rice Research Institute, Cuttack which is an Institute under ~~xxxxxxxx~~ Indian Council for Agricultural Research. He was selected and appointed as Grade.II Officer (Scientist S-2) in the year 1972 and in the year 1975 he was inducted as a Grade-I Scientist (S-1). The applicant filed OA 137/98 for removing the discrimination against him by ante-dating his promotion with effect from 1.7.76 as in the case of the other Scientists one of whom he alleges to have been given undue favour.

3. The Ministry of Human Resource & Development has issued Notification No.F.1-22/97-UI, dated 27.7.98 (Annexure A-1 at page 6 to the OA) in regard to revision of pay scales of Teachers in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of the Fifth Central Pay Commission. In that letter, the age of superannuation of University and College Teachers would be 62 years and thereafter no extension in service should be given. The above is incorporated in Sub para (vi) of Para-I of the said letter. That letter was also copied to the Secretary, Indian Concil of Agricultural Research, Krishi Bhavan, New Delhi. Following that letter of the Government of India, the University Grants Commission, New Delhi issued the notification bearing NO.F.3-1/94(PS), dated 24.12.98

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(Annexure A-2 at page 9 to the OA) regarding service conditions of Professors and other teaching staff of the Educational Institutions. In para 1, sub para (vi) of the letter at page 21 to the OA, the age of superannuation has been indicated as 62 years for the college teachers and other teaching staff. In Annexure A-3 at page 39 to the OA, the applicant has quoted the reasons for increasing the age to 62 years for superannuation of UGC teachers. That reason given by him is reproduced below:-

"The Committee has noted that retirement age for Central Government employees has been raised to 60 years while those of UGC teachers to 62. The average life expectancy in India has increased. In scientific research the maturity and experience are two important attributes for policy and research planning and their execution. The retirement age in International Research Organisations is already 65 years. In judicial services where maturity and experience is equally important, the age of retirement is also 65 years. The Committee, therefore, recommends that:

The age of retirement for ICAR and SAU scientists/teachers be increased from present 60 years to 62 years."

4. The ICAR has also issued Memo No.1(15)/98-Per.IV, dated 27.2.99 (Annexure A-4 at page 40 to the OA)

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indicating the revision of pay scales of Scientists of ICAR following the revision of pay scales of Central Government employees on the recommendations of the 5th Central Pay Commission. The applicant submits that the pay scales given in that letter correspond to the pay scales given to the teaching staff of the Universities and they are in consonance with the notification of the University Grants Commission.

5. The main contention of the applicant is that when the Ministry of Human Resource and Development by its OM dated 27.7.98 has indicated the age of superannuation to the teachers in Universities and colleges which letter has also been copied to the Secretary, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi and those instructions of 27.7.98 have been followed by the University Grants Commission, there is no reason to deny the age of superannuation to the applicant herein as he is governed by the letter of the Ministry of Human Resources and Development dated 27.7.98. The applicant had retired at the age of 60 years, even though he has to be retired at the age of 62, submits the learned counsel for the applicant.

6. As the pay scale of the Scientists of Indian Council of Agricultural Research had been revised with the concurrence of the Ministry of Finance and/approval of the competent authority on the basis of the recommendations of the 5th Central Pay Commission for the Central Government employees, there is no reason for the Council in not increasing the age of superannuation also and there is no

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need for the Council to place it before the Cabinet as the Indian Council of Agricultural Research is empowered to increase the age of superannuation to 62 years in view of the letter dated 27.7.98.

7. The applicant was asked by the letter F.No.5-34/Admn/98-99/247 dated 17.2.99 (Annexure A-5 at Page 45 to the OA) for filling up the pension proforma in triplicate so as to reach the Administrative Officer on or before 10.3.99 for onward transmission to the Finance and Accounts Officer, CRIDA, Hyderabad, for payment of the final settlement dues. The applicant submits that the above letter is violative of the recommendations of the University Grants Commission accepted by the Government and that he should have been retired only at the age of 62 years but not at the age of 60 years.

8. This OA is filed for setting aside the impugned notice NO.5-34/Admn/98-99/247 dated 17.2.99 and for consequential direction to the respondents to continue him in service till he attains the age of 62 years.

9. An interim order was passed in this OA on 19.5.99 for expediting disposal of this OA.

10. In the reply, the respondents rely on the judgement of the Ernakulam Bench of this Tribunal in OA No. 99/99 disposed of on 11.3.99 wherein the same question came up for consideration. The learned Members of that Bench dismissed that OA. Hence as this OA is also for the same relief, this OA also is liable to be dismissed, submits the

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respondents. The respondents further submit that the Indian Council of Agricultural Research had already taken necessary action to submit the proposal for enhancement of the age of retirement of Scientists from 60 to 62 years for consideration of the Cabinet. Based on the decision of the Cabinet, separate orders in this regard will be issued by the Indian Council of Agricultural Research and until such time, the age of superannuation of Scientists will continue to be 60 years. They also deny the submission of the applicant that the Cabinet should deemed to have been accepted the 2nd respondent's recommendations in this regard inasmuch as 5th Central Pay Commission recommendations as well as those of the UGC package have already been accepted by the 1st Respondent i.e., Central Government. They also submit that the applicant cannot state that no ^approval of Cabinet is necessary in this regard nor can the matter be reopened in the name of ICAR's proposal. They also deny any malafides attributed by the applicant in view of the fact that he had filed earlier OA 137/98 read with OA 751/98. They further add that no notification of the Central Government is automatically applicable to the employees of the ICAR till the same is approved by the Governing Body of the ICAR.

11. The applicant was asked by the impugned letter dated 17.2.99 requesting him to submit his pension papers in accordance with the rules and hence there is no reason to allow this OA.

12. The applicant has also filed a written statement as to why the judgement of the Ernakulam Bench of this

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Tribunal in OA 99/99 is to be considered as erroneous. That written submission is also examined and the issue in this OA is discussed as follows.

13. The relevant portion of the judgement of Ernakulam Bench of this Tribunal is necessary to be extracted. It is as follows:-

"They (the respondents) submit that the retirement age for the Scientists in Indian Council of Agricultural Research is 60 years. Indian Council of Agricultural Research is a Society registered under the Registration of Societies Act as an autonomous body and no notification of the Central Government is automatically applicable to the employees of the Indian Council of Agricultural Research till the same is approved by the Governing Body of the Society. They state that the matter was taken up with the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training), North Block, New Delhi who had advised that the proposal to increase the age of retirement of the Scientists in Indian Council of Agricultural Research may be dropped. Even after this advice, the Indian Council of Agricultural Research had

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reconsidered and submitted to the Cabinet this question and only after the Cabinet approves the proposal then the matter can be placed before the Governing Body of the Indian Council of Agricultural Research for amendment of the "Rules."

14. The question of fixation of pay scale of ICAR vis-a-vis University teachers came up for consideration before the Apex Court in the case of "Dr. S.M. Ilyas and Ors. Vs. Indian Council of Agricultural Research and others; (1993) 1 SCC 182". The Apex Court had held that the pay scale should be the same both for University Teachers and Indian Council of Agricultural Research. That decision of the Apex Court was considered by the Ernakulam Bench of this Tribunal and held that the decision will not be applicable in the case of the age of superannuation. The relevant portion of the observations made by the Ernakulam Bench in this connection is reproduced below:-

"We are unable to discern in this direction any declaration that all the service conditions of University teachers including those working in Central Agricultural Universities would apply Mutatis Mutandis to those working with the Indian Council of Agricultural Research. The issue in Dr. S.M. Ilyas and Others (Supra) was in any case of pay-scale and not of the age of

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superannuation."

On that basis, the Ernakulam Bench of this Tribunal held that the age of superannuation cannot be increased to 62 years unless approval of the Government is implicitly conveyed to the ICAR.

15. Further, analysing the question of increasing the age of superannuation to 62 years, the learned Members of the Ernakulam Bench had further observed as follows:-

"The learned counsel for the applicant tried to persuade us to his proposition by pointing out that the present set of pay scale as well as age of retirement are the same as applicable to the University teachers prior to issue of the letters of the Government of India enhancing the pay as well as the age of retirement of such University teachers. The argument is that if one part viz. the pay-scales have been raised on the same condition the age of retirement should also be raised. Secondly, he submits that as pointed out by the Supreme Court, the I.C.A.R. is nothing but a wholly government funded institution, historically an instrument for financing Agricultural projects and hence is an instrumentality of the State. To be an instrumentality of

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State does not mean that it is a government department and its employees are government servants governed by the Statutory Rules framed under Art. 309 of the Constitution. The Indian Council of Agricultural Research is admittedly a registered society under the Societies Registration Act with its own rules as well as Bye-laws which determine the service conditions of the employees. There is no provision in the Rules brought to our notice that pay and allowances as well as the age of superannuation and other service conditions of Central Government or any category of the University teachers will automatically apply to the employees of the Indian Council of Agricultural Research. We, therefore, find that unless a decision is taken to amend the Rules by the competent authority i.e, the Governing Body of the I.C.A.R., the age of superannuation cannot be enhanced merely on the strength of Ministry of Human Resource Development letters dated 27.7.1998 and 6.11.1998."

It was concluded by the Ernakulam Bench that the applicant therein has no vested right to the enhanced age of retirement as he is governed by the existing rules of

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retirement at the age of 60 years. If this rule undergoes a change, it will apply equally to all. That observation is very relevant for noting in this OA also.

16. The applicant in his written statement tries to persuade us to come to a conclusion that the view taken by the Ernakulam Bench of this Tribunal is erroneous. Further, he submits that in view of the power vested in Bye-law 30 (b) of ICAR's Bye-Laws, the age of superannuation retirement prescribed as 60 years in the Bye-law 33(a) should be deemed to have been relaxed unconditionally in view of the Cabinet's decision conveyed by the Ministry of Human Resource and Development by the order dated 27.7.98. We do not agree with this view. For the reasons given that there is no rule available now to increase the age of superannuation, as observed by the Ernakulam Bench of this Tribunal, without any rule having been framed and accepted by the competent authority, the present age of superannuation viz, 60 years should continue. The same view is further explained by the applicant in para 7 of the written statement. He further alleges that to get rid of some of the Scientists, ICAR is refusing to increase the age of superannuation from 60 to 62 years. The above submission, in our opinion, is uncalled for and cannot be accepted. The respondents have already stated that the proposal is pending with the Government and the Scientists of ICAR have to wait till a final decision of the Government is taken for increasing the age of superannuation from 60 to 62 years. It is stated that the applicant has already attained the age of 60 years and that ~~therefore~~ he should necessarily be

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retired in view of the present rule of the retirement of age on superannuation as given in the service conditions in Bye-law 30(b) enclosed as Annexure R-3 to the reply.

17. In view of what is stated above, we find no merit in this OA. Hence, the OA is dismissed. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

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DATED: 6 APRIL, 2000


(R.RANGARAJAN)
MEMBER (ADMN.)

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