A LT. GENERAL R. K. ANAND

v.

UNION OF INDIA AND ANR.

DECEMBER 18, 1991

B [A.M. AHMADI AND K. RAMASWAMY, JJ.]

Army Act, 1950/Army Rules, 1954:

Sections 191, 192/Rule 16A

C *Superannuation age of officers—Prescribing different ages for 'Staff only' and 'Command and Staff streams'—Instructions contained in letters dated 9.5.85 and 9.9.86—Whether in the nature of executive instructions—Whether the latter letter superseded or only modified the earlier letter.*

The appellant joined the infantry in 1954 and gradually rose to the
D **rank of Lieutenant General. The terms and conditions of his service were governed by the Army Act, 1950, and the Army Rules, 1954. By the 1979 Amendment to the Army Rules, Rule 16A came to be introduced, which dealt with compulsory retirement of officers of the Armed Forces. According to sub-rule (5) of Rule 16A, the appellant, who belonged to the infantry and having been promoted as lieutenant General was liable to be retired**
E **between 56 and 58 years of age.**

As per instructions contained in the letter dated 9.5.1985 prescribing retirement age, the appellant who belonged to the infantry, was entitled to continue in service upto 58 years.

F **By another letter dated 9.9.1986, it was envisaged that officers on promotion to the post of Major General and Lt. General will be bifurcated into the 'Command and Staff' stream, and the 'Staff only' stream. Lt. Generals belonging to the 'Staff only' stream would retire at the age of 57 years, i.e. one year before the officer of that rank in the 'Command and Staff' stream. Accordingly by an order dated 3.3.90, the appellant was**
G **retired on attaining the age of 57 years, as he belonged to Infantry and fell under 'Staff only' stream.**

The appellant filed a Writ Petition before the High Court, challenging the said order, on the ground that under the departmental instructions contained in the letter dated 9.5.1985, he could not be retired before he
H **attained the age of 58 years. The High Court took the view that the letter dated 9.5.85 did not hold the field and the subsequent letter dated 9.9.86**

was the one which governed the retirement of the appellant. In this view of the matter, the High Court dismissed the Writ Petition. A

Aggrieved against the High Court's order, the appellant preferred the present appeal by special leave.

On behalf of the appellant it was contended that the letter of 9th May, 1985 was issued under the signature of the Joint Secretary in the Ministry of Defence and was, therefore, in the nature of executive instructions, even if it did not have statutory flavour, it held the field and the authorities were bound by the terms thereof, and could not have superannuated him before he completed 58 years of age; that the letter of 9th September, 1986 cannot supersede the letter of 9th May, 1985 as it is only a departmental letter which cannot be placed on the pedestal of executive instructions contemplated by Article 162 of the Constitution; and that the fact that two new clauses were sought to be introduced in the letter of 9th May, 1985, showed that the instructions contained in the said letter were very much in operation and they were not superseded by the letter of 9th September, 1986. B C D

On behalf of the Respondents, it was contended that after the two streams concept was introduced by the letter of 9th September, 1986, superannuation was regulated as per the terms thereof and accordingly the appellant, an infantry man and falling under 'Staff only' stream had to retire at the age of 57. E

Dismissing the appeal, this Court,

HELD: 1. The instructions contained in the letter dated 9th September, 1986 do not run counter to Rule 16A of Army Rules, 1954 which prescribes the age of superannuation for Lt. Generals between 56 and 58 years. The letter of 9th May, 1985 was general in nature and applied to all Lt. Generals regardless of the stream to which they belonged. Of course at that point of time there was no concept of two streams but there was nothing in Rule 16A or the said letter which debarred the authorities from introducing the same so long as it was consistent with Rule 16A. The appellant superannuated with effect from 31st December, 1990, i.e. after the terms of the letter of 9th September, 1986 came into force. The appellant cannot, therefore, claim the benefit of the instructions contained in the letter of 9th May, 1985. [504 D-G] F G

2. Both the letters of 9th May, 1985 and 9th September, 1986 are in the nature of executive instructions because Rule 16A of the Army Rules, 1954 has not been amended even though the letter of 9th May, 1985 H

A **envisaged a change therein. That letter dated 9th September, 1986 prescribes the age of superannuation of officers belonging to the 'Staff only' stream as one year less than the officers of equivalent rank in 'Command and Staff' stream. The Lt. General in the Command and Staff stream would superannuate at the age of 58 years and, therefore, a Lt. General in the 'Staff only' stream would superannuate one year earlier, that is, at the**
B **age of 57 years. It is, therefore, clear that the subsequent letter of 9th September, 1986 modifies the superannuation age for officers in the 'Staff only' stream. That being the position the appellant who belonged to infantry and fell under 'Staff only' stream was rightly superannuated on his attaining the age of 57 years. [504 F-G; 505 A-B]**

C **3. In May, 1987 an Addenda was sought to be introduced in the instructions contained in the letter of 9th May, 1985 by adding certain clauses. By clause 3 the age of retirement of the General Cadre Officers in the rank of Major General and Lt. General in the 'Command and Staff' stream was proposed to be 56 and 58 years respectively, whereas the age of superannuation for officers of the same rank in the 'Staff only' stream**
D **was proposed to be 55 and 57 years. By clause 4 the age of superannuation of Lt. General of non-General Cadre promoted in the 'Staff only' stream was proposed to be prescribed as one year earlier than the Lt. General promoted in his own corps, that is, at the age of 57 years. It was this Addenda which was placed in abeyance and not the instructions contained in the letter of 9th September, 1986. What was proposed by the Addenda**
E **was to bring the letter of 9th May, 1985 in line with the instructions contained in the letter of 9th September, 1986 since the earlier letter dealt with several other Army officers also and not merely Lt.Generals.**

[505 C-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5085-A of
F 1991.

From the Judgment and Order dated 14.8.1991 of the Delhi High Court in C.W.P. No. 3997 of 1990.

Vibhu Bakhru and Lt. Genl. R.K.Anand, in person for the Appellant.

G V.V.Vaze, A.K.Sharma and S.N.Terdol for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. Special leave granted.

By an order dated 3rd March, 1990, the appellant on attaining the age of
H 57 years on 19th December, 1990 was retired from service at the end of the

month i.e. 31st December, 1990. He challenged this order of retirement by filing a Civil Writ Petition No. 3997 of 1990 in the High Court of Delhi on the ground that under the department instructions contained in the letter of 9th May, 1985 he could not be retired before he attained the age of 58 years. The respondents supported the order of retirement placing reliance on the subsequent letter of instructions dated 9th September, 1986. The appellant also attempted to invoke certain regulations stated to have been framed under Section 192 of the Army Act, 1950 as contained in the Army Instructions Book (1987 Edition). The High Court, after a critical examination of the various submissions made before it, came to the conclusion that the appellant was not entitled to continue in service till he attained the age of 58 years. The High Court took the view that the letter of 9th May, 1985 did not hold the field and the subsequent letter of 9th September, 1986 was the one which governed the retirement of the appellant. In that view of the matter it dismissed the Writ Petition and discharged the Rule awarding Rs. 3,300 by way of counsel fee to the appellant finding fault with the Central Government for having failed to notify the relevant instructions. Since that part of the order awarding cost is not in challenge before us we need say no more on that subject.

A few facts relevant for the disposal of this appeal may be noticed at this stage. The appellant joined the Infantry on 6th June, 1954 and in due course rose to the rank of Lieutenant General. The terms and conditions of his service were governed by the Army Act, 1950 (hereinafter called 'the Act') and the Rules made thereunder. Section 191 of the Act empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the Act. Sub-section (2) of Section 191 enumerates the various matters in respect of which rules may be framed by the Central Government. Clause (a) of that sub-section deals with the question of retirement from service. Therefore, the age of superannuation for officers governed under the provisions of the Act could be prescribed by the rules made under Section 191 of the Act. Section 192 empowers the Central Government to make regulations for all or any of the purposes of the Act other than those specified in Section 191 which would include the matter regarding determination of the age of superannuation. Section 193 next provides that all rules and regulations made under the Act shall be published in the official gazette and on such publication shall have effect as if enacted under the Act. Section 193A was inserted in the Act by an amendment which came into force w.e.f. 15th March, 1984. It *inter alia* provides that every rule and every regulation made by the Central Government under the Act shall be laid before each House of Parliament. It is not in dispute that the regulations on which reliance is placed were not placed before each House of Parliament as required by this provision. Secondly, the regulation could not cover the area covered by Section 192(2) (a) which deals with the question of prescription of age of superannuation. Counsel for the appellant

A realising these difficulties could not carry his submission based on the regulations any further. But it is stated that the regulations give an insight in how the authorities understood the relevant letters of instructions dated 9th May, 1985 and 9th September, 1986. We will presently come to these two documents on which either side places reliance but before we do so we think it necessary to notice Rule 16A introduced by the Army (Amendment) Rules, 1979 (hereinB after called 'the Rules'). By the said rules the Army Rules, 1954 came to be amended. Rule 16A deals with the question of compulsory retirement of officers of the Armed Forces. Clause (1) (a) of the said Rule provides that officers shall be liable to be compulsorily retired from service by order of the Central Government or the authorities specified in sub-rule (2). With effect C from the afternoon of the last date of the month in which they attain the age limits specified in sub-rule (5). Sub-rule (5) next provides that the officers of Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps, Army Ordinance Corps, Electrical and Mechanical Engineers and Pioneer Corps shall retire at the ages mentioned immediately thereunder. So far as Lt.General is concerned the retirement age is mentioned to be between 56 years D and 58 years. In other words the minimum age of retirement of a Lt.General is 56 years and the maximum 58 years. This rule has statutory force. It may be noticed that the appellant belongs to the Infantry and having been promoted to the post of Lt.General was liable to be retired between 56 and 58 years of age under Rule 16A(5) of the Rules.

E We may now come to the letter of 9th May, 1985 on which considerable reliance was placed by the appellant. That letter prescribes the ages of retirement for officers belonging to the Armoured Corps. Infantry, Artillery, Engineers and Signals Corps. The age of retirement for the Lt.General is mentioned as 58 years. Since the appellant belongs to the Infantry he was entitled to continue in service upto the age of 58 years under the instructions F contained in this letter. This letter was issued with the concurrence of the Ministry of Defence (Finance) and was to come into force from the date of its issue. If this letter held the field the appellant's contention would be well founded. The letter further directs that the Army Rule 16A should be revised in due course. But factually the Army Rule 16A never underwent a revision G as envisaged by this letter.

That brings us to the letter of 9th September, 1986 on which the respondents rely. By this letter it was envisaged that officers on promotion to the post of Major General and Lt.General will be bifurcated into the 'Command and Staff' stream and the 'Staff only' stream. The former were expected to H serve upto the maximum age prescribed for the rank, i.e. 58 years in the case

of Lt.General and the latter i.e. General Cadre Officers belonging to 'Staff only' stream were expected to superannuate one year earlier than the officers of the 'Command and Staff' stream in the corresponding rank. To put it differently a Lt.General belonging to the 'Staff only' stream would retire at the age of 57 years i.e. one year before the officer of that rank in the 'Command and Staff' stream. It will thus be seen that by this letter of 9th September, 1986 the age of superannuation in regard to Lt.Generals in the Armed Forces was regulated according to two Streams, namely, those belonging to the 'Command and Staff' stream were to retire at the age of 58 years and those belonging to the 'Staff only' stream were to retire one year before, that is, at the age of 57 years. This is clear on a plain reading of the relevant clauses of the letter of 9th September, 1986. This is not inconsistent with Rule 16A of the Rules.

It would thus appear from the above facts that after Rule 16A came to be incorporated with effect from 4th June, 1979, the question of superannuation of officers retiring between 4th June, 1979 and 8th May, 1985 was regulated on a case to case basis. The cases of officers who retired with effect from 9th May, 1985 and before the letter of 9th September, 1986 came into force were regulated by the instructions contained in the letter of 9th May, 1985 and, therefore, Lt.Generals retired at the age of 58 years. However, after the letter of 9th September, 1986 came into force and the concept of two streams was introduced the age of superannuation was regulated by the terms of the said letter. As stated earlier the instructions contained in this letter do not run counter to Rule 16A of the Rules which prescribes the age of superannuation for Lt.Generals between 56 and 58 years. The letter of 9th May, 1985 was general in nature and applied to all Lt.Generals regardless of the stream to which they belonged. Ofcourse at that point of time there was no concept of two streams but there was nothing in Rule 16A or the said letter which debarred the authorities from introducing the same so long as it was consistent with Rule 16A. The appellant superannuated with effect from 31st December, 1990 i.e. after the terms of the letter of 9th September, 1986 came into force. He cannot, therefore, claim the benefit of the instructions contained in the letter of 9th May, 1985.

The appellant contends that notwithstanding the letter of 9th September, 1986 the letter of 9th May, 1985 held the field and he was, therefore, entitled to continue in service till he attained the age of 58 years and was wrongly superannuated on his completing 57 years of age. According to him the letter of 9th May, 1985 was issued under the signature of Joint Secretary in the Ministry of Defence, Central Government and was, therefore, in the nature of

A executive instructions, even if it did not have statutory flavour, and hence the authorities were bound by the terms thereof and could not have superannuated him before he completed 58 years of age. On the other hand the respondents contend that after the two streams concept was introduced by the letter of 9th September, 1986, superannuation was regulated as per the terms thereof and accordingly the appellant who was an Infantry man and belonged to 'Staff B only' stream had to retire one year before an officer of equivalent rank belonging to the 'Command and Staff' stream became liable to be superannuated. If the contention of the respondents is right, there can be no doubt that the appellant was rightly superannuated on his completing the age of 57 years.

The appellant contends that the letter of 9th September, 1986 cannot C supersede the letter of 9th May, 1985 as it is a departmental letter which cannot be placed on the pedestal of executive instructions contemplated by Article 162 of the Constitution. In order to satisfy ourselves whether the communication of 9th September, 1986 had received the concurrence of the concerned Ministry, we inspected the department file and found that the matter was referred to the Ministry of Defence and had received the approval of the Prime Minister. In D view of the same it is not possible to accede to the submission of the appellant that the letter of 9th September, 1986 is merely a departmental communication and cannot be raised to the pedestal of an executive instruction under Article 162 of the Constitution. Therefore, both the letter of 9th May, 1985 and the letter of 9th September, 1986 stand on the same footing. It is obvious that by the subsequent letter of 9th September, 1986 two streams were contemplated E and the ages of superannuation of both the streams were separately stated. So far as the Lt.General belonging to the 'Command and Staff' stream is concerned, under the letter of 9th September, 1986 as well as the letter of 9th May, 1985, his age of superannuation is fixed at 58 years but so far as the Lt.General belonging to the 'Staff only' stream is concerned, by the subsequent letter of 9th September, 1986 his age of superannuation is fixed at one year less F than the age of superannuation of an equivalent officer in the 'Command and Staff' stream. As stated earlier both these letters of 9th May, 1985 and 9th September, 1986 are in the nature of executive instructions because Rule 16A has not been amended even though the letter of 9th May, 1985 envisaged a change therein. The fact, however, remains that no change was brought about G and, therefore, Rule 16A stands unaltered. The appellant has mainly relied on the letter of 9th May, 1985 because otherwise under Rule 16A(5) it was open to retire him between the ages of 56 and 58 years and, therefore, it was permissible to superannuate him at the age of 57 years. If only the instructions contained in the letter of 9th May, 1985 come to his rescue he can succeed. But as stated earlier the subsequent letter of 9th September, 1986 by which two H streams came to be introduced has made in-roads. That letter prescribes the age of superannuation for officers belonging to the 'Staff only' stream as one year

less than the officer of equivalent rank in 'Commandand Staff' stream. The Lt.General in the 'Command and Staff' stream would superannuate at the age of 58 years and, therefore, a Lt.General in the 'Staff only' stream would superannuate one year earlier, that is, at the age of 57 years. It is, therefore, clear that the subsequent letter of 9th September, 1986 modifies the superannuation age for officers in the 'Staff only' stream from that contained in the letter of 9th May, 1985. That being the position the appellant was rightly superannuated on his attaining the age of 57 years.

Our attention was invited to a note dated 22nd June, 1987 which has reference to an earlier note dated the 17th May, 1987 whereby the issuance of Government order stipulating ages of retirement on two-stream concept was placed in abeyance. On the strength of this noting the appellant contended that the two stream concept contained in the letter of 9th September, 1986 was kept in abeyance and, therefore, his case was governed by the instructions contained in the letter of 9th May, 1985. In order to verify the accuracy of this submission made by the appellant we perused the file and we find that in May, 1987 an Addenda was sought to be introduced in the instructions contained in the letter of 9th May, 1985 by adding Clauses 3 and 4 and re-numbering the existing clauses 3, 4 and 5 as clauses 5, 6 and 7. By the proposed clause 3 the age of retirement of the general Cadre Officers in the rank of Major General and Lt.General in the 'Command and Staff' stream was proposed to be 56 and 58 years, respectively, whereas the age of superannuation for officers of the same rank in the 'Staff only' stream was proposed to be 55 and 57 years. By clause 4 the age of superannuation of Lt.General of non-General cadre promoted in the 'Staff only' stream was proposed to be prescribed as one year earlier than the Lt.General promoted in his own corps, that is, at the age of 57 years. It was this Addenda which was placed in abeyance and not the instructions contained in the letter of 9th September, 1986.

The appellant, however, contends that the fact that by this Addenda two new clauses were sought to be introduced in the letter of 9th May, 1985, shows that the instructions contained in the said letter were very much in operation and they were not superseded by the letter of 9th September, 1986. This submission is clearly misconceived. What was proposed by the Addenda was to bring the letter of 9th May, 1985 in line with the instructions contained in the letter of 9th September, 1986 since the earlier letter dealt with several other Army officers also and not merely Lt.Generals. We are, therefore, not impressed by this submission made by the appellant.

In the result we do not see any merit in this appeal and dismiss the same but make no order as to costs.

G.N. Appeal dismissed.