A

UNION OF INDIA & ORS.

v.

K.T. SHASTRI

JANUARY 12, 1990

B [RANGANATH MISRA, P.B. SAWANT AND K. RAMASWAMY, JJ.]

Constitution of India, 1950: Article 16: Service Law—Defence Research Service—Three units—Benefit of enhanced superannuation age to the members of one unit—Denial to members of other units—
C *Held discriminatory.*

Respondent was recruited as a Senior Scientific Officer in the Defence Science Service which was subsequently trifurcated and reconstituted.

D **The Government of India enhanced the superannuation age of Scientific and Technical personnel of one of the newly constituted units upto 60 years by an order dated 24.12.1985.**

The respondent who was working in one of the other units of the reconstituted service, filed an application in the Central Administrative
E **Tribunal seeking a direction that he was entitled to the benefit of enhanced age of superannuation upto 60 years as made applicable to the other unit which allowed the application. Hence this appeal by the Union of India.**

Dismissing the appeal, this Court,

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HELD: 1. In view of Rule 12 of the Defence Aeronautical Quality Assurance Service Rules, 1979 the benefit of enhanced age of superannuation given to the members of one unit was also available to the members of the other unit since the said condition of service was not expressly provided for in the Service Rules. At the time of reconstitution
G **of the service no option was given to the employees working in the different units to opt for one or the other of the units. Those who were already working in either of the three units were deemed to belong to the respective newly constituted service. Therefore their service conditions will have to run parallel and no discrimination can be made between them by an unilateral action. The classification made between**
H **them further has no rational basis and no nexus of such classification to**

the object sought to be achieved has been shown. In the circumstances, the denial of the benefit of the enhanced superannuation age to the members of one unit while the same is granted to the members of the other units amounts to discrimination, violative of Article 16 of the Constitution. [23A, F, G, H, 24A]

2. The decision of the Tribunal is both proper and valid. The appellants are directed to reinstate the respondent in service, who would continue in service till he attains the age of 60 years. [24A, C-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4284 of 1988.

From the Judgment and Order dated 30.3.88 of the Central Admn. Tribunal Hyderabad in O.A. No. 575 of 1987.

A.D. Singh, A. Subba Rao, C.V.S. Rao and P. Parmeshwaran for the Appellants.

K.T. Shastri Respondent-in-person.

The Judgment of the Court was delivered by

SAWANT, J. The appellants, Union of India and the Director, Technical Development and Production (Air), Ministry of Defence, have preferred this appeal against the decision of the Central Administrative Tribunal, Hyderabad Bench, holding that respondent K.T. Shastry was entitled to remain in service upto the superannuation age of 60 years and was not liable to be retired at the alleged superannuation age of 58 years.

2. The relevant admitted facts are that the respondent was recruited as a Senior Scientific Officer on October 12, 1966 in the Defence Science Service. He was posted in the Directorate of Technical Development and Producation (Air), briefly called DTD & P. at the relevant time, the Defence Science Service had three units under it, namely, 1) Defence Research and Development Organisation (DRDO), 2) Directorate-General of Inspection (DGI) and 3) Directorate of Technical Development and Production (Air) (DTD & P).

The recruitment when made was always to the Defence Science Service, and after the recruitment, the recruits were posted according to the exigency of the service, in any of the said three units. Their

A services were inter-changeable and inter-transferable between the three units. All the service conditions of the persons working in the three units including scales of pay, superannuation age, etc. were the same and were regulated by the same set of Rules, viz. Defence Science Service Rules.

B 3. In the year 1979, the Defence Science Service was trifurcated and reconstituted as follows.

(1) Defence Research and Development Organisation (DRDO) was reconstituted as Defence Research and Development Service (DRDS). (2) Directorate of Technical Development and Production (Air) (DTD & P) was reconstituted as Defence Aeronautical Quality C Assurance Service (DAQAS), and (3) Directorate General of Inspection (DGI) was reconstituted as Defence Quality Assurance Service (DQAS). The appellant who was working in DTD & P became a member of DAQAS. When the trifurcation was made, the Service Rules governing the three units had a common Rule which was Rule 12 D in DAQAS and DQAS, and Rule 13 in DRDS which reads as follows:

> "Other conditions of service:
>
> (1) The conditions of service of the members of the service in respect of matters not expressly provided for in E these Rules, shall *mutatis mutandis* and subject to any special orders issued by the Government in respect of the service, be the same as those applicable to officers (Civilians) of corresponding status in similar scientific institutions/organisations under the Government of India."

F 4. At the time the present controversy arose and the respondent approached the Administrative Tribunal, he was holding the post of Deputy Chief Scientific Officer. By an Office Memorandum No. 7(3)/85-D(R & D) of the Government of India, Ministry of Defence, Department of Defence Research & Development dated 24.12.1985, the decision of the President was conveyed whereby Scientific and G Technical personnel (gazetted) of D.R. and D.S. in the grade of Scientist 'E' and above, would retire at the age of 60 years and those in the lower grade for which flexible complementing scheme was applicable would also retire at the age of 60 years provided they had been promoted to the grades they were holding at the time of attaining the age of 58 years within the preceding five years. Subsequently by OM No. H 7(3)/85-D(R & D) dated 10.2.86, the said decision was extended to all

Scientific and technical personnel of the DRDO i.e. DRDS as listed in the Appendix 'A' of that Memo. By virtue of Rule 12 quoted above, this benefit given to the members of DRDS was also available to the members of DAQAS, since the said condition of service was not expressly provided for in the Service Rules. The Tribunal, therefore, held that the respondent was not liable to be retired at the age of 58 years his superannuation age being deemed to have been increased to 60 years in view of the OM dated 24.12.85 read with OM dated 10.2.86 referred to above.

5. It is this decision which is challenged before us by the appellants. Mr. Subba Rao, learned counsel appearing for the appellants contended that the Government had a right to prescribe different conditions of service for the members belonging to the different units, and merely because the superannuation age of the members of the DRDS was increased, it could not be held that the respondent who belonged to another unit, viz. DAQAS, was entitled to the said benefit. There is no dispute that the Government has power to vary the service conditions of the members of the services from time to time. The question involved in the present appeal is, however, not whether the Government had such power. The question is whether the respondent was also entitled to the benefit of the power so exercised in the facts and circumstances of the case. The admitted facts are that in 1966 when the respondent was recruited to the Defence Science Service, the three units belonged to the said Service and the employees were recruited initially to that service and then sent to different units. The service conditions of the employees belonging to the three units were the same and their services were inter-changeable between the three units. The Service Rules which applied to all the three units were also common, viz. Defence Science Service Rules. The three units, therefore, belonged to and constituted one single service. It is later in the year 1979, that the Defence Research Service was reconstituted into three different services as stated above. However, at that time, admittedly no option was given to the employees working in the different units to opt for one or the other of the units. It appears that those who were already working in either of the three units were deemed to belong to the respective newly constituted service. This being so, their service conditions will have to run parallel and no discrimination can be made between them by an unilateral action. The classification made between them further has no rational basis and no nexus of such classification to the object sought to be achieved has been shown to us by Mr. Subba Rao appearing for the appellants. In the circumstances, the denial of the benefit of the enhanced superannuation age to the members of one

A unit while the same is granted to the members of the other unit amounts to discrimination, violative of Article 16 of the Constitution. We are, therefore, satisfied that the decision of the Tribunal is both proper and valid, and there is no substance in the present appeal. The appeal is, therefore, dismissed.

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6. We are informed that in spite of the decision of the Tribunal and even pending this appeal when no stay was granted, the Appellant-Union of India retired the respondent at the age of 58 years. We have been unable to understand this indefensible action on the part of the Appellant nor could the learned counsel for the Appellants explain it to us. We, therefore, direct the Appellants to reinstate
C the respondent in service within one week of this Order and to pay to him all his emoluments from the date of his arbitrary retirement till the date of his re-instatement in service as if he had not been retired. We further direct that he would continue in service till he attains the age of 60 years, unless of course for some other legal reasons, it becomes necessary to discontinue his services before that date.

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7. We also understand that in the meanwhile the respondent was paid all his retirement benefits. The Appellant will not recover any amount so paid to the respondent. The appeal is accordingly dismissed with aforesaid directions and with costs.

E T.N.A. Apeal dismissed.