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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11614/2017 & C.M. No.47285/2017**

VIMLA GHOSH

..... Petitioner

Through Ms.Monica Kapoor, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through Mr.Sanjeev Narula, Adv. with
Mr.Apar Chopra, Adv. & Mr.Rajat
Gava, Adv. for UOI.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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20.09.2018

1. The petitioner is aggrieved by an order dated 31.08.2015, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, dismissing O.A. No.4069/2011 filed by her, praying *inter alia* that the policy decision taken by the respondent no.1/Union of India and the respondent no.2/National Cadet Corps (NCC) whereunder the age of superannuation of NCC Girl Cadet Instructors had been declared as 55 years, be declared as arbitrary and discriminatory and further, for directions to the respondent nos.1 & 2 to formulate Guidelines regarding the age of superannuation of Girl Cadet Instructors at par with similarly placed persons, by enhancing the same to 60 years.

2. The present case had a chequered history. On 29.05.1969, the petitioner had joined NCC as a Girl Cadet Instructor (in short, GCI).

On 08.12.1975, she was appointed as a part time Officer and she was made permanent on the said post on 24.01.1981. On 22.04.1994, the petitioner was promoted as an Under Officer Instructor. In the year 1996, the Fifth Pay Commission proposed enhancement of the age of superannuation of the GCI's from 52 years to 55 years which was partly implemented by the respondent no.1/Union of India by enhancing the age of superannuation of GCI's from 52 years to 54 years. Subsequently, on 19.09.2000, the age of superannuation of the GCI's was enhanced from 54 years to 55 years. On 30.09.2001, on attaining the age of 55 years, the petitioner retired from the subject post.

3. Two days before her superannuation, on 28.09.2001, the petitioner filed OA No.2596/2001 before the Tribunal, raising a grievance about her age of superannuation and praying *inter alia* for enhancing the age of superannuation from 55 years to 57 years. Vide order dated 28.09.2001, the Tribunal disposed of the captioned OA with directions issued to the respondents to consider the averments made by the petitioner in the said OA as a representation and decide the same. The respondents complied with the said order and rejected the petitioner's representation vide order dated 11.01.2002. Aggrieved by the rejection order, the petitioner filed a second Original Application before the Tribunal in May, 2003, registered as OA No.1636/2003. The said application was partly allowed by the Tribunal vide order dated 20.04.2004 and as regards the issue raised by the petitioner with regard to enhancement of the age of superannuation, liberty was granted to her to file a separate OA in

accordance with law.

4. Two years thereafter, in the year 2006, the petitioner filed OA No.1597/2006 raising the very same issue of enhancement of the age of superannuation of the GCI's at par with the Government employees i.e. 60 years or at par with the age of superannuation of the whole time officers in NCC i.e. 57 years. On 22.08.2007, the petitioner withdrew the captioned OA. While doing so, she was granted liberty to challenge the policy decision by filing a fresh OA.

5. After four years reckoned from August, 2007, , the petitioner filed OA No.4069/2011 which was dismissed by the Tribunal vide order dated 31.08.2015 stating *inter alia* that it cannot issue a mandate to the Government to legislate under Article 309 of the Constitution of India and nor can the Court assume to itself, a supervisory role over the rule making power of the Executive. As a result, the fresh OA filed by the petitioner was dismissed. Aggrieved by the said order, the present petition has been filed.

6. Ms.Monica Kapoor, learned counsel for the petitioner submits that the policy of the respondents to superannuate GCI's at 55 years is arbitrary, unjust and unconstitutional as other Central Government employees superannuate much later, at the age of 60 years and Whole Time Commissioned Lady Officers of the NCC retire at the age of 57 years whereas Associate NCC Officers retire at the age of 58 year; that the respondents cannot be permitted to follow a policy of pick and choose while granting extension of age to GCI's; that the Tribunal has failed to appreciate that different rules cannot be permitted to govern the age of superannuation of three sets of officers

within the NCC. Lastly, she states that the Tribunal has failed to appreciate that the respondents were required to follow the recommendations of the Fifth Pay Commission for enhancing the age of superannuation of the GCI's to 55 years in the year 1996 itself, but they did so in a staggered manner, by initially increasing their age of superannuation to 54 year in the year 1998 and subsequently, enhancing the same to 55 year.

7. We have heard learned counsel for the petitioner and examined the record. We do not find any error in the observations made by the Tribunal to the effect that Courts are not expected to legislate and the said activity falls purely within the domain of the Executive authority under the Constitution of India. Courts are meant to interpret the law and if the law has been transgressed, strike down the action and issue appropriate directions to the State to follow the law in letter and spirit but not that under the garb of issuing directions to the State, the Court can usurp the power of legislating. Any such direction sought by the petitioner in the subject OA, for enhancing the age of superannuation will amount to laying down a policy, which is purely within the domain of the Executive Authority.

8. Even the recommendations made by the Pay Commission to the Government, cannot be treated as a mandatory in nature. It would still be open for the Government to accept the said recommendations or partly accept some of the recommendations and reject others, which has been happening over the years when Pay Commissions have been constituted by the Government from time to time. But all the recommendations made by the Pay Commissions as expert bodies,

have not to be necessarily accepted. (Refer: M.P. Rural Agriculture Extension Officers' Assn. Vs. State of M.P. reported as [(2004) 4 SCC 646]; K.S. Krishnaswamy Vs. Union of India reported as (2006) 13 SCC 215 & Union of India Vs. Arun Jyoti Kundu & Ors. reported as (2007) 7 SCC 472].

9. In view of the aforesaid facts and circumstances, we do not find any merit in the present petition. In any event, much water has flown under the bridge as by now, the petitioner has attained the age of 72 years.

10. Accordingly, the present petition is dismissed in limine along with the pending application.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 20, 2018/aa.