

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO.210/00039/2014

DATED THIS *Tuesday*, THE 5th DAY OF NOVEMBER, 2019

**CORAM: R.VIJAYKUMAR, MEMBER (ADMINISTRATIVE)
RAVINDER KAUR, MEMBER (JUDICIAL)**

1. Dr. Nand Lal Sharma, Associate Professor (Mathematics), National Defence Academy, Khadakwasla, Pune 411 023. (R/at D-3/81, N.D.A. Khadakwasla, Pune 411 023).
2. Dr. A.N.Srivastava, Professor and Head of Deptt. (Maths), National Defence Academy, Khadakwasla, Pune 411 023. (R/at D2/145, N.D.A., Khadakwasla, Pune 411 023). - **Applicants** (By Advocate Ms. Sujatha Krishnan)

VERSUS

1. The Union of India through The Secretary, Ministry of Defence, D.HQ, P.O. New Delhi 110 011.
2. Deleted.
3. The Chief Headquarter, Integrated Defence Staff, 48 Kashmir House, Ministry of Defence, New Delhi 110 004.
4. The Commandant, National Defence Academy, Khadakwasla, Pune 411 023.
5. Deleted.
6. The Registrar, Jawaharlal Nehru University, Opposite to Sector III, R.K.Puram, New Delhi 110 016. ..**Respondents** (By Advocates Shri R.R.Shetty)

O R D E R

Per : R.Vijaykumar, Member (A)

This application has been filed on 23.01.2014 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8(a). to allow the original application.

8(b). to hold and declare that, the decision of Ministry of Human Resources (Dept. of Expenditure) letters dated 23.03.2007 and 27.07.1998, are binding on the National Defence Academy, which is an institution recognized and affiliated to Jawaharlal Nehru University, New Delhi, which is established as a Central University.

8(c). to further hold and declare that, U.G.C Regulations dated 30.06.2010, are binding on Respondent No.4, in respect of age of superannuation of teaching staff like the Applicants.

8(d). to quash and set aside the impugned orders dated 09.04.2013 and 05.07.2013, issued by Respondent No.4.

8(dd).to quash and set aside Para 4 of the letter dt. 19.12.2000 so far it declares the age of superannuation of Civilian Academic Staff of N.D.A. as 60 yrs., being contrary to the orders of Ministry of H.R.D., Govt. of India, dt. 23.03.2007 (Annexure A-3 to Original Application).

8(e) to direct Respondent No.1 to continue the Applicants in service till they attain 65 years of age, whereafter only they can be superannuated in terms of policy decisions of Govt. of India, Ministry of H.R.D. and U.G.C. Notification dated 30.06.2010.

8(f) to pass any other orders, which may be considered necessary in the facts and circumstances of the case.

8(g). to award the cost of application.”

2. The applicants had filed MA No.742/2014 on 31.10.2014 for amendment of the OA in order to challenge the orders of the respondents dated 19.12.2000 restricting the age of superannuation for 60 years of teaching staff of NDA and this was withdrawn on 11.03.2015 to file a fresh MA, which was done by MA No.468/2016 dated 24.04.2015 and was

allowed. This MA included reference to the judgments of the Hon'ble High Court of Delhi in **Asha Aggarwal (Dr.) & Ors. Vs. Union of India & Anr.** reported in 2009 (1) AISLJ 225 dated 11.01.2008 and orders of this Bench in OA No.299/2008 dated 13.04.2011 in **Dr. B.B.Nayak Vs. Union of India and others** and which was opposed by the respondents in their reply stating, inter-alia, that the orders of 19.12.2000 had been superseded by the Ministry of Defence dated 12.11.2009 in which retirement date continued at the earlier level without enhancement.

Facts of the case:

3. The applicants are civilian employees presently employed as teaching faculty in the National Defence Academy (hereinafter referred as N.D.A. for brevity) at Pune. The said Institution is a teaching institution under the Ministry of Defence, and cadets recruited in the Institution and who complete 3 yrs of course of B.A., B.Sc. and on passing prescribed course, are conferred the degree of B.A./B.Sc.(Science and Computer Science), by Jawaharlal Nehru University (JNU). The Jawaharlal Nehru University is a Central University and all

the Rules and Regulations and directions prescribed by the Ministry of H.R.D. (Dept. of Education) are binding on U.G.C. and the University and also to colleges affiliated to the Jawaharlal Nehru University, New Delhi, for which one-time recognition fee and annual affiliation fee is charged by the University.

4. The applicant No.1 was selected by UPSC for the post of Lecturer in Maths in NDA, which he joined on 05.08.1990. Subsequently, he was appointed as Sr. Lecturer, w.e.f. 06.08.1995, as per U.G.C. package adopted by the Ministry of Defence for NDA Establishment. The Applicant No.1 was thereafter placed as Reader w.e.f. 01.04.2001 and later on as Associate Professor w.e.f. 01.01.2006.

5. The Applicant No.2 joined as Lecturer in Maths in NDA in July 1983 after being selected through UPSC and subsequently, he was placed as Senior Lecturer on completion of five years of service, and as a Reader w.e.f. 11.07.1996, after eight years of service, as Sr. Lecturer and as per UGC package. He was thereafter appointed as Professor/Head of Dept. of Maths w.e.f. 26.02.2009,

through UPSC by direct appointment.

6. From the above it is clear that the applicant No.1 was in service from 1990 onwards after adoption of UGC package in toto by the respondents from 1983 and with a gap from 1986 to 02.04.1983 when persons similarly placed as the applicant had opted for IV CPC pay scales and then, on 02.04.1993 went back and exercised their option for UGC pay scales thereafter. The applicant No.2 was in service when the UGC package was accepted including after 1993 but was directly appointed as Professor through the UPSC only on 26.02.2009 which is subsequent to the orders of the respondents dated 19.12.2000 which were incorporated by revision in the orders of the respondents dated 12.11.2009. The applicant No.1 never challenged the orders of the respondents dated 19.12.2000 up to date of filing of the amendment to this OA while the applicant No.2 who was directly appointed in 2009 as Professor through UPSC cannot obviously challenge an order that precedes his appointment in this position which was clearly a fresh appointment.

7. The central grievance of the applicants are

that they have been Central Government Teaching Staff (Gazetted). Prior to the issuance of above letter dated 02.04.1993 by Ministry of Defence, New Delhi (which came into effect from 01.01.1986 retrospectively), they were admittedly governed by the service conditions as applicable to all other Central Government employees/officers. However, the UGC package was finalized and approved by the Ministry of HRD (Dept. of Education), which was aimed at improving the service conditions of the Teaching Staff of all Universities and Colleges recognized and affiliated to such Universities. The provisions of UGC package was mandatory for all Central Government Universities and Colleges affiliated/recognized by such Universities. This Bench passed orders allowing **K.D. Dhavase Vs. Union of India in OA No.182/1997** in orders dated 23.04.1997 and directed the Respondents that the provisions of para 5 of the said letter dated 02.04.1993, so far as it relates to academic/teaching staff of NDA would have the effect of incorporation therein of Para 24 of the UGC package dated 22.07.1988. The issue in the above case was as to whether the academic/teaching

staff of NDA will have the superannuation age as 58 years as applicable to all other Central Government Employees/Officers or whether their age of superannuation shall be 60 years as provided in the UGC package which had been adopted by respondent No.1. When the said OA was allowed, the applicant therein was directed to be superannuated only on attaining the age of 60 years. The High Court refused to interfere with the findings of the Tribunal, which became final and binding. Thereafter, other teaching faculty staff of NDA were superannuated at 60 years of age.

8. The applicant has also relied the claims of doctors who were teaching faculty at Armed Forces Medical College, Pune (AFMC) and Maulana Abul Kalam Azad Medical College, New Delhi (MAMC), although governed by CCS Rules vide **Dr. B.B.Nayak**, supra and for whom, age of retirement was enhanced on par with medical officers of CGHS. The applicant has filed rejoinder and further affidavits and has essentially relied on following judgments of Courts and orders of this Tribunal:

(i). **K.D.Dhavase vs. Union of India in OA No.182/1997.**

(ii). *Asha Aggarwal (Dr.) & Ors. Vs. Union of India & Anr. reported in 2009 (1) AISLJ 225 dated 11.01.2008.*

(iii). *OA No.299/2008 dated 13.04.2011 in Dr. B.B.Nayak Vs. Union of India and others.*

(iv). *Association of Maharashtra Education Service Class-II Officers Vs. State of Maharashtra decided by the High Court of Bombay on 24.07.1989 (Writ Petition No.788 of 1980).*

(v). *State of Karnataka Vs. Dr. R.Halesha, decided on 09.11.2011 by the High Court of Karnataka (Writ Appeal No.5670 of 2011).*

(vi). *Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and others decided on 17.12.2004 (Writ Petition No.740/1986).*

9. The reasons for relying on the last reference mentioned above which relates to the aspect of stare decisis and the treatment of precedent decisions of the same and larger Benches is unclear nor has it been argued in pleadings, written statement or during oral arguments but it appears that the applicants have taken the precautionary step to include this judgment to guide this Tribunal in case it wishes to differ from the

earlier judgments of this Tribunal and Courts.

10. The official respondents Nos.1, 2 and 3 have filed their reply stating that the policy decision of the Government of India in Ministry of Human Resources Development and the UGC notification of 30.06.2010 has been adopted by the respondents only to the extent of the pay scales prescribed under the UGC including the qualification for appointment and this was the position from 1983. They submit that the applicants are appointed as Central Government servants and are governed by the Fundamental Rule 56 (FR56) by which, every government servant is required to retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. They note that the applicants have not challenged FR56 and have instead mounted a challenge from the aspect of the full adoption of UGC package which includes the aspect of superannuation. They submit that the letter of respondent No.1 dated 02.04.1993 (Annexure A-4) wherein the full UGC package was adopted in toto and was the relevant order considered in Dhavase supra has subsequently been clarified by the respondents in their letter dated

11.08.1997 (Annexure R-1) and this letter sets out very clearly that the UGC package has been adopted only for the purpose of pay scales, career progression and recruitment qualifications as below:

"I am directed to refer to Ministry of Defence letter No.PC.47020/Misc/GS/MT-7/838/D(Cil.1) dated 2.4.93 on the above subject. The Civilian Academic Staff in the aforesaid Institutions were initially given the UGC pay scales for Lecturers, Readers, Professors etc by Govt. letter No.1(2)/82/D(Civ. 1) dated 20.1.83. Consequent to the revision of UGC pay scales from 1.1.86 Government sanction was issued on 2.4.93 to extend the same. The first para of this letter is very clear that Government was examining the question of extending these revised pay scales to the teaching staff of NDA and IMA. The letter at para 3 states that the same career progression in the case of Lecturers will be adopted in the two institutions as approved by the UGC and subject to the same conditions as contained in the UGC and subject to the same conditions as contained in the UGC Scheme. Para 4 states that recruitment qualification will be as prescribed under the UGC package and so also the method of recruitment. Para 5 states that the package of UGC without any modification will be adopted by NDA/IMA in future.

2. It is clarified that the statement in para 5 that the UGC package without any modification will be adopted by NDA/IMA in future is applicable only with regard to the UGC pay scale, career progression and the recruitment qualifications and not to any other matter whatsoever. For all other matters regarding age of retirement etc. the civilian teaching staff will be governed by the rules applicable to Defence civilians in other Defence establishments. It may be pointed out that the UGC Scheme as contained in Ministry of Human Resources Development letter No.F.1.21/07-U.1 dated 22.7.88 does not provide for special pay of Rs.150/- to Vice Principal, Professors, Readers and Lecturers and similarly there is no provision in the UGC Scheme to provide rent free unfurnished accommodation to the Principals of the Colleges. These have been provided in the MoD letter dated 2.4.93 as Human Resources Development letter dated 22.7.88 has been addressed to the Education Secretaries of States/Union

Territories and not to any Central Government Ministry/Departments. Ministry of Defence letter No.PC47020/Misc/GS/MT-7/838/D(Civ.I) dated 2.4.93 may be implemented in accordance with this circulation.

3. This issues in consultation with Department of Legal Affairs and with the concurrence of Integrated Finance Division vide their U.O. No.745-PA dated 7th August, 1997."

11. The respondents have emphasized that the applicants have not challenged this circular which was issued in consultation with other departments. They submit that the main reasons for difference in treatment of these academic staff is that the academic staff of NDA are actively involved in many extra/co-curricular/adventure activities of Cadets and that the academic staff at NDA are paid NDA allowance. Physical fitness and energetic academic staff are required at NDA for the training of Cadets. By enhancing the retirement age, the aim of effective Cadet Training will be defeated. They argue that NDA is not an educational institution or college in a normal sense hence it is not mandatory for Ministry of Defence to adopt the procedures prescribed either by Ministry of Human Resources Development or guidelines issued by the UGC. They emphasize that the affiliation of NDA to the JNU is for the approval of the syllabus as in other colleges affiliated to the JNU and for conferment

of the degree but the training and syllabus of NDA goes beyond to include leadership training, military training, outdoor training and the convocation is held in NDA campus and not in JNU. They also urge that paragraph 5 of the Ministry of Defence letter No.PC47020/Misc/CS/MT-7/838/D(Civ) dated 2.4.1993 which stated that the UGC package would be adopted without any modification was also rectified in paragraph 4 of the letter of the respondent No.1 in No.1(1)/200/D(Civ.I) dated 19.12.2000 which reads as below:

“4. Service Conditions:- For all matters other than those mentioned in the foregoing paras, namely pay scales, incentives for Research Qualifications and Career Advancement Scheme, the civilian academic staff of NDA and IMA will continue to be governed by the rules applicable to Defence Civilians in other Defence establishments. The age of superannuation for them will be also as applicable to the civilian employee under MOD, i.e., 60 years.”

Therefore, the facts and circumstances that prevailed at the time when orders were passed by this Bench in OA No.182/1997 of **K.D.Dhavase Vs. Union of India** supra, no longer exist by virtue of clarification of 1997 which was later to date of orders in the OA and 19.12.2000 and cease to have precedent value. On the claim made by the applicants in the OA that the Indian Naval Academy, Ezhimala, Kerala(INA), have been granted enhanced

retirement age for academics to 65 years, they denied its veracity. They state that both NDA and INA impart military training, and while NDA grants B.A., B.Sc, B.Sc(Computer Science) undergraduate degree, the INA grants a four year B.Tech degree after adopting guidelines of AICTE. However, in both cases, the age of superannuation is retained at 60 years. In regard to the Defence Institute of Advanced Technology Pune (DIAT), the institution had been granted the status of Deemed University under the UGC Act and it is an Autonomous body of the Ministry of Defence. This Deemed University is governed by the UGC guidelines and therefore, the academic staff engage only in class room teaching and superannuate at the age of 65 years but this position is not applicable to NDA. They also emphasize that the order of the respondents No.1 dated 19.12.2000 has been incorporated and replaced by the orders passed on 12.11.2009 which adopted the UGC guidelines in part but retained the age of superannuation as 60 years as prescribed under FR56 for government servants. They further emphasize that the applicants have been granted various allowances which are listed in the letters of

12.11.2009 and include all allowances and facilities meant for defence civilians, special compensatory allowance of Rs.300 per month from 01.10.2008, rent-free unfurnished accommodation, etc.

12. In rejoinder, the applicants have essentially argue that the Ministry of Human Resources Development regulates through the UGC, Universities and Colleges and the Degrees awarded in the country in regard to the Central Universities and, therefore, since both the Ministry of HRD and Ministry of Defence which operates NDA fall within the Government of India, their regulation shall apply mutatis mutandis to the NDA. They claim that the teaching faculty of NDA are governed by Special Rules which are UGC regulations and these will prevail over the General Rules as contained in FR56. They submit that the special allowances and other allowances have no nexus with the age of superannuation.

13. The respondent No.4 (Registrar JNU) has filed a reply confirming that the JNU is not involved in the selection process of teachers in the NDA and this was being done through the UPSC. They have

confirmed the NDA is affiliated to the JNU and is a recognized defence institute of JNU affiliated by virtue of the resolution of the Executive Council in terms of Section 5(13) of the JNU Act for award of B.A., B.Sc, B.Sc (Computer Science) degree and this was contained in Ordnance No.29 passed in 1973 which took effect from 31.08.1973. Further, this ordinance states at paragraph Nos.10, 11 and 12 as follows:

"10. Appointment of Teachers:

(a) Civil teachers of the Academy shall be appointed by the selection process laid down by the Academy provided; however, that the qualifications will be laid down by the University and one-teacher of the University, nominated by the Vice-Chancellor, the appointments will be subject to the concurrence of the University.

(b) Any appointment from Army Education Corps and other Service Officers on the teaching staff of the Academy for more than three months shall be with the concurrence of the University.

11. Admission to the Academy:

The Admission to the Academy shall be on the basis of a written test conducted by the UPSC and selection by the Service Selection Board. The University shall lay down the criteria, syllabus etc for the written test.

12. The Executive Council on the recommendation of the Academic Council shall have the right to cause an inspection after every three years to be made by such person or persons as may be decided by the Executive Council in respect of its buildings, laboratories and equipments and

also of the examination, teaching and evaluation with a view to ensuring of Academic standards."

14. The respondents have replied stating that the civilian teaching officers of NDA are paid out of defence service estimates and that NDA is not a university or deemed university or institute under the Ministry of Human Resource Development. They also refer to the Ministry of HRD letter No.1019/2006-U.II dated 22.03.2007 which sets out as below:

"It is further clarified that the enhancement of retirement age as mentioned above and the provision for re-employment, will apply only to persons in teaching positions against posts sanctioned to centrally funded higher and technical educational institutions coming under purview of this Ministry in order to overcome the shortage of teachers."

15. In support of their submission, the respondents have relied on the following orders/judgments:

(i). **Dr. Bijay Kumar Bohra Vs. Union of India and others** in OA No.552/2010 dated 10.07.2014 passed by this Bench.

(ii). **State of Orissa & Ors. Vs. Sadhu Charan Pradhan** reported in 1999 (1) SCC 68 decided on 17.09.1997.

(iii). **State of Bihar and Another Vs. Teachers' Association of Government Engineering College and**

Others reported in 2001 SCC (L&S) 655 decided on 27.08.1998.

(iv). State of Orissa and Another Vs. Adwait Charan Mohanty and others reported in 1995 Supp (1) SCC 470.

16. They submit that the orders of this Bench dated 10.07.2014 in **Dr. Bijay Kumar Bohra** supra reflect the position that the orders of the respondents dated 02.04.1993 discussed supra have been subsequently revised by the Government orders dated 19.12.2000 and 12.11.2009. To this, we may add that the clarification issued by the respondents on 11.08.1997 has not been challenged by the applicants. This Bench also noticed the previous orders passed in OA No.228/2006 of **Dr. B.C.Shrivastava and others Vs. Union of India and others** dated 05.12.2006 dismissing the OA on the grounds that enhancement of the age of applicants' retirement from 60 to 65 years was a policy matter that did not fall within the powers of this Tribunal. The OA discussed the decision in orders of **Dr. B.C.Shrivastava** supra in the context of the judgment and rulings of the Hon'ble Apex Court in **State of Bihar and Another Vs. Teachers'**

Association of Government Engineering College and Others supra which had interpreted the position and ruled as follows while also taking note of the decision of the Hon'ble Apex Court in **State of Orissa and Another Vs. Adwait Charan Mohanty and others** supra, now relied by the respondents. The Hon'ble Apex Court had ruled as follows:

"Rule 71(a) provides superannuation which is relevant for the purpose of this Case, reads thus:-

"Except as other wise provided in the other clauses of this rule the date of compulsory retirement of a Government servant, except a ministerial servant who was in Government service on the 31st March 1939 and Class IV Government servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in respect of the Government servant in the 35th year of age in order to determine whether he/she should be allowed to remain in service up to the date of the completion of the age of 58 years or retired on completing the age of 55 years in public interest."

The second proviso reads as follows:-

'Provided further that a workman who is governed by these rules shall ordinarily be retained in service up to the age of 60 years. He may, however, be required to retire at any time after attaining the age of 55 years after being given a month's notice or a month's pay in lieu thereof, on the ground of impaired health or of being negligent or inefficient in the discharge of his duties. He also may retire at any time after attaining the age of 55 years, by giving one month's notice in writing.

Note:- For this purpose, "a workman" means a highly skilled, skilled or semiskilled and unskilled artisan employed on a monthly rate of pay in any Government establishment."

17. On this basis, this Bench had held:

“15. We have carefully gone through the U.G.C. Act as well as the Regulations framed by U.G.C. Section 12 of the U.G.C. Act empowers the Commission to inquire into the financial needs of the Universities, allocate and disburse grants to universities established or incorporated by or under the Central Act, out of the funds of the Commission for the maintenance and development of such universities or for any other general or specified purpose. The Commission was also empowered to allocate and disburse, out of such funds, such grants to other universities, as it may deem necessary or appropriate for the development of such universities or for the maintenance or development or for any other general or specified purpose. The Commission was further empowered to allocate and disburse, such grants to institutions deemed to be universities, as it deemed necessary, for similar purpose. Therefore, Section 12 makes it clear that U.G.C. Disburses grants to Universities and deemed universities for maintenance and development of such Universities.

16. Section 25 of the U.G.C. Act empowers the Central Government to make rules to carry out the purposes of the Act by notification in the Official Gazette, with regard to the formation and the functioning of the Commission. Section 26 empowers the Commission to make regulations consistent with the provisions of the Act and the rules make thereunder, by notification in the Official Gazette, *inter alia*, in regard to defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University.

17. Clause 16 of the U.G.C. Notification dated 24.12.1998 indicated that the teachers will retire at the age of 62 years but it would be open to a University or a College to re-employ a superannuated teacher. Subsequently, the Commission framed a regulation 2000. However, such regulation did not provide for the age of superannuation.

18. On 23.03.2007, the Government, in its Ministry of Human Resources Department, Department of Higher Education, wrote to the Secretary of the Commission on the question of enhancement of the age of superannuation from 62 years to 65 years for teaching positions in the Centrally funded institutions in higher and technical education. In the said letter, it was indicated that the matter was reviewed by the Central Government, in the light of the existing shortage in teaching positions in the Centrally-funded institutions in higher and

technical education under the said Ministry. Thereafter, a letter was also written by the Central Government in its Ministry of Human Resource Development, Department of Higher Education, to the Secretary, University Grants Commission on 31.12.2008 regarding a Scheme of revision of pay of teachers and other equivalent cadres in all the Central Universities and Colleges and deemed Universities, following the revision of pay scales of the Central Government employees on the recommendation of the Sixth Central Pay Commission. Therefore, the Ministry of Human Resources Development, due to shortage of teachers in the teaching Institutions, wrote to U.G.C. to enhance the retirement age from 62 to 65 years. In this regard, the paragraph regarding applicability of the Scheme is very important to be noted. The same is set out herein below :

"(p) Applicability of the Scheme – (i) This Scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this Letter as well as Regulations to be framed by UGC in this behalf. Universities implementing this Scheme shall be advised by UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter."

19. This Scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by UGC. Para 8 (f) of the aforesaid Scheme dealt with the age of superannuation. U.G.C. recommended the enhancement of age in its 452nd meeting where a conscious decision was taken recommending the age to be 65 years whether it was a college or a University.

20. From the reading of the U.G.C. Act and the relevant regulations, it is apparent that U.G.C. Regulations for enhancement of age from 62 years to 65 years were recommended pursuant to the recommendations of the Central Government in Department of Higher Education, Ministry of Human Resources and Development. Admittedly, the N.D.A. is an Institution under the Ministry of Defence and not under the Ministry of Human Resources and Development. The U.G.C.

neither extends any grant or any fund to National Defence Academy for its maintenance or development. U.G.C. guidelines are not binding on N.D.A. like other centrally funded Institutes or Universities or Deemed Universities. Enhancement of the age of retirement is exclusively within the domain of the policy of the Central Government in its Ministry of Defence since the Civilian Academic Officers are governed by the service conditions applicable to National Defence Academy under the Ministry of Defence. That the regulations and guidelines of U.G.C., being recommendatory in nature, there is no enforceable right of the applicant to enforce the same by Writ of Mandamus inasmuch as the University Grant Commission had no power to enhance the age of superannuation of the Civilian Academic Officers of National Defence Academy as a condition of service. Despite the N.D.A. being affiliated to the Jawaharlal Nehru University, for the purpose of adoption of syllabus and award of academic degrees, it still remains a part of the Ministry of Defence. The applicant, admittedly, being a Government servant and working as Civilian Academic Staff under National Defence Academy, cannot urge in this O.A. to implement the U.G.C. regulations inasmuch as the guidelines are not binding on N.D.A. As such, the applicant has no enforceable right to file this O.A., praying for a direction to N.D.A. to implement the U.G.C. regulations for enhancing the age of superannuation from 62 to 65 years. All other institutes, as referred to by Shri Saxena, Learned Counsel for applicant, are not under the Ministry of Defence. They are controlled and regulated by the Ministry of Human Resource Development, but N.D.A. is different in its constitution as well as in its function. N.D.A. is under the Ministry of Defence. As discussed herein above, the N.D.A. has already framed the service conditions which govern the services of the applicant.

21. We do not find any merit in this O.A. The O.A. is, accordingly, dismissed. No order as to costs."

18. The respondents have further relied on **State of Orissa & Ors. Vs. Sadhu Charan Pradhan** supra which more or less duplicates the rulings of the Hon'ble Apex Court in **State of Orissa and Another Vs. Adwait Charan Mohanty and others** supra.

19. To summarize the view of the Hon'ble Apex

Court in part, the examination of any claim of this kind needs to look at the processes by which applicants were selected, the determination of their qualifications, pay, the source of the budget for their salary payments, the rules governing their conduct and disciplinary matters, and nature of allowances and facilities that they are entitled to, for determining whether there is any basis for discrimination or any basis for claims for common treatment. The orders passed in OA No.182/1997 of **K.D.Dhavase Vs. Union of India** supra by this Bench on 23.04.1997 referred to a decision of the Hon'ble High Court of Bombay in Association of Maharashtra Education Service Class-II Officers supra which had decided an issue of equality of claims by Government teachers in Government Colleges and those in Government Universities and non-Government Colleges. That judgment of the Hon'ble High Court was passed on 24.07.1989 and no doubt, not been brought before the Principal Bench of this Tribunal which had considered the OA No.1345/1993 of **Dr. I.C.Sharma Vs. Union of India and others** on 19.04.1994. However, as we have noted above, the Hon'ble Apex Court has set out the law for guiding

interpretation in regard to such claims of discriminatory treatment and this clearly over-rides the position taken and interpretation given to the matter by the Hon'ble High Court of Bombay in 1989 in the above case.

20. The applicants have relied on **Asha Aggarwal (Dr.) & Ors. Vs. Union of India & Anr.** Supra in which General Duty Medical Officers of the CGHS were successful in their claim of discriminatory treatment against Medical Specialist but the facts in that case are quite different and cannot apply in the present matter. Further, the applicants have referred to the OA No.229/2008 of **Dr. B.B.Nayak & Ors Vs. Union of India and others** supra who had claimed enhancement of their retirement age on par with doctors working with the Ministry of Health Services (CGHS) and which had been raised based on recommendations of a Committee. It is seen that this Bench observed that enhancement of age of superannuation was a policy matter and could not be decided by the Tribunal. Accordingly, the Tribunal directed the Secretary, Ministry of Defence to take into consideration all the facts and circumstances and comparisons sought to be made between the

different Ministries/Departments of the AFMC under Ministry of Defence and Central Health Services under the Ministry of Health and take an appropriate decisions. Therefore, even this case does not help the applicants. Rather, it places the onus back on the respondents especially the respondent No.1 to take a policy decision in such a matters. However, such a policy decision had already been taken and is contained in the orders of the respondent No.1 on 11.08.1997 which has not been challenged and 19.12.2000 which has been challenged by an MA amending the OA but without any explanation by way of an MA for condonation of delay. Moreover, as we have observed, this appears to be irrelevant to applicant No.2 who was appointed through UPSC in direct appointment as Professor much later. The respondents have also taken a policy decision and passed orders on 12.11.2009 reiterating and incorporating the orders of 19.12.2000 after taking into account, the latest version of the UGC package as communicated in Ministry of Human Resource Development letter dated 31.12.2008.

21. Finally, the applicants have referred to an

order of Calcutta Bench of this Tribunal in **OA No.73/AN/2007 dated 30.01.2008 of Dr. V.K.Upadhyay Vs. Union of India and others** in which the colleges in Andaman and Nicobar Islands which are affiliated with Pondicherry University had not extended the benefit of increase of retirement age from 62 years to 65 years to their teachers. The College was being run by the Union Territory functioning under the Ministry of Home Affairs as Administrative Ministry. The Bench held that the Colleges fell under the Union Government since the subject of Education was in concurrent list of the Constitution. Since the Union Government decided policy matters in respect of Colleges and Universities administered by the Union Government, the OA was allowed stating that the Andaman and Nicobar Islands administration could not have taken a stand different from the Central Government. The circumstances of the case have not been detailed in this order nor have any details been provided as required to be examined in terms of rulings of the Hon'ble Apex Court in **State of Bihar and Another Vs. Teachers' Association of Government Engineering College and Others** supra. There is no clarity on

the source of recruitment, method of selection and other terms of the applicant of that case and therefore, in the absence of such relevant information, we can only fall back on the rulings of the Hon'ble Apex Court as binding on the Courts and Tribunals of this Country for deciding this matter. This was also the basis for the decision of this Bench in **Dr. Bijay Kumar Bohra** supra.

22. We may mention in passing, that in terms of the facts and circumstances of this case and the nature of the UGC package, that the UGC recommendation come with several grants that are provided to all such administered colleges and universities. In the present case, the source of the budget is totally different, as set out in the orders of the respondents in consequence of a policy decision. The UGC package sets out recommendations involving both administrative and financial implications but in regard to the NDA, these are provided with empty hands and leave it entirely to the respondents in the present case to pick and choose whatsoever they considered appropriate to their needs and circumstances and that is how we can interpret the nature and policy

decision taken by the respondents and put into effect and has become effective for the cases of the applicants. As earlier observed by this Bench in **Dr. Bijay Kumar Bohra** OA No.552/2010 dated 10.07.2014 *supra*, the UGC package is purely *recommendatory in nature*.

23. In the circumstances discussed above, this OA has clearly no merits whatsoever. It is also noted from the pleadings that both the applicants have already retired. This OA is dismissed accordingly without any order as to costs.

(Ravinder Kaur)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

*kmg**

