

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/1100 of 2017

Reserved on: 15.03.2019

Pronounced on: 5.04.2019

Between:

Dr. M. Srinadha Charya, S/o. late M. Venkataramacharya,
Aged about 61 years, Occ: Chief Medical officer,
(Ayurveda), Central Government Health Scheme,
Kendriya Swasthya Bhawan, Begumpet, Hyderabad – 16.

... Applicant

And

1. Union of India, Rep. by the Secretary,
Government of India,
Ministry of AYUSH, AYUSH Bhavan,
B Block, GPO Complex, INA, New Delhi-23.
2. The Secretary,
Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.
3. Union of India, rep. by Secretary,
Department of Personnel & Training,
Ministry of Human Resource Development,
New Delhi.
4. The Additional Director,
Central Government Health Scheme,
Kendriya Swasthya Bhawan, Begumpet,
Prakash Nagar, Hyderabad – 500 016.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mrs. L. Pranathi Reddy, Addl. CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant is challenging the refusal of the respondents to enhance the age of retirement of Ayush doctors from 31-05-2016 as in case of similarly placed doctors under the Ministry of Health and Family Welfare , Ministry of Railways etc. At present, the enhanced age of retirement of Ayush Doctors has been effective only from 27.9.2017

3. Facts being admitted, the same obviates debate. The Applicant joined the respondents' organisation viz., the Ministry of Health and Family Welfare in 1986, a Ministry that was administering various systems of medicines and at present is working as Chief Medical Officer. He belongs to the Homoeopathic system of medicines. He was aged 60 in February month of 2017 and as per rules, due for retirement on 28-02-2017. Carving out from the Ministry of Health and Family Welfare, a separate Ministry with the Appellation, Ministry of AYUSH (an acronym of Ayurveda, Unani, Sidhha and Homoeopathic) was constituted in 2014. The conditions of services of medical officers are governed by those laid down by the Ministry of Health and Family Welfare. Parity amongst the doctors of Allopathic system and those of the Ayush system has been duly maintained. However, a Presidential order was issued augmenting the age of retirement of the general duty doctors to 65 years w.e.f. 31.5.2016 by the Ministry of Health & Family Welfare (MOH&FW) and by the Ministry of Railways. The enhanced age of retirement has not been extended to the medical officers belonging to Ayush. Being due for retirement on 28.2.2017 the applicant as well as the Association of concerned Ayush doctors represented on several occasions to the respondents for extending the benefit of enhanced retirement age. And, there being no response, some doctors approached the

Hon'ble Principal Bench of this Tribunal and obtained interim orders to continue in service with certain conditions appended. Meanwhile, the MOH&FW has clarified that each Ministry can take up with the competent authority and get the age of retirement amplified to 65 as per their functional requirements. Following this clarification, Govt. of NCT of Delhi and South Delhi Municipal Corporation have issued favourable orders in respect of doctors working under them. Being aware of these developments the applicant made another representation on 6.12.2016 and since his retirement date was close by he filed OA 1/2017 in this Tribunal which was dismissed on the ground that the Tribunal is not in favour of interfering in policy matters. When the Tribunal order was challenged in the Hon'ble High Court, interim stay was granted in WP No 7022/2017 ordering the continuance of the applicant in service till further orders. Respondents issued orders complying with the judgment of the Hon'ble High Court with a rider that he will not draw salary till the case is finalised. Thereafter, the Cabinet approved the proposal of enhanced retirement age of 65 years to Ayush Doctors w.e.f. 27.9.2017, i.e. the date of approval and also gave post facto approval of the decisions of the Ministry of Railways, Ministry of Shipping etc extending the retirement age to 65 years analogous to that of the orders of the MOH&FW. Consequent to this development Ministry of Ayush has issued concurrent orders on 24.11.2017 raising the retirement age to 65 years w.e.f 27.9.2017. The order having been construed to be discriminative by some similarly placed doctors of the National Capital Region moved the Hon'ble Principal Bench in OA 2712/2016 which was allowed on 24.8.2017. From the Ministry of Ayush, one another Doctor by name Dr K.S.Sethi has moved the Hon'ble Principal Bench in OAs 2442/2017 & OA 4009/2017 wherein it was directed to continue the services of the applicant with salary. Applicant claims that the order of the

Ministry giving only prospective effect to the decision of the cabinet on 27.9.2017 is discriminative and is in violation of articles 14 and 16 of the Constitution. Aggrieved over the same the OA has been filed.

4. The contentions of the applicant are that the impugned order dated 24.11.2017 is discriminative and violates articles 14 and 16 of the constitution. Different Ministries have enhanced the retirement age to 65 years to similarly placed doctors and hence the applicant is also eligible. The cut off date of implementation being taken as 27.9.2017 instead of 31.5.2016 is artificial and arbitrary. The terms and conditions of General Duty Officers of the Ministry of Health and Family Welfare and those of Ayush being identical, retirement age of General Duty Officers when enhanced w.e.f 31-5-2016, the same benefit should have been extended to Ayush doctors as well. Hon'ble Principal Bench has allowed a similar issue in OA 2712/2016 and therefore there is a binding precedent to be adhered to.

5. Respondents contest the claim of the applicant by contending that the Hon'ble High Court of Delhi has stayed the order of Hon'ble PB in OA 2712/2016 favouring doctors of Delhi NCT in regard to enhancement of age in WP No.8704 of 2017 with a direction to the petitioners therein to continue the services of the doctors if they so desire without salary. Thus the stay will have similar effect on the orders issued by the Hon'ble PB orders in OA 2442/2017 favouring Dr K.S. Sethi working for the respondents. Taking cue from the order of the Hon'ble High Court of Delhi, respondents on the advice of DOPT have challenged the order of Hon'ble PB in OA 2442/2017 allowed on 5.9.2017 favouring Dr K.S.Sethi, in W.P No 610/2018 but it was dismissed with a direction that Dr K.S.Sethi be continued in service till 65 years without assigning administrative duties and pay salary as well. It was also mentioned in the order

that the legality of the impugned order denying enhanced retirement age has not been gone into. Respondents claim that the order of the High Court of Delhi is specific to Dr Sethi and cannot be extended to the applicant. Besides, prescribing the retirement age is a policy matter and hence judicial review is prohibited. Enhancement of the retirement age cannot be claimed as a matter of right. It is the pure discretion of the respondents to increase or decrease the age of retirement based on functional and financial justification.

6. Heard the learned counsel and perused the documents as well the material papers placed on record.

7. Applicant claims that since the Hon'ble Principal Bench in OA 2442/2017 has delivered a verdict which is in favour of the applicant therein and on being upheld by the Hon'ble High Court of Delhi, the same relief has to be extended to the applicant. Otherwise it would tantamount to discrimination and violating articles 14 and 16 of the constitution. Further, it is true that the Cabinet has taken a decision to apply the norm of enhanced retirement age of 65 years to Ayush doctors w.e.f 27.9.2017. Respondents have issued consequential orders on 24.11.2017. The respondents order had a prospective effect w.e.f. 27.9.2017 and hence the applicant who was due to retire on 28.2.2017 could not be brought under the ambit of the said order by the respondents. The applicant claims that one another colleague by name Dr K.S.Sethi, was given the benefit of extension of retirement age to 65 years by the Hon'ble High Court of Delhi in W.P No 610/2018. Respondents have implemented the judgment and therefore it attained finality until it is challenged in the Hon'ble Supreme Court. Applicant has also submitted an office note of the respondents dated 28.11.2018 wherein it was observed that it may not be appropriate to file an SLP before the Hon'ble Supreme Court. However, in the said judgment of Hon'ble Court of Delhi it was

spelt out that the legality of the impugned order refusing to enhance the retirement age was not gone into. Therefore the legal question is still open. Besides, the respondents claim that the said judgment of the Hon'ble High Court of Delhi is applicable only to Dr K.S. Sethi and not to others.

Further, earlier, prior to the decision dated 27-09-2017 of the Cabinet, this very same applicant had filed OA No. 01/2017, which when considered was dismissed on 27-02-2017 on the ground that the age of retirement is one of policy decision of the Government and against the same, the applicant has moved the High Court for the State of Telangana and the State of Andhra Pradesh in WP no 7022/2017 against the order of dismissal dt 27.2.2017 and obtained interim orders in WPMP no 8626/2017 on 28.2.2017 in his favour to continue in service. Thus, the Hon'ble High Court of A.P is already seized of the matter. Institution of the present OA is posterior to the date of Cabinet decision, which is to be treated as a subsequent development in the case of the pending writ petition No. 7022/2017. Further, as per the learned counsel for the respondents, the Respondents have approached the Hon'ble High Court for the State of Telangana and for the State of A.P for vacation of the interim order issued in favour of the applicant in WP No. 7022/2017.

Under the above circumstances, judicial propriety demands that the case of the applicant be not considered on merit in this OA separately as the very subject matter in respect of the very applicant has been seized of by the Hon'ble High Court. If advised, the applicant may apprise Hon'ble High Court, the fact of the issue of the Cabinet Decision enhancing the age of retirement of Ayush Doctors upto 65 years, but w.e.f. 27-09-2017 as well the office note of the respondents dt. 28.11.2018 while the claim of the applicant is that parity should be maintained with reference to the date of effect of the said decision. It is

pertinent to mention here that the Hon'ble of High Court of Delhi left open the question of law in respect of the issue for interpretation. With the above direction the OA is disposed of with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 5th day of April, 2019

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