

A

UNION OF INDIA AND ORS.

v.

MAJOR. R.N. MATHUR

NOVEMBER 4, 1996

B

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

*Service Law :*

C

*Superannuation—Officers granted permanent NCC commission—Appointed in NCC units and on staff including Directorate General NCC—Superannuation at the age of 55 years—Tribunal directing to retain the employee till the age of 57—On appeal held since the appointment was made fixing the age of superannuation at 55 years, the officer is to retire at the age of 55 years—N.C.C. Act—S.13.*

D

*Union of India and Anr. v. Lt. Col. Komal Chand and Ors., AIR (1992) SC 1479, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14774 of 1996.

E

From the Judgment and Order dated 6.3.96 of the Central Administrative Tribunal at Jaipur in O.A. No. 648 of 1994.

Altaff Ahmed, Additional Solicitor General, N.N. Goswami, Ashok K. Srivastava, Anil Katiyar and Ms. Mridul Aggrawal for the Appellants.

F

In-person for the Respondent.

The following Order of the Court was delivered :

G

Leave granted.

Heard learned counsel for the appellants and Major R.N. Mathur, respondent-in-person.

H This appeal arises from the judgment and order of the Central Administrative Tribunal, Jaipur, made on 6.3.1996 in O.A. No. 648/94.

Admittedly, the respondent was granted, in 1980, a permanent NCC Commission. The letter of appointment dated 23.5.1980 indicates that, as a condition, the selected officers granted permanent NCC Commission under the Government of India's letter dated August 4, 1978, as amended, might be appointed in NCC units and on staff including Directorate General, NCC. Clause (5) of the appointment letter says that these officers, if otherwise not found unfit, would be eligible to serve till 55 years. This controversy is no longer *res integra*. This question was considered by this Court in *Union of India and Anr. v. Lt. Col. Komal Chand and Ors.*, AIR (1992) SC 1479 wherein it was held that it was considered desirable that before a person was granted NCC 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 he may indicate his choice by exercising his option in the form prescribed in appendix 'B' to the letter. We cannot accept the contention of the respondent. Having accepted the Commission in 1980, it is not open to him to contend now that during these years he did not read the terms of appointment. This Court has clearly laid down that para 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 para 5 fixing in clear and express terms "the age of superannuation as fifty five years nugatory." The contention of the learned counsel, Mr. Mukhoty, appearing in that case that since the rules framed under Section 13 of the NCC Act do not fix the age of retirement of the respondents, they could not be retired at the age of 55 years, therefore, was not accepted by this Court. It was held that "it is true that there is 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 55 years." Thus, it is clear that the appointment was made fixing the age of superannuation of 55 years. In terms thereof, the officer is required to retire at the age of 55 years.

It is in an admitted position that the Fundamental Rules have no application and the statutory rules equally have no application. Under these circumstances, the Tribunal is clearly in error in directing the appellants to retain the respondent herein, in service

A till 57 years.

The appeal is accordingly allowed. In the circumstances, there will be no order as to costs.

G.N.

Appeal allowed.