

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 29TH DAY OF JULY 2020 / 7TH SRAVANA, 1942

OP (KAT) .No.227 OF 2020

AGAINST THE ORDER IN OA (EKM) 2066/2019 DATED 09-03-2020 OF KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/APPLICANTS IN OA:

1 SAJU NAMBADAN,
AGED 49 YEARS
S/O.N.P. JOSEPH, DEPUTY COMMISSIONER OF STATE TAX
(LAW), OFFICE OF THE DEPUTY COMMISSIONER OF STATE TAX
(LAW), REVENUE TOWER, PARK AVE ROAD,
ERNAKULAM 682 011, MOB. NO. 8075347493

RESIDING AT NAMBADAN HOUSE P.O. KALLUR,
THRISSUR 680 317.

2 T.K. MOOSA,
AGED 56 YEARS
S/O. KUNJU MARAKKAR, OFFICE ATTENDANT (RETIRED),
STATE GST DEPARTMENT, THRISSUR
MOB. NO. 9037425318
RESIDING AT THEKKENCHERY HOUSE, CHENAM P.O. CHERPU,
THRISSUR 680 561.

BY ADV. DR.K.P.PRADEEP

RESPONDENTS/RESPONDENTS IN OA:

1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF
KERALA, GOVERNMENT SECRETARIAT ,
THIRUVANANTHAPURAM 695 001.

2 ADDITIONAL CHIEF SECRETARY,
FINANCE DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

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3 **PRINCIPAL SECRETARY,
TAX DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT THIRUVANANTHAPURAM 695 001.**

SRI. P.N. SANTHOSH- SR.G.P.

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 15-07-2020, THE COURT ON 29-07-2020 DELIVERED THE
FOLLOWING:**

JUDGMENT

Dated this the 29th day of July 2020

Shaffique, J

This original petition has been filed challenging the order dated 9.3.2020 in O.A.(EKM) 2066/2019, by which the Kerala Administrative Tribunal dismissed the original application. The petitioners are persons who were working in the State Goods and Services Tax Department. They challenged the Government order dated 27.9.2019 (Annexure A11) by which representation of the petitioners challenging Government Order dated 31.10.2014 had been rejected.

2. By an amendment made to Rule 60 of Part I of the Kerala Service Rules, it was inter alia stated that those who entered service after 1.4.2013 would retire from service on attaining the age of 60 years. Petitioners are persons who entered service prior to 1.4.2013. They challenge the amendment to Rule 60 of Part I KSR, to the extent that it has been made applicable only for the employees who join service after 1.4.2013. In other words, they claim that the retirement age of all the employees should have been made until the attainment of 60 years of age.

3. The petitioner had filed an earlier O.A.No.1040/2019 which came to be disposed of on 25.6.2019 directing the Government to consider the grievances of the petitioners and it is pursuant to the said

direction that Annexure A11 order came to be passed.

4. The Government took up a contention that the Government of India established Pension Fund Regulatory Authority (PFRDA) to develop and regulate National Pension System. It is pointed out that pursuant to the introduction of a defined contributory pension system called National Pension System (NPS) for the new entrants to the Central Government service with effect from 01.01.2004 vide GOI Notification F.No.5/7/2003-ECB & PR dated 22/12/2013 (later statutory validation were given by The PFRDA Act 2013, Act No.23 of 2013), almost all State Governments had adopted the new pension system in their states with effect from various dates. Vide GO(P) No.441/2012/Fin dated 08.08.2012, Government of Kerala have decided in principle to introduce the National Pension System w.e.f 01.04.2013 consequent upon the introduction of fiscal management measures to control expenditure to achieve fiscal consolidation. Subsequently, vide G.O.(P) No.20/13/Fin dated 07.01.2013, Government have introduced National Pension System for State Government employees who are appointed in service on or after 01.04.2013 for whom part III KSRs would have been made applicable otherwise vide G.O.(P)20/13/Fin dated 07.01.2013. Later vide G.O.(P) 135/14/Fin dated 08.04.14 NPS has been implemented in PSU's/autonomous bodies/Universities w.e.f 01.04.2013 where pensionary benefits is applicable as per Part III of Kerala Service Rules.

It is also stated that in NPS which has been implemented on the basis of the Act and Regulations of PFRDA and as per notification dated 22.12.2003, the individual can normally exit from the system at the age of 60 years. Therefore, the date of retirement for the employees coming under NPS has been enhanced to 60 years. Proportionate rule was incorporated as Rule 60(af) of Part I KSR vide SRO No.696/2014 notified in G.O.(P) No.469/2014/Fin dated 31.10.2014. Till then, the retirement rules of employees were solely governed by Part III of the Kerala Service Rules.

5. The contention urged by the petitioners was that the amendment to the Rule is discriminatory to the extent it did not include the existing employees of the Government. After evaluating the respective contention, the Tribunal arrived at a finding that the decision of the Government to limit retirement for those appointed prior to 1.4.2013 at 56 years cannot be branded as discriminative or violative of Article 14 of the Constitution of India and accordingly dismissed the original application.

6. While impugning the aforesaid order, leaned counsel for the petitioners fairly submitted that another Division Bench of this Court in W.A.No.333/2016 while considering the claims set up by some of the petitioners with reference to the very same amendment had upheld the amendment and observed that there is justification to fix a different date of superannuation for the employees joining service

after 1.4.2013. It is argued that aforesaid judgment is contrary to the law laid down by the Apex Court in ***Union of India & Others v. Atul Shukla & Others*** [(2014) 10 SCC 432]. Learned counsel also placed reliance on the judgment of the Delhi High Court in ***Dev Sharma & Others v. Indo Tibetan Border Police & Others*** (CDJ) 2019 DHC 103. In Fact, the Division Bench of this Court in W.A.No.333/2016 has considered the very same issue and rejected the claim of similarly placed persons. It was held at paragraphs 4 and 5 of the said judgment as under:

“4. As seen from the impugned judgment, the Government has applied its mind and, with justification, has decided that the employees appointed before 01.04.2013 come under the statutory pension scheme contemplated under part III of Kerala Service Rules. On the other hand the employees appointed on or after 01.04.2013 are not entitled to the statutory pension. Nevertheless, they come under the National Pension Scheme, which requires that an employee ought to have attained the age of 60 years to be eligible to claim pension under the said scheme. Under those circumstances, the Government, in our view correctly, has decided to fix a different date of superannuation for the employees joining services after 01.04.2013.

5. The Apex Court as well as this Court has repeatedly held that the employer has the final say in the matters of recruitment as well as superannuation, more particularly when the decision is informed by unassailable reasons as well as financial commitments, both of which we find in the present instance.”

7. The only necessity now is to consider whether the Apex Court had laid down a different proposition in ***Atul Shukla's*** case (supra) and whether the judgment of Delhi High Court in ***Dev***

Sharma's case (supra) would persuade us to take a different view.

8. In **Atul Shukla's** case (supra), the Apex Court was considering the question whether there was justification for prescribing different age of retirement for Officers serving in the Ground Duty Branch and Officers serving in the Flying Branch of the Indian Air Force. The Officers who served in the Ground Duty were permitted to continue in service up to the age of 57 and in Flying Branch up to the age of 52. The Union of India took up a contention that although the Officers held the same rank and were similar in all other respects regarding emoluments and conditions of service, the nature of duties and the operational employability of Officers in the two segments were different. The Apex Court after considering the respective contentions held at paragraphs 44 to 46 as under:

“44. The assertion of the appellant that a parity in the retirement age reduces the combat effectiveness of the Force has been stoutly denied by the respondents who have asserted that if a Group Captain (Select) or for that an Air Commodore or an Air Vice Marshall gets superseded, his higher age neither automatically impedes the quality and standard of performance of his duties nor does IAF summarily curtail his residual service as a consequence of his supersession, on the ground that his higher age group may impact combat effectiveness.

45. On the material placed before us and having regard to the rival assertions made by the parties in their

respective affidavits the difference in employability of Group Captains (Timescale) is not borne out to justify the classification made by the Government. It is evident from the particulars given by the respondents that several Group Captains (Timescale) have held appointments which are also held by Group Captains (Select). If that be so, the difference in the employability of Timescale Officers vis-à-vis Select Officers appears to be more illusory than real. There does not appear to be any hard-and-fast rule on the question of deployment or employability of Group Captains (Timescale) or Group Captains (Select) for that matter. The Air HQ can, depending upon its perception, order deployment and post any officer found suitable for the job. Deployment remains an administrative matter and unless the same involves any reduction in pay, allowances or other benefits or reduction in rank or status of an officer legally impermissible, such deployment remains an administrative prerogative of the competent authority.

46. Suffice it to say that the basis for classification in question for purposes of age of superannuation which the appellant has projected is much too tenuous to be accepted as a valid basis for giving to the Timescale Officers a treatment different from the one given to the Select Officers. We are also of the view that concerns arising from a parity in the retirement age of Timescale and Select Officers too are more perceptual than real. At any rate, such concerns remain to be substantiated on the basis of any empirical data. The upshot of the above discussion is that the

classification made by the Government of India for purposes of different retirement age for Timescale Officers and Select Officers does not stand scrutiny on the touchstone of Articles 14 and 16 of the Constitution as rightly held by the Tribunal.”

9. In **Dev Sharma's** case (supra), the question involved was regarding the constitutional validity of the Rules framed under the Indo-Tibetan Border Police Act, 1992. It provided that all members of Indo-Tibetan Border Police (ITBP) from the rank of Constable to Commandant were to superannuate on completing age of 57 years, whereas those who were above the rank of Commandant were to superannuate at the age of 60 years irrespective of the cadre they belong to. This came to be challenged by the petitioner. The Delhi High Court, after considering the materials placed on record and on an evaluation of the judgments relating to the classification, held at paragraphs 59 and 60 as under:

“59. This Court is of the view that the Petitioners have made out a case of discrimination, that is violative of Articles 14 and 16 of the Constitution, based on empirical data that the fixing of the age of superannuation of members of the ranks of Commandant and below in the ITBP, CRPF, BSF and SSB different from those in the ranks above that of the Commandant is not based on a rational criteria and that such differentiation has no nexus to the object sought to be achieved. Also, the expert body that was required to examine the matter and make its recommendations, i.e. the CPC, by a

majority of 2:1 favoured the enhancement of the retirement age. The concerned CAPFs themselves i.e. the BSF, CRPF, ITBP and SSB have also favoured the removal of the discrimination. The following test laid down by the Supreme Court in [Air India v. Nergesh Meerza](#) (supra) stands fully satisfied in the present case:

"There can be no cut and dried formula for fixing age of retirement. It is to be decided by the authorities concerned after taking into consideration various factors such as the nature of the work, the prevailing conditions, the practice prevalent in other establishments and the like. But the factors to be considered must be relevant and should bear a close nexus to the nature of the organisation and the duties of the employees. So where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny." (emphasis supplied)

60. There appears to be no justification whatsoever put forth by the Respondents in discriminating amongst the CAPFs particularly when the retirement age of all members of the CISF and AR is 60 years and whereas the retirement age of those of the rank of Commandant and below in BSF, CRPF, SSB and ITBP is 57 years. The above classification has no rational nexus to the object sought to be achieved, which is keeping high the morale of the CAPFs, who are performing yeoman service and supplementing the efforts of the armed forces and the police throughout the country. The CAPFs have become an indispensable part of the security apparatus in the country. It is difficult to think that the Government whether at the Centre or at the States would be able to combat the serious challenges of safety and security and of its people without the participation and the sacrifices made by members of the CAPFs. Their morale definitely needs to be preserved. Discrimination in the matter of the age of retirement amongst members of two wings of the CAPFs will contribute to lowering the morale rather than bolstering it. Accordingly, it is held that Rule 43 (a) of the CRPF Rules which presently states that

"Retirement of member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 57 years" is held to be discriminatory and violative of [Article 14](#) of the Constitution vis-à-vis members of the CRPF of the rank of Commandant and below. The OM dated 1st April 2013 issued by the MHA rejecting the plea of the Petitioners is hereby quashed."

10. It is settled law that each case has to be decided on its own facts. The fundamental principle that has to be borne in mind while evaluating whether a classification is bad for any particular reason has been long settled. The question to be considered is whether there is an *intelligible differentia* between those grouped together and others who were kept out of the group and there exists any nexus between the *differentia* and the object of legislation. The factual aspects involved in the present case is disclosed at paragraph 5 of the reply statement filed on behalf of the State before the Tribunal. The same is extracted here under:

"5. In view of increasing financial burden on the government accounts of Pension payments, Government have decided to implement National Pension System with effect from 01.04.2013. As per GO(P)No.20/13/Fin dated 07.01.2013, NPS would be mandatory for all appointments made on or after 01/04/2013 and the scheme will apply to all employees to whom Part III KSR is applicable. Government vide G.O (P)209/13/Fin dated 07.05.13 allowed mobility for Government servants/autonomous body employees/aided institutions employees who were appointed in substantive vacancies on regular basis on or before 31.03.13 and who were in such posts on 31.03.13 and to whom KSR Part III pension scheme applies in their respective institutions. Also Government had allowed

mobility to retain in Part III KSR in respect of State Government employees appointed into the service on or before 31.03.13 and re-appointed in various institutions on or after 01.04.13, vide G.O(P)No.279/2014/Fin dated 14/07/2014 which refers to the category of employees who had benefited with KSR Part III pension in their former service. Hence there is two different pension system in the State for the employees appointed before 01.04.2013 having statutory Pension Scheme with retirement age at 56 years and for the employees appointed after 01.04.2013 having National Pension Scheme with retirement age at 60 years. Sub rule (a) and (af) of rule 60 Part 1 KSR has been formulated to strike a balance between different segments of the workforce having different entitlements.”

11. Therefore this is a case in which a policy had been evolved by the Government, to shift to a new scheme of pension based on the Contributory Pension System evolved by the Central Government. All the State Governments had adopted the new pension system in their respective States with effect from various dates. As far as State of Kerala is concerned, the new pension system for State Government employees has been implemented to those who were appointed in service on or after 1.4.2013. Once the National Pension System is implemented on the basis of the statutory provision, the employee can continue service until the age of 60 years. It is under such circumstances that the retirement for the employees coming under the National Pension System has been enhanced to 60 years. The Rule has also been amended to incorporate the retirement age of employees who were governed by the National Pension System.

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Therefore, as far as the employees who are appointed on or after 1.4.2013 are concerned, their service conditions are entirely different. It is true that the appointments are made to the same cadre. But the classification is based on an *intelligible differentia* and in conformity with the object to be achieved. The existing employees were governed by the pension rules where the age of retirement is stated to be 56 years, whereas when a shift has been made to the National Pension System pursuant to the change in policy, appointees who were appointed on or after 1.4.2013 has been permitted to remain in service up to the age of 60 years. The object to be achieved for the aforesaid classification is justifiable and hence the amendment to Rule 60 of Part III KSR is not in violation of Article 14 of the Constitution of India.

In the result, we don't find any ground to interfere with the order of the Tribunal. O.P.(KAT).No.227/2020 is hence dismissed.

sd/-

A.M. SHAFFIQUE

JUDGE

sd/-

GOPINATH P.

JUDGE

kp

True copy

P.A. To Judge

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE MEMORANDUM OF ORIGINAL APPLICATION IN OA (EKM) NO 2066 OF 2019 ON THE FILES OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- ANNEXURE A1 TRUE COPY OF THE SRO NO. 193 OF 2012 ISSUED BY THE 1ST RESPONDENT DATED 24.03.2012
- ANNEXURE A2 TRUE COPY OF THE GO (P) NO. 441/2012/FIN DATED 08.08.2012 ISSUED BY THE 2ND RESPONDENT.
- ANNEXURE A3 TRUE COPY OF THE GO (P) N O 20/2013/FIN DATED 07.01.2013 ISSUED BY THE 2ND RESPONDENT.
- ANNEXURE A4 TRUE RELEVANT PAGES OF THE BUDGET SPEECH FOR THE YEAR 2013-14 OF THE GOVERNMENT OF KERALA.
- ANNEXURE A5 TRUE COPY OF SRO NO. 969 OF 2014 ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE A6 TRUE COPY OF THE PERMANENT RETIREMENT ACCOUNT NUMBER ISSUED TO THE 1ST APPLICANT UNDER THE NATIONAL PENSION SYSTEM.
- ANNEXURE A7 TRUE RELEVANT PAGES OF THE REPORT OF THE 10TH PAY REVISION COMMISSION WITH RESPECT TO THE PAY REVISION OF STATE GOVERNMENT EMPLOYEES IN KERALA.
- ANNEXURE A8 TRUE RELEVANT PAGES OF THE REPORT OF KERALA PUBLIC EXPENDITURE REVIEW COMMITTEE, DECEMBER 2013.
- ANNEXURE A9 TRUE COPY OF THE REPRESENTATION DATED 7.3.2019 SUBMITTED BY THE 1ST APPLICANT TO THE 1ST RESPONDENT.
- ANNEXURE A10 TRUE COPY OF THE HEARING NOTE DATED 13.08.2019 SUBMITTED BY THE 1ST APPLICANT TO THE 1ST RESPONDENT.
- ANNEXURE A11 TRUE COPY OF THE ORDER GO (RT) NO. 7588/2019/FIN DATED 27.,09.2019 ISSUED BY THE 2ND RESPONDENT.

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EXHIBIT P2

**TRUE COPY OF THE JUDGMENT DATED 09.03.2020
IN OA (EKM) NO. 2066 OF 2019 OF THE LEARNED
KERALA NO ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.**

EXHIBIT P3

**REPLY STATEMENT FILED BY THE 2ND RESPONDENT
DATED 25.02.2020 IN OA (EKM) NO. 2066 OF
2019 OF THE LEARNED KERALA NO
ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.**