

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/3746/2018
M.A./100/4176/2018
With
O.A./100/1317/2018
O.A./100/2191/2018
O.A./100/3523/2018
M.A./100/5286/2018
O.A./100/3582/2018
O.A./100/3597/2018
O.A./100/3671/2018
O.A./100/3987/2018
M.A./100/4444/2018
O.A./100/2593/2017

New Delhi, this the 14th day of August, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

O.A.3746/2018

1. Dr. Vinod Kumar Jain
S/o Late Shri Hari Lal Jain
Aged 61 years Group A,
Presently working as Sr. C.M.O.,
(H.A.G.) Department of Pediatrics
PGIMER & Dr. RML Hospital,
New Delhi
R/o Block R-35-B Dilshad Garden,
New Delhi-110095
2. Dr. Komal Singh
S/o Late Shri Kishori Lal
Aged 62 years Group A,
Sr. C.M.O. (HAG) & Head
R/o E-1, Deen Dayal Upadhyay Hospital Residential
Complex, Hari Nagar,
New Delhi-110064
3. Dr. Ashok Kumar Agarwal
S/o Shri R.K. Agarwal
Aged 62 years Group A,
Additional Director, CGHS, Dehradun
R/o A 29, Vishali Colony,
Garh Road, Meerut-250002

4. Dr. G. Vijayabhaskar
 S/o Late Shri G. Narayana
 R/o Dr. G. Vijayabhaskar,
 Aged 62 years, Group A ,
 Additional Director, CGHS, Hyderabad
 R/o Plot No.275A, 4B,
 Kamala Residency,
 Addagutta Housing Society,
 Western Hills Colony, Opp. JNTU,
 Kukatpally, Hyderabad-85,
 Telangana

....Applicants

(Through Sh.Sagar Saxena with Ms.Sukriti Sinha, Advocates)

Versus

1. Union of India
 Through the Secretary
 Ministry of Health and Family Welfare
 Government of India, Nirman Bhawan,
 New Delhi-110011
2. Ministry of Personnel Public Grievances & Pensions,
 Govt. of India,
 Department of Personnel & Training,
 Through its Secretary,
 North Block, New Delhi
3. Deen Dayal Upadhyay Hospital,
 Through its Medical Superintendent,
 Hari Nagar,
 New Delhi-110064
4. Department of Health & Family Welfare,
 Government of National Capital Territory of Delhi
 Through its Principal Secretary (H&FW)
 Level-9, Delhi Secretariat, IP Estate,
 New Delhi-110002

... Respondents

(Through Shri Rajeev Sharma, Shri Rajat Krishna and
 Shri Saket Chandra, Advocates)

O.A.1317/2018

Dr. Ravi Prakash Narayan
 Age about 62 years
 S/o Dr. M.N. Srivastava,
 R/o D-II/141, West Kidwai Nagar,
 New Delhi-110023
 Consultant, Professor & Head of

Department of Burns, Plastic &
Maxillofacial Surgery,
Vardhman Mahavir Medical College &
Safdarjung Hospital,
New Delhi-110029

....Applicant

(None appeared)

Versus

1. Union of India
Through its Secretary
Ministry of Health and Family Welfare
Government of India, Nirman Bhawan,
New Delhi-110001
2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi

... Respondents

(Through Shri Rajeev Sharma, Shri Rajat Krishna and
Shri Saket Chandra, Advocates)

O.A.2191/2018

Dr. Komal Singh
S/o Late Shri Kishori Lal,
Aged 61 years, Group A
Head of Department, Forensic Medicine,
R/o E 1, DDU Hospital Residential Complex,
Hari Nagar, New Delhi-110064

....Applicant

(Through Sh.Sagar Saxena with Ms.Sukriti Sinha, Advocates)

Versus

1. Union of India
Through the Secretary
Ministry of Health and Family Welfare
Government of India, Nirman Bhawan,
New Delhi
2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi

... Respondents

(Through Shri Rajeev Sharma, Shri Rajat Krishna and
Shri Saket Chandra, Advocates)

O.A.3523/2018

1. Delhi Administration Doctors
Welfare Association
Through its President,
Dr. Amareshwar Narayan
56, Triveni Apt.,
A-6, Paschim Vihar,
New Delhi-110063
 2. Dr. B.K. Dey,
S/o Late Shri Bhaskar Kumar Dey,
Aged 62 years, Group A,
45, Harit Niketan,
West Enclave, Pitampura,
New Delhi
-Applicants

(Through Sh.Sagar Saxena with Ms.Sukriti Sinha, Advocates)

Versus

1. Union of India
Through the Secretary
Ministry of Health and Family Welfare
Government of India, Nirman Bhawan,
New Delhi
 2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi
 3. Government of National Capital Territory of Delhi
Through its Chief Secretary,
Level-4, Delhi Secretariat,
IP Estate, New Delhi-110002
 4. Department of Health & Family Welfare,
Government of National Capital Territory of Delhi
Through its Principal Secretary (H&FW)
Level-9, Delhi Secretariat, IP Estate,
New Delhi-110002
- Respondents

(Through Sh.Rajeev Sharma, Sh.Rajat Krishna, Sh. Saket
Chandra and Sh. R.K. Sharma, Advocates)

O.A.3582/2018

1. Joint Action Council of Service Doctors
Organization,
Through its President Dr. D.R. Dey,
586, Laxmibai Nagar,
New Delhi-110023
 2. Dr. Anil Kumar Varshney,
S/o Late Shri R.K. Varshney,
Aged 61 years,
Consultant Medicine,
PGIMER & Dr. RML Hospital,
New Delhi
 3. Dr. Vijay Rai,
S/o Late Shri Ram Rai,
Aged 61 years Group A
Presently working as Sr. C.M.O. (S.A.G.)
Department of Pediatrics, PGIMER &
Dr. RML Hospital New Delhi
R/o Flat No.75, J.D.M. Apartments,
Sector 5 Dwarka,
New Delhi-110075
-Applicants

(Through Sh.Sagar Saxena with Ms.Sukriti Sinha, Advocates)

Versus

1. Union of India
Through the Secretary
Ministry of Health and Family Welfare
Government of India, Nirman Bhawan,
New Delhi
2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi

(Through Sh.Rajeev Sharma, Sh.Rajat Krishna, Sh. Saket
Chandra, Advocates)

O.A.3597/2018

1. Dr. Laxmi Narain Gupta,
S/o Shri Ram Narain Gupta
Aged 62 years, Group A,
Consultant & Head, Department of Neurosurgery
PGIMER & Dr. RML Hospital,
New Delhi
2. Dr. Smita Deshpande
W/o Dr. Nilkanth D. Deshpande
Aged 62 years, Group A,
Consultant & Head, Department of Psychiatry &
Centre of Excellence in Mental Health, PGIMER
& Dr. RML Hospital, New Delhi
R/o D-1/100, Satya Marg,
New Delhi-110021
3. Dr. Neeraj Pandit
S/o Shri Udai Shankar Sharma
Aged 62 years, Group A,
Presently working as Consultant & Head,
Department of Cardiology,
PGIMER & Dr. RML Hospital, New Delhi
R/o Flat No.90, Prashant Apartments,
Plot No.41, I.P. Extension,
New Delhi-110092
4. Dr. Bani Sarkar
D/o Shri P.K. Sarkar,
Aged 61 years,
Group A, Consultant & Head
Department of Obst & Gyne
PGIMER & Dr. RML Hospital, New Delhi
R/o X-12, HUDCO Place, Andrews Ganj,
New Delhi-110049 ...Applicants

(Through Sh.Sagar Saxena with Ms.Sukriti Sinha, Advocates)

Versus

1. Union of India
Through the Secretary
Ministry of Health and Family Welfare
Government of India, Nirman Bhawan,
New Delhi
2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,

North Block, New Delhi

3. Dr. Ram Manohar Lohia Hospital & PGIMER
Through its Medical Superintendent,
Baba Kharak Singh Marg,
New Delhi-110001Respondents

(Through Sh.Rajeev Sharma, Sh.Rajat Krishna, Sh. Saket Chandra, Advocates)

O.A.3671/2018

Dr. Shabnam Bhandari Grover,
W/o Shri Inder Pal Singh Grover,
Aged 62 years, Group A
Consultant and Head,
Department of Radiology,
VMMC and Safdarjung Hospital, New Delhi
R/o E-81, Kalkaji,
New Delhi ...Applicant

(Through Sh.Sagar Saxena with Ms.Sukriti Sinha, Advocates)

Versus

1. Union of India
Through the Secretary
Ministry of Health and Family Welfare
Government of India, Nirman Bhawan,
New Delhi
2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi
3. Safdarjung Hospital & VMMC,
Through Medical Superintendent,
New Delhi-110029Respondents

(Through Sh.Rajeev Sharma, Sh.Rajat Krishna, Sh. Saket Chandra, Shri Subhash Gosai and Shri R.K. Sharma, Advocates)

O.A.3987/2018

1. Dr. Archana Gupta,
W/o Shri R.K. Gupta
Aged 62 years, Group A,

Chief Health Director,
R/o 303-2B, P.K. Road Railway Officers Enclave,
Chelmsford Road,
New Delhi-110055

2. Dr. Sunil Kapur,
S/o Shri Roshan Lal Kapur
Aged 62 years, Group A,
Principal Chief Medical Director,
R/o 253-5A, P.K. Road Railway Officers Enclave
New Delhi-110001
3. Dr. Anil Kumar
S/o Shri Hari Singh,
Aged 62 years, Group A,
Director General Railway Health Service,
R/o 253-8B, P.K. Road Railway Officers Enclave,
New Delhi-110001 ...Applicants

(Through Sh.Sagar Saxena with Ms.Sukriti Sinha, Advocates)

Versus

1. Ministry of Railway (Railway Board)
Through the Secretary
Rail Bhawan, Rafi Marg,
New Delhi-110001
2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi
3. Ministry of Health and Family Welfare,
Through the Secretary,
Government of India, Nirman Bhawan,
New DelhiRespondents

(Through Shri Krishna Kant Sharma, Advocate)

O.A.2593/2017

Dr. (Prof.) Shabnam Bhandari Grover,
Presently Non-Teaching Specialist (NFU)
Radiology (HOD) VMMC & Safdarjung Hospital, Group 'A'
W/o Shri Inder Pal Singh Grover,
Aged about 62 years,
R/o E-81, Kalkaji, New Delhi-110019 ...Applicant

(None appeared)

Versus

1. Union of India
Through the Secretary
Ministry of Health and Family Welfare,
Government of India, Nirman Bhawan,
New Delhi-110001
 2. Ministry of Personnel Public Grievances & Pensions,
Govt. of India,
Department of Personnel & Training,
Through its Secretary,
North Block, New Delhi
-Respondents

(Through Shri Rajeev Sharma, Sh. Rajat Krishna, Sh. Saket Chandra, Advocates)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

In this batch of OAs, the amendment caused to Rule 56 of the Fundamental Rules through Notification dated 11.08.2018 is challenged. The provision relates to the age of superannuation of Medical Officers of the Central Health Service. Earlier, the age of superannuation of Doctors in various Central Health Services and Institutions was 60 or 62 years, depending upon the nature of duties and positions held. With a view to avail the services of the experienced Doctors in the field of teaching and treatment of patients, the government decided to enhance the age of superannuation to 65 years through Notification dated 31.05.2016. However, that was resulting in a situation where, the Doctors who have crossed the age of 62 years were continuing to hold the

administrative positions and the very purpose of extending the age of superannuation was being defeated. Therefore, the Government came forward with an amendment by notification dated 22.03.2017 wherein it was mentioned that the Doctors shall not hold administrative positions after 62 years of age.

Here again a spate of litigation ensued.

2. With a view to give a quietus to the entire issue, the impugned notification is issued to the effect that the age of superannuation shall be 62 years and if any Doctors intend to continue in service beyond that age, it shall be open to them to opt for that. A clause was also incorporated to the effect that their service shall be availed in the fields of teaching, clinical patient care and implementation of health programmes and public health etc., and not on administration side.

3. The applicants contend that the conditions incorporated in the impugned amendment are arbitrary and illegal and they defeat their right in many ways. It is stated that if Doctors are continued beyond 62 years but are denied administrative positions, a situation would emerge wherein they have to report to the Doctors who were their juniors earlier and there may also be instances of their being victimised or humiliated.

4. Another facet of their argument is that promotion and other benefits which are inseparable part of service law are denied for the service beyond 62 years *albeit* on exercise of option. According to them, such a denial is contrary to the relevant Service Rules, and principles of law. Other contentions are also advanced.

5. The respondents filed counter affidavits, opposing the OAs. It is stated that the very purpose of extending the age of superannuation of Doctors, beyond 62 years was to avail their services in teaching and for treatment of patients. It is stated that if they continue to hold administrative positions even after 62 years, a situation would emerge wherein quite a large number of Doctors have to stagnate in the lower posts. It is further stated that once it is optional for any Doctor to continue beyond 62 years, they cannot ignore the conditions stipulated therefor. The plea as regards the possible humiliation or victimisation is denied.

6. We heard Shri Sagar Saxena with Ms.Sukriti Sinha, for the applicants in OA Nos. 3746/2018, 2191/2018, 3523/2018, 3582/2018, 3597/2018, 3671/2018 and 3987/2018 and Shri Rajeev Sharma, Shri Rajat Krishna, Shri Saket Chandra, Shri R.K. Sharma, Shri Krishna Kant Sharma and Shri Subhash Gosai, for the respondents.

7. It was a long drawn exercise for the government, in the context of availing the services of the experienced Doctors in the field of teaching and treatment of patients, beyond the normal age of superannuation. There was no demand whatsoever for enhancement of the age of superannuation of doctors who were retiring at the age of 60 or 62 years depending upon the stipulation of services rules. The proposal emanated from the government itself, for availing the services of experienced Doctors. On account of insistence of some of them to continue in the administrative positions, the very purpose was defeated. Therefore, successive amendments had to be made to ensure that the Doctors do not hold any administrative position beyond 62 years.

8. The amendment which is under challenge in these OAs reads as under:

“NOTIFICATION

New Delhi, the 11th August, 2018

G.S.R. 767(E) – In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Fundamental Rules, 1922, namely -

1. Short title and commencement – (1) These rules may be called the Fundamental (Second Amendment) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Fundamental Rules, 1922, in rule 56, for clause (bb), the following shall be substituted, namely:-

“(bb)(i) The age of superannuation in respect of the doctors belonging to –

- (i) Central Health Service;
- (ii) Indian Railways Medical Service

- (iii) AYUSH and working under the Ministry of AYUSH,
- (iv) Civilian doctors under the Directorate General of Armed Forces Medical Service,
- (v) Medical Officers of the Indian Ordnance Factories Health Service
- (vi) Dental Doctors under the Department of Health and Family Welfare,
- (vii) Dental doctors under the Ministry of Railways; and
- (viii) General Duty Medical Officers, Specialist Grade doctors and Teaching Medical Faculty working in Bhopal Memorial Hospital and Research Centre

shall be sixty-two years unless they exercise the option of posting to Teaching, Clinical, Patient Care, Implementation of health programmes, Public Health programmes and functions including advisory and consultancy depending on their expertise and experience, as decided by the competent authority in the concerned Ministry or Department from time to time, in case they desire to continue in their service upto the age of sixty-five years:

provided that the age of superannuation in respect of the doctors belonging to the General Duty Medical Officers sub-cadre of Central Armed Police Forces and Assam Rifles and Specialist Medical officers of Central Armed Police Forces and Assam Rifles shall be sixty-five years.

(ii) The serving doctors belonging to the services referred to in sub-clause (i) who have either already attained the age of sixty-two years or attaining the age of sixty-two years within next six months from the date of publication of these amendment rules in the Official Gazette, may exercise their option in regard to their posting to Teaching, Clinical, Patient Care, Implementation of Health programmes, Public Health programmes and functions including advisory and consultancy as specified in sub-clause (i), within a period of thirty days from the date of the commencement of the Fundamental (Second Amendment) Rules, 2018.

(iii) The serving doctors who fail to exercise the option in regard to their posting to Teaching, Clinical, Patient Care, Implementation of Health programmes, Public Health programmes and functions including advisory and consultancy as specified in sub-clause (i), within the period specified in sub-clause (ii), shall be superannuated from their service on attaining the age of sixty-two years or on expiry of a period of thirty days from the date of the commencement of the Fundamental (Second Amendment) Rules, 2018, whichever is later.”

9. From this, it is clear that the age of superannuation is stipulated as 62 years and it is optional for the Doctors to continue beyond that age, up to 65 years. The nature of duties that are to be assigned to the Doctors who continue beyond 62 years is indicated in clause 2 of the notification.

10. Added to that, the government prescribed a form of option, as under:

“OPTION FOR CONTINUING IN SERVICE UPTO 65 YEARS BY DOCTORS OF CENTRAL HEALTH SERVICE ON ATTAINING 62 YEARS OF AGE

SL No.	DETAILS	
01	Name	
02	Employee code	
03	Date of Birth	
04	Educational Qualification	
05	Present place of Posting	
06	Telephone No. (Office) (Resi.) (Mobile)	
07	E-mail ID	
08	Present Address	
09	Permanent Address	

2. In pursuance of Ministry of Health and Family Welfare’s O.M. No.A-12034/4/2018-CHS-V, dated 13.08.2018 and Department of Personnel and Training’s notification No.GSR 767(E) dated 11.08.2018 I, Dr._____ working as _____ in the sub cadre of GDMO/Teaching/Non-Teaching/Public Health of Central Health Service have already attained the age of 62 years on _____/going to attain the age of 62 years on _____ am exercising the option to be posted to Teaching/ Clinical/ Patient Care/ Implementation of Health Programmes/ Implementation of

Public Health Porgrammes including advisory, consultancy, etc as given under:-

SL No.	OPTION	PREFERENCE OF OPTION (TO BE INDICATED FROM 1 TO 7)
01	Teaching	
02	Clinical	
03	Patient Care	
04	Implementation of Health Programmes	
05	Implementation of Public Health Programmes	
06	Advisory	
07	Consultancy	

3. I am aware that I will be considered for posting to posts other than administrative posts at the desired field as per my option indicated subject to availability of vacancy and administrative convenience and as decided by the Competent Authority. Further, I shall not stake any claim for posting to any additional administrative posts notified in future. I also understand that my continuation in service is subject to Government of India rules/instructions, etc. issued from time to time.

(Signature of the Officer)
Name.....
Stamp.....Date.....”

The last paragraph of the option form virtually puts the Doctors on notice that they are aware of the duties assigned to them during the extended period of service.

11. Things would have been different altogether, had it been a case where such restrictions are imposed in the course of ordinary service i.e. before the age of superannuation which was existing earlier. The age of superannuation as contained in the earlier rules is left intact. There are instances where

the Hon'ble Supreme Court did not interfere even if the age of superannuation was reduced in public interest. In the instant case, it has been enhanced with certain restrictions. Further, the restrictions are not imposed. Rather the continuation beyond 62 years is optional.

12. The occasion for the Tribunal to interfere would arise either when the amendment was carried out in contravention of the prescribed procedure or where the existing service conditions of the Doctors are altered to their detriment. None of those grounds exist here.

13. It may be true that the right of an employee in the context of seniority and other incidental benefits cannot be defeated while he is in service. Where, however, a special mechanism is evolved subject to certain conditions, the ordinary tenets of service law cannot be applied just like that.

14. The government has also, in the recent past, amended the CHS Rules wherein the uncertainty as to the scope and ambit of administrative posts has been put at rest. Schedule 8 appended to the rules contains the list of administrative positions. In one or two OAs, applications are filed proposing to challenge the amendments to those rules also. However, in the absence of comprehensive pleadings, we do not feel it appropriate to deal with such an important aspect. It shall

always be open to the applicants to challenge the said rules separately, if they are so advised.

15. The first of the amendments caused to the Notification dated 31.05.2016 was challenged in **Dr. Jagdish Prasad Vs. Union of India** in OA No.494/2017. After undertaking extensive discussion, as to the competence of the government to amend the rules and taking note of the law laid down by the Hon'ble Supreme Court in **Government of A.P. Vs. P. Laxmi Devi**, (2008) 4 SCC 720, this Tribunal vide its judgment dated 5.04.2018 declined to interfere with the amendment. However, an observation was made to the effect that the applicant therein cannot be deprived of the administrative positions held by him, unless an equivalent post of his rank is created. That part of the judgment is stayed by the Hon'ble High Court of Delhi.

16. An argument is advanced to the effect that under the impugned notification itself, certain categories of doctors are permitted to remain in service up to the age of 65 years without the necessity of exercising option etc. There the classification is based on intelligible criteria and the concerned organisations are known for their typical nature. The applicants who are working in the Central Health Service, cannot be compared with those working in Army or other similar establishments.

17. We do not find any merit in the OAs. Accordingly, we dismiss the same, however leaving it open to the applicants to pursue remedy vis-a-vis the amendment to the Service Rules, if they want. Pending MAs in the OAs shall also stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/