
(1999) 07 AHC CK 0075
In the Allahabad High Court
Case No : C.M.W.P. No. 34550 of 1998

Dr. B.N. Gupta

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 5A
Council of Forestry Research and Education Rules — Rule 31, 33, 34

Citation : (1999) 3 AWC 2615

Hon'ble Judges : S.H.A. Raza, J; Krishna Kumar, J

Bench : Division Bench

Advocate : Umesh Narain Sharma and Man Mohan Das Agarwal, for the Appellant; S.N. Srivastava, Senior S.C., Government of India, High Court and M.S.Negi, for the Respondent

Judgement

S. H. A. Raza and Krishna Kumar, JJ.—The petitioner who belongs to Indian Forest Services, initially was appointed on deputation as Director in the cadre of Scientist "H". In the Indian Council of Forestry Research and Education, Dehradun, thereafter referred to as ICFRE). On 7.11.1994 the petitioner was absorbed in the service on his application, with effect from 1.1.1994 as per A.I.S. Rules and Rules of Indian Council of Forestry Research and Education by means of letter No. Nil dated 29th December, 1993.

2. Later on the Government of Punjab and Chandigarh have conveyed their concurrence for the acceptance of the resignation of the petitioner for his permanent absorption in ICFRE vide letter No. 13/1/94/FI-1/15128 dated 18.8.1994. The Ministry of Environment and Forests vide letter No. A. 19011/17/90-IFS-I dated 23rd/26th September, 1994 have conveyed approval of the Government of India for permanent absorption of the petitioner in the Council with effect from 1.1.1994 under provisions of Rule 5A of AIS (DCRB) Rules, 1958.

3. The said absorption letter indicates, that after 1.1.1994 Dr. B. N. Gupta. Scientist "H" Tropical Forest Research Institute, Jabalpur, will cease to be a

member of the Indian Forest Service and will henceforth be governed by the Recruitment Rules for Group "A" Scientific posts in ICFRE. On absorption with effect from 1.1.1994, his pay, etc, will be protected, as per ICFRE Rules.

4. In pursuance of an advertisement published in Hindustan Times dated 17.10.1995, the post of Director General in the ICFRE was advertised. According to the terms and conditions as set out in the advertisement, which is relevant for consideration in the present case, the term of appointment of Director General. ICFRE will normally be for a period of five years which can be" extendable by the Central Government on the recommendation of the Board of Governor subject to the age of superannuation as ICFRE Rules (emphasis laid).

5. The petitioner who was working as Scientist "H" and Director in ICFRE was selected as Director General in ICFRE. On 9.1.1997 the Government of India. Ministry of Environment and Forest offered the appointment to the petitioner to the post of Director General, Council of Forestry Research and Education on the following terms and conditions.

"(i) The pay scale of the post is Rs. 7.300-100-7,600.

(ii) You will be entitled to draw pay and allowance in the scale of the post.

(iii) The term of appointment of Director General. Indian Council of Forestry Research and Education will be for a period of five years or till the date of his superannuation, as per ICFRE Rules, whichever is earlier (emphasis laid)."

The said letter also Indicated that the other conditions of the service of the petitioner will be in accordance with the Rules and Regulations framed by the ICFRE, Dehradun.

6. By means of the letter dated 9.1.1997 addressed to the President, ICFRE Society, the petitioner accepted the offer of appointment for the post of Director General, Indian Council of Forestry Research and Education on the terms and conditions mentioned in the aforesaid letter (emphasis laid).

7. After the petitioner gave his acceptance to the offer, the Chairman, Board of Governors of the ICFRE passed an order indicating the following terms and conditions :

"Terms of appointment of Director General, ICFRE will primarily be for a period of 5 years which can be extended by the Central Government on the recommendation of the Board of Governors subject to the age of superannuation as per ICFRE Rules."

8. On 10.1.1997 the petitioner assumed the charge of the post of Director General of ICFRE. On 14.9.1998 the petitioner was directed to retire from service with effect from 13.12.1998 after attaining the age of 60 years.

9. Being aggrieved against the said order the petitioner Invoked the jurisdiction of this Court by filing the present writ petition.

10. Although generally no interim order is passed in such matter, however, while entertaining the writ petition, a Division Bench of this Court granted an interim order directing the respondents to permit the petitioner to continue in service till he will complete a period of five years from the date of his appointment.

11. The Union of India, thereafter, filed a civil appeal bearing Civil Appeal No. 2476 of 1999 arising out of SLP (Civil) No. 4296 of 1999. A Division Bench of Hon"ble Supreme Court after hearing the matter found that balance of convenience and irreparable injury or loss was not in favour of the petitioner of this writ petition, in view of the fact that in case the petitioner would succeed in the writ petition, he would very well be compensated in terms of money. The Hon"ble Supreme Court set aside the order passed by this Court and directed the High Court to decide the writ petition expeditiously preferably within a period of three months. Accordingly, the writ petition was listed before this Court.

12. We have heard Sri Man Mohan Das Agarwal. learned counsel appearing on behalf of the petitioner as well as Shri S. N. Srivastava assisted by Shri M. S. Negi at considerable length.

13. It is well-settled principle of service jurisprudence that the age of superannuation should be in accordance with service rules of the appointment under the terms and conditions of the appointment letter has a binding effect until and unless it is arbitrary, irrational, unfair, unjust or improper. No person who has agreed to the terms and conditions can wriggle out or resile from the same.

14. In Union of India and others Vs. Major R.N. Mathur, , the Hon"ble Supreme Court observed that if there are no statutory rules at all dealing with the age of superannuation of the respondents but for the reason the age which is fixed for the civil servants governed by the Fundamental Rules cannot be brought in. In the absence of a rule to the contrary, the Central Government is fully authorised to fix the age which it has done and which was accepted voluntarily by the respondents. They must now retire when they reach the age of fifty five years.

It was further Indicated that the appointment was made fixing the age of superannuation as fifty five years. In terms, thereof, the officer is required to retire at the age of fifty five years.

15. A similar question cropped up in Union, of India and others v. Lt. Col. Komal Charan and others 1992 (2) SC 186. wherein the Hon"ble Supreme Court observed that there are no statutory rules at all dealing with the age of superannuation of the, respondents, but for that reason the age which is fixed for the civil servants governed by the Fundamental Rules cannot be brought in. In the absence of a rule to the contrary, the Central Government is fully authorised to fix the age which it has done and which was accepted voluntarily by the respondents. The relevant order in clear terms lays down the age of superannuation at fifty five years with a further provision of extension to the age of fifty seven years. The respondents exercised their option and were accordingly

granted whole time NCC Commission. They cannot now repudiate the same and claim any additional benefit which they are not entitled to under any rule or law.

16. In the present case. Shri Mohan Das Agarwal, learned counsel appearing on behalf of the petitioner canvassed before the Court that the post of Director General is a ex cadre post with a fixed tenure and the selection/appointment was made by direct recruitment. The recruitment" rules for Group "A" Scientific post in the Indian Council of Forestry Research and Education provides that the age of superannuation for regular employees will be 60 years. Is not applicable. He further submitted that the Board of Governors may grant extension in such cases in accordance with the instructions/ guidelines issued by the Government.

17. As far as the appointment of the Director General is concerned. Rule 31 provides that the Director General. ICFRE shall be the Chief Executive Officer of the Society. Rule 32 provides that the appointment to the post of Director General. ICFRE shall be made by the President of the Society with the concurrence of the Government of India from a panel to be drawn up by the Board of Governors from amongst eminent Scientists/Foresters with a minimum of 25 years of service having background in Forestry Research. However, the Director General, ICFRE in position at the time of the registration of the society would continue to hold the post under the new rules as per terms and conditions of his appointment made by the Government of India. Rule 33 deals with the terms of the office of the Director General which provides that the terms of the Director General. ICFRE will normally be for a period of five years extendable by the Central Government on the recommendation of the Board. Rule 34 provides that the other terms and conditions of the Director General. ICFRE shall be determined by the Board of Governors in consultation with the Government of India.

18. Relying upon the aforesaid rules, it was vehemently contended by Shri Agarwal that the appointment of the petitioner, was for a period of five years and that tenure "cannot be cut short by the respondents by retiring the petitioner on his attaining the age of 60 years and in that regard, relied upon a decision of Hon"ble Supreme Court in L. P. Agarwal v. Union of India AIR 1992 SCC 1872.

19. Before dealing with the observations of the Hon"ble Supreme Court, it would be proper to mention the fact involved in that case that L. P. Agarwal was appointed as Director of All India Institute of Medical Sciences with effect from 18th February. 1979. The order dated 6.4.1979 stated that he was given appointment for a period of five years or till he attains the age of 62 years. whichever is earlier. He was confirmed on the said post with effect from 19.2.1980. By an order dated November 24. 1980. he was prematurely retired from service in the public interest by giving him three months pay and allowances in lieu of notice. In the light of the aforesaid facts and circumstances, the Hon"ble Supreme Court observed in paragraph 16 of the report :

"We have given our thoughtful consideration to the reasoning and the

conclusions reached by the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under proviso to Regulation 30 (2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the institute-services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director, Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a five year tenure, but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "tenure for five years" inclusive of one year probation and the post is to be filled "by direct recruitment". Tenure means a term during which an office is held. It is condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he Joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order, concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not, therefore, have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This Court's judgment in Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, relied upon by the High Court is not on the point involved in this case. In that case the tenure of Dr. Bool Chand was curtailed as he was found" unfit to continue as Vice-Chancellor having regard to his antecedents, which were not discussed by him at the time of his appointment as Vice Chancellor. Similarly the Judgment in Dr. D.C. Saxena Vs. State of Haryana and Others, has no relevance to the facts of this case."

20. A bare perusal of the observations of the Hon"ble Supreme Court would indicate that the Hon"ble Judges of the Supreme Court did not agree with the

view expressed by the High Court simply because the appointment of the appellant L. P. Agarwal mentioned that he was appointed for a period of five years or till he attained the age of 62 years. The appointment cannot cease to be tenure post. Even an outsider could be selected and appointed on the post of Director General. Can such a person be asked to retire prematurely even if he did not complete either the fixed tenure of five years or till he attains the age of superannuation. The Supreme Court answered the question in negative, but observed that the appointment of the appellant was for a five year tenure, but could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. This observation of Hon"ble Supreme Court does not help the petitioner rather it helps the case of the respondents. The petitioner actually belongs to the cadre of Indian Council of Forestry Research and Education and discharged his duties for a considerable period of time. At the relevant time, the Rules and Regulations of the Indian Council of Forestry Research and Education were applicable to him. According to those rules, the age of retirement is 60 years, only a person belonging to the cadre of Indian Council of Forestry Research and Education could be appointed as Director General of Indian Council of Forestry Research and Education, which was not in the case of Dr. L. P. Agarwal (supra), because in the matter of appointment of a Director in Alt India Institute of Medical Sciences, a person other than a cadre of All India Institute of Medical Sciences could be appointed.

21. The terms and conditions of the advertisement in pursuance to which the petitioner was selected clearly Indicates that the terms of appointment of Director General, ICFRE will normally be for a period of five years which can be extended by the Central Government on the recommendation of the Board of Governors subject to the age of superannuation as ICFRE Rules. The said Rules, which we have mentioned earlier indicate that the age of superannuation of the officers of ICFRE will be 60 years. In pursuance of that advertisement, the petitioner had applied. He was selected and an offer was given to him to join the post of Director General. The offer clearly indicates that the term of appointment of Director General, ICFRE will be for a period of five years or till the date of his superannuation, as per ICFRE Rules, whichever is earlier. The offer was accepted by the petitioner on the terms and conditions mentioned in the aforesaid letter. Although the Rules do not provide any age of superannuation as far as the post of Director General is concerned, but the Rules clearly provide the age of superannuation of the officers of ICFRE including the Director as 60 years. The advertisement, offer of appointment and its acceptance by the petitioner clearly shows that the ICFRE Rules will be applicable. Now it is not open for the petitioner to resile from the same and stake a claim to continue as Director General until and unless the tenure appointment of five years comes to an end. Actually the said appointment was for a period of five years or till the date of superannuation of the petitioner as per ICFRE Rules, whichever was earlier. According to ICFRE Rules the age of retirement. which were made applicable in the case of the petitioner was 60 years, thus he can be retired at the age of 60

years.

22. We are of the view that the petitioner played his innings well during his career as a Scientist, reaching the highest ladder. Initially, the petitioner was inducted in the Indian Forest Service. Thereafter he was appointed as Director in ICFRE and then became its Director General. It is unfortunate that lust for office and power has prompted him to prolong his stay as Director General. contrary to the terms and conditions of the appointment, which cannot be permitted.

23. We are definitely of the view that the writ petition is devoid of merit. It is accordingly dismissed.

24. However, the parties are directed to bear their own costs.