

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1755/2015
with
O.A.No.2/2015
O.A.No.4423/2014
and
O.A.No.378/2016

Order Reserved on: 27.09.2016
Order pronounced on 30.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

O.A.No.1755/2015

Shri A.K.Puri
Age-58 years
S/o Shri S.K.Puri
Designation: Assistant Manager Finance
R/o B-164, Pocket-II
DDA Flat Sector-7
Dwarka, New Delhi – 110 075. Applicant

(By Advocate: Shri Pankaj Sinha and Ms. Nupur Sinha)
Versus

1. National Projects Construction Corporation Ltd.
Through its Chairman and Managing Director
30-31, Raja House
Nehru Place
New Delhi – 110 019.
2. Ministry of Water Resources
Government of India
Through its Secretary
Shram Shakti Bhawan
Rafi Marg, New Delhi – 110 001.

3. Department of Public Enterprises
Ministry of Heavy Industries and Public Enterprises
Through its Secretary
305, Block-14
CGO Complex
Lodi Road, New Delhi -110 003 Respondents.

(By Advocate: Sh. Naresh Kaushik, Mr. Manoj Joshi and Ms. Kritika Sharma for R-1 and Mr. Gyanendra Singh for Rs-2 & 3)

with

O.A.No.2/2015

Madan Lal, age 58 years (Manager Finance)
S/o Late Shri Tara Chand
E-31, Shardapuri, Phase-II, Bypass road
Meerut – 250 001. Applicant

(By Advocate: Mr. Rajiv Kumar)

Versus

1. Union of India
Ministry of Water Resource
Shram Shakti Bhawan
New Delhi through its Secretary.
2. National Project Construction Ltd.
Through its CMD
30-31 Raja House
Nehru Place, New Delhi
Regd Office. Respondents.

(By Advocate: Dr. Ch. Shamsuddin Khan for R-1 and Mr. Naresh Kaushik, Mr. Manoj Joshi and Ms. Kritika Sharma for R-2)

O.A.No.4423/2014

Rajbir Singh
S/o Shri Sumru
Dy. Manager
CRPF Unit, Vasant Kunj
New Delhi.

.... Applicant

(By Advocate: Mr. S. C. Soren)

Versus

1. Union of India
Ministry of Water Resource
Shram Shakti Bhawan
New Delhi through its Secretary.

2. C.M.D.
National Project
Construction Corporation Ltd.
30-31 Raja House
Nehru Place, New Delhi
(Regd Office)

.... Respondents.

(By Advocate: Dr. Ch. Shamsuddin Khan for R-1 and Mr. Naresh Kaushik, Mr. Manoj Joshi and Ms. Kritika Sharma for R-2)

and

O.A.No.378/2016

Ranvir Singh (Age 58 years, Group D)
Plot No.67-68, Sector-25
Faridabad, Haryana.

...

Petitioner

(By Advocate: Mr. S.C.Soren)

Versus

CMD
National Project Construction Corporation Ltd.
Raja House, Nehru Place
New Delhi.

...

Respondent

(By Advocate : Mr. Naresh Kaushik, Mr. Manoj Joshi and Ms. Kritika Sharma)

O R D E R (Common)

By V. Ajay Kumar, Member (J):

Since the questions of fact and law involved in all the aforesaid OAs are common, they are being disposed of by this common order.

2. The applicants in all these OAs, were working in various below board level posts in the respondent-National Projects Construction Corporation Ltd. (in short, NPCC). They have filed the OAs aggrieved by the respective proceedings in passing orders retiring the applicants from the services of the Corporation w.e.f. the respective dates on which the applicants attained the age of superannuation, i.e., 58 years.

3. Heard the learned counsels appearing in the respective OAs and perused the pleadings on record. Though the counsels, on both sides, advanced arguments raising various grounds, in our considered view, these OAs can be disposed of on the following preliminary issues.

4. It is submitted that the age of superannuation of the employees of the Corporation is 58 years, as per the Recruitment Rules, prior to 1998. In pursuance of the directions of the Government of India, vide Office Memorandums dated 19.05.1998 and 21.08.1998, the Corporation has enhanced the age of superannuation of the employees of the Corporation from 58 to 60 years, vide the Correction Slip No.31 to the manual of orders dated 21.10.1998.

5. It is further submitted that the Corporation, however, in pursuance of the Proceedings No.6/13/98-P.II/897 to 908 dated 22.06.2001 of the Ministry of Water Resources, reduced the retirement age of the employees of the Corporation from 60 years to 58 years vide Office Order No.500133/RA dated 26.06.2001. The Corporation further vide Circular-C-01/P-12 dated 20.01.2012 issued the modified NPCC Promotion Policy and Rules, 2012 of regular employees in executives and non-executives categories, which came into force with immediate effect. The relevant Rule No.17 reads as under:

"17.0 RETIREMENT/SUPERANNUATION:

Retirement age of the regular employees of the Corporation (including projects/Units) at present is 58 years. Employees will retire from the service of the Corporation with effect from the last day of the month in which they attain the age of 58 years. In case of employees whose date of birth falls on the first day of the month, the date of retirement will be the afternoon of the preceding month. This will also be applicable to personnel re-employed before attaining the age of 58 years. Any subsequent change in the retirement age would be notified separately."

6. It is further submitted that the Board for Reconstruction of Public Sector Enterprises vide its Office Memorandum dated 11.10.2013 recommended to the Ministry of Water Resources for enhancement of age of superannuation of the employees of the NPCC from 58 years to 60 years. In pursuance of the said recommendation, Ministry of Water Resources, vide its Proceedings No.6/2/2010-PSU/1360 dated 24.12.2013, advised NPCC to send a proposal with the approval of its Board of Directors for enhancing the age of superannuation from 58 years to 60 years in respect of their below board level employees.

7. However, till date the respondents have not finally enhanced the age of superannuation of the below board level employees of the Corporation to 60 years, though they have done so in respect of Board Level Employees, and as a result, as on date, the age of retirement of the below board level employees of the Corporation stands at 58 years. Accordingly, the respondents passed the impugned orders for retirement of the applicants on attaining the said age of superannuation, i.e., 58 years.

8. At the very outset, it is noticed that though the respondents vide their counters specifically raised the preliminary objection of the maintainability of the OAs on the ground of non-questioning the Office Order dated 22.06.2001 and Rules of 2012, the applicants have not chosen to take appropriate steps for questioning the same by amending the prayer of the OAs.

9. Admittedly, in any of these OAs, the applicants have not questioned the legality or validity of either the Office Order dated 26.06.2001 of NPCC, reducing the superannuation age from 60 years to 58 years or the NPCC Promotion Policy and Rules, 2012 prescribing the age of superannuation at 58 years, and not sought for quashing of either of them.

10. The impugned orders are only consequential orders intimating the date of retirement of the applicants on attaining the age of superannuation, i.e., 58 years.

11. In our considered view, the applicants cannot maintain the present OAs without questioning the Rules, which prescribed the age of superannuation of the below board level employees of the Corporation. The contention of the learned counsel for the applicants that though they have not questioned the Office Order dated 26.06.2001, and the aforesaid Rules of 2012, but various grounds were raised in the OAs alleging that the same are non-est and void ab initio and hence the OAs are maintainable even in the absence of non-questioning the said Office Order and the Rules, is unsustainable, since, in the absence of specific challenge, no definite opinion can be expressed.

12. Moreover, fixing of superannuation age of its employees is a policy matter of the NPCC, an autonomous Public Sector Undertaking. In view of the decision of the Hon'ble Apex Court in **P. U. Joshi & Others v. Accountant General, Ahmedabad & Others**, (2003) 2 SCC 632, this Tribunal cannot exercise its power of judicial review in such matters, unless it is demonstrated that either it is irrational or clear cut hostile discrimination, based on no basis or mala fide either in law or in fact or it was made with extraneous considerations. In the said case, the Hon'ble Apex Court held as under:

"10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of

Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

13. The applicants failed to show any such valid grounds, to interfere with the policy decision of the respondent-Corporation in fixing the age of superannuation.

14. In the circumstances and for the aforesaid reasons, all the aforesaid OAs are devoid of any merit and accordingly the same are dismissed. However, this order shall not preclude the NPCC from enhancing the age of superannuation of its below board level employees from 58 to 60 years, if so advised, in pursuance of the letter dated 24.12.2013 of the Ministry of Water Resources. No costs.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)