

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00381/2018

Jabalpur, this Thursday, the 19th day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Dr. V.G.Rao, S/o Shri Gangadhar Rao,
Aged 61 years, Scientist Grade G,
ICMR-NIRTH, Nagpur Road,
Jabalpur, (MP)-482001

-Applicant

(By Advocate –**Shri S. Ganguly**)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110029

2. Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel & Training,
Lok Nayak Bhawan,
New Delhi-110029

3. Secretary, Department of Health Research,
Ministry of Health & Family Welfare and Director General,
Indian Council for Medical Research,
V. Ramalingaswami Bhawan,
Ansari Nagar, New Delhi-110029

4. Director, ICMR-National Institute of Research
in Tribal Health, Nagpur Road,
Jabalpur (M.P.)-482001

-Respondents

(By Advocate –**Shri Ashish Shroti**)

(Date of reserving the order:-27.06.2018)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant whereby implementation of decision of Union Cabinet regarding the enhancement of age of superannuation upto 65 years as the applicant is being discriminated by the respondents Nos. 3 & 4 who have not properly enhanced the age of superannuation upto the age of 65 years.

2. The applicant has sought for the following reliefs in this Original Application:-

Relief Sought:

“8(i) Summon the entire relevant record from the possession of the respondents for its kind perusal.

(ii) In the given facts and circumstances of the case, the respondents, more specifically the respondent Nos.3 & 4, may be directed to forthwith implement the decision as taken by the Central Government/various other Ministries vide Annexure A/ & A/2 and enhance the age of superannuation even in the organization of respondent NO.3/4 with immediate effect.

(iii) In the given facts and circumstances, it is prayed that during the pendency of original application, the respondents may be restrained from retiring the applicant on 30.06.2018 and protect the service of the applicant till disposal of the original application along with all consequential benefits.

(iv) Any other order/orders, which this Hon'ble Court deems, fit proper.

(v) cost of the petition.”

3. The case of the applicant is that he is working under the fold of respondents Nos. 3&4 as Scientist-G Grade. The Central Cabinet Secretariat, Rashtrapati Bhawan, New Delhi has decided to enhance the age of superannuation of General Duty Medical Officer and non teaching Specialist Cadre for Central Health services upto 65 years with effect from 31.05.2016, a copy of which is annexed as Annexure A/1.

4. That in the line of the aforesaid decision, by exercising the power conferred under Article 309 of Constitution of India, the DoPT and has also issued the consequential order by appropriately amending the FR-56, a copy of which is annexed as Annexure A-2.

5. That one of the wings of respondent No.1 i.e. the Ayush Doctors have already been granted the aforesaid benefit by an order i.e. 24.11.2017. A copy of which is annexed as Annexure A-6.

6. That after the basic decision taken by the Union of India vide Annexures A-1 & A-2, the respective organisation/autonomous bodies/various sectors have passed their individual orders but with regard to ICMR (Indian Council of Medical Research) no such decision was taken. The case of the applicant is that the ICMR is an autonomous body working under the Department of Health Research Ministry of Health and Family Welfare (Govt. of India). Despite the various Communications of the Indian Medical

Association the extension of service of ICMR Scientists is to be considered by the Government on case to case basis. A copy of communication dated 21.12.2017 is annexed as Annexure A-7. and a uniform decision ought to have been taken by the respondents.

7. One Dr. Mukul Das, Chief Medical Officer, Gun Carriage Factory, Jabalpur has approached the Hon'ble Tribunal by way of Original Application No. 325/2016 wherein Co-ordinate Bench of Ernakulam, Central Administrative Tribunal was pleased to grant an interim order. A similar view has also been taken by the Hon'ble High Court of Madhya Pradesh Jabalpur and CAT, Kolkata Bench.

8. Respondents Nos. 3 & 4 have filed their reply. The replying respondents have specifically submitted that ICMR is a National Institute for Research in Tribal Health formerly known as 'Regional Medical Research Centre for Tribals (in short 'RMRCT') is a permanent Institute of Indian Council of Medical Research. It is established on 01.03.1984 with the mandate to improve health and create awareness among tribals through applied and operational research. It has been specifically submitted by the replying respondents that as per ICMR bye-laws the age of superannuation of officers/employees working in ICMR/NIRTH is 62 years and the applicant is due to retire on 30.06.2018. The

respondents has submitted that the Central Cabinet Secretariat approved the proposal for enhancement of age of superannuation of non teaching, public health specialists and general duty medical officers sub-cadres of Central Health Service (in short CHS) upto 65 years with effect from 31.05.2016. The Central Govt. has amended the Fundamental Rule 56 by way of notification dated 31.05.2016 (Annexure A-2), which is as under:

“(bb) The age of superannuation in respect of General Duty Medical Officers and Specialists included in Teaching, Non-Teaching and Public Health Sub-cadres of Central Health Service shall be sixty-five years.”

9. The Ministry of Health and Family Welfare was pleased to pass the order dated 31.05.2018 (Annexure A-3), thereby enhancing the age of superannuation of specialists of non-teaching and public health services (CHS) and general duty officer of CHS to 65 years.

10. Pursuant to aforesaid decision of the Central Govt. various references were received by the Ministry of Health and Family Welfare from various Autonomous Institutions/Associations/ State Govt. seeking clarification as to whether the decision of enhancing the age of superannuation is applicable to doctors other than those belonging to CHS. The Ministry of Health and Family Welfare vide office memorandum dated 30.10.2016 (Annexure A-4)

clarified that the said order dated 31.05.2016 of Central Govt. is applicable only to Doctors of CHS.

11. The replying respondents has submitted that the matter was placed before the Executive Council of ICMR in its meeting held on 12.10.2017 and Council resolved as under:

“On a suggestion from one of the member on increase in retirement age from 62 to 65 years in view of increase in retirement age of CHS Doctors and Medical Faculty, President, Governing Council observed that the extension in service of deserving Scientists after their retirement at the age of 62 years is considered by the Government on case to case basis. However, administrative powers cannot be exercised by the superannuated scientists beyond the age of 62 years.”

12. It is submitted by the replying respondents that the applicant is due to retire on 30.06.2018 and he made an application on 12.03.2018 which is annexed as Annexure R/1 requesting for his engagement as consultant in NIRTH after the retirement. The director NIRTH recommended vide order dated 12.03.2018 which is annexed as Annexure R/2, for engagement of applicant as consultant with effect from 01.07.2018. The said request of the applicant has been considered by the competent authority vide letter dated 10.05.2018, a copy of which is annexed as Annexure R/3. The said information has already been conveyed to the applicant vide letter dated 29.05.2018.

13. It is also submitted by the replying respondents that the applicant made another representation dated 12.03.2018 (Annexure R-4) requesting for his re-employment as Scientist-G after his retirement. So in view of the decision taken by the governing counsel of ICMR, the applicant's request for enhancement of age of retirement has not been accepted and speaking order has been passed on 13.06.2018 vide Annexure R-5.

14. It has been specifically mentioned by the replying respondents that a decision in the matter of enhancement of age of retirement has already been taken by the governing counsel of ICMR. The decision to enhance the age of retirement taken by other department is not binding on the respondents. The need of each department is different based on which they are free to take decision. The Ministry of Health and Family Welfare has clarified vide memo dated 30.08.2016 that each Department/Autonomous body may take decision with the approval of competent authority regarding applicability of order dated 31.05.2016 of the Ministry of Health and Family Welfare. So the respondent ICMR and autonomous body have taken its own decision in the matter in case to case basis.

15. The replying respondents have specifically submitted that the case of Dr. Mukul is different as Dr. Mukul Das is a civilian

doctor of Ordnance Factory Board belonging to Indian Ordnance Factories Health Services. Whereas the applicant is working as a Researcher/Scientist and he is not a practicing civilian doctor, therefore, the applicant can not claim parity with others. Moreover, from the perusal of Annexure A-1 & A-2 it is clear that decision by respondent No.1 has been taken in view of paucity of doctors who are involved in patient care. Other department have also implemented this decision in relation to such doctors who are involved in treating the patients. However, the applicant being a scientist and not involved in treatment of patient, is not similarly placed. So the replying respondents have given offer for engagement as consultant to the applicant. So there is no question of discrimination.

16. We have heard counsel for both the parties and also gone through the documents attached with the pleadings.

17. In the instant case, it is not disputed that before the notification issued by the Ministry of Health and Family Welfare dated 31.05.2018 (Annexure A-3) the age of superannuation of the applicant in the respondent organisation is 62 years. The said provision itself clear in the bye-laws governing the conditions of the service of the employees of the Indian Council of Medical Research (ICMR) which is as under:-

“4. The rules of the Government of India governing the retirement of employees as amended from time to time, shall apply to the employees of ICMR. However, the age of superannuation of Scientists under Health Research Scientists Cadre Rules shall be sixty-two years and of others shall be sixty years.

Re-employment of Scientists: In exceptional cases they may be retained in service up to the age of sixty five years on re-employment basis, subject to the person concerned being physically fit and suitable in all respects and subject to approval of President of Governing Council.”

18. It is also clear in the bye-laws that the respondent department is at liberty to adopt the rules or orders issued by the Government of India in proviso. The said relevant rules in the bye-laws of the respondent department are as under:-

“1. In regard to all matters concerning the service conditions of employees of ICMR, the Fundamental and Supplementary Rules framed by the Government of India and such other rules and orders issued by the Government of India from time to time shall mutatis mutandis apply to the employees of ICMR.

Notwithstanding anything contained in this by-law, the Governing Council shall have the power to frame rules & regulations to govern the conditions of service of employees of ICMR and relax the requirement of any rules to such extent and subject to such conditions as it may consider necessary.

Provided that such rules and orders issued by the Government of India as are specifically not made applicable to autonomous organisation like ICMR shall not apply to the employees of ICMR.”

19. The counsel for the applicant submits that as per Annexure A-2 the provisions of Fundamental Rule 56 has been amended and as per decision taken by the Union of India vide Annexures A-1 &

A-2 the respective organisation/autonomous bodies/various sectors have passed their individual orders but with regard to ICMR no such decision was taken.

20. The specific reply has been filed by the respondents and the respondent department has relied upon their bye-laws and as per rule 1 of bye-laws of the respondent department which clearly indicates that such rules and orders issued by the Government of India are not specifically made to be applied to the employees of ICMR.

21. The replying respondents has taken the specific averments in the reply that the Central Cabinet Secretariat approved the proposal for enhancement of age of superannuation of non teaching, Public Health Specialists and General Duty Medical officer sub-cadres of CHS upto 65 years with effect from 31.05.2016. It is also clear as per Annexure A-4 by which the clarification has been issued by the Ministry of Health and Family Welfare and it has been specifically spelt out that the notification dated 31.05.2016 is applicable to Doctors of Central Health Services only and it has been mentioned in the said clarification that the Department/Ministry/State Government/Autonomous bodies may take decision with the approval of their respective competent authority regarding the applicability of the order dated 31.05.2016 of the Ministry to

enhance the age of superannuation of Doctors upto 65 years as per the requirements and circumstances.

22. In the reply the respondent department has specifically mentioned that ICMR- National Institute for Research in Tribal Health is a permanent institution of Indian Council of Medical Research with the mandate to improve health and create awareness among tribals through applied and operations research. It has been submitted by the replying respondents that the Executive Council of ICMR in its meeting held on 12.10.2017 has resolved as under:

“ On a suggestion from one of the member on increase in retirement age from 62 to 65 years in view of increase in retirement age of CHS Doctors and Medical Faculty, President, Governing Council observed that the extension in service of deserving scientists after their retirement at the age of 62 years is considered by the Government on case to case basis. However, administrative powers cannot be exercised by the superannuated scientist beyond the age of 62 years.”

So the ICMR has not taken any decision in the matter of enhancement of age is not correct and the replying respondents has specifically not adopted the notification issued by the DOPT. Rather, the ICMR has taken a decision to consider the extension of service on case to case basis and the case of the applicant was considered and the applicant has been offered for engagement as consultant. Moreover, in the reply the respondent department has specifically submitted that the applicant being a scientist is not

involved in the treatment of patient and is not similarly placed as specified in Annexure A-1. So as per request of the applicant and also based on his utility for the Institution, the applicant has been suitably offer for engagement as Consultant so their cannot be a uniform decision between all the Department or Institution in the matter of enhancement of age of requirement.

23. As per Annexure R-5 dated 13.06.2018 the speaking order has been passed by the replying respondents. The said order has been passed after direction by this Tribunal in O.A. No. 200/00381/2018. The respondents dealt with each and every aspect including bye-laws of the respondent department and the decision taken by the respondent department regarding the consideration of enhancement of age.

24. Resultantly, we do not find any reasons to interfere with the impugned order, which is a reasoned one. Accordingly, this Original Application is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member