

(2012) 09 DEL CK 0548
In the Delhi High Court
Case No : Writ Petition (C) 5456 of 2012

Gajendra Prasad Sinha

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 09 DEL CK 0548

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : J.P. Sengh, with Mr. Sagar Saxena, for the Appellant; Sachin Datta with Ms. Kritika Mehra, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The petitioner is aggrieved by the order dated 11.7.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2091/2011. The petitioner had approached the Tribunal by way of the said original application claiming that General Duty Medical Officers (GDMOs) should also have the same retirement age as that of non-teaching specialists and public health specialists. The case of the petitioner was that General Duty Medical Officers along with teaching specialists, non-teaching specialists and public health specialists were four separate streams under the Central Health Services. Although their promotional avenues were different in the respective streams upto the grade of Senior Administrative Grade, after reaching the grade of HAG, they all became the same. It was the case of the petitioner that since the age of superannuation in respect of non-teaching specialists and public health specialists had been raised to 62, the age of superannuation of GDMOs should also have been raised from 60 to 62. As this was not done, according to the petitioner, the petitioner, who is a General Duty Medical Officer, was a victim of hostile discrimination violative of Article 14 of the Constitution. In essence, the prayer of the petitioner was that the age of superannuation of

persons in all the four streams should be the same.

2. The Tribunal did not agree with the submissions made by the petitioner and came to the conclusion that the category of GDMOs was distinct and different from the other three streams. According to the Tribunal the clear intelligible differentia between the GDMOs on the one hand and the other three streams on the other was that the GDMOs were not specialists whereas the persons in the other three streams were specialists. The Tribunal also held that this intelligible differentia had a clear nexus with the object of differentiating in the ages of superannuation of the two sets of persons. According to the Tribunal there was a greater dearth of specialists and, therefore, the superannuation ages of the specialists in the three streams were higher than that of GDMOs who were not specialists.

3. Having come to the aforesaid conclusion, the Tribunal dismissed the said OA No. 2091/2011 filed by the petitioner. Being aggrieved by that decision, the petitioner is before this Court.

4. At this juncture, it would be relevant to point out that this is the third time that the issue of the increase in the superannuation age of GDMOs is before this Court. On the first occasion this Court considered the issue while deciding the case of *Asha Aggarwal & Ors. vs. Union of India & Ors.*, 2008 (149) DLT 263. This court, inter alia, observed and held as under:

The moot question in the circumstances arises as to what should be the direction in such a case. After all, vide OM dated 1.8.2007 proposal is sent to the Sixth CPC for consideration to enhance the age of superannuation of GDMOs from 60 to 62 years. In view of this proposal, matter is yet to be looked into by the Sixth CPC. Though we find prima facie that it was not justified to exclude GDMOs and action of the Government suffers from vice of hostile discrimination and is, therefore, violative of Articles 14 and 16 of the Constitution, we do not express our final opinion on this aspect and would leave the matter to the Sixth CPC to decide about the justification for the enhancement of the age of GDMOs. However, at the same time we are of the opinion that if the Sixth CPC recommends enhancement of age of retirement of GDMOs to 62 years and the Government accepts that recommendation, it would be clear vindication of the stand of the petitioners who belong to the category of GDMOs. In such as case, the interest of justice would be subserved by giving effect to the decision of enhancement of age from the date the other sub-cadres were given, i.e., vide OM dated 16.11.2006.

(underlining added)

5. It is evident that this Court in *Asha Aggarwal* (supra) had made those observations at a time when the matter was yet to be looked into by the Sixth Central Pay Commission. Subsequent thereto the report of the Sixth Central Pay Commission was finalized in March 2008. Chapter 6.2 of the said report dealt with the age of superannuation and voluntary retirement in general. There is,

however, specific mention of General Duty Medical Officers in Paragraphs 6.2.3 and 6.2.4 of the said report, which are to the following effect:-

6.2.3 The Commission has received many demands for increasing the age of superannuation further keeping in view the increased longevity and better health care facilities leading to improved health standards. Ministry of Health & Family Welfare had sent a proposal seeking enhancement of the age of superannuation of General Duty Medical Officers (GDMOs) of Central Health Services to 62 years.

6.2.4 It is observed that the Fifth CPC increased the age of superannuation to 60 years precisely on these very considerations. The same grounds cannot, therefore, be justifiably used to further increase the age of superannuation. Another reason that prompted the Fifth Pay Commission to increase the age of superannuation to 60 years was the tendency on the part of senior officers to seek extension of service for further two years so that they could serve till 60 years. The Fifth CPC, in their wisdom, thought that a general increase in the age of superannuation coupled with total ban on extension of service except for certain specified categories, will remove this tendency to seek extension beyond the prescribed age of superannuation. This has clearly not happened. The tendency amongst the senior officials to seek extension of service beyond stipulated age of superannuation of 60 years has not abated at all. The argument for any further increase in the age of superannuation, therefore becomes all the more unsustainable. Economic Survey, 2006-07 shows that out of the entire population of 111.2 crore, 3.57 crore is below 15 years, 69.9 crore between the age of 15-64 years and only 5.6 crore of and above the age of 65 years. According to the Technical Group on Population projections constituted by the National Commission on Population, the demographic dividend will manifest in the proportions of population in the working age group of 15-64 years increasing steadily from 62.9 per cent in 2006 to 68.4% in 2020. As such, a younger pool of manpower is and will be available for the requirements of the Government. This shows that India is a youthful nation with a majority of population in the working age group and this youthful profile will only increase in the decades to come. Besides, the entire import of this Report is towards maintaining a youthful profile of the bureaucracy that will be more dynamic, result oriented and better attuned to the needs of their constituents. In fact, the Commission has recommended liberalization of the extant pension rules with full pension being granted on completion of 20 years service so as to facilitate early exit of willing employees from the Government. In such a scenario, no rationale exists for recommending any further increase in the age of superannuation. The Commission is also not in favour of recommending a blanket increase in the age of superannuation for all General Duty Medical Officers belonging to Central Health Service. The Commission recommends that the current age of superannuation should be maintained. Further, except in the case of Scientists and Medical Specialists, no extensions should be given in any other case. Tenure based posts should be filled by incumbents who have sufficient period of service left before the stipulated age of retirement. Medical Specialists and Scientists may, however, be allowed

extension of service of upto 2 years on a case to case basis.

(underlining added)

6. After the said report came into being, the All India GDMOs Association along with certain other members of that association filed original applications before the Tribunal being OA No. 2232/2007 and OA No. 200/2008. Those OAs were dismissed by the Tribunal by virtue of an order dated 28.01.2008. That order became the subject matter of a writ petition being W.P.(C) No. 1005/2008 (All India GDMO Association & Ors. vs. Union of India) before this Court. The short question in that writ petition, as can be noticed from the order dated 17.07.2008 whereby the same was disposed of, was whether the age of superannuation of General Duty Medical Officers should be increased from 60 to 62 as has been done in the cases of non-teaching specialists, teaching specialists and public health specialists.

7. From the order dated 17.7.2008 passed by a Division Bench of this Court in All India GDMO Association (supra), it is apparent that the petitioners therein had relied on the decision of this Court in Asha Aggarwal (supra). The petitioner before us is also placing reliance on the said decision in the case of Asha Aggarwal (supra). But, we find that this aspect of the matter stands covered by the decision of the subsequent Division Bench in the case of All India GDMO Association (supra). In the case of All India GDMO Association (supra) the Division Bench dismissed the writ petition by holding that in view of the report of the Sixth Central Pay Commission, they could not find any fault with the decision taken by the Tribunal. However, it was made clear by the said Division Bench that they had not gone into the various averments made by the respondents herein (i.e. the Union of India) seeking to justify the difference in ages of superannuation for different categories.

8. The said Division Bench also noted that in Asha Aggarwal (supra) the Court had not expressed any final opinion and had left the matter to be decided by the Sixth Central Pay Commission. Since the recommendation of the Sixth Central Pay Commission did not include enhancement of the age of superannuation of GDMOs, this Court, in All India GDMO Association (supra) did not find any fault with the decision of the Tribunal in rejecting the plea raised on behalf of the petitioners therein.

9. It is clear that this Court has already taken a view on the very aspects which are sought to be argued before us. Therefore, it would not be proper for us to go into the questions all over again. Being bound by the decision in All India GDMO Association (supra), we do not find any merit in the present writ petition and the same is dismissed. There shall be no order as to the costs.