

Union of India and another

Vs

Col. Komal Charan and others

Civil Appeals Nos. 2449-50 of 1992

(Dr. A. S. Anand, L. M. Sharma JJ)

14.05.1992

JUDGEMENT

SHARMA, J.

1. The questions which fall for decision in these cases are as to whether the officers appointed on whole-time basis in the National Cadet Corps are governed by the Fundamental Rules applicable to the civil servants serving the Union of India and accordingly entitled to continue in service until the age of fifty-eight years or they retire under the terms and conditions of their service as contained in the Government order being letter dated 23-5-1980. The Central Administrative Tribunal, New Delhi, by the impugned judgment, has agreed with the respondents that they will remain in service till they attain the age of fifty-eight years in view of the provisions in Fundamental Rule 56 (a).

2. Special Leave is granted.

3. The respondents were earlier serving in the Armed Forces from 1962-67. After the expiry of their tenure they applied for appointment under the scheme of re-employment of ex-service officers in the National Cadet Corps and they were granted N.C.C. commission on whole-time basis. The grant of permanent commission was on the terms and conditions as laid down in the aforesaid letter dated 23-5-1980 which had inter alia fixed the age of retirement at fifty five, and it required the appointees to exercise their option to accept the same on the aforesaid terms and conditions if they so chose. Accordingly they were granted the permanent commission after they exercised the option as indicated in the letter. When the dates of their retirement were coming close the respondents filed the original applications before the Central Administrative Tribunal out of which these appeals have arisen. The Tribunal agreeing with the respondents held that they were entitled to continue the service until they attained the age of fifty-eight, and the service conditions as contained in the letter dated 23-5-1980 to the contrary were not legally valid.

4. The provisions of Fundamental Rules 56 (a) which are the basis of the claim of the respondents read as follows:

"F.R. 56 (a). Except as otherwise provided in this Rule, every Government servant shall retire from service on the afternoon of the last day of the month in which the attains the age of fifty-eight years."

It has been contended by Mr. Additional Solicitor General appearing in support of the appeal that the whole-time officers of N.C.C. are appointed in accordance with the provisions of the N.C.C. Act and Rules, and the Fundamental Rules are not applicable to them at all. Mr. Mukhoty the learned

counsel for the respondents has, in reply, argued that the N. C.C. Act and the Rules do not lay down the age of superannuation of such officers and the Army Act which prescribes different age of retirement is not applicable. According to the learned counsel, the result is that the general rule as contained in Fundamental Rule No. 2 must govern the respondents.

5. As indicated above, the decision in the case is dependent on the question as to whether the Fundamental Rules are applicable to the respondents or not. Having got the permanent commission on the basis of the letter dated 23-5-1980, it is for the respondents to show that they are entitled to rely on the Fundamental Rules, including F.R. 56 (a) and to continue in service till the age of fiftyeight. The extent of application of the Fundamental Rules has been dealt with in Part 1 Chapter 1, and F.R. 2 declares that,

"The Fundamental Rules apply, subject to the provisions of Rule 3, to all Government servants whose pay is debitable to Civil Estimates and to any other class of Government servants to which the President may, by general or special order, declare them to be applicable."

Admittedly the President has not issued any general or special order extending the Fundamental Rules to the N. C. C. whole-time officers..Pointing out to the reference of Rule 3 in Part 2, Mr. Mukhoty contended that since the respondents are not governed by Army or Marine Regulations their conditions of service must be held to be as under Fundamental Rules. The learned counsel referred to the provisions of the N.C.C. Act, the Army Act and certain statements made in the affidavits filed in the present case in support of his point that the Army or Marine Regulations have no application to the respondents. We are afraid, the argument is based on the assumption that unless Army and Marine Regulations are shown to be applicable to the holders of a service, the Fundamental Rules will govern the employees in the service. Fundamental Rule 3, on which reliance has been placed on behalf of the respondents, is by way of exception, and it becomes relevant only- where the Fundamental Rules are shown to be applicable. Only if a particular service is proved to be governed by the Fundamental Rules that the question of its falling within the exception referred to in F.R. 3 can arise and not otherwise. It is, therefore, necessary first to examine the question whether the Fundamental Rules are at all applicable to the whole-time officers with permanent commission in the N. C. C.

6. It appears from the Fundamental Rule No. 2, quoted earlier, that the Fundamental Rules are applicable. only to such government servant whose pay is debitable to Civil Estimates. It is the case of the appellants that the pay and allowances of the N.C.C. wholetime officers are not paid from Civil Estimates and they are paid, from Defence Services Estimates. Reliance was placed on behalf of the appellants before the Tribunal on the Explanatory Notes, Sub-Head B - National Cadet Corps, in the Defence Services Estimates for the year 1989-90. The Explanatory Note do support the appellants' stand, but since the respondents raised certain controversy about the meaning and effect of the said Explanatory Note, we adjourned the case to enable the parties to file further affidavits dealing with this qustion. Accordingly affidavit was filed on behalf of the appellants giving full details in this regard and in clear and unambiguous terms stating that the N.C.C. officers employed on whole-time basis are paid exclusively, by the Central Government from the Defence,Services Estimates. This affidavit has been sworn by an Under Secretary of the Union of India, who claims to have access to the official records and has given details dealing with the question and we do not have any reason to doubt the correctness of the statement. We, therefore, hold that the pay of the respondents is not debitable to the Civil Estimates, as required by Fundamental Rule 2 for the application of the Fundamental Rules, and the Fundamental Rules must, therefore, be held to be not

attracted. The Tribunal was, thus, in error to hold on that basis that the respondents were entitled to remain in service up to the age of fifty-eight years.

7. In view of our conclusion above we do not feel it necessary to refer to the other provisions of the N.C.C. Act relied upon by Mr. Mukhoty, and we do not consider it either necessary or relevant to examine the question whether the Army Act applies to the respondents or not. In support of these appeals Mr. Additional Solicitor General has not placed any reliance on the Army Act and his contention has been that the provisions of the National Cadet Corps Act, 1948, the rules framed thereunder and the letter dated 23-5-80 in pursuance of which the respondents were granted permanent commission, settled the question. The Corps has been established under Section 3 of the N.C.C. Act, Section 9 of the Act authorises the Central Government to provide for the appointment of officers from amongst the members of the staff and university or school or otherwise. Section 13 of the Act authorises the Central Government to make rules to carry out the objects of the Act and without prejudice to the generality of this power to lay down the manner in which and the conditions subject to which a person or class of persons may be enrolled under the Act. Accordingly the Rules described as National Cadet Corps Rules, 1948 were framed. Proviso (iii) in Rule 16 vests the authority concerned with very wide power in this regard. Except for Fundamental Rule 56 (a) relied upon in the impugned judgment, it has not been suggested on behalf of the respondents that they are entitled to continue in service up to the age of fifty-eight years on the strength of any other provision. The Central Government has, therefore, full authority to appoint persons on such terms and conditions as it may choose to prescribe. The question of grant of permanent commission to N.C.C. officers employed on whole-time basis was considered in all the relevant aspects and a decision was taken as mentioned in the afore-mentioned letter dated 23-5-80 and referred to in the letter of 24-5-80 sent under the signature of the Under Secretary to the Government of India to the Director General, N.C.C., New Delhi (Annexure P-4). It was considered desirable that before a person was granted N.C.C. permanent commission in terms of the above letter an opportunity should be given to him to consider the terms and conditions of the appointment and then indicate his choice by exercising his option in the form prescribed in Appendix B to the letter. The relevant order in clear terms lays down the age of superannuation at fifty-five years with a further provision of extension to the age of fifty-seven years. The respondents exercised their option and were accordingly granted whole-time N.C.C. commission. They cannot now repudiate the same and claim any additional benefit which they are not entitled to under any rule or law.

8. Mr. Mukhoty relied upon paragraph 8 of the terms and conditions stating that the officers will be governed by Central Civil Services (Pension) Rules, 1972 as amended from time to time and contended that in view of these provisions the respondents should be treated to be governed by the Civil Services Rules prescribing fifty-eight years as the age of retirement. The argument is fallacious. Paragraph 8 makes a limited application of the Civil Services Rules in regard to pension only and cannot be held to have rendered the provisions of paragraph 5 fixing in clear and express terms the age of superannuation as fifty-five years nugatory. Mr. Mukhoty also urged that since the Rules framed under Section 13 of the N.C.C. Act do not fix the age of retirement of the respondents, they cannot be retired at the age of fifty-five years. We do not find any logic in this plea. It is true that there are no statutory rules at all dealing with the age of superannuation of the respondents but for that reason the age which is fixed for the civil servants governed by the Fundamental Rules cannot be brought in. In the absence of a rule to the contrary, the Central Government is fully authorised to fix the age which it has done and which was accepted voluntarily by the respondents. They must now retire when they reach the age of fifty-five years.

9. For the reasons above, the impugned judgment of the Central Administrative Tribunal is set aside

and the Original Applications filed before the Tribunal by the respondents are dismissed. The appeal is accordingly allowed but without costs. Appeal allowed.

</html