

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO.466/2011

Order reserved on : 7.5.2015

Date of Order: 30-06-2015

CORAM

**Hon'ble Mr. Justice Harun-Ul-Rashid, Judicial Member
Hon'ble Mr. R.Ramanujam, Administrative Member**

Krishna Charan Sharma S/o Shri Bhuvaneshwar Lal Sharma, aged 62 years, resident of 423, Haribhau Upadhyay Extension, Ajmer-305004. Office Address: Associate Professor of Physics, Regional Institute of Education, Pushkar Road, Ajmer-305004 (Rajasthan).

.....Applicant

(By Advocate :Mr. Ashwini Jaiman)

VERSUS

1. The Union of India, through its Secretary, Ministry of Humane Resources Development, New Delhi-110016.
2. Secretary, National Counsel of Education Research and Training, Sri Aurobindo Marg, New Delhi-110016.
3. Principal Regional Institute of Education, Pushkar Road, Ajmer-305004.

.....Respondents

(By Advocate :Mr. Amit Mathur, Proxy Counsel for
Mr. K.P.Mathur)

ORDER

(Per Mr. R.Ramanujam, Administrative Member)

The applicant's case is that he was an Associate Professor in the Regional Institute of Education, Ajmer in the office of National Counsel of Education Research and Training (NCERT). He was retired by the impugned order Annexure-A/1 of the respondent No.2 dated 15/21.9.2011 on attaining the age of superannuation w.e.f. 31.10.2011. The applicant alleges that in

terms of the UGC guidelines and various other relevant rules/orders of the respondents he was entitled to serve till he attained the enhanced retirement age of 65 years. He has been denied this right despite his timely representations to the respondents.

2. The applicant submits that NCERT has been consistently following the UGC norms in respect of various service conditions such as salary, grade, discipline, age of superannuation etc. at par with the academic staff of Central Universities. The Central Government, Ministry of Human Resource Development(MHRD), by Ann.A/8 letter, had decided that the age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.3.2007 in any of the centrally funded higher and technical educations shall be increased from 62 to 65 years. The Central Government issued the relevant notification to this effect in the light of existing shortage in teaching positions in the centrally funded institutions so as to expand the capacity of such institutions for increasing access to higher education etc. This was followed up by the UGC by way of issuing instructions to the Registrars of all Central/deemed universities through a letter dated 30.3.2007(Ann.A/9). The Govt. of India by MHRD letter dated 31.12.2008(Ann.A/10) further confirmed that the age of superannuation for teachers in central educational institutions had already been enhanced to 65 years and directed the revision of pay of teachers in equivalent cadres of universities accordingly. It was stated that the enhancement of age of superannuation for teachers engaged in class room teaching was intended to attract eligible persons to a career in teaching and to

meet the shortage of teachers by retaining the teachers in service for a longer period. The UGC issued instructions to all universities and colleges coming its jurisdiction as also other universities and institutions funded by the UGC to adopt the UGC guidelines as a composite scheme without any modification. Payment of Central Assistance for implementing the new scheme was subject to the condition that entire scheme of revision of pay scales together with all conditions to be laid down by the UGC by way of regulations and other guidelines shall be implemented by the State Government and the universities and colleges coming under their jurisdiction as a composite scheme without any modification. It was made mandatory for universities and management of colleges to make appropriate changes in their statutes, ordinances, rules and regulations etc. to incorporate the provisions of UGC scheme.

3. The applicant states that the NCERT is an entirely central funded organisation under MHRD. Majority of NCERT's academic faculty is in the Regional Institutes of Education(RIEs) doing regular classroom teaching like B.Sc.,B.Ed., B.A., B.Ed., M.Sc. Ed. , M.Ed., M.Phil. and Ph.D. NCERT followed the terms and conditions of MHRD letter dated 31.12.2008 (Ann. A/10) and UGC scheme Regulations-2010 and allowed similar salary and designations to its academic faculty in NCERT and the RIEs by their dated 21.7.2010 (Ann.A/13). However, in spite of the fact that NCERT adopted all other terms and conditions of UGC scheme, they did not enhance the age of superannuation from 62 to 65 years.

4. The applicant alleges that the scheme of revision of pay has to be adopted in a composite manner and could not be

selectively applied differently in the case of NCERT alone. The applicant also referred to some of the judgments of this Tribunal and Hon'ble High Courts of Jharkhand, Karnataka etc. to insist that the scheme of UGC has to be adopted as a whole and there was no scope for excluding the matter regarding enhancing of retirement age from the scheme.

5. The respondents submit that the NCERT is a society registered under the Societies Registration Act with the objective to assist and advise to MHRD in implementing its policies and major programmes in the field of education, and more particularly the school education. It runs five regional institutes but only four of them are running teaching programmes. None of the institutes is affiliated to any of the Central Universities. NCERT depends upon the MHRD for funds to run the Council, five regional institute and vocational educational institutes. The salary and pay scale of every employee in the NCERT and its constituent units are determined after the same is proposed by the Finance Committee and finally approved by the MHRD. The Council cannot increase the salary and pay of its employees without the concurrence of the Government of India. All the expenditure incurred by Council have to be proposed for approval to the MHRD and are subject to audit by CAG. The NCERT being only a society registered under the Societies Registration Act, it is neither a University nor one that enjoys the status of a university. The NCERT is bound by the decision of MHRD regarding the terms and conditions of employment for its employees including the age of superannuation. The decision of MHRD and the UGC to offer a composite scheme for revision of pay scales for the teaching staff of universities and colleges

affiliated to various universities and funded by the UGC including the age of superannuation is not applicable to NCERT.

6. We have heard the learned counsels for the applicant as well as respondents at length. The Ld. Counsel for the applicant insisted that NCERT being a centrally funded institution coming under the MHRD could not be differentiated from the universities and colleges funded by the UGC including those established under the statute of the various States. The Ld. Counsel for the applicant took us through the various orders issued by the MHRD and the follow up scheme announced by the UGC which are applicable to all universities and colleges funded by the UGC. He contended that it has been stated in no uncertain terms that the scheme had to be adopted as a composite whole and there was no provision for adoption of only the pay scales to derive the benefit of funding by UGC while having different terms and conditions regarding superannuation etc. The Ld. Counsel also placed reliance on the judgment pronounced by the Hon'ble Supreme Court in the case of Jagdish Prasad Sharma and others Vs. State of Bihar and others in Civil Appeals No.5527-43 of 2013 with Nos. 5544-67 and batch cases decided on 17.7.2013 under which it has been held that while the State Government was free to have its own law pertaining to service conditions of teachers of state of universities. However, where the State decides to adopt the regulations framed by UGC, it is bound to abide by the stipulated conditions contained therein. Where the state government takes a positive decision to adopt a UGC Scheme/Regulations, consequences envisaged in the regulations/scheme automatically follow. The Supreme Court in this case held that there was no compulsion to accept and/or

adopt the UGC scheme and States were free to decide as to whether the scheme was to be adopted by them or not. The Ld. Counsel for the applicant contended that the implication of such judgment of the Supreme Court is that since the Commission agreed to bear 80% of the expenses incurred by the State if such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1.4.2010, the State Govt. would take over the entire burden thereafter and also enhance the age of superannuation of teachers and other staff from 62 to 65 years. NCERT also, being a funded institution shall be bound by the same discipline.

7. The Ld. Counsel for the respondents, on the other hand, argued that the respondent institution is not a university or a college affiliated to a university coming under the jurisdiction of UGC. Therefore, the UGC scheme of funding the revision of pay scales subject, *inter alia*, to the acceptance the whole scheme including enhancement of retirement age etc. would not be applicable at all to the respondent institution which is only a society registered under the Societies Registration Act. The NCERT is a society coming directly under the purview of the MHRD and the MHRD was not bound for any composite scheme which it may have prescribed for the purpose of funding of universities and colleges through UGC. The terms and conditions of the employees of NCERT would necessarily be determined by the Central Government in the context of the role envisaged for the said institution. After a careful analysis of requirement of NCERT, MHRD through their order dated 28.7.2009 have conveyed no objection to the adoption of revised pay scale in the

NCERT subject to various conditions contained therein. This letter as referred to in the NCERT order dated 21.7.2010 (Ann.A/13) clearly states that the age of superannuation of academic staff would remain 62 years. The reliance placed by the Ld. Counsel for applicant on the implication of Hon'ble Supreme Court decision cited above is not applicable to the NCERT as the said condition regarding non-enhancement of retirement age has been imposed by MHRD itself and not by NCERT independently. The Ld. Counsel for the respondents also referred in this regard to the decisions by other benches of this Tribunal in various OAs including an order dated 20.1.2009 in a similar case.

8. The following issues arise for determination in this case:-

I. Whether the NCERT is a university established or incorporated by or under the Central Act, Provincial Act or a State Act, or an institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under clause (f) of Section 2 of the University Grants Commission Act, 1956 or an institution deemed to be a university under Section 3 of the said Act.

II. Whether the nature of duties performed by the academic staff of NCERT is identical/similar to those of the teaching staff of the universities/colleges/institutions covered under clause 1.2 of the UGC Regulations, 2010.

III. Is the Central Government in MHRD justified in prescribing for NCERT terms and conditions different from those offered under the composite scheme of pay revision to the staff of the institutions covered by the UGC scheme.

9. Regarding issue No.I, clause 1.2 of the UGC Regulations, 2010 as reproduced in the application reads as follows:

"They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under clause (f) of section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a university under Section 3 of the said Act.

Clause 2.1.0 of these regulations reads:

"The revised scales of pay and other service conditions including age of superannuation in central universities and other institutions maintained and/or funded by the University Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in Appendix-I (i.e. MHRD letter dated 31.12.2008)".

Clause 2.3.1 of these regulations 2010 reads:

"The revised scales of pay and age of superannuation as provided in clause 2.1.0 above, may also be extended to universities colleges and other higher educational institutions coming under the purview of the State Legislature and maintained by the State Govenments, subject to the implementation of the scheme as a composite one in adherence of the terms and conditions laid down in the MHRD notifications provided as Appendix I and in the MHRD letter No.F.1-7/2010-U II dated 11th May, 2010 with all conditions specified by the UGC in these Regulations and other guidelines."

It has been pointed out by the respondents that the NCERT is not covered by the definition of university/college or other higher educational institutions coming under the purview of the State Legislature or deemed university as recognized by the UGC. The NCERT is a completely ~~is~~ different entity directly under the MHRD and ~~the~~ ^{is a} society registered under the Societies Registration Act. The applicant has been unable to establish the contrary so as to bring it under the purview of the University Grants Commission thereby making the UGC scheme applicable to the NCERT. We are satisfied that NCERT is not a university established or incorporated under the Central Act, a Provincial Act or State Act or an institution including constituent or an affiliated college recognized by the Commission. It is therefore, not possible to automatically extend of the provisions of the composite scheme of pay revision to the NCERT.

10. Regarding whether the nature of duties performed by the academic staff of NCERT is identical or similar to those performed by the teaching staff of universities etc. calling for similar treatment in terms and conditions of service, the Ld.

Counsel for the ~~applicant~~^{Respondent} drew our attention to order dated 20.1.2009 of CAT Principal Bench in OA No.1952/2008 Dr. Mohd. Akhtar Hussain and batch cases Vs. Union of India and others. The Principal Bench in this case has made the following observations in Para 22 thereof which clinches the issue as follows:

22. "It is indeed a vexed issue to decide whether the academic staff of the NCERT is a full time teaching staff or not. This Tribunal is not equipped to decide this issue and it should best be left to an expert body to decide. The expert body in this case is clearly the Executive Committee of the NCERT. The Executive Committee has not approved the proposal for enhancing the age of superannuation from 62 to 65 years."

".....In so far as the benefit of grant of age to various other institutions is concerned, we cannot go into this matter because each case has to be decided on its merit. We do not have sufficient material on record to show that the decision by the other institutions was taken wrongly and we are not competent to do so also."

".....In the case of NCERT, its Executive Committee has declined to give this approval. Following the judgment of the Honourable Supreme Court in B. Bharat Kumar (supra), we feel that it is not for the Tribunal to interfere in this matter."

On a careful examination of the matter, we are inclined to agree that the ratio of the aforesaid CAT Principal Bench order dated 20.1.2009 is fully applicable in this case. It is not for the Tribunal to compare the nature of duties performed by the staff of different institutions that come under the MHRD either directly or through the UGC and arrive at an independent conclusion regarding whether they are similar or identical calling for identical terms and conditions. Clearly it is for the experts in the field to do this and we believe such expertise as it could avail of was available to MHRD when it decided to impose a different condition regarding the age of superannuation for NCERT.

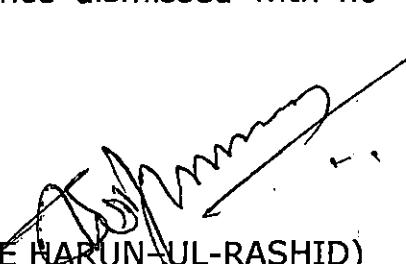
11. On the third issue, we observe that MHRD while conveying its approval for adoption of new pay scales in the NCERT has clearly prescribed a condition regarding age of superannuation in NCERT which is different from that prescribed for universities etc. MHRD's no objection inter alia clearly, specifically and categorically states that the age of superannuation of academic staff in NCERT will remain 62 years. It is with the funds provided by the MHRD that by the NCERT academic and various activities are carried out. MHRD is the nodal Ministry in the Central Government competent to decide the modalities and process required for achieving the goals and objectives of the Ministry through the institutions coming under its purview. We are not inclined to agree that the terms and conditions prescribed as part of a composite scheme for one set up institution should necessarily be adopted 100 per cent for funding other institutions coming under the Ministry. There is no evidence to infer that the direction to retain the age of superannuation in NCERT as 62 is arbitrary.

12. In the light of the aforesaid findings, we are unable to see how the judgment of Hon'ble Supreme Court referred to above by the Ld. Counsel for the applicant could be of any applicability in the instant case. The Supreme Court in that case had implied that a State Government or a state university or other such institutions governed by an independent statute were entitled to frame their own rules and regulations. However, if they decided to adopt the UGC scheme, the same would have adopted in full. The case of the applicant can however, be clearly distinguished in as much as the NCERT is not a University or college governed by

the UGC at all. It is funded by the MHRD for carrying out activities which are not necessarily identical to those undertaken by universities and colleges. The applicant has failed to establish the direct legal applicability of the UGC regulations on the NCERT. Further, NCERT being an institution funded by the MHRD is bound by the conditions of approval granted by the Ministry while consenting to revised pay scales for its employees. It was under the directions of the Central Government that the age of superannuation has been retained at 62 in the NCERT. Accordingly, we have no hesitation in holding that there is no illegality involved in NCERT adopting a scheme of revision of pay scales approved by the MHRD which is slightly different and independent of the scheme formulated and approved by the UGC. The applicant, therefore, is not entitled to any relief in the matter. The OA is misconceived and hence dismissed with no order, however, as to costs.



(R.RAMANUJAM)
MEMBER (A)



(JUSTICE HARUN-UL-RASHID)
MEMBER(J)

Adm/