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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00883/2014 &
M.A.No.060/00589, 00688/2015

Date of Decision : 18.8.2015
Reserved on : 14.08.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER
HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER**

Dr. S P S Bhatia, s/o Sardar Gurbax Singh, aged 62 years presently working as Lecturer, Department of Biostatistics, PGIMER, Sector 12, Chandigarh.

Applicant

Versus

1. Union of India through Secretary, Ministry of Health and Family Welfare, Department of Health and Family Welfare, New Delhi.
2. Post Graduate Institute of Medical Education & Research, through its Governing Body, Sector 12, Chandigarh.
3. The Director, Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh.

Respondents

Present: Mr. Jagdeep Jaswal, counsel for the applicant in OA & MA
Mr. D.R. Sharma, counsel for respondents

O R D E R
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8 (i) The impugned order dated 14.08.2014 (Annexure A-1) and decision dated 28.04.2012 (Annexure A-2) be quashed and set aside.

(ii) The applicant being belonging to teaching faculty be held entitled to benefit of enhanced age of superannuation upto 65 years which already stand incorporated in the PGI Act, 1967 w.e.f. 22.07.2008 vide notification dated 23.12.2009 and the respondents be directed to

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allow the applicant continue in service upto attaining the age of superannuation of 65 years and not to retire him at the age of 62 years i.e. 31.10.2014.

(iii) The decision dated 28.04.2012 (Annexure A-2) of the respondents in restricting the benefit of age of superannuation from 62 to 65 years to Medical Teaching Faculty be declared illegal, unsustainable and accordingly quashed and set aside because the enhancement of age of superannuation from 62 to 65 years has been made in respect of members of Teaching Faculty as a whole and no distinction exist / existed between Medical, Non-Medical, Nursing and Paramedical Faculty Members and the Regulations 37A(2) of the PGI Regulations, 1967 have also been amended w.e.f. 22.07.2008 vide Notification dated 23.12.2009. Further, the Cabinet had approved the enhancement of superannuation age in respect of teaching specialists of Central Health Service (CHS) officers who are engaged only in teaching activities and not occupying administrative positions, and, in respect of Medical Teaching Faculty in Medical Institutions including PGIMER, Chandigarh."

2. It has been stated in the OA that the applicant was appointed as Lecturer (Biostatistics) in Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) vide order dated 31.07.2001 (Annexure A-3) and he joined his duties w.e.f. 13.02.2002. The applicant seeks to substantiate his claim that the post of Lecturer belongs to Teaching Faculty as under:-

- "i) The petitioner was appointed as a Lecturer in PGI, his designation itself shows that he belongs to teaching faculty.
- ii) Applicant's duties as Lecturer (Biostatistics) inter-alia include teaching, research methodology and Biostatistics, to the MD / MS residents, Ph.D. Scholars, M.Sc. (Nursing), M.Sc. (Speech Therapy), B.Sc. (Speech Therapy and Physio Therapy).
- iii) Regulation 35 of the PGI Act also is clear that the Lecturers (including Senior Lecturers) have been treated as Teaching Staff of the Institute.

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- iv) The yearly benefits like summer and winter vacations Academic Allowance have been extended to teaching faculty which include lecturers like the applicant.
 - v) Lecturers being classified Teaching Faculty have been granted enhanced Learning Resource Allowance (LRA) of Rs.60,000 at par with other Teaching Faculty of the Institute. Copy of the order dated 14.02.2012 is annexed as Annexure A-4.
 - vi) Appointing Authority of the Lecturer is the Governing Body of Institute. Under the PGIMER the appointing authority of all Group 'A' faculty position except Director is 'Governing Body' and for all Group 'A' post except Faculty is the President. Copy of appointment order of Subhash Chand Bansal to this effect is annexed as Annexure A-5.
 - vii) Members of the faculty including Lecturers have been deputed for attending National and International Conferences."
3. It is further stated that initially Regulation 37A of PGIMER, Chandigarh Regulations, 1967 provided for age of superannuation of employees other than teaching faculty as 60 years and for medical scientific specialists the extension in service was permissible up to 62 years (Annexure A-6). Respondent no.1 vide office memorandum dated 22.07.2008 (Annexure A-9) conveyed to all Medical Institutions including the PGIMER, Chandigarh, that the Cabinet has approved Ministry's proposal to enhance the retirement age from 62 to 65 years as per its proposal i.e. in respect of teaching specialists of Central Health Service (CHS) Officers who are engaged only in teaching activities and not occupying administrative positions, and, in respect of Medical Teaching Faculty and asked the institutions to implement the same. The Governing Body of the PGIMER in its meeting held on 03.12.2008 considered the Agenda Item No.C-2 for enhancing the retirement age of faculty members from 62 to 65 years at PGIMER.

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Chandigarh and amendment of Regulation (Annexure A-10). Ultimately, the Governing Body approved the enhancement of retirement age of the Teaching Faculty from 62 years to 65 years and further approved the amendment in the Regulation 37A(2). The Gazette Notification, which is statutory in character, to this effect was held notified on 23.12.2009 (Annexure A-11), and the notification has been incorporated in Regulations 37A (2) of the PGI Regulations, 1967 w.e.f. 22.07.2008 vide notification dated 23.12.2009 as follows.

“The age of superannuation of the members of the teaching faculty of the Institute shall be 65 years.

Provided that this provision shall not apply in the case of a person who is on extension in service.”

Despite the fact that the PGIMER, Chandigarh Act, 1966 already stands amended w.e.f. 23.12.2009, providing for age of superannuation of the members of the teaching faculty as 65 years, but the matter was placed before the President of the Institute vide U.O. Note dated 24.09.2011, who accorded approval on 05.10.2011 and orders to this effect were issued on 10.10.2011 / 14-20.10.2011 (Annexure A-12), subject to ratification by the Governing Body / Institute Body. In the meeting dated 28.04.2012 (Annexure A-2) the Institute Body did not agree to the proposal on the pretext that the enhancement is for the medical teaching faculty only, whereas in the statutory notification dated 23.12.2009, or non-medical faculty and the word used is teaching faculty. The applicant represented on 25.06.2014 (Annexure A-13) and on 11.09.2014 (Annexure A-14) to allow him to continue in service upto the age of 65 years and not retire him on 30.09.2014 at the



age of 62 years, but no response has been received from the side of Institute. Without considering the representation, respondent no.2 has passed the impugned order dated 14.08.2014 (Annexure A-1) and ordered the retirement of the applicant from the service of the Institute w.e.f. 31.10.2014 instead of 31.10.2017.

4. In the written statement filed on behalf of the respondents, it has been stated that Governing Body rejected the proposal for enhancement of age from 62 to 65 years and in pursuance of the decision of the Governing Body, the necessary orders of superannuation of the applicant w.e.f. 31.10.2014 were issued. As per PGIMER Act, Rules and Regulations, the Institute being an Autonomous Body, the Governing Body / Institute Body are competent authorities to implement the instructions / orders / guidelines of the Govt. of India issued from time to time. Had the applicant been holding Group 'A' faculty post, he would have been eligible to be promoted as Professor by now under the Faculty Assessment Promotion Scheme which is a time scale scheme. Since the applicant was holding only a Group 'A' post of Lecturer, he was granted in situ promotion as per rules of his post. The order dated 14.08.2014 passed by the respondents is as per rules and there is no infirmity in it. Therefore, the applicant is not entitled to any relief. The similar claims of Dr. H.S. Bhatti & Sh. S.K. Sharma, Lecturer (Medical Technology) filed in OA No.640/CH/2012 and 1239/CH/2012 respectively had also been dismissed by the C.A.T. vide order

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dated 13.08.2013 (Annexure R-2/1). Thus, the present OA is also liable to be dismissed.

5. It is further stated that the employees of the PGIMER had been covered under separate promotion schemes such as Assessment Promotion Scheme for Medical Faculty, Modified Assured Career Promotion Scheme for other Group A, B, C & D categories of employees. With the grant of benefit of in-situ promotions after every five years of service, the applicant has been drawing the salary in the Pay Band-4 of Rs.37400-67000 with Grade Pay of Rs.8700. Though the applicant was appointed as Lecturer, yet his post was a teaching post and not Teaching Faculty.

6. Rejoinder has been filed reiterating the content of the OA.

7. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant reiterated the content of the OA and rejoinder. Learned counsel asserted that the post of the applicant had to be treated as a Teaching post and hence he was entitled to superannuate at the age of 65 years. Moreover, while the medical faculty were being retired at the age of 65 years other staff of the Institute were being retired at the age of 60 years, no person was therefore left to be retired at the age of 62 years and the respondents have wrongly retired the applicant at the age of 62 years when he should have been allowed to continue in service till the age of 65 years. Learned counsel cited

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"Harwinder Kumar Vs. Chief Engineer, Karmik & Ors." in Civil Appeal No.7840 of 2002, decided on 18.11.2005, wherein it had been held as follows:-

"Retirement age – Age of superannuation – Administrative instructions – Till the Regulations framed under Section 97(2)(c) of the Act provide that service conditions of the employees of the Nigam will be the same as of the U.P. Govt. employees, the amended provisions of the Rules applicable to State Govt. employees will automatically apply to the Nigam employees unless the Regulations are amended in accordance with law – Mere administrative instructions will not take place of amendment of statutory Regulations – Once Fundamental Rules for State Govt. employees provide 60 years of age for retirement, the Nigam employees are also entitled to retire at the same age and not at the age of 58 years as provided in the regulations."

He also cited "State of Orissa & Ors. Vs. Prasana Kumar Sahoo" reported 2007

(3) SCT 560, 2007 (6) JT 182 wherein it had been held as follows:-

"11. It is now well-settled that a State is bound by the constitutional scheme to treat all persons equally in the matter of grant of public employment as envisaged under Articles 14 and 16 of the Constitution of India.

Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions."

And in the case of "Virender Singh Hodda & Ors. Vs. State of Haryana & Anr.",

reported 2004 (4) SCT 793, wherein it had been held as follows:-

"The aforesaid circular is general in nature and does not refer to any particular service or service rules. In law if an executive instruction is contrary to statutory rules, the rules will prevail and not the executive instructions"

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8. Learned counsel for the respondents stated that a similar matter had already been decided in OA No.640/CH/2012 titled "Dr. H.S. Bhatti Vs. UOI & Ors.", and in OA No.1239/CH/2012 titled "S.K. Sharma Vs. UOI & Anr.", decided on 13.08.2013 wherein it was held that the applicants who were Lecturers in the Department of Parasitology and Department of Hematology were held to be not entitled to serve upto the age of 65 years. Learned counsel stated that the extension of retirement age was restricted to persons who belong to Medical Teaching Faculty and not to the Non-Medical categories. The applicant who was teaching in the field of Biostatistics clearly belonged to Non-Medical Teaching Faculty and hence he was not entitled to the benefit of extension of age of superannuation to 65 years.

9. We have given our careful consideration to the matter. The issue as to whether the non-medical teaching faculty are entitled to superannuate at the age of 65 years is no longer res-integra keeping in view the judgments in H.S. Bhatti and S.K. Sharma (supra). This issue has also been considered in detail in OA No.893/CH/2012 titled Dr. (Mrs.) Safrunnisa Mahmood Vs. UOI & Ors.", decided on 03.03.2015. Besides, the applicant continued to be designated as Lecturer from the time he joined as such in the PGI w.e.f. 13.02.2002 and he availed the Modified Assured Career Progression Scheme applicable to the Group A, B, C & D categories of employees while it is the Assessment Promotion Scheme that is applicable to the Medical Faculty. With the grant of benefit in Group 'C' promotions after every 05 years of service, the applicant has been

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drawing the salary in the Pay Band-4 of Rs.37400-67000 while his designation remained as Lecturer.

10. In view of the above, we conclude that there is no merit in this OA and the same is rejected. MAs No.060/00589, 060/00688/2015 are also disposed of accordingly. No costs.

(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER

(SANJEEV KAUSHIK)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 18/8/2015

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