

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA 2092/2015

New Delhi this the 16<sup>th</sup> day of October, 2015

**Hon'ble Mr. A.K.Bhardwaj, Member (J)**  
**Hon'ble Dr. Birendra Kumar Sinha, Member (A)**

Shri V.Jeganathan Arulmoni,  
Associate Professor,  
S/o E.Varuvel,  
Aged about 61 years,  
R/o Flat No.16, Type-V,  
Delhi Technological University,  
Bawana Road, Delhi-110042

.... Applicant

(By Advocate: Ms. Rashmi Chopra )

**VERSUS**

1. Chief Secretary,  
Govt. of NCT of Delhi,  
Delhi Secretariat, I.P.Estate,  
New Delhi.

2. Department of Training & Technical  
Education,  
Muni Maya Ram Marg,  
Pitampura, Delhi-110088

... Respondents

(By Advocate Mr.Amit Anand and Shri N.K.Singh for  
Mrs.Avinash Ahlawat)

**ORDER**

**Hon'ble Mr. A.K.Bhardwaj, Member (J):**

The facts of the case narrated in the Original Application are that the applicant who is BE (Mech.Engg), ME (Thermal Engg.) and B.M.(A) Ph.D, participated in selection conducted by UPSC for appointment to the post of Foreman Instructor (Pay scale Rs.2200-75-2800-100-4000) in Delhi College of Engineering on 15.12.1994. The four posts of Foreman

Instructor were carved out of the posts of Lecturers on recommendations of an expert Committee under the Chairmanship of Prof. P.J.Madan while re-designating faculty position in Delhi College of Engineering. The Committee was set up to examine the issue of revision of staff structure in Engineering Institutions. The posts were meant to be at par with Lecturers as their functions and duties were of teaching; giving instructions; doing research and discharging other academic responsibility related to workshop technology. The Recruitment Rules (RRs) for the posts classified as group 'A' Gazetted were made compatible with the RRs for the post of Lecturer in the College. The Madan Committee (hereinafter referred to as the 'Committee') viewed that the teaching functions of Foreman Instructors must be taken into consideration while determining the total strength of Lecturers in Engineering College in order to avoid overlapping of subjects taught there. In the wake of the recommendation of the Committee, the Ministry of Human Resources Development, Government of India issued letter No.F.1-27/81 T.2 T.10 dated 25.09.1987 conveying the approval for the revised staff structure in Delhi College of Engineering. The sanction for the posts of Forman Instructor in the pay scale of Rs.2200-4000 plus usual allowances was accorded by the Lt. Governor vide letter No.F-1(225)/88-8B/19949 dated 28.11.88. In the letter, it was amplified that the staffing pattern should be strictly in

accordance with the norms recommended by the Committee, accepted by the Government of India, Ministry of Home Resources Development. Ergo, the RRs for the post of Lecturer are kept pari-materia to those for the post of Foreman Instructor. The Delhi College of Engineering recommended the case of applicant for grant of benefit under the career advancement scheme on the ground that he had been teaching at UG level and was conducting workshop classes as well as discharging the responsibility of imparting education in workshop technology. In acceptance of the recommendations made by the College, GNCTD granted him senior scale and selection grade of Rs.12000-420-18300 under AICTE (Career Advancement Scheme of All India Council for Technical Education) at par with Lecturer. On enactment of Delhi Technological University Act, 2009 (6 of 2009), Delhi College of Engineering was reconstituted as Delhi Technological University (DTU) i.e. a non-affiliating, teaching and research University at Delhi to facilitate and promote studies, research, technology, incubation, product innovation and extension work in Science, Technology and Management Education, and also to achieve excellence in higher technical education and other matters connected therewith or incidental thereto. Vide letter No.F-1/12(1)/DTU/Stat/09/6020-25 dated 15.12.2009, the post of Foreman Instructor held by the applicant was re-designated as Lecturer. Subsequently, the Govt. of National Capital

Territory of Delhi (Department of Training & Technical Education) issued Office Order No. F.1 (702) /2010-SB /PF.1 /1164 dated 29.07.2010, enhancing the age of superannuation for teachers in degree level technical institutions from 62 to 65 years. Later, in pursuance of Department of TTE, GNCT of Delhi Office order no.F.1 (702)/2010-SB/PF-1/1684 dated 19.11.2010, the pay of the applicant herein was fixed along with other faculty members as Associate Professor. Once the benefit of Office Order No. F.1 (702)/2010-SB/PF.1/1164 dated 29.07.2010 was not extended to applicant and he was denied the benefit of enhancement in retirement age, he made representation to respondents to give him the benefit of order dated 29.07.2010 issued by the Government of National Capital Territory of Delhi (Department of Training and Technical Education). The representation was turned down in terms of the communication dated 8.12.2014. Subsequently, the DTU issued Notification no.F.1/2-583/ 2013/Estt./DTU/8696-705 dated 22.09.2014 keeping the age of superannuation for Foreman Instructor as 62 years. Applicants approached Hon'ble High Court, nevertheless the Hon'ble High Court dismissed the Writ Petition as not maintainable. The order passed by Hon'ble High Court reads thus:-

“1. This writ petition is filed under Articles 226 and 227 of the Constitution of India by two persons who claim themselves as teachers in the respondent no. 3/Delhi Technological University (in short 'University'). The claim in the writ petition is for benefit to the petitioners of increase of age of retirement to the age of 65 years. The writ petition seeks application of the principle of equal

pay for equal work and also states that the petitioners are very much lecturers/teachers and once other lecturers/teachers of respondent no.3/University have been given benefit of increase of retirement to 65 years, petitioners also must be given similar treatment by increasing their age of retirement to 65 years.

2. Respondent nos. 1 & 2 in the writ petition are Chief Secretary, Govt. of NCT of Delhi and Department of Training and Technical Education. Respondent nos. 1 & 2 have filed their counter affidavit in which it is specifically mentioned that the petitioners are not the employees of the respondent no. 3/University but are employees of the Govt. of NCT of Delhi and for which purpose reference is made in the counter affidavit of respondent nos. 1 & 2 to the provision of Section 4(d) of the Delhi Technological University Act, 2009 (in short 'Act'). In the counter affidavit, decision of the learned Governor of Delhi is also referred by which employees of the respondent no. 3/University are continuing as deemed employees of the Govt. of NCT of Delhi on deemed deputation to respondent no. 3/University. In the counter affidavit claim of parity claimed by petitioners both the regular/ordinary lecturers/teachers in respondent no.3/University is denied and respondent nos. 1 and 2 also question the legality of action of respondent no.3/University in re-designating foreman instructors such as the petitioners as lecturers. Claim of parity of petitioners to lecturers of respondent no.3/University can also not be granted to petitioners who are foreman-instructors because petitioners are employees of Govt. of NCT of Delhi and other foreman-instructors employed with Govt. of NCT of Delhi (not working with respondent no.3/University as deputationists from Govt. of NCT of Delhi) are to retire at the age of 62 years and not 65 years.

3. With respect to the writ petition, two aspects have to be examined by this Court, either for entertaining of the writ petition itself or for grant of interim orders. The first aspect is that, if petitioners are employees of the Govt. of NCT of Delhi, this Court would not have jurisdiction inasmuch as, service disputes of employees of Govt. of NCT of Delhi with Govt. of NCT of Delhi have to be decided by Central Administrative Tribunal (in short 'CAT'), Principal Bench, New Delhi and not by this Court. The second aspect is that, even assuming this Court has jurisdiction, whether increase of age which has been brought about by the respondent no.3/University's Board has received the necessary approval of the Chancellor/Lieutenant Governor of Delhi (in short 'LG') in terms of the Section 31(3) of the Act read with Section

30(c) of the Act specifically with respect to re-designation of foreman instructors as lecturers. As per these statutory provisions, terms and conditions for continuation of teachers and other employees of respondent no. 3/University can only be changed with the prior approval of the Chancellor/LG and re-designation of foreman instructors as lecturers for the foreman instructors to get the benefit of service conditions applicable to lecturers/teachers will amount to change of service conditions of foreman instructors which have financial implications.

4. I put a specific query to the counsel for the petitioner as to whether petitioners have exercised the option in terms of the Section 4(d) of the Act for them to have become employees of respondent no.3/University and hence they do not continue as employees of Govt. of NCT of Delhi, and to this specific query no document could be pointed out on behalf of the petitioners that petitioners have exercised the option to not remain as employees of Govt. of NCT of Delhi and they have become employees of respondent no. 3/University. Therefore, petitioners continue to be employees of the Govt. of NCT of Delhi and in this regard the following averments made in the counter affidavit by the respondent nos. 1 & 2 become relevant:-

“1. That the petitioner accepts the terms and conditions as per the Board Resolution dated 21.11.2009 has severed the relationship with the Delhi College of Engineering as pre section 4(d) of the DTU, 2009 (Delhi Act 6 of 2009). The petitioner cannot take excess benefits beyond section 4(d) of the aforesaid Act.

2. It is further submitted that the Principal Secy. TTE conveying the decision of the Hon’ble Lieutenant Governor of Delhi vide dated 21/7/2014 in terms of the reference.

“Whereas, a W.P.(C) No. 3207/2012 titled Sandeep Singh and Ors. Vs. GNCTD was filed by 26 Technical Staff members of the erstwhile Delhi College of Engineering (DCE) now posted in Delhi Technological University (DTU) before the Hon’ble High Court with the prayers “to pass an order/direction in the nature of writ mandamus directing the respondents to repatriate the petitioners to Department of Training & Technical Education (DTTE) under GNCT of Delhi and post them in any other technological institute under the DTTE and to maintain in the interregnum the disciplinary control over the petitioners under the

provisions of CCS(CCA) Rules, 1965 as it were prior to the deemed deputation of the petitioners. Hon'ble High Court vide its order dated 29/05/2012 directed the respondents i.e. this Government to decide the representations/legal notice made by the petitioners in W.P.(C) No. 3207/2012 within six weeks and to convey the outcome thereof to the petitioners."

Which was replied under para 6 and 7 of the order dated 21.07.2014 which is reproduced below.

"Now, in view of the grounds stated above and as per the provisions of Section 4(d) of DTU Act, 2009, the Competent Authority is pleased to order that all the erstwhile DCE staff including petitioners in W.P.(C) No. 3207/2012 will continue to work in DTU on deemed deputation from the GNCT of Delhi without affecting their rights and privileges as Govt. employees and at the same time protecting their interest such as their service conditions, like remuneration, pension, leave, gratuity, provident fund and other matters until they opt for the University terms and conditions of employment. However, all the service related matters of the persons employed in erstwhile Delhi College of Engineering shall continue to be dealt in the same manner as was being dealt prior to enactment of DTU Act, 2009 till they remain on deemed deputation in DTU. This is issued with the prior approval of Hon'ble Lt. Governor, Delhi."

3. Copy of the communication vide file no. F.No.10(15)/2013/Sect. Branch/1262-1267 dated 21/07/2014 is annexed herewith as Annexure R-1."

5. It is clear therefore that since petitioners are employees of Govt. of NCT of Delhi that this Court has no jurisdiction in view of paragraph 99 of the judgment of the Constitution Bench of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India & Ors. AIR 1997 SC 1125 and its para 99 has observed as under:-

"99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be

unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.” (underling added)

6. The counsel for the petitioner sought to place reliance upon Annexure 16 to the writ petition, being the letter dated 8.12.2014 issued by the respondent no. 3/University to the petitioner no. 1, and on which basis it is argued that petitioner no. 1 is an employee of the respondent no. 3/University, however, in my opinion letters cannot change the requirement of the statutory provision being Section 4(d) of the Act and which requires that before persons becomes employees of respondent no. 3/University, specific option has to be exercised but existence of that option being exercised has not been shown to this Court.

7. Though with respect to the second issue as per para 3, prima facie I am of the view that nothing has been substantiated before this Court to show compliance of the provisions of the Section 31(3) of the Act, that Chancellor/LG has given permission for re-designation of foreman instructors to lecturers having financial implications by increase of age, and that amendment in the statute after permission of the Chancellor/LG has or has not been notified in terms of the Section 46 of the Act,



I need not observe anything in this regard on merits one way or the other, as merits will have to be considered by the CAT, Principal Bench, New Delhi and not by this Court.

8. This Court has no jurisdiction to decide the petition and therefore it is dismissed.”

Thus, the applicant filed the present OA praying therein:-

- “(a) extend the age of superannuation of the applicant to 65 years as extended for others involved in class nominated.
- (b) quash the order/letter dated 08.12.2014, 22.09.2014 and 08.12.2014.
- (c) pass any other orders of directions, as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

The learned counsel for the applicant espoused:-

- (i). Once the Madan Committee made a recommendation that the posts of Foreman Instructor were meant to be at par with Lecturer and their functions and duties were to include teaching, instructions, research and academic responsibilities related to workshop technology and in terms of the letter No.F.1(225)88-SB/19949 dated 28.11.1988, the four posts of Foreman Instructor were created in implementation of the staffing pattern suggested by the Committee, the applicants herein cannot be treated differently from Lecturer in any manner.
- (ii). The educational and other qualifications prescribed for appointment to the post of Foreman Instructor is same as is for Lecturer.

- (iii). As can be seen from letter no.F.1 /Misc /P / 2003/ 1188/15946 dated 10.03.2005 (Annexure A-6) written by the Government of NCT of Delhi (Delhi College of Engineering) to the Principal Secretary (TTE), the Foreman Instructors are kept all along at par with the level of Lecturers.
- (iv). In terms of the letter No.1(826)/2005-SB/1170 dated 23.08.2006, the Government of NCT of Delhi (DTTE) conveyed the approval of the competent authority for grant of career advancement scheme benefits to the Foreman Instructors of Delhi College of Engineering at par with lecturers, thus, they cannot be denied the benefit of retirement age prescribed for lecturer.
- (v). In its second meeting, the Board of Management of Delhi Technological University approved the proposal for re-designation of four posts of Foreman Instructor as Lecturer and as a result, the DTU issued Office Order No.F.1/ 12 (1)/DTU /Stat /09 / 6020-25 dated 15.12.2009 re-designating the applicant as Lecturer.
- (vi). When in terms of office order No.F.1(702)/2010-SB/PF.1/1164 dated 29.07.2010, the age of superannuation for teachers in Degree Level Technical Institutions has been enhanced from 62 to 65 years, the applicant who has been identified as

Lecturer/teacher cannot be denied the benefit of the order.

- (vii). Once in Corrigendum No. F.1 /2-pay scales/ 2010/ Estt/ 12487-91 dated 26.11.2010, the designation of the applicant has been mentioned as Associate Professor, the benefits attached to the post including the age of superannuation cannot be nixed to him.
- (viii). It is quite bizarre that the applicants whose RRs are compatible with those of Lecturers, who were re-designated as Lecturers and are doing the teaching work, are not given the benefit admissible to Lecturers but are compared with Librarian and Director (Physical Education).
- (ix). When the Delhi Technological University has allowed the applicant to continue in service as Associate Professor/Lecturer and he is assigned the job of teaching only, he cannot be denied the benefit of retirement age fixed by Delhi Government for teacher .
- (x). In the impugned order dated 8.12.2014, the applicants are compared with Librarian and Director (Physical Education). It is not understood that when in all respects, the applicants are not only compare with senior Lecturers but are redesignated

as such, how can they now be compared with Librarian and Director (Physical Education) and not with Lecturer.

2. On the other hand, Mr.Amit Anand learned counsel for respondents submitted that:-

- (i) The retirement age of Foreman Instructors available in other institutes of GNCTD is 60 years, therefore, it was bounden duty of the DTU to process the case of the applicant for retirement at the age of 60 years.
- (ii) Since, Foreman Instructors had no promotional avenues, only to give them financial benefits they are treated as par with Lecturers and are granted financial benefits.
- (iii) The post of Foreman Instructor is not changed to Lecturer by the Government of Delhi.
- (iv) The Office Order No. F.1(702)/2010-SB/PF.1/1164 dated 29.07.2010 provided for revision of pay scale and other service conditions of the teacher and other eligible staff of degree level technical institutions and not of Foreman Instructor.

Finally, he relied upon the order of Hon'ble Delhi High Court (ibid) to argue that the applicant was employee of GNCTD and the DTU had no authority to re-designate him as Lecturer.

3. Mr.N.K.Singh proxy counsel for standing counsel for Delhi Technological University who appeared in the matter on our direction, relied upon the counter affidavit filed by DTU before Hon'ble High Court in WP (C) 2833/2015 and submitted that in view of the order passed by Hon'ble High Court in the said Writ Petition, the DTU is not amenable to the jurisdiction of this Tribunal. When the respondents herein i.e. Govt. of NCT of Delhi have maintained that applicant is liable to retire at the age of 60 years, the DTU espoused that the age of retirement of applicant (Foreman Instructor) should be 62 years. Rejoining the submissions, Ms. Rashmi Chopra, learned counsel for applicant submitted that in the Delhi Technological University prospectus for 2012-13 and 2013-14, the applicants have been shown as members of teaching faculty (faculty Members).

4. We heard counsel for parties and perused the record. We find from the records that the RRs for the posts of Foreman Instructor and Lecturers are quite compatible. A comparison of two posts mentioned in Annexure A-5 reads thus:-

	Lecturer	Foreman Instructor (Associate Professors)
Recruitment	Direct through UPSC	Direct through UPSC
Group of Service	Group A Gazetted	
Pay scale at the same point of joining	2200-75-2800-100-4000	2200-75-2800-100-4000
Eligibility criteria	First class bachelor Degree in appropriate Branch of Engineering. Desirable Two years	First class bachelor Degree in appropriate Branch of Engineering <b>Desirable</b> Two years

	Professional/teaching experience out of which at least one year should be in the shop floor of a large Engineering workshop of repute.	Professional/teaching experience out of which at least one year should be in the shop floor of a large Engineering workshop of repute.
Xxx	Xxx	Xxx
CAS (Career Advance Schemes)		
Senior Scale (Rs.10,000-325-15200)	Yes	Yes
Selection Scale(Rs.12000-420-18300)	Yes	Yes
POB IV scale	Yes	Yes
Nature of Duties		
Classroom Teaching	Yes	Yes
Laboratory instructions	Yes	Yes
Student assessment and evaluation including University examination work.	Yes	Yes
Supervising Students, Research and Project Work	Yes	Yes
Developing learning Resource material and laboratory development	Yes	Yes
Attending National/International conferences, Seminars, Faculty Development Programs and Short Term Courses, etc.	Yes	Yes
Administration both at department level as well as College/University level.	Yes	Yes
Age of Superannuation	65 years	62 years

May be compatibility or comparison of the RRs for two posts cannot be conclusive ground to hold that the nature of duties and functions of the posts is same, nevertheless in letter no.F.1/Misc/P/2003/1188/15946 dated 10.03.2005, the Government of NCT of Delhi (Delhi College of Engineering) recommended to the Principal Secretary (TTE), Directorate of Training and Technical Education, Govt. of NCT of Delhi that the Foreman Instructor, including the applicants herein had

been teaching at UG level and had been conducting workshop classes and laboratories; the posts of Foreman Instructor were created as follow up of Madan Committee report with the purpose to strengthen the workshop teaching and practice in Colleges of Engineering & Technology; as per the recommendations of Madan Committee, Foreman Instructors had been kept at the level of lecturers and they also assume the responsibility for teaching workshop technology, therefore, they are entitled to career advancement Scheme and other benefits available to teachers as per AICTE pay structure. The letter reads thus:-

“Sub: Career Advancement Scheme for Foreman Instructor in Delhi College of Engineering.

Sir,

I am forwarding herewith letters from Shri Pradeep Kumar Jain and Shri Jaganathan Arul Moni, Foreman Instructors at Delhi College of Engineering in connections with Career Advancement Scheme in Delhi College of Engineering.

I strongly recommend their case, especially that they have been teaching at UG level and have been conducting workshops classes & laboratories. These posts were created as a follow-up of Madan Committee Report with the purpose to strengthen the workshop teaching and practice in college of engineering & technology. As per the recommendations of the Madan Committee, foreman instructors have been kept at the level of lecturers and it is clearly mentioned that foreman instructors also assume the responsibilities “for teaching workshop technology”. Therefore, they are entitled for Career Advancement Scheme and other benefits currently available to the teachers as per AICTE pay structure.

I shall be thankful if their genuine demand is reconsidered and necessary decision be intimated accordingly.”

The letter was acted upon by the Government of NCT of Delhi (DTTE) and approval of the competent authority was conveyed for grant of career advancement Scheme benefits to the Foreman Instructors of Delhi College of Engineering at par with lecturers. The letter No. 1(826)/2005-SB/1170 dated 23.08.2006, whereby such approval was conveyed reads thus:-

“Subject: Regarding grant of Career Advancement benefits to Foreman Instructors of Delhi College of Engineering.

Sir,

I am directed to convey the approval of the competent authority for grant of Career Advancement Scheme benefits to the Foreman Instructors of the Delhi College of Engineering at par with the lecturers.

In view of above, you are requested to submit cases of all eligible Foreman Instructors of Delhi College of Engineering for grant of Career Advancements benefits at an early date.”

After conveyance of the approval, the Government of National Capital Territory of Delhi (DTTE) issued order no.F.1(826)/2005/SB/566-572 dated 13.04.2007 granting senior scale and selection grade to the Foreman Instructors, including the applicant herein (at par with Lecturers). The matter did not rest there and the Board of Management of Delhi Technological University (erstwhile DCE) in its second meeting approved the categorical proposal that the four posts of Foreman Instructor (Mechanical Engineering/Production Engineering Department should be re-designated as Lecturer in Mechanical/Production Engineering. The relevant excerpt of the minutes read thus:-



“Supplementary Agenda 1: Redesignating Foreman Instructor as Lecturer with no financial implications;

The Board of Management was informed that 4 posts of Foreman Instructor were carved out of the posts of Lecturers by the Madan Committee in 1989 while re-designating faculty positions in the erstwhile Delhi College of Engineering. These posts of Foreman Instructor were meant to be at par with Lecturers position and were meant for teaching, instructions, research and other academic responsibilities to support Production engineering and workshop related subjects in the college in Mechanical/Production Engineering Department. The posts were designated as Group ‘A’ Gazetted and the RRs for these posts are compatible with the RRS for Lecturers position in Mechanical Engineering/Production Engineering.

Subsequently, the posts have been filled through UPSC through direct recruitment as was the case for all faculty positions in the erstwhile DCE. The incumbents who joined as Foreman Instructor possess necessary qualifications at par with Lecturer position and have handled teaching, research and academic responsibilities in the Mechanical Engineering/Production Engineering Department of the Institute including the teaching load of the workshop.

Presently the posts are occupied by the following:

Sl. No	Name	Designation at the time of joining	Current position held
1.	Sh.P.K.Jain	Foreman Instructor (w.e.f 15.07.1994)	Foreman Instructor (Selection Grade) with effect from 15.7.2005
2.	Sh.V.Jaganathan	Foreman Instructor w.e.f. 15.12.1994)	Foreman Instructor (Selection Grade) with effect from 15.12.2005.
3.	Sh.N.Yuvaraj	Foreman Instructor (w.e.f.16.8.2000)	Foreman Instructor (Sr.Scale) w.e.f. 16.8.2006.

As the recruitment qualifications, duties and responsibilities and functions of Foreman Instructor are comparable to that of the Lecturer position, the incumbents have functioned like teaching faculty and have also been given the benefit of Career Advancement at par with that of teaching faculty with the approval of the Govt. of Delhi.

The designation of Foreman Instructor confuses with the position of Foreman in workshop which is a Technical Staff post in a much lower grade. Further

as the position of Foreman Instructor does not exist in NSIT and other leading institutions such as IIT Delhi etc., the incumbents occupying the above positions in erstwhile DCE now DTU have been facing hardship on account of the designation relating to their post. The pay scale of Foreman Instructor is Rs.8000-13500 (pre-revised) which is at par with the pay scale applicable to the Lecturers position. Further, the Foreman (Selection Grade) is given the scale of Rs.12000-18300 (pre-revised) which is also at par with the Lecturer (Selection Grade).

In order to bring in uniformity it is proposed that the 4 posts of Foreman Instructor in Mechanical Engineering/ Production Engineering Department be re-designated as Lecturers in Mechanical/Production Engineering. Likewise the present incumbents occupying posts of Foreman Instructor (Selection Grade) be re-designated as Lecturer (Selection Grade) and Foreman Instructor (Sr.Scale) as Lecturer (Sr.Scale) in Mechanical Engineering/Production Engineering Department.

There is no financial implication involved by the University due to the above change in the nomenclature.”

In implementation of the approval, the Delhi Technological University issued Office Order NO. F.1/12 (1)/DTU /Stat /09/ 6020-25 dated 15.12.2009, which reads thus:

“Sub:- Re-designation of Foreman Instructor as lecturer.

The Competent Authority is pleased to re-designate 4 post of Foreman Instructor as lecturer in the mechanical/Production Engg. Deptt. With immediate effect. The terms & conditions of service remain the same.

No extra remuneration/scale shall be paid by the DTU.

This issues with the approval of BOM in the second meeting held on 21.11.2009.”

In the meantime, vide Office Order No.F.1 (702)/2010-SB/PF.1/1164 dated 29.07.2010, the Government of NCT of Delhi (DTTE) issued order enhancing the age of superannuation for teachers in degree level technical institutions from 62 to 65 years i.e. for those involved in classroom teaching in order to attract eligible people to the teaching career and to retain teachers in service for a longer period. Para 7 of the order reads thus:-

**“7. AGE OF SUPERANNUATION:**

- (1) The age of superannuation for teachers in Degree Level Technical Institutions has been enhanced from 62 to 65 years for those involved in classroom teaching in order to attract eligible people to the teaching career and to retain teachers in service for a longer period. Whereas there is no shortage in the category of librarians who aren't involved in classroom teaching, the increase in the age of superannuation from present 62 years shall not be available to the category of librarian.
- (ii). Subject to the availability of vacant position and fitness, teachers shall also be reemployed on contract appointment beyond the age of 65 years upto the age of 70 years. Reemployment beyond the age of superannuation shall however, be done selectively for a limited period of three years i.e. the first instance and another further period of two years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.
- (iii). Whereas the enhancement the age of superannuation for teachers engaged in class room teaching is intended to attract eligible periods to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period.”

5. From the aforementioned, it is clear that not only the Delhi Technological University but Government of National Capital Territory of Delhi also treated the applicant at par with Lecturers and members of teaching faculty and kept on extending them all such benefits, as were extended to Lecturers. Along with his OA, the applicant has also placed time table, whereby he was given the responsibility of teaching. The time table placed on record as Annexure 3 reads thus:-

Name of the Faculty V. Jaganathan w.e.f. 01.08.07

	9.00-10.00	10.00-11.00	11.00-12.00	12.00-1.00	1.00-2.00	2.00-3.00	3.00-4.00	4.00-5.00
Monday			MP(L) I-E		WS	I	I-H	
Tuesday					WS	I	I-J	
Wednesday					WS	I	I-B	
Thursday	M.P(L) I-E							
Friday	WS	I			MP(L) I-E			

FACULTY OF TIME TABLE  
Dept. of Mechanical Engineering  
DELHI TECHNOLOGICAL UNIVERSITY

w.e.f. 2<sup>nd</sup> Aug 2010  
0-0-15

	9-10	10-11	11-12	12-1	1-2	2-3	3-4	4-5
<b>MON</b>	P							
	MECHANICAL WORKSHOP							
	B9-1 SEM							
<b>TUE</b>	P							
	WS-III-K III ME					P		
						WS-III 6N-III ME		

**WED****THU****FRI**P  
WS-III-A2  
III AE

P

WS-III óJ  
III ME**SAT** **MON TT** 07-08-10, 18.09-10 & 13-11-10 **TUE TT** 14.08.10 & 25-09-10  
**WED TT** 21-08-10 & 23-10-10 **THR TT** 28.08.10 & 30-10-10 **FRI TT**-  
04-09-10 & 06-11-10

-Practical & Tutorial Classes will be held in the respective Laboratories.ö

Not only this, he was also given the responsibility of assessment of theory and practical examination as also of paper setter/examiner for the examination held in May/June, 2014. The letter No.FT/6097 dated 28.03.2007 and dated .09.05... ( page 84) read thus:-

“Ref.No.FT/6097

Dated 28.03.2007

Sir/Madam,

I am sending herewith a list of examiners for B.E. II, IV, VI and VIII Semester theory and Practical examinations to be held in May/June-2007 under New Scheme of Examination along with their N.S.T. Numbers.

It may please be ensured that:-

- All the questions are duly evaluated and marks awarded are shown in the answer script.
- Marks so awarded are posted in the columns on the first page of answer script.
- The answer script is duly countersigned by the examiner at the appropriate place on first page of answer script.
- All blank sheets in the answer script be duly crossed out.

I am to bring to your kind notice that some of examiners do not submit their remuneration bills for paper setting, evaluation and for practical examinations after the submission of awards/declaration of results and in some cases even after one or two years. Some times bills are

not authenticated by ERC Chairman. In the new scheme of examinations, it is very difficult to verify the number of scripts evaluated by an examiner without the authenticity of the same by ERC Chairman, as the answer scripts after the examination are collected by the ERC Chairman and distributed to the concerned examiners. Similarly, number of teachers setting one question paper jointly can be ensured when their remuneration bills are received together through the Examination, duly verified.

In view of the above, all remuneration bills for theory and practical may please be submitted along with the awards duly signed by the ERC Chairman. This will help in expediting the payment of remuneration to the examiners. It will not be possible to process remuneration bills for payment unless it is duly verified by the ERC Chairman.

Hoping for kind cooperation.

Yours faithfully,  
Sd/-  
Assistant Registrar

dated 09.05.. ( page 84 of the paperbook)  
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Subject: Appointment of Paper Setter/Examiner for the examination to be held in May/June, 2014.

Dear Sir/Madam

Based on the recommendation of the Board of Studies, the Competent Authority of the University wish to appoint you as the paper Setter/Examiner for the subject mentioned below:-

S.No.	Paper Code	Paper Name	Paper Setter/JointPS/Examiner External/Internal	TCode
1	PE-120	Mechanical Workshop	Examiner/Coordinator)	DTU/EV-2014/1026
2.	ME-215	Principle of Manufacturing Systems	Examiner	DTU/EV-2014/1175
3.	ME-219	Machine Shop Lab	Examiner	DTU/EV-2014/1194
4	AE-212	Production Technology	Paper Setter, Examiner (Coordinator)	DTU/EV-2014/1311

I request you to kindly send one set of question paper for the above subject in sealed envelop to the Deputy Controller of Examination (Room No. FW3-FFB) by 09-May-2014.

You are requested not to accept the appointment if any of your near relations(husband, wife, son, daughter, brother, sister, nephew, niece, sister-in-law, brother-in-law or daughter-in-law) is a candidate for the examination.

The Co-ordinator Central Evaluation/Practical will inform the examiners about date and venue for evaluation of answer scripts/Practical exams.

All the paper setters/examiners are requested to maintain utmost confidentiality of the question paper and they will not keep any material (hard and short copy) related to the question paper with them. It is requested that question paper to be preferably in the proper format (format enclosed) and can be downloaded from exam.dce.edn.”

Having seen the various decisions of Government of NCT of Delhi and Delhi Technological University, we cannot avoid taking a view that the applicant herein was discharging the function as a teacher and cannot be denied such benefit as are extended to teachers in terms of para 7 of Office order dated 29.07.2010. The first and foremost argument put forth on behalf of respondents is that the petitioners who are employees of GNCTD could not have been re-designated as Lecturers by Delhi Technological University and the increase in enhancement of age of Lecturers in Delhi Technological University should have approval of the Lt. Governor. As far as the said plea is concerned, we cannot be oblivious of the fact that the Delhi Technological University was earlier Delhi College of Engineering i.e. an institution of

Government of National Capital Territory of Delhi affiliated to the University of Delhi and the applicants herein were appointed in the said College from the very beginning. When it was felt expedient to confer on the said institutions the status of a University to enable it to function more efficiently as a teaching and research centre in various branches of learning and courses of study promoting advancement and dissemination of knowledge and learning and to meet the requirement of higher education and research in the field of engineering and technology, applied sciences and management sciences, foster industry relevant research and innovation and to avail better scopes and opportunities to serve the society in the nation, the Delhi Technological University Act, 2009 Act was passed and the Delhi College of Engineering was constituted as Delhi Technological University. What we want to prosper by saying so is that the services of applicants were from the very beginning utilized by Delhi College of Engineering reconstituted as DTU and no other body or department could comment upon the nature of their functions and responsibility. It could be different issue if the applicants could have been initially appointed in some other organization and could then join the DTU on deputation. The decision of the Management Board of DTU to re-designate the applicant as Lecturer cannot be ignored very lightly. The GNCTD can very much say that the decision taken by DTU regarding the designation of its



employees is not binding upon it. But then it should be in a position to comment upon the identity of the post and designation of the applicant. He should be enabled to introduce himself in the society with reference to one or the other designation of posts, professed by him while in service. He cannot be left in a quandary or dilemma regarding his post i.e., whether it was Foreman Instructor or Lecturer (Associate Professor) and what was the job performed by him in such capacity. In the counter reply filed by the GNCTD, an effort is made to buttress that the applicant should have retired at the age of 60 years. The relevant excerpts of the counter reply read thus:-

“It is also informed that the retirement age of Foreman Instructors available in other institutes of this department is 60 years, therefore, it was the bounden duty of the authority of Delhi Technological University erstwhile DCE to process his case of retirement at the age of his superannuation i.e. 60 years as the personal file of the petitioner is with the Delhi Technological University from the very inception of the act and the creation of the University, which was not done.

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4 (bb) In reply to the Para 4 (bb), it is submitted that the petitioner is appointed as Foreman Instructors having been selected through UPSC against the vacant positions of Foreman Instructor for Delhi College of Engineering. His service conditions are protected as per Section 4 (d) of DTU Act and this office order dated 21.07.2014, as stated above. He is covered under the provisions of CCS(CCA) Rules and his retirement age is 60 years and no extension in his service is being granted by the Government. Therefore, the contention of the petitioner is incorrect as no discrimination and no injustice is being done to him.

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4 (ff)- (iii) In reply to the Para 4 (ff)- (ii), it is submitted that the contention of the petitioners is not correct as no

discrimination and no injustice is being done to him. It is again submitted that the petitioner was appointed as Foreman Instructor through UPSC and is governed by the retirement age applicable to normal government servants, which is 60 years and the applicant has not been given any relaxation in age by the Government at any point of time. It is also informed that as on date they are working in DTU on deemed deputation from the Government and his rights and privileges are protected as per Section 4 (d) of the DTU Act.”

Such stand taken by the respondents is reflection of complete non-application of mind by them, as the respondents remain completely oblivious of the fact that the applicant has been allowed to continued in service till attaining the age of 62 years. Once it is the contention of the respondents that the post of Foreman Instructors being isolated post, the scale of pay given to applicant as financial up-gradation in terms of the ACP Scheme should be the same as applicable to Lecturers, there is categorical admission by them that the post is similar to that of Lecturers and there can be no justification to nix him all such benefits as are attached to the posts. In terms of the clarification No 10 issued by the Government of India, Department of Personnel and Training O.M. No.35034/1/97-Estt.(D) (Vol.IV) dated 10.02.2000, for isolated posts the scale of pay for ACPs should be the same as applicable for similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPS. For easy reference, the clarification is reproduced hereinbelow:-

Xxx	Xxx
10. For isolated posts, the scale of pay for ACPS as recommended by the Pay Commission may be implemented and not the standard/common pay scales indicated vide Annexure-II of the Office Memorandum, dated August 9,1999.	For isolated posts, the scales of pay for ACPS shall be the same as those applicable for similar posts in the same Ministry/Department/ Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPS. Such specific cases may be examined by respective Ministries /Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the pay scales contained in Annexure-II of the Office Memorandum dated August 9,1999 (ACPS) shall apply.

Besides, the Madan Committee in implementation of recommendation of which, the post of Foreman Instructors was created, had specifically provided that the post of Foreman Instructors should assume the responsibility of teaching the workshop technology. The relevant excerpt of the recommendation of Madan Committee read thus:-

“Workshop Staff“

The Committee felt that greater improvements must definitely be brought about in workshop instruction and to that end, the present staffing pattern in the workshops needs to be completely revised. Workshop instruction in all Engineering Colleges should be under the overall supervision of a Workshop Superintendent who should be at the level of an Assistant Professor. There should be provision for three foreman instructors at the level of lecturers incharge of (1) Machine Shop (2) dies, jigs and fixtures including tool-room and (3) general workshop. The Committee also recommended that these foreman instructors should possess a degree or diploma in engineering with a minimum of three years experience on the shop floor, and that they should also assume the responsibility for teaching Workshop Technology. This fact should be taken into consideration while determining the total strength of lecturers in an Engineering College.”

To verify the analysis in the wake of which the applicant was granted financial upgradation at par with Lecturers, we

summoned file No.1(826)/2005-SB/1170. However, the file is not reproduced and Mr.Amit Anand, learned counsel for the respondents reported that the file is misplaced and the matter has been reported to Police. Nevertheless, as has been held hereinabove, the grant of financial upgradation to applicant at par with Lecturers would lead to a conclusion that he cannot be denied the benefit extended to lecturers/teachers. Had the Government of NCT of Delhi not accepted the Notification issued by DTU, it could have retired the applicant at the age of 60 years. The Notification issued by DTU enhancing the age of retirement of Foreman Instructor from 60 to 62 years reads thus:-

“DELHI TECHNOLOGICAL UNIVERSITY  
Established by Govt. of Delhi vide Act 6 of 2009  
(FORMERLY DELHI COLLEGE OF ENGINEERING)  
BAWANA ROAD, DELHI-110042

No.F.1/2/583/2013/Estt/DTU/8696-708  
dated 22.09.2014

NOTIFICATION

This is with reference to the 4<sup>th</sup> meeting of Board of Management held on 28.12.2010 regarding age of superannuation for Foreman Instructor and Programmer will be kept 62 years.

In this regard, the Competent Authority has decided that the superannuation age of Foreman Instructor and Programmer will be 62 years.”

Even if it is presumed that the DTU could issue the notification of enhancing the age of retirement of applicant without the approval of Delhi Government, from the fact that the applicant was sought to be retired from service on attaining the age of 62

years, there is all reason to believe that GNCTD gave its facit approval to the decision of DTU regarding its employees who are only on deputation with the University. The fact that the age of retirement of the applicant was enhanced from 60 to 62 years is established from the reply filed by the DTU before Hon'ble High Court. Relevant excerpt of the reply read thus:-

“..That age of retirement of teachers as recommended by AICTE was accepted by Govt. of NCT Delhi from 62 to 65 years in respect of faculty members except Librarian, Director Physical Education for whom the retirement age was prescribed by AICTE 62 years.

That the Board of Management of DTU considered the case for enhancement of age of retirement from 62 years to 65 years in its 4<sup>th</sup> meeting held on 28 Dec., 2010 decided the age of superannuation 62 years in the case of Foreman Instructors and Programmers re-designated as Lecturers...

In reply to para 1-2 it is submitted that the petitioners have been appointed to the post of Foreman Instructors and the post has been re-designated as Lecturer without financial implications and as per the decision of BoM the age of superannuation for the post of Foreman Instructor and Programmer is 62 years. In that case as requested by the petitioners if they are allowed to work for three years more it will involve financial implications.”

Again it is not GNCTD which nixed the enhancement age of the applicant, but it was DTU which took such decision. The decision so taken by the Board of Management of DTU reads thus:-

“Enhancement of age of superannuation from 62 to 65 years for teachers of the University.

The Govt. of Delhi accepted the recommendation of AICTE to enhance the age of superannuation from

62 to 65 in respect of faculty members except Librarian, Director (Physical Education) for whom retirement age prescribed by AICTE is 62 years. The acceptance of the Govt. of Delhi was communicated vide DTTE order No. F1(702)/2010-SB/PF.1/1164 dated 29.7.2010. Accordingly, this University had implemented the same and issued revised retirement order in respect of three faculty members namely Prof. Ashok Bhattacharya, Prof. Mukti Acharya & Sh. V.K.Sethi, Associate Professor who were otherwise due to retirement in the months of September and November, 2010 respectively. As per revised retirement order, their retirement shall now be in the year 2013. As far as the retirement age in respect of Programmer & Lecturer (Formerly Foreman Instructor, Workshop) there are no mentioned in the in respect of retirement age of these 2 cadres, these are non-vocational posts. Moreover, Programmers & similarly placed Foreman Instructors are available in other departments of Govt. of Delhi, they are governed by the retirement age applicable to normal Govt. servant, therefore, the age of retirement in respect of above two posts should be kept 62 years similar to Librarian & Director (Physical Education) in the university. (Copy of revised retirement order is placed in Annexure 4.6(i).13 (Page 120).”

Thus, if we go by the argument of respondents themselves, the aforementioned decision taken by DTU should not regulate the issue of enhancement of retirement age of the applicant and it should be the Office Order No. F.1 (702)/2010-SB/PF.1/1164 dated 29.07.2010 (Annexure A-10) which should apply to them. The said order clearly provides for enhancement of age of superannuation for Teachers in degree level technical institutions. Once the Govt. of NCT of Delhi endorsed in terms of the letter F.1 /Misc /P / 2003/1188 /15946 dated 10.03.2005 (Annexure A-6) and allowed the applicant to continue in service beyond the age of 60 years i.e.

upto 62 years, it does not lie in their mouth now to contend that the retirement age of the applicant should be 60 years and he was not doing the duty of teaching.

6. One of the plea espoused on behalf of respondents is that the continuance of the applicant in service beyond 62 years would have financial implication. As far as the said plea is concerned the applicant herein has been working in the organization for quite long and it cannot be said that his services were not required in Delhi College of Engineering (DTU). After retirement of the applicant, the respondents would be required to fill up the post by making fresh appointment thereto and the newly incumbents will also be required to be paid the salary. The difference between the salary of new incumbent and the applicant would be quite meager and the total financial implication involved in the matter would not be beyond few lakhs. Further, the number of total individuals who are likely to be affected by the enhanced retirement age would be not more than four. Thus, the plea of respondents of financial implication can be no ground to nix the applicant herein his due. Besides, as has been noted hereinabove, once the Hon'ble High Court has taken a view regarding the status of applicant i.e. he is Delhi Government employee, the decision taken by the DTU regarding his date of retirement is oblivious. Once both the Madan Committee as well as respondents

viewed that the main job of applicant is teaching and such question is also established on the basis of material available on record, the applicant cannot be denied the benefit extended to such employees of Delhi Government who were doing the teaching job. Further in Writ Petition (Civil) No. 7130/2011 (**Krishan Gopal Vs. UOI**), Hon'ble Delhi High Court ruled thus:-

“2.1 The issue in those writ petitions, broadly, was whether Librarians and Directors of Physical Education at par with the teachers, with respect to claim for age enhancement. The Writ petition is confined to Directors of Physical Education. The Division Bench vide its judgment dated 18.05.2012, on this aspect of the matter, in Krishan Gopal's case made the following observations:

“... 24. As a fortiori, it also becomes the prerogative of the Government to enhance the age of superannuation. Furthermore, while doing so, it is again the prerogative of the Government/employer to increase the age of superannuation in respect of certain categories of employees only. However, it would be with one caveat. When age of superannuation is increased in respect of a particular class of employees, then it has to be made available to all employees falling in the same category as otherwise it would result in invidious discrimination. Thus, if certain categories of employees who belong to same class are left out, they can legitimately make grievance and question the decision of the Government on the ground that it amounts to hostile discrimination and is thus violative of Article 14 of the Constitution.”

7. The decision mentioned in the impugned order F.1/260/76-Estt/12901 dated 08.12.2014 to nix the enhancement of retirement age of applicant is taken by DTU. Once according to the stand taken by the respondents, the



applicant is not employee of DTU and it is for Delhi Government to take decision regarding the age of his retirement, the decision taken by DTU is oblivious and is liable to be ignored, on this ground alone. Similarly the impugned Notification dated 22.09.2014 is also liable to be ignored. Besides, the ground espoused by the DTU to deny the benefit of retirement age to applicant is that they should be compared with Librarian and Director of Physical Education. Such stand is quite bizarre. Once in terms of letter F.1 /Misc /P /2003/1188/15946 dated 10.03.2005 (Annexure A-6), letter No. No.1(826)/2005-SB/1170 dated 23.08.2006, Annexure 7), as well as office order No.F.1 (702)/2010-SB/PF-1/684 dated 19.11.2010 referred to in Corrigendum No. F.1 /2-pay scales/ 2010/ Estt/ 12487-91 dated 26.11.2010 (Annexure -11), the GNCTD has treated the applicant as Lecturer/Teacher and DTU itself re-designated him as Lecturer, it is not understood that how the DTU could consider him compatible with Librarian and Director (Physical Education). If the applicant is to be compared with some other posts, as per the stand taken by the respondents time and again he has to be compared with Lecturer and with no one else. Moreover, when the DTU compared the applicant with Librarian and Director (Physical Education) to treat his retirement age as 62 years, the

GNCTD has tried to compare him with other Foreman Instructor of Govt. of NCT of Delhi whose age of retirement should be 60 years. At the cost of repetition, the communication dated 08.12.2014 and relevant excerpt of the reply of GNCTD is reproduced hereinbelow:-

“Communication dated 08.12.2014”

With reference to your application dated 25/09/2014 and 28/10/2014 on the above cited subject, I am directed to state that the case for clarifying the age of superannuation in respect of Foreman Instructor and Programmer as 62 to 65 was sent to DTTE on 23/09/2013 and they have returned the file on 06.08/2014 with the observation that DTU is an autonomous body and therefore, may take a decision in the matter at their level keeping in view of service conditions of Foreman Instructor and Programmer and benefits given to them.

This case was then put up to the Competent Authority for consideration of age of superannuation. The Competent Authority has decided to stand still the decision of the Board of Management in its 4<sup>th</sup> meeting held on 28.12.2010 wherein it has been decided that Programmer & similarly placed Foreman Instructors are available in other departments of Govt. of Delhi, they are governed by the retirement age applicable to normal Govt. servant, therefore, the age of retirement in respect of above two post should be kept 62 years similar to Librarian & Director (Physical Education) in University. Accordingly, necessary notification has been issued vide notification of even No. 8696-705 dated 20.9.2014 (copy enclosed) Your representation was again sent to the DTTE on 20.10.2014 for consideration. But DD (SB) referred to the observation dated 06.08.2014 in the relevant file. Hence, the decision taken regarding age of superannuation as 62 years for Foreman Instructor and Programmer in the 4<sup>th</sup> Meeting of Board of Management is valid.

“reply of GNCTD”

It is also informed that the retirement age of Foreman Instructors available in other institutes of this department is 60 years, therefore, it was the bounden duty of the authority of Delhi Technological University erstwhile DCE

to process his case of retirement at the age of his superannuation i.e. 60 years as the personal file of the petitioner is with the Delhi Technological University from the very inception of the act and the creation of the University, which was not done.”

8. In view of the aforementioned discussion and analysis, the OA is allowed. The respondents are directed to ignore the impugned letter dated 8.12.2014 and Notification dated 22.09.2014 issued by DTU and to extend the benefit of para 7 of the Office order dated 29.07.2010 to applicant herein also, i.e. they should continue the applicant in service, till he attains the age of 65 years. No costs.

**(Dr.Birendra Kumar Sinha)**  
**Member (A)**

**(A.K.Bhardwaj )**  
**Member (J)**

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