**Before The Hon'ble State Administrative Tribunal At Shimla**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application Under Section 19 of the H.P. Administrative Tribunals Act, 1985

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

Respectfully Sheweth :

1. Particulars of the Applicant

As given in the Memo of Parties.

2. Particulars of the Respondents

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the impugned action of the respondents Nos. \_\_\_\_\_ and \_\_\_\_\_, whereby they are retiring the applicant wef \_\_\_\_\_\_, on attaining the age of \_\_\_\_\_ years instead of \_\_\_\_\_ years as per Govt. of India has issued office Memo No. \_\_\_\_\_ dated \_\_\_\_\_ , vide which the Govt. of India has interalia directed that every government servant whose age of retirement is currently \_\_\_\_\_ years shall now retire from service on the afternoon of the last day of the month in which he/she will attain the age of \_\_\_\_\_ years, as the applicant is a Central Government Employee as per the notification of Directorate of Education, \_\_\_\_\_\_\_\_ (Annexure A-1) and the Governor of \_\_\_\_\_ letter of \_\_\_\_\_ (Annexure A-2).

The said impugned order is arbitrary, illegal, malafide, violative of the Constitutional Rights and natural justice and issued in colourable exercise of power.

4. Jurisdiction:

That the applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation.

6. Facts of the Case:

6.1 That the applicant submits that the Government of India has launched the National Discipline Scheme in the year 1964 with the objective to inculcate discipline amongst the school going children. A number of National Discipline Scheme instructors were recruited, trained and posted to school which patronized the Scheme. The Instructors who were borne on the strength of National Discipline Scheme Directorate wee full time Central Government Servants, but their services were made available to the schools for teaching NDS activities namely PT, Drill, Lazium, cultural activities etc. etc. The scheme was voluntary upto 1965, when it was replaced by a new scheme known as National Fitness Corps incorporating the best features of the erstwhile National Discipline Scheme, ACC and the Physical Education Programme. The National Fitness Corps was compulsory curricular activity for all school going children of the age group between 9 plus 16. The programme was later introduced in the High and Higher Secondary Schools and was proposed to extend the same to Middle Schools during the Fourth Plan Period. The NDS Instructors were at par with the Physical Education Teachers with the only difference that they were controlled and paid by the Central Government.

6.2 That sometime in the year 1965 the Central Government has taken a decision to transfer the services of the NDS Instructors to their respective native state schools and the options of all the NDS Instructors were obtained. The state of \_\_\_\_\_ has taken the services of the NDS Instructions with clear stipulations vide Annexures A-1 and A-2 that the entire expenditure on account of pay, allowances and other allied expenditure on NDS staff will be re-imbursed by the Government of India till their retirement and even the pension and gratuity benefits to the incumbents will be the liability of the Central Government. It was specifically stated by the Governor of \_\_\_\_\_ vide Annexure A-2 that the Govt of India will bear the entire financial liability of the scheme including salary, pension, gratuity etc, till such time NDSIs serve the state of Himachal Pradesh an are not absorbed against the regular posts of the PTIs. It is pertinent to submit here that the services of the NDS Instructors were specifically refused by the respondent from being absorbed against the posts of PTIs.

6.3 That the applicant is presently working as a National Discipline Scheme Instructor with the respondents at \_\_\_\_\_\_.

6.4 That the applicant is being retired w.e.f. \_\_ on attaining the age of 58 years.

6.5 That the Govt. of India has issued office Memo No. \_\_\_\_\_ dated \_\_\_\_\_, vide which the Govt. of India has interalia directed that every government servant whose age of retirement is currently \_\_\_\_\_ years shall now retire from service on the afternoon of the last day of the month in which he/she will attain the age of 60 years.

6.6 That the Government of India have amended the Fundamental Rule 56 accordingly vide above notification.

6.7 That despite the fact that the change in the age of retirement is applicable to the applicant as well as all other similarly situated persons, the respondents have chosen to retire the applicant w.e.f. \_\_\_\_\_\_\_ which act on the part of the respondents is arbitrary, illegal, malafide, discriminatory, unconstitutional, against the natural justice and dehors rules and regulations.

6.8 That the applicant is a Central government employee for all purposes and intents including retirement as the pension is to be paid by the Central Government as per the stipulation in Annexures A-1 and A-2.

GROUNDS

6.9 That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, which may be taken at the time of arguments, each one of which is without prejudice to and independent of others :-

(a) That the impugned action whereby the applicant is being retired at the age of \_\_\_\_\_ year by the respondent is arbitrary, malafide, illegal, ultra vires, against the Articles 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(b) That the applicant is a Central Government Employee for all purposes and intents as is clear from the specific stipulations made in the Annexures A-1 and A-2.

(c) That with the retiring age having been raised to \_\_\_\_\_ years for all the Central Government employees by the Central Government, the same will apply to the applicant and as such the applicant is liable to be retired only after the applicant attains the age of \_\_\_\_\_ years.

(d) That the respondents are estopped due to their own act, deed and conduct. The principle of the Promissory Estopple applies against the respondents.

(e) That the impugned order is against the well settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice:-

(a) Quash the impugned action of the respondents whereby they are going to retire the applicant on attaining the age of \_\_\_\_\_ years being issued arbitrarily, malafidely and illegally by the respondents;

(b) Direct the respondents to allow the applicant to serve upto the age of \_\_\_\_\_ years;

(c) Direct the respondents to produce all the relevant documents alongwith reply for perusal by this Hon'ble Tribunal;

(d) Allow the cost of this O.A.;

(e) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, If Prayed:

It is, therefore, most respectfully prayed that during the pendency of this OA the respondents may kindly be restrained from retiring the applicant wef \_\_\_\_\_\_ and the applicant may kindly be allowed to continue at his present post. Similar orders have already been passed by this Hon'ble Tribunal in OA No. \_\_\_\_\_titled as \_\_\_\_\_ Vs \_\_\_\_\_ on \_\_\_\_\_.

9. Details of Remedies Exhausted:

That the applicant submits that since the matter being of an urgent nature, there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter not Pending with any Other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Shimla Applicant

\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of O.A. under Section 19 of the H.P. Administrative Tribunals Act 1985.

I,\_\_\_\_\_, do hereby solemnly, affirm and declare as under :-

1. That the accompanying O.A. has been prepared under my instructions.

2. That the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_.

Deponent

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

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Shimla Applicant

\_\_\_\_\_ Through, Advocate

**Annexure A-1**

DIRECTORATE OF EDUCATION\_\_\_\_\_\_\_\_\_\_\_

No.:\_\_\_\_\_\_\_\_\_\_.

Dated \_\_\_\_\_\_\_\_\_.

MEMORANDUM

Consequent upon the decentralisation of the National Discipline Scheme by the Government of India, Ministry of Education & Social Welfare as per orders contained in letter No. \_\_\_\_\_ dated the \_\_\_\_\_ from the Deputy Secretary to the Government of India, New Delhi as also subsequent references issued thereafter on the subject from time to time, and the decision conveyed by the \_\_\_\_\_ in the Education Department Memorandum No. \_\_\_\_\_ dated the \_\_\_\_\_ , the administrative control of 168 NDS Instructors of various categories, as per list enclosed, is hereby taken over with effect from \_\_\_\_\_. The officials concerned will be allowed the pay and allowances provisionally at the same scale/rate at which they have been drawing their pay and allowances immediately before taking over the administrative control by the Government of \_\_\_\_\_. The terms and conditions of their services will be decided later on.

The Administrative control has been taken on the clear understanding that the entire expenditure on account of pay, allowances and other allied expenditure on NDS staff will be re-imbursed by the Government of India till their retirement and even the pension and gratuity benefits to the incumbents will be the liability of the Central Government.

Director of Education,\_\_\_\_\_\_\_\_\_\_\_\_

Endst No. \_\_\_\_\_. Dated \_\_\_\_\_\_\_\_\_\_

A copy is forwarded for information and necessary action to the deputy Programme Advisor, NSS Zonal Center, \_\_\_\_\_. He is requested to please send their service record viz. Service Books, LPC, ACTs. files etc. to this Directorate immediately.

Director of Education, \_\_\_\_\_\_\_\_\_\_

No. Even. \_\_\_\_\_Dated \_\_\_\_\_.

A copy is forwarded to the Secretary (Education) to the Government of \_\_\_\_\_\_\_\_\_\_ for information with reference to his memorandum No. \_\_\_\_\_, dated \_\_\_\_\_

Director of Education,\_\_\_\_\_\_\_\_\_\_\_\_

No. Even.\_\_\_\_\_ Dated \_\_\_\_\_\_\_\_\_\_.

A copy is forwarded for information and necessary action to:-

1. The Accountant General, \_\_\_\_\_\_\_\_\_

2. The Dy. Directors of Education, \_\_\_\_\_\_\_\_\_

3. All the Distt. Education Officers, in \_\_\_\_\_.

4. All officials concerned.

5. All Head of Institutions concerned.

Director of Education,\_\_\_\_\_\_\_\_\_

True Copy

**Annexure A-2**

ALL INDIA NATIONAL FITNESS CORPS EMPLOYEES ASSOCIATION COPY OF THE LETTER OF THE DIRECTOR OF EDUCATION NO. 224 DATED 7/6/73

To:

The Director of Education,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subject: Decentralisation of NFC Absorption of the NDS Instructions in the States.

Memo:-

Reference correspondence resting with your letter No. \_\_\_\_\_ , dated \_\_\_\_\_, on the subject cited above.

2. A sanction of the Governor, \_\_\_\_\_ is accorded to the taking of the administrative control with immediate effect, of 168 NDSIs of various categories working in Govt./Private schools in the State under the NFC scheme from the Govt. of India to the State on the following conditions:-

1. That the Govt of India will bear the entire financial liability of the scheme including salary, pension, gratuity etc, till such time NDSIs serve the state of Himachal Pradesh an are not absorbed against the regular posts of the PTIs.

2. That NDSIs will be a vanishing cadre and any post vacated by an NDSI by resignation, death of eventual absorption in a regular post shall be deemed to have automatically and instantaneously abolished.

3. That the expenditure on the staff will be provided for in the budge for \_\_\_\_\_ and will be booked to a single hand to be got opened in consultation with the Finance Department \_\_\_\_\_.

4. That no further posts of APTs/PTIs will created in the Education Department till these incumbents die/retire etc. Additional requirements in these posts will be met from this pool, though expenditure on them will continue to be got re-imbursed by Central Government.

5. Sanction of the Governor \_\_\_\_\_ is also accorded to the creation of the following posts in the office of DE \_\_\_\_\_ for maintenance of records of these personnel, disbursement of pay etc

1. Assistant in the Pay Scale of Rs. \_\_\_\_\_- Two

2. Clerk in the Pay scale of Rs. \_\_\_\_\_ - One

3. Peon in the Pay scale of Rs. \_\_\_\_\_- One.

6. The expenditure of the additional staff at the Directorate level to maintain records etc. will also be shouldered by the Govt of India.

7. This issue with the prior concurrence of the Finance Det. obtained vide their UO No. \_\_\_\_\_ dated \_\_\_\_\_.

Sd/-

Governor of \_\_\_\_\_\_\_\_\_\_

Note: I, \_\_\_\_\_\_\_\_\_\_, holds the entire contribution paid by you all. But Mr. \_\_\_\_\_ is pressing to handover the entire contribution to him Please intimate your collective opinion that should I handover the amount to him or

NOT. Each subscriber should and must reply.

Dated: \_\_\_\_\_.

Secretary

\_\_\_\_\_\_\_\_\_\_\_\_

True Copy

**Annexure – A**

High Court of Himachal Pradesh Shimla

Appellate Side

Receipt showing Court Fees Paid : OA No :\_\_\_\_\_of 2004

\_\_\_\_\_ Versus \_\_\_\_\_

|  |  |
| --- | --- |
| Particulars | Amount |
| Court Fees stamp on Memo | 50.00 |
| Petition |  |
| Enclosures |  |
| Vakalatnama | 2.65 |
| Process Fees |  |
| Others |  |
| Total | 52.65 |

Date :\_\_\_\_\_\_

Signature of Receiving Clerk

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No.:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Court Fees Rs. 50/-

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate