

A

KUDRAT SANDHU

v.

UNION OF INDIA AND ANR.

(Writ Petition (C) No. 279 of 2017)

B

AUGUST 21, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

C

Tribunal: Age of superannuation – CESTAT – Member (Judicial) – A person selected as Member of the CESTAT shall continue until the age of 62 years while a person holding the post of President shall continue until the age of 65 years.

D

Tribunal: Age of superannuation – AFT – Members of the Armed Forces Tribunal shall hold office until the attainment of the age of 65 years – Chairpersons who have been former Judges of the Supreme Court shall hold office until the attainment of the age of 70 years.

CAT: In the case of the Central Administrative Tribunal, the old rules/provisions shall continue to apply.

E

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 279 of 2017

Under Article 32 of the Constitution of India

WITH

F

W.P. (C) Nos. 558/2017, 561/2017, 640/2017, 1016/2017, 788/2017, 925/2017, 1098/2017, 1129/2017, 33/2018, 205/2018, 467/2018, T.C. (C) Nos. 49/2018 and 51/2018.

G

K. K. Venugopal, AG, Ms. Aishwarya Bhati, AAG, Ashok Kumar Panda, Arvind P. Datar, Sidharth Luthra, Amarendra Sharan, Mrs. Prem Lata Bansal, Sr. Advs., Tejaswi Kumar Pradhan, Satyabrata Panda, Manoranjan Paikaray, Aniruddha Purushotham, Shashwat Panda, Nikhil Nayyar, N. Sai Vinod, Dhananjay Baijal, Divyanshu Rai, Karan Batura, Ms. Anushree Prashit Kapadia, Arun Monga, Ms. Divya Sharma, Ms. Mayuri Raghuvanshi, Ms. Ruchira Goel, Muhammad A. Khan, R. V. Prabhat, Abishek Jebraj, Nikhil Swami, Omar Hoda, A. K. Behera, V. K. Verma, Mrs. Priya Hingorani, Kripa Shankar Prasad, Rupesh

H

Kumar, Rajeev Sharma, Pravesh Bahuguna, Karbppaiah Meyyappan, Anand Varma, Ms. Shubhangi Jain, Ms. Manpreet Kaur, K. Krishna Kumar, Annam D. N. Rao, A. Venkatesh, Sudipto Sircar, Rahul Mishra, Ms. Diksha Rai, Ms. Palak Mahajan, R. Balasubramanian, S.S. Shamsbery, Ms. Rukhmani Bobde, Harish V. Shekhar, Ms. Shradha Deshmukh, Rohit Bhat, Ms. Aarti Sharma, Santosh Kr. Vishwakarma, Arvind Kumar Sharma, G. S. Makker, Raj Bahadur Yadav, Mukesh Kumar Maroria, Mrs. Anil Katiyar, Vishnu B. Saharya, Viresh B. Saharya (for M/s Saharya & Co.), Jagjit Singh Chhabra, Puspraj Singh, Ms. Chitragda Rastravara, Ms. Smitakshi Talukdar, Rahul Jain, Zoheb Hossain, Ashok Mathur, Ajay Veer Singh Jain, Ms. Mamta Jain, Uday Ram Bokadia, Ms. Divya Garg, Sonal Jain, Ajay Bansal, Gaurav Yadava, Mrs. Veena Bansal, Nachiketa Joshi, Ms. Sucheta, Ujjaval Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR. D. Y. CHANDRACHUD, J. 1. By an order dated 20 March 2018, we had clarified the previous order dated 9 February 2018. Clause (iii) of the clarifications is relevant and reads as follows:

“(iii) The tenure of the Chairperson and the Judicial/Administrative/Expert/Technical Members of all the Tribunals shall be for a period of five years or the maximum age that was fixed/determined under the old Acts and Rules;”

On 16 July 2018, this Court issued the following directions in regard to the age of the superannuation of Member of the Income Tax Appellate Tribunal:

“At this juncture, we may note that there is some confusion with regard to the Income Tax Appellate Tribunal (ITAT) as regards the age of superannuation. We make it clear that the person selected as Member of the ITAT will continue till the age of 62 years and the person holding the post of President, shall continue till the age of 65 years.”

CESTAT:

2. In IA 113281 of 2018, the applicant is an Additional District and Sessions Judge in the State of West Bengal, who has been selected as Member (Judicial) in the CESTAT. The notification of appointment of six officers who have been selected as Member (Judicial), including the

- A applicant, stipulates that they shall hold office for a period of five years or till attaining the age of 62 years, whichever is earlier "in terms of the Hon'ble Supreme Court's order dated 20 March 2018". A member of the judicial service would have ordinarily continued until the date of superannuation in the state judicial service, subject to the service rules.
- B It would be manifestly inappropriate to adopt an interpretation as a result of which, upon assuming office as Member (Judicial) in CESTAT the officer will have a tenure which will expire after five years, if it falls prior to attaining the age of 62 years. We, accordingly, are of the view that the clarification issued for the ITAT in the order dated 20 March 2018 needs to be reiterated in the case of the members of the CESTAT,
- C which we do. We clarify that a person selected as Member of the CESTAT will continue until the age of 62 years while a person holding the post of President shall continue until the age of 65 years.

AFT:

- D 3. Members of the Armed Forces Tribunal shall hold office until the attainment of the age of 65 years. Chairpersons who have been former Judges of the Supreme Court shall hold office until the attainment of the age of 70 years.

CAT:

- E 4. In the case of the Central Administrative Tribunal, we clarify that the old rules/provisions shall continue to apply.

- F 5. We direct the Union government to file a status report before this Court within a period of two weeks setting out position with respect to each Tribunal, including the vacancies and the stage of the selection process. IA No.113281 of 2018 is disposed of accordingly.