

A.F.R.**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO. 1 (List A)****T.A. No. 1446 of 2010****Tuesday, this the 20th day of December, 2016****"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"**

Col. A.B. Natu, Son of Shri B.N. Natu, Adm. Battalion, AMC
Centre & School, Lucknow.

& Others

Col. R.S. Rana, Son of Sri Basanta Ram, Resident of 14/3, Guru
Govind Singh Marg, Lucknow Cantt.

Lt. Col. Shashi Kant, Son of late Sri K.N. Tamboli, Base Hospital,
Lucknow. **Petitioners**

Versus

1. Union of India, through the Secretary, Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Army Headquarter, New Delhi,
3. Director General, Armed Forces Medical Services
(DGAFMS), Ministry of Defence, Army Headquarters, New Delhi,
4. Director General of Medical Services, Army Headquarters,
New Delhi.
5. Commandant, AMC Centre and School, Lucknow.
6. Officer-in-Charge, AMC Records, Army Medical Corps,
Lucknow.
7. Commandant, Base Hospital, Lucknow.

.....**Respondents**

**Ld. Counsel appeared
for the Petitioner**

**- Shri Lalit Kumar,
Advocate**

**Ld. Counsel appeared
for the Respondents**

**- Shri Sunil Sharma, Advocate
Sr. Central Govt. Counsel.**

Order (Oral)

1. Petitioners had initially preferred a writ petition, being Writ Petition No 621 of 2000 in the High Court Allahabad at Lucknow Bench assailing the letter dated 01.05.2000, as a consequence of which they were superannuated without completing the age of 57 years years in the teeth of the order dated 13.05.1998 which petition, on establishment of the Armed Forces Tribunal, stood transferred in pursuance of the provisions contained in section 34 of the Act and was registered here as T.A No 1446 of 2010.

2. In the instant case, the Petitioners are Colonels and Lt Colonels in the Army. It is not in dispute that the petitioners held the rank and status of colonels and Lt Colonels in the Army. It is also not in dispute that the Government of India issued Office Memorandum dated 13.05.1998 for enhancement of age of superannuation by two years to all the incumbents serving in the Armed Forces. The office Memorandum dated 13.05.1998 in so far as it is relevant is reproduced below.

*" No. 150 12/H/97-Cell (A)
Government of India
Ministry of Personal Public Grievances &
(Departmental of Personnel & Training)
New Delhi, The 13th May 1998*

OFFICE MEMORANDUM**Subject : Fifth Central Pay Commission – Age of Retirement – Raising of – FR 58**

The undersigned is directed to say that recommendations made by the Fifth Central Pay Commission In paragraph 128.16 and 128.17 relating to age of retirement Central Government employees have been examined carefully and the President is placed to direct that :

- (a) *Except On otherwise provided specially, every Government servant whose age of retirement is currently 58 years shall now retire from service on the afternoon of the last day of the month in which he/she attains the age of sixty years. However, Government servants whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.*
- (b) *There shall be complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years. Officers connected with budget work and full-time Members of the Committees likely to be would up shortly may be given extension in service for a maximum period of three months in public interest, on a case to come basis.*
3. *These orders will come into force with effect from the date of Notification of amendment to the relevant rules and regulations, etc, and will be applicable to all Central Government employees except those who have already retired in accordance with the earlier rules, those who are on extension in service on the date of issue of*

those orders or those who are governed by specific rules and/or regulations. An amendment to the.....56 has been issued separately today (copy enclosed).

4. Consequent upon the increase in the age of retirement, amendment to the All India Service (Death Cum Retirement Benefit) Rules, 1958 have been notified separately today.

5. Consequent upon enhancement of the age of retirement from 58 to 60 years all Ministries/Departments are requested to review the vacancies arising from retirement in regard to direct recruitment as well as promotion so that there is no over recruitment or litigation leading to creation of supernumerary posts or review DPCs because of change in the zone of consideration as a result of reduction in the number of retirement vacancies.

6. It has been also decided that the age of retirement of the personnel of the Armed Forces and the Central Para-Military Force, be enhanced by two years. Necessary orders and amendment to the respective rules, etc, will be issued by the Ministry of Defence and Ministry of Home Affairs, as the case may be in consultation with Department of Personnel & Training.

7. So far as serving the Indian Audit and Accounts Department are concerned. These orders issue in consultation with the Controller and Auditor General of India.

*Sd/-
(Harinder Singh)
Joint Secretary to the Government of India."*

A bare perusal of the Office memorandum bears it out that the Government of India took a decision for enhancement of age of superannuation of members of Armed Forces and Para Military Forces by two years. It

further envisages that enhancement shall be subject to expression **“Except as otherwise provided specifically”** as postulated in the Office Memorandum dated 13.05.1998.

3. Challenge in the instant case is to the consequential order dated 01.05.2000 whereby the Government appears to have modified the earlier order by way of clarification that the age of superannuation in so far as post of colonel and equivalent posts of Army Medical Corps and allied corps are concerned, shall be only one year. For the sake of convenience, the order dated 01.05.2000 in its totality is reproduced below.

*"No. 14 (3)/98.D(AG)
Bharat Sarkar/Ministry of Defence
Raksha Mantralaya/Ministry of Defence,
New Delhi - 110011
1st ., May, 2000*

To

DGAFMS

Sub : Age of Retirement of Officers of Army Medical Corps (AMC), Army Dental Corps (ADC), Military Nursing Service (MNS), Army Medical Corps (Non - Tech.) (AMC/NT) up to the rank of Major General and equivalent.

Sir,

I am directed to refer to paragraph 6 of Ministry of Personnel, Public Grievances & Pension (Department of Personnel and Training) O.M. No. 25012/2/2/97-Estt(A) dated 13.5.1998 and this Ministry's letter No. 14 (3)/98/D(AG) dated 30.5.98 and 3.9.98 and to convey the sanction of the President that the following shall be the revised retirement age of Officers of Army Medical Corps

(AMC), Army Dental Corps (ADC), Military Nursing Service (MNS), Army Medical Corps (Non-Tech.) (AMC/NT).

Rank	Age of retirement
AMC (NT)	56 years
Lt. Colonel & equivalent and Major	56 years
Colonel and equivalent	58 years
Brig & equivalent	59 years
Major General & equivalent	60 years.

2. *These orders will come into force immediately.*
3. *The period of service of those officers who have continued in service*

beyond their existing age of retirement in pursuance of this Ministry's letter No. 14 (3)/98-D(AG) dated 30.5.98 will be regulated as extension in service as a special case. All such officers will demit their office with effect from 31.5.2000.

3. *At 74/76 as amended from time to time and any other instructions in this regard contained in the relevant Rules and Regulations will be deemed to have been amended accordingly.*
4. *This issues with the concurrence of Ministry of Defence (Finance) vide their U.O. No. _____ Dated 1.5.2000.*

Yours faithfully,

*Sd/-
(Jose Thomas)*

Under Secretary of Government of India"

4. Learned counsel for the Petitioners invited our attention to the letter dated 30.05.1998 issued by

Director (AG), Government of India, Ministry of Defence which envisaged that the enhancement of age by two years shall be applicable to Subedar Maj/Risaldar, who have completed their tenure of appointment as per the existing policy, those proceeding on voluntary retirement, those seeking retirement on compassionate grounds, JCOs, NCOs, Ors who do not opt for further engagement, those who have already retired, those who are on extension in service beyond the stipulated retirement age on the date of issue of these orders and Lt Gen & equivalent of Armed Forces Medical Services, who have attained their stipulated age of retirement viz 60 years.

5. The substance of submissions made by learned counsel for the Petitioners is that once certain persons have been excluded from the order pertaining to enhancement of age, then Govt instructions should be confined to that extent and further enhancement of retirement age should be done equally to all the cadres.

6. **Per contra**, learned counsel for the respondents submits that two Colonels, namely, Lt Col H.S Ahlawat and Lt Col L.S Mehta belonging to same cadre have been granted extension of age by two years infringing on order dated 01.05.2000 (supra). In so far as

aforesaid two officers are concerned, it is submitted that the order granting extension was passed before issuance of final orders and hence, it was subject to final decision by the Ministry of Defence. The submission of learned counsel for the respondents is that some inadvertent error or mistake with regard to two officers aforesaid shall not furnish foundation to disown applicability of Order dated 01.05.2000. It is further argued by learned counsel for the respondents that in Para 3 of the order dated 01.05.2000, it has been indicated that the period of service beyond their existing age of retirement in pursuance of the Ministry of Defence Letter dated 30.05.1998 will be regulated as extension in service as a special case and all such officers will demit their office with effect from 31.05.2000. Keeping in view the note in Para 3 of the order dated 01.05.2000, at the face of record, it appears that no decision has been taken by the respondents for enhancement of age of Colonel or equivalent posts to two years. Rather, a conscious decision has been taken to confine the age of superannuation of the Colonel or equivalent posts of A.M.C officers by enhancing their age for one year only. Otherwise there was no reason to put the note on record as No 3 (supra).

7. Accordingly, we are not impressed by the argument advanced by the learned counsel for the Petitioners that office memorandum dated 30.05.1998 has to be applied equally to other A.M.C officers holding the rank of colonel or equivalent post. The fact is not as has been portrayed by the learned counsel. All A.M.C. officers holding the rank of colonel or equivalent posts have been superannuated with enhanced age of one year and not two years. The incident of two officers as cited above, is an exception that too in the teeth of Note 3 of the order dated 01.05.2000, which shall not constitute a ground for interference with that aspect of the matter.

8. Coming to FIRST limb of argument advanced the learned counsel for the Petitioners with regard to applicability of the order dated 30.05.1998, it is worthy of notice that it is not the office memorandum but clarificatory order issued by Director (AG) Ministry of Defence who according to learned counsel for the respondents belongs to Ministry of Defence which is a subordinate authority to Ministry of Defence. The said letter makes it clear that the modalities of the implementation of orders on the same will be issued shortly attended with direction that the retirement of all Army personnel who are to retire on 31.05.1998

has been deferred till final orders are issued except certain categories which are (a) the Subedar Maj/Risaldar who have completed their tenure of appointment as per the existing policy, (b) those proceeding on voluntary retirement (c) those seeking retirement on compassionate grounds, (d) JCOs, NCOs, Ors who do not opt for further engagement, (e) those who have already retired (f) those who are on extension in service beyond the stipulated retirement age on the date of issue of those orders; and (g) Lt Gen and equivalent of Armed Forces Medical Services who have attained their stipulated age of retirement viz 60 years. The above order by all reckoning, is only clarificatory and cannot be construed to be exclusion clause keeping in view the rank of the officers of Armed Forces. In so far as argument of counsel for the Petitioners with regard to binding nature of Government of India order dated 30.05.1998 is concerned, there appears to be no room for doubt that the office memorandum (supra) issued by the Government of India for enhancing the age of retirement by two years was to be applied equally to all concerned but at the same time, it does not preclude the Government of India from taking a decision keeping in view the mandate contained in

clause (a) of the order dated 13.05.1998. The order itself uses the expression "otherwise provided specially" which means, looking to the factual matrix, exigencies of service, rank and post. In our considered view, in view of the above, it was open to the Government to take a decision while implementing the order with regard to age of superannuation. Moreover, it may be noted that the order dated 01.05.2000 categorising the age of superannuation granting only one year's enhancement of age of retirement to the colonel or equivalent of A.M.C. is also issued by the Government of India, Ministry of defence. The Ministry of Defence is part and parcel of the Government of India and it has no separate entity for itself and it is separate only for working purposes and to discharge the sovereign function. The country has got different departments but the decision taken by the Departments shall be taken to be decision of Government of India.

9. Thus, in the above conspectus, we are not impressed by the arguments advanced by learned counsel for the Petitioners that the order dated 01.05.2000 offends the fundamental rights of the petitioners. The order/office memorandum dated 30.05.1998 empowers the Government to take a

decision keeping in view the facts and circumstances of the case. There is another aspect of the matter. It is well settled proposition of law that age of superannuation or retirement falls within the prerogatives of Government as to what should be the age of superannuation. Whether the age should be increased or decreased is exclusively within the sovereign jurisdiction and Court and Tribunal Ordinarily lacks jurisdiction to interfere with it.

10. Our attention has been drawn to a recent decision of the Apex Court in **Civil Appeal Nos. 9382-83 of 2014 Union of India & Ors vs A.K.Behl, AVSM, PHS etc** in which their Lordships of Hon'ble Supreme Court by referring the earlier decisions of the Apex Court have observed as under:

"17. This Court, however, rejected the contention relying upon the decision of this Court in Yeshwant Singh Kothari Vs. State Bank of Indore (1993 Supp (2) SCC 592). This Court observed:

" The impugned provision that prescribes retirement from the public employment at the age of 60 years or completion of 35 years of service, whichever is earlier, is apparently consistent with the decision in the case of Yeshwant Singh Kothari¹ and the ratio in that case is squarely applicable to the case in hand. If 30 years' period of active service was not held a small period for gainful employment, or an arbitrary exercise to withhold the right to hold an office beyond 30 years, having not attained 58 years of age, a

fortiori, retiring a person from public service on completion of 35 years of service without attaining age of 60 years may not be held to be unjustified or impermissible.

The impugned provision prescribes two rules of retirement, one by reference to age and the other by reference to maximum length of service. The classification is founded on valid reason. Pertinently, no uniformity in length of service can be maintained if the retirement from public employment is on account of age since age of the government employees at the time of entry into service would not be same. Conversely, no uniformity in age could be possible if retirement rule prescribes maximum length of service. The age at the time of entry into service would always make such difference. In our view, challenge to the impugned provision based on the aforesaid ground must fail."

18. In Yeshwant Singh's case (supra) also the regulation prescribed a dual basis for purpose of retirement viz. Attaining the age of 58 years or completing 30 years of service whichever was earlier. The challenge to the rule was repelled by this Court and the provision upheld with the following observations:

"In K Nagaraj and others etc. V. Chief Secretary of Andhra Pradesh, AIR 1985 SC 551 this Court repelled a challenge to the reduction of retirement age from 58 to 55 on the basis of the policy of the Government, which was found not to be irrational or violating recognised norms of employment plan. It was also noticed that not to provide for an age of retirement at all would be contrary to public interest because the State cannot afford the luxury of allowing its

employee to continue in service after they have passed the point of peak and that rules of retirement do not take away the right of a member to his livelihood, the only limit is to the right to hold office till the stated number of years. The provision in the Regulation in hand for maintaining the age of retirement at 58 years as before but in the same breath permitting retirement on the completion of 30 years of service, whichever occurs earlier, is in keeping with the policy of reckoning a stated number of years of office attaining the crest, where after inevitably is the descent, justifying retirement. In this context 30 years period of active service is not a small period for gainful employment, or an arbitrary exercise to withhold the right to hold an office beyond thirty years, having not attained 58 years of age.”

11. In the above conspectus, regard being had to law settled over the question with regard to age of superannuation, it is not open for the Tribunal to interfere with the impugned policy decision of the Government of India, whereby the age of superannuation has been categorised with regard to different ranks of the Army more so when it has been equally applied without offending the fundamental rights under Article 14 of the Constitution of India. Otherwise also, when the matter of enhancement of age of retirement pertains to Armed Forces, and for

matter of that, Indian Military, it is for the Government to look into the matter as to what should be the age of superannuation of the officers of different ranks of the Armed Forces keeping in view the exigencies of services, nature of duties and other variety of related factors. In the present case, we are of the view that the order dated 01.05.2000 does not offend the earlier office memorandum dated 30th May 1998 and the order has been issued by the Government within the jurisdiction without offending the fundamental rights of the Petitioners.

12. Yet another submission which has been pressed to the fore is that the office memorandum dated 30.05.1998 does not speak of ranks seems to be misconceived argument inasmuch as, of course, the order aforesaid enumerates enhancement of age of superannuation by two years to all concerned but regard being had to peculiar facts and circumstances and nature of duties discharged by the A.M.C cadre of Armed Forces, the Government of India is not precluded from taking a decision more so when in the Armed Forces the age of superannuation of different ranks and posts is different keeping in view the nature of duties and exigencies of services. Thus this

submission also does not commend to us for acceptance.

13. As a result of foregoing discussions, the present petition lacks merit and is liable to be dismissed and is accordingly dismissed.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Date: December, 20 ,2016

MH/-