

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 633 of 2016

Dated this Tuesday, the 25th day of June, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
RAVINDER KAUR, MEMBER (JUDICIAL)

Dr. Chandana Biswas,
Age 59 years,
Wife of Tushar K. Biswas
working as Chief Medical Officer (NMSG)
at Naval Armament Depot, Trombay,
residing at Adhiraj Gardens,
Cyprus Aqua, Flat 503 / 504,
A Wing, Sector 5, Kharghar,
Navi Mumbai 410 210. ... ***Applicant***
(By Advocate Shri S.V.Marne)

VERSUS

1. Union of India, Through the Secretary,
Ministry of Defence, South Block,
New Delhi 110 001.
2. Director General of Armed Forces Medical Services,
Ministry of Defence, M Block,
New Delhi 110 011.
3. Director General of Naval Armament,
Integrated Head Quarters of
Ministry of Defence (Navy),
West Block 5, R.K. Puram,
New Delhi 110 066.
4. The Flag Officer Commanding-in-Chief,
CSO (P&A) H.Q. Western Naval Command,
Shahid Bhagat Singh Marg,
Mumbai 400 001. ... ***Respondents***
(By Advocate Shri D.A.Dube)

Order reserved on 19.03.2019

Order pronounced on 25.06.2019

O R D E R

Per: Dr. Bhagwan Sahai, Member (Administrative)

Dr. Chandana Biswas working at the time of filing of the OA as Chief Medical Officer (Non Functional Selection Grade) at Naval Armament Depot, Trombay, Mumbai filed this OA on 12.09.2016. She has sought quashing and setting aside of order dated 24.10.2017 (Annex A-11) issued by the D.G., Armed Forces Medical Services (AFMS), Ministry of Defence, Government of India, New Delhi conveying approval to enhancement of age of superannuation of Civilian Doctors under DGAfMS to 65 years with effect from 27.09.2017 by which benefit of enhanced age of superannuation has been denied to her.

She seeks direction to the respondents to reinstate her in service and / or permit her to resume service as Chief Medical Officer (NFSG) with effect from 01.10.2016 with all consequential benefits of pay and allowances, counting for service for pension, etc.

She further seeks direction to

the respondents to pay her arrears of salary and allowance from 01.10.2016 till she actually resumed her duty along with interest of 12%.

2. Briefly stated facts :-

2(a). The applicant has stated that her date of birth is 29.09.1956, she has a qualification of MBBS and was initially appointed as Civilian Medical Officer on 15.05.1995 at Naval Armament Depot, Karanja. Subsequently, she got promoted to the post of Senior Medical Officer and Chief Medical Officer (non-functional selection grade) in 2008.

2(b). The Head Office for Medical Officers serving under the Ministry of Defence is Director General, Armed Forces Medical Services, New Delhi i.e. the respondent No.2. She claims that the Government of India decided to enhance with immediate effect the age of superannuation of various categories of Doctors working as Specialist in non-teaching and public health cadres of Central Health Service and General Duty Medical Officers of CHS (Central Health

Service) employed under the Government of India from 62 to 65 years as per the order of Ministry of Health and Family Welfare dated 31.05.2016. A copy of the order is at Annex A-1.

2(c). The applicant has further stated that along with issuance of the order dated 31.05.2016, necessary amendment was also made in Rule 56 of the Fundamental Rules (copy at Annex A-2). Thereafter, various Ministries of the Government of India issued letters informing their respective offices and field formations about the enhanced age of superannuation. For example, a copy of such letter issued by the Railway Board enhancing the age of superannuation of General Duty Medical Officers in Indian Railway Medical Service was issued on 31.05.2016 (copy at Annex A-3).

2(d). However, Ministry of Defence did not take immediate action in this regard. Since the applicant was to complete the age of 60 years on 29.09.2016, she submitted a representation to the Director General of Naval Armament,

Integrated Headquarters, Ministry of Defence (Navy), New Delhi (respondent No.3) on 10.08.2016 requesting for specific order regarding her superannuation (copy at Annex A-4).

2(e). Then she made another representation on 30.08.2016 to Hon'ble Defence Minister with copies to respondents Nos.2 and 3 for issuing specific order for enhancement of her age of superannuation to 65 years. This representation was forwarded by the General Manager, Naval Armament Depot, Trombay, Mumbai to Chief General Manager, Naval Armament Depot, Mumbai.

2(f). However, till filing of the present OA on 12.09.2016, no clarification had been received about date of superannuation of the applicant. On making inquiry with the office of the respondent No.4, the applicant was informed that for continuation of service beyond 30.09.2016, clear order from the respondent No.1 i.e. Secretary, Ministry of Defence was necessary failing which the applicant would stand retired on

30.09.2016. Therefore, this OA has been filed.

2(g). Thus, during the pendency of the present OA, the applicant has been retired on 30.09.2016. However, one Doctor serving under Indian Ordnance Factory Health Service was due to retire on superannuation on 30.11.2016 and in OA filed by that Doctor before Ernakulam Bench of this Tribunal in OA No.1023/2016, interim order was issued allowing her to continue in service on the same post as he held on 30.11.2016.

2(h). Another Doctor (Mukul Das) serving under the same Indian Ordnance Factory Health Service, who was due for retirement on 31.05.2017 approached Jabalpur Bench of this Tribunal in OA No.321/2017 in which also interim relief was granted to him on 09.05.2017 directing that Doctor Mukul Das would continue in service till final decision is taken in the matter by the respondent department.

2(i). On a Writ Petition filed by the respondents before the Madhya Pradesh

High Court, the interim relief granted by the Tribunal was allowed to continue but benefit of service to Dr. Das was made subject to enhancement of the age of superannuation by the respondents and if that was not done, Dr. Das would refund the benefits received by him during his service after 31.05.2017 (copy at Annex A-9).

2(j). The respondent department has implemented the above judgment by an order dated 01.06.2017 (copy at Annex A-10). It has been further directed in that order that the Civilian Doctors shall hold administrative posts til the age of 62 years and thereafter their services would be placed at non-administrative position (Annex A-11).

2(k). The applicant is aggrieved by the impugned order to the limited extent that it set a cut off date for implementation of the order as 27.09.2017 because of which all those who retired prior to that date would not get benefit of the enhanced age of superannuation. This has been done in spite of the Government of

India decision of 31.05.2017 enhancing the age of retirement to 65 years.

2(1). Since the applicant had already filed the present OA before her retirement when the Tribunal had directed by its order of 29.09.2016 that in the event the OA is allowed, the respondents shall take back the applicant in service with all benefits. Since the decision has been taken subsequently by the Ministry of Defence for enhancement of age of superannuation of Civilian Doctors of DGAFMS, the benefit of this enhanced age of superannuation needs to be extended to the applicant.

3. *Contentions of the parties :-*

The applicant has contended that-

3(a). the action of the respondents in not applying the provisions of the order dated 31.05.2016 issued by the Ministry of Health and Family Welfare to the applicant is arbitrary, illegal and void, the applicant is covered by the presidential order dated 31.05.2016 issued by that Ministry as well as amendment to Fundamental Rules 56 (bb)

for enhanced age of superannuation to 65 years;

3(b). the applicant is General Duty Medical Officer of the Central Health Service and the order of 31.05.2016 is applicable to all General Duty Medical Officers working under the Government of India;

3(c). all the General Duty Medical Officers working under various Ministries and Departments of Government of India other than the Ministry of Defence have been permitted to work till the age of 65 years and it is only the Ministry of Defence which has failed to issue specific order in this regard for its field formation;

3(d). once the specific provision is already been made in FR 56 (bb) about the age of superannuation as of 65 years, the respondents should allow the benefit of this to the applicant. Enhancement of age of superannuation for the Civilian Doctors working under the DGAFMS from 27.09.2017 is arbitrary, illegal and discriminatory;

3(e). although this decision of the Ministry of Defence is based on the decision taken by the Ministry of Health and Family Welfare on 31.05.2016 for enhancement of age of superannuation for doctors under CHS, the applicant cannot be made to suffer because of delay by the Ministry of Defence in issuing the necessary orders;

3(f). two Medical Officers working under the Indian Ordnance Factories Health Service have already been allowed to continue in service with expectation of the order by the Ministry of Defence for enhancing the age of superannuation, so they would be entitled for the benefit of order of Ministry of Defence dated 24.09.2017;

3(g). the Ministry of Defence also issued the order of 13.10.2017 (Annex A-13) for enhancing the age of superannuation of officers of Indian Ordnance Factories Health Service to 65 years with effect from 27.09.2017. This order was based on approval for enhancement of age of superannuation of

doctors other than Central Health Service doctors to 65 years of age by the Union Cabinet in its meeting held on 27.09.2017;

3(h). in fact the Cabinet gave post facto approval to enhancement of superannuation age of 65 years of doctors working under Central Universities, IIT, (autonomous body) under the Department of Higher Education and doctors in Major Port Trust (autonomous body) under the Ministry of Shipping;

3(i). since the applicant had filed this OA before her retirement and in view of the observation of the Tribunal in its order dated 29.09.2016, the applicant is entitled to resume duty and continue in service till the age of 65 years. She is willing to refund / adjust the amounts of pensionary benefits received by her from the respondents after her retirement on 30.09.2016. Therefore, the OA should be allowed;

The respondents have contended that -

3(j). the provision of DOPT

notification dated 31.05.2016 about amendment in the Fundamental Rule 56 (bb) is applicable only to the doctors of the Central Health Service. As per the message from Integrated Headquarters, Ministry of Defence dated 24.10.2016, it had been intimated that the Civilian Medical Officers working under DGAFMS do not form a part of the Central Health Service. Therefore, the order issued by the Ministry of Health and Family Welfare on 31.05.2016 for enhancement of age of superannuation of doctors working under CHS is not applicable to the Civilian Doctors of the DGAFMS cadre;

Hence, the claim of the applicant that she comes under the Central Health Service is not correct;

3(k). for extending the age of superannuation to 65 years to Chief Medical Officers working under DGAFMS has already been taken with the Ministry of Defence, the Competent Authority with effect from 27.09.2017, as per order MOD/DGAFMS dated 24.10.2017;

3(l). since the applicant already

retired from service on 30.09.2016 i.e. before the decision of the Ministry of Defence for enhancement of age of superannuation of the Civilian doctors under the DGAfms, she is not eligible for benefit of that order. Therefore, this OA should be dismissed.

4. Analysis and conclusions :-

We have carefully perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents, various case laws cited by the parties and considered the arguments advanced by both of them on 19.03.2019. Based on such consideration, we conclude as follows :-

4(a). Health and Medical Services under different Ministries of Government of India do not constitute a single service cadre. They are constituted under different cadres such as Central Health Service under the Ministry of Health and Family Welfare, Armed Forces Medical Services under the Directorate General of Armed Forces Medical Services, Department of Defence and Indian Ordnance Factories

Health Service under the Department of Defence Production, Ministry of Defence; Indian Railway Medical Service under the Ministry of Railways, etc.

4(b). As submitted by the applicant herself in paragraph No.4.1 of the OA, the Head Office for the Civilian Medical Officers working under the Department of Defence (like the applicant) is the Directorate General Armed Forces Medical Services and also as per the specific communication from Integrated Headquarters, Ministry of Defence dated 24.10.2016, the Civilian Medical Officers under the DGAFMS do not form a part of the Central Health Service cadre of the Ministry of Health and Family Welfare.

4(c). From these facts, it is clear that the applicant was a Civilian Medical Officer working as Chief Medical Officer under the DG, Armed Forces Medical Services. She was not a part of the Central Health Service under the Ministry of Health and Family Welfare, Government of India.

4(d). The order dated 31.05.2016 was

issued by the Ministry of Health and Family Welfare to enhance of age of superannuation to 65 years for specialists of non-teaching and Public Health Sub-Cadres of the Central Health Service and General Duty Medical Officers of the Central Health Service (CHS). Thus, this order was not issued by the DOPT which normally becomes applicable to all Ministries and Departments of Government of India. This order was only specific for the CHS cadre of the Ministry of Health and Family Welfare for enhancing the age of superannuation to 65 years.

Accordingly, amendment to FR 56 (bb) was issued by the DOPT on that date only for enhancement of age of superannuation in respect of General Duty Medical Officers and Specialists included in non-teaching and public health sub-cadres of Central Health Service only. This amendment to the FR was also not issued for all Health and Medical Services cadres under all the different Ministries and Departments of Government

of India.

That is why different Ministries took decisions on this subject at different times at their levels for enhancing the age of superannuation of doctors working under their respective cadres. For example the Ministry of Railways issued their own order on 31.05.2016 (Annex A-3) for the Indian Railway Medical Service doctors.

4(e). Later on, however, based on the cabinet decision on 27.09.2017, for enhancement of age of superannuation for doctors under different Ministries and Departments, the Department of Defence Production, Ministry of Defence issued the order on 13.10.2017 for such enhancement of age of superannuation for their officers of Indian Ordnance Factories Health Service making it effective from 27.09.2017.

Similarly, the office of DGAfMS, Ministry of Defence issued the order on 24.10.2016 for enhancement of age of superannuation for Civilian doctors under the DGAfMS cadre making effective from

27.09.2017 i.e. the date of the decision of the Union Cabinet.

In view of the above clear position, enhancement of age of superannuation to 65 years has become effective only from 27.09.2017 for the Civilian doctors working under the Armed Forces Medical Services cadre to which the applicant belonged.

4(f). In view of this, since the applicant had already retired on 30.09.2016, she is not eligible for the benefit of enhancement of age of superannuation to 65 years. As a result, her claims in paragraph No.5(b) that she was covered by the order of 31.05.2016 issued by the Ministry of Health and Family Welfare for the doctors working under the Central Health Service, that she was a General Duty Medical Officer of the Central Health Service and that the order of Ministry of Health and Family Welfare dated 31.05.2016 was made for all General Duty Medical Officers under all Ministries of the Government of India are not correct, they are misleading.

The relevant decision to enhance the age of superannuation for doctors working under all Ministries of the Government of India was only the cabinet decision of 27.09.2017.

4(g). In the case law cited by the applicant i.e. Delhi High Court decision dated 15.11.2018 in Writ Petition No.8704/2017 with three other Writ Petitions in *North Delhi Municipal Corporation Vs. Santosh Kumar Sharma and others*, the facts were different. The main issue contested in those Writ Petitions was about applicability of the order of the Ministry of Health and Family Welfare dated 31.05.2016 to doctors of various streams other than Allopathy.

It was held in that decision that the doctors of streams other than Allopathy would also be entitled for benefit of enhancement of age of superannuation to 65 years as per the decision of Ministry of Health and Family Welfare dated 31.05.2016, particularly in view of the subsequent decision of the

Union Cabinet dated 27.09.2017 extending the benefit of enhanced age of superannuation to AYUSH doctors;

However, this benefit was allowed in those Writ Petitions only to the doctors who continued in service on or after 27.09.2017. It was not extended to those who had attained the age of 60 years between 31.05.2016 and 27.09.2017 and they were thus denied the benefit. In view of these conclusions, we do not find any merit in the present OA of the applicant. It deserves dismissal.

5. Decision :-

The OA stands dismissed. The parties to bear their own costs.

(Ravinder Kaur)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

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26/6/19

