

(2002) 04 MP CK 0019
In the Madhya Pradesh High Court
Case No : M.P. No. 1474 of 1991

Jaspal Singh (Captain)

APPELLANT

Vs

Union of India (UOI) and another

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Citation : (2002) 4 MPLJ 528

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : Mahan Singh, for the Appellant; Indira Nair with Mrs. Kalyani Menon, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

The petitioner, an Ex-Captain of the Indian Army, was enrolled in the Army on 13-1-1962 in Sikh Regiment as "Sepoy" and was allotted Army No. 3350611. After completion of the Military basic training he was posted to 6, Sikh Regiment. Thereafter he was promoted in the rank of Naib Subedar and subsequently to the rank of Subedar. He was commissioned on 12-8-1985 as Regimental officer in the rank of Lieutenant in the same Regiment and eventually, was promoted to the rank of Captain with effect from 12-8-1999. It is put forth in the petition due to erroneous policy adopted for Regimental Commissioned Officer (RCO) the petitioner was compelled to retire at the age of 48 years on 31-10-1998.

According to the writ petitioner his retirement at the age of 48 violates paragraph 76 of the Army Regulations, 1987. It is set forth in the petition that age limit provided for retirement and the likes of the petitioner in paragraph 17 of the Army Instructions 32/89 is inconsistent with the Rule 16A(5) of the Army Rules, 1954 and paragraph 76 of the Army Regulations and such dissonance vitiates the policy and deserves to be declared ultra vires.

Though various factual assertions have been made, same need not be dilated

upon as the said is founded on the base of inconsistency betwixt the Army Instructions and the Army Rules and Regulations.

A return has been filed by the answering respondents contending, inter alia, that the Regimental commission was created for expanding further promotional avenues for persons in the lower ranks and meeting the needs of the Army in the junior level officers and the same came into effect from 12-8-1985. The NCOs and JCOs of the Army were promoted to the substantive rank of Captain after four years of service. As the petitioner was taken on this Regiment Commission as per Army Instructions he was to retire at the age of 48. It is the further case of the respondents that the officers who were recruited according to the Army Rules and Regulations stand in a different footing, being regular commissioned army officer, and, therefore, there is no comparison between the two, and the classification has a rational substratum which meets the requirement of equality clause engrafted under Article 14 of the Constitution.

We have heard Captain Mahan Singh, learned Counsel for the petitioner and Mrs. Indira Nair, learned Senior Counsel along with Mrs. Kalyani Menon, learned Counsel for the respondents. It is submitted by Mr. Singh that the Instructions which have been issued by the Army run counter to the Army Rules and Regulations and hence, are ultra vires. It is urged by him, recently there has been amendment in the year 1992, indicating enhancement of age of retirement to 50 years and that itself shows that Army personnel have realised the mistake and rectified the same. Alternatively it is urged by Mr. Singh that the petitioner is entitled to the benefit of the amended notification.

Mrs. Indira Nair, learned Senior Counsel appearing for the respondents, per contra, has contended that there are two categories of Army Officers and the age of retirement can vary and the petitioner ipso facto cannot claim equality. It is also urged by her that the petitioner was appointed on a particular Scheme/Commission and hence, is governed by the said Commission/Scheme and cannot claim advantage that is available to the regular rank holders. It is also canvassed by her that the amended notification being not retrospective would not enure to the benefit of the petitioner.

To appreciate the rival submissions raised at the Bar, we have carefully perused the Instructions dated 1-5-1984 and on an X-ray of the same it appears that it is a special commission known as "Regimental Commissioned Officers". The purpose of the said Commission is to appoint certain officers as "Regimental Commissioned Officers". There is a separate age limit, notification, process of selection, training and appointment. Paragraph 17 of the same reads as under:

"17. The age limit for compulsory retirement of RCOs will be 48 years or 10 years of service as RCO, whichever is earlier."

In contradistinction Regulation 76 which has been brought on record as Annexure-H reads as under:

"76. Age limit for compulsory retirement of officers.- Compulsory retirement in the respective substantive ranks will be on attaining the age limits given below, or on completion of tenure granted under para 75, whichever is earlier:

(a) Officers of Armoured Corps, Artillery, Engineers, Signals, Infantry, ASC, ACC, EME and Pioneer Corps:--

General

60 years

Lt. Colonel

58 years

Major General

56 years

Brigadier

54 years

Colonel

52 years

Lt. Colonel (selection)

52 years

Lt. Colonel (Time Scale)

52 years

Major and below

50 years

On a perusal of the Regulations we find that it relates to a different category of officers and, therefore, different age of retirement has been provided. An officer who has been promoted under the Army Instructions dated 1-5-1984 under the Commission/Scheme for "Regimental Commissioned Officer" cannot be equated with a regular officer holding regular rank. The purpose of introducing this Commission was to give promotion to certain categories of persons who ordinarily would not have been promoted. In this context, Mrs Nair, learned senior counsel for the respondents has drawn our attention to the decision tendered in the case of Union of India and others vs. Lt. (Mrs) E Lacats, MLJ 1998 SC 67 wherein a two Judge Bench of the Apex Court in paragraph 3 held as under:

"3. The respondent contended that denial of the benefit of pension to the respondent was discriminatory and that although she retired in 19151 she should also be given pensionary benefits in the same manner as those who had retired

after 1st of October 1983. On the question of the age of retirement, though the respondent contended that Army Instruction No.14 does not contain the age of retirement, the position relating to the age of retirement is unambiguous. All appointees in this service hold the rank of Lieutenant with no eligibility for further promotion. Therefore, they must retire at the same age as a Lieutenant, which is at 55. The contention of the respondent that it is discriminatory not to have prescribed the same age of retirement for her as is prescribed for other military nursing services cannot be accepted. The terms and conditions attaching to other Military Nursing Service are different from the terms and conditions attaching to Military Nursing Service (Local). One major difference lies in the fact that those who are appointed to Military Nursing Service (Local) are not liable to transfer and the married women or widows with children can avail of this service without any problem. We are told that under the terms and conditions of service of the other two military nursing services the person appointed is liable to transfer from one place to another and that there are also restrictions on married women or women with children being appointed to the other two services. If different nursing services are constituted under separate army instructions carrying their own separate terms and conditions of service, one cannot complain of discrimination if the ages of retirement prescribed under these different services are different. Each will be governed by its own rules and regulations. The respondent is therefore, not justified in claiming that she has been discriminated against because she has retired at the age of 55."

We may hasten to add that in the aforesaid case their Lordships were dealing with three categories of Military Nursing Services (MNS) i.e. MNS (Regular), MNS (Civilian) and MNS (Local) and accordingly upheld the age of superannuation provided for each category. As we have perceived that the petitioner belongs to a different category and the officers who are covered by the Army regulations are in a different group altogether. It cannot be said that equals are being treated unequally. There is no discrimination. They come from different streams and their continuance in the Army are fixed by different criteria. If a person is appointed under the Army Instructions he belongs to different class altogether and the persons who are appointed under the Regulations are in a separate compartment. In view of the perceivable and appreciable distinction, it cannot be said that there is inconsistency between paragraph 16 of the Instructions on the one hand and the Army Rules and Regulations on the other inviting the wrath of equality phenomena. Thus, we conclude and hold that the paragraph 17 of the Army Instructions is *intra vires*.

It is apposite to mention here Mr. Mahan Singh, learned counsel for the petitioner has drawn inspiration from the amended provision by which the age of superannuation has been enhanced to 50 years for the RCOs. The said paragraph reads as under:

"2. Delete existing para 17 and substitute as under:

The age limit for compulsory retirement of RCOs will be 50 years or 10 years of

service as RCO, whichever is earlier.

This will come into force from the date of issue of this A. 1."

This notification came into force in 1992 after the date of retirement of the petitioner. It is put forth by Mrs. Nair as the notification is prospective, benefit under the same cannot be extended to the petitioner. In this context she has commended us to the decision rendered in the case of Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, wherein in paragraph 4 the Apex Court ruled thus:

"4. We are of the opinion that the ratio of D.S. Nakara has no application here. D.S. Nakara prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in the liberalised pension rules as the cut-off date was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefore as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from 1-1-1986 were new Rules or merely revised or liberalised Rules) which came into force with effect from 1-1-1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting the respondent's contention would have very curious consequences; even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules."

Though the aforesaid dictum was laid down in a different context, we are of the considered opinion that the principle inhered therein would apply in all fours to the case at hand.

The factual scenarios can be perceived from another angle and judged on a different anvil. The petitioner was appointed under the Army Instructions. Prior to that the Army Rules and Regulations were in vogue. At the time of entry into the Regimental Commission under the Army Instructions, he was very well aware that he would be compulsorily retired at the age of 48 years. Once he had entered into the service knowing the age of superannuation he cannot claim equality with other officer who come from different streams. We have stated so as an additional reason.

In view of our preceding analysis, we do not find any substance in the writ petition and the same is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.