



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH,
CALCUTTA**

O. A. No. 350/00/246 of 2019

IN THE MATTER OF:

Dr. MANORANJAN PAIK, son of
Late Mrityunjoy Paik, aged about 62
years, residing at Flat No. 603,
Block No. D-6, 169, Badra Nath,
Shaktigarh, Birati, Kolkata- 700051
and working to the post of Chief
Medical Officer (CMO) in the
Ordnance Factory Hospital under
Metal & Steel Factory, Ishapore;

...Applicant

-Versus-

1. UNION OF INDIA service
through the Secretary, Ministry
of Defence, Department of
Defence Production, D
(Establishment/Gazette), Room
No. 339, Sena Bhawan, New
Delhi-110001.

2. **THE CHAIRMAN-CUM-DGOF,**

Ordnance Factory Board, having
his office at 10A, Shaheed
Khudiram Bose Road, Kolkata-
700001.

3. **THE UNDER-SECRETARY,**

Ministry of Defence, Department
of Defence Production, D
(Establishment/Gazette), Room
No. 339, Sena Bhawan, New
Delhi-110001.

4. **THE DIRECTOR OF HEALTH**

SERVICES, Ordnance Factory
Board, 10A, Shaheed Khudiram
Bose Road, Kolkata- 700001

5. **THE GENERAL MANAGER,**

Metal & Steel Factory, Ishapore,
Post Office-Ichapore-Nawabganj,
District-24-Parganas (North),
Pin-743144;

6. **THE SECRETARY,** Department

of Personnel & Training, North

Block, Central Secretariat, New
Delhi- 110001.

7. **THE DIRECTOR**, Government of
India, Ministry of Health and
Family Welfare, Department of
Health and Family Welfare,
Nirman Bhawan, New Delhi-
110001.

...Respondents.



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1246/2019

Date of order : 01-10-2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

DR. MANORANJAN PAIK

VS.

UNION OF INDIA & OTHERS

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. B.B. Chatterjee, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant, holding the post of Chief Medical Officer in Ordnance Factory Hospital under Metal and Steel Factory, Ichhapur is aggrieved as his prayer for allowing him to serve until 65 years of age has been turned down and upon completion of 62 years of age he is supposed to superannuate this month.

2. The applicant has claimed that he is eminently eligible to be bestowed with the benefit of further 3 years of service on the strength of and in terms of the following:-

(i) A decision of the Hon'ble High Court at Madhya Pradesh in W.P. 7902/2017 rendered on 29.05.2017 which as Annexure A-1 depicts, is a modification of an interim order.

(ii) Office Order dated 13.10.2017 issued with the approval of the Ministry, enhancing the age of superannuation of Doctors of IOFHS upto 65 years, w.e.f. 27.09.2017;

(iii) O.M. dated 13.08.18 of Ministry of Health and Family Welfare and Fundamental (Second Amendment) Rules 2018, issued on 11.08.2018 and circulated on 08.01.2019 and 28.08.2018 directing all the concerned to take option from Medical Officers of IOFHS willing to serve upto 65 years of age on the basis of Ministry of Defence's order dated 27.08.2018, 6 months prior to attaining 62 years of age.

(iv) Letter dated 25.05.2019 whereby and whereunder the General Manager, Metal and Steel Factory, Ichhapur permitted the applicant to submit option within 28.05.2019 i.e. beyond the permissible period, within the last six months of his service span ending at 62. His option exercised on 25.05.2019 was forwarded on 28.05.2019.

3. Id. counsel for the respondents would plead that the applicant having failed to exercise his option to continue till 65 years, within 6 months prior to attaining the age of 62 years, was not entitled to seek continuation beyond 62 years in terms of the policy.

4. Vociferously opposing such contention Id. counsel for the applicant would submit that when he was allowed to opt within 28.05.2019 by the Works Manager Administration for General Manager, there was no occasion for the respondents to turn down his prayer to continue beyond 62 years of age.

5. We heard the Id. counsel for the parties and perused the materials on record.

6. From the facts pleaded and the records placed by the rival parties we discern the following:-

(i) On 13th October, 2017 Ministry of Defence, Department of Defence Production issued an order communicating as under:-

"ORDER

Consequent upon the approval of the proposal of Ministry of Health & Family Welfare for enhancement of age of superannuation of the doctors other than Central Health Service doctors to 65 years by the Union Cabinet in the meeting of the Cabinet held on 27.9.2017 circulated by Cabinet Secretariat OM No.33/CM/2017 (i) dated 29.9.2017, the President is pleased to enhance the age of superannuation of the Officers of Indian Ordnance Factories Health Service to 65 years with effect from 27.9.2017. The Doctors shall hold the administrative posts till the date of attaining the age of 62 years and thereafter their services shall be placed in Non-administrative positions."

This was amended from time to time.

(ii) Further on 27.08.2018 the Ministry of Defence, Department of Defence Production issued the following guidelines:-

MOST IMMEDIATE

Government of India
Ministry of Defence
Department of Defence Production
D (Estt./Gaztt.)

Subject: Fundamental (Second Amendment) Rules, 2018 -- Option to be submitted by IOFHS Doctors to serve the Govt. upto 65 years- reg

Please find enclosed a copy of the OM No. A 12034/4/2018-CHS.V dated 13.08.2018 on the above mentioned subject forwarding therewith a copy of the Notification issued by DOP&T, published in the Gazette of India on 11.08.2018 amending FR 56 relating to age of superannuation of doctors. As per the amendment, the age of superannuation in respect of doctors belonging to the doctors of CHS and other civilian doctors including IOFHS shall be 62 years unless they exercise the option of posting to teaching/ clinical/ patient care/ implementation of health programmes/ Public Health Programmes and functions and other areas/ functions including advisory and consultancy etc. 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 65 years.

2. As per Notification, the serving doctors belonging to IOFHS who have either already attained the age of 62 years or attaining the age of 62 years within 6 months from date of publication of Amendment Rules may exercise their options within a period of thirty days in the prescribed format. The serving doctors who fail to exercise their options shall be superannuated from their service on attaining the age of 62 years or on expiry of a period of 30 days from the date of commencement of Fundamental (Second Amendment) Rules, 2018.

3. Accordingly, a copy of the OM of Ministry of H&FW dated 13.08.2018 enclosing therewith Gazette Notification of DOP&T along with the prescribed format for option is enclosed. DGOF & Chairman, OFB may kindly bring the matter to the notice of all concerned doctors of IOFHS and take necessary action as stated in para 2 above for implementation of the decision covered by the provisions of FR 56 (bh).

Biswajit Sarkar
(Biswajit Sarkar)

Under Secretary to the Govt. of India

Encl: As above. (not found)

In terms of the said guidelines it was made imperative for the serving Doctors belonging to IOFHS who have either already attained the age of 62 years ^{were} or about to attain the age of 62 years within 6 months of publication of Amended Rules, to exercise their option within a period of 30 days in prescribed format in order to continue beyond 62 years in terms of 13th August 2018 O.M. of the Ministry, that clearly specified the following:-

"5. The serving doctors belonging to the CHS and dental doctors of Department of Health and Family Welfare who fail to exercise the option with regard to their continuation in service upto 65 years as mentioned in para 3 above shall stand superannuated from their service on attaining the age of 62 years or on expiry of 30 days as the case may be from the date of commencement of the Fundamental (Second Amendment) Rules, 2018 dated 11.08.2018 whichever is later.

6. As this will be an ongoing process, the heads of Organisations, Hospitals/Institutions under the Department of Health and Family Welfare should send the option to be submitted by the doctors who are going to attain the age of 62 years, in the prescribed format 6 months in advance to this department i.e. to Joint Secretary(CHS), Department of Health and Family Welfare, Nirman Bhawan, New Delhi. The doctors who fail to exercise the 'option' with regard to their continuation in service upto 65 years as mentioned in para 3 above and within the period specified above, shall stand superannuated from their service on attaining the age of 62 years."

7. On 08.01.2019 the Medical Division of the OFB circulated the decision of MOH & F.W. O.M. dated 13.08.2018 as under:-

Sub: Fundamental (Second amendment) Rules, 2018 - Option to be submitted by IOFHS Officers to serve up to the age of 65 years - Action Reg.

Ref: Ministry of Health & Family Welfare OM No. 12034/4/2018-CHS.V dated 13-08-2018 forwarded vide MOD ID No. PC-18(1)/2016-D(Estt./Gaz) dated 27-08-2018;

A copy of the MoH&FW OM (Annexure-A) forwarded vide MOD OM (Annexure-B) at reference above, the contents of which are self explanatory, along with format of an Option Form (Annexure-C) is enclosed herewith for information of the Medical Officers in the DGOF Organization.

In this context, it may be noted that all posts in the Ordnance Factory Hospitals and Independent Health Clinics are directly concerned with patient care/clinical work/Implementation of Public Health Programmes/implementation of Health Programmes only. On date there is no post which can be notified as teaching/advisory/consultancy in the IOFHS.

All Medical Officers are requested to fill up the enclosed Option Form 06 months prior to attaining the age of 62 years and forward the same to the O/o the DHS, OFB through the established channel. Thereafter, the concerned unit will be instructed to act as required in this regard by OFB.

If a Medical Officer fails to / does not submit the Option Form within the prescribed time frame, it will be presumed that the Medical Officer is not interested to continue in service beyond 62 years of age and such cases will be intimated to the Unit for initiation of superannuation proceedings.

Encl: Annexure-A, B & C:

(डॉ. प्र. वडीखाये / DR. P. P. WADIKHAYE)

निदेशक स्वास्थ्य सेवाए / DHS

कृते महानिदेशक एवं अध्यक्ष आयुध निर्माणिया / FOR DGOF & CHAIRMAN

To
The Senior General Manager/General Manager
All Factories

Pursuant to the said circular it was incumbent upon the Doctors attaining the age of 62 years to opt within 6 months

prior to attaining the age of 62 years for their continuation and forwarding the option to the DHS, OFB through the established channel so that a decision could be taken well before such medical practitioner attains 62 years of age. In the present case, we notice that the applicant was allowed to submit option form within 28.05.2019 i.e. prior to 4 months of attaining 62 years and that too by the General Manager who had no authority to modify the orders of the Ministry as extracted supra, to permit the applicant to opt beyond the permissible period.

8. Although Id. counsel for the applicant would vociferously plead that having allowed him to opt within 28.05.2019 and the applicant having opted within 28.05.2019 he ought to have retained till 65 years of age, in our considered opinion, such a course of action was not permissible to be undertaken by the General Manager. We further noticed that on 04.07.2019 OFB has turned down the prayer directing the General Manager to take action regarding the superannuation of Dr. Paik w.e.f. 30.09.2019 which in our considered view is justified.

9. In view of our discussions supra, we find no pressing reasons to interfere with the decision of the OFB to retire Dr. Manoranjan Paik on 30.09.2019 on attaining 62 years of age since Dr. Paik failed to opt in terms of the Ministry of Defence circular, 6 months prior to attaining 62 years of age and as we

indicated earlier that General Manager had no authority to allow him to opt beyond time. At the conclusion of hearing, Id. counsel for the applicant would plead that in the event the applicant is not allowed to continue beyond 62 years all his retiral benefits should be released forthwith. ^{Hence,} We direct the respondent authorities to release his retiral dues at the earliest.

10. The claim of the applicant, therefore, fails but the O.A. is disposed of with the directions as above. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

sb

