



GOVERNMENT OF INDIA
LAW COMMISSION OF INDIA

**RETIREMENT AGE OF CHAIRPERSONS
AND MEMBERS OF TRIBUNALS –
NEED FOR UNIFORMITY**

Report No. 232

August 2009



**LAW COMMISSION OF INDIA
(REPORT NO. 232)**

**RETIREMENT AGE OF CHAIRPERSONS
AND MEMBERS OF TRIBUNALS –
NEED FOR UNIFORMITY**

**Submitted to the Union Minister of Law and Justice,
Ministry of Law and Justice, Government of India by
Dr. Justice AR. Lakshmanan, Chairman, Law
Commission of India, on the 22nd day of August, 2009.**

The 18th Law Commission was constituted for a period of three years from 1st September, 2006 by Order No. A.45012/1/2006-Admn.III (LA) dated the 16th October, 2006, issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi.

The Law Commission consists of the Chairman, the Member-Secretary, one full-time Member and seven part-time Members.

Chairman

Hon'ble Dr. Justice AR. Lakshmanan

Member-Secretary

Dr. Brahm A. Agrawal

Full-time Member

Prof. Dr. Tahir Mahmood

Part-time Members

Dr. (Mrs.) Devinder Kumari Raheja

Dr. K. N. Chandrasekharan Pillai

Prof. (Mrs.) Lakshmi Jambholkar

Smt. Kirti Singh

Shri Justice I. Venkatanarayana

Shri O.P. Sharma

Dr. (Mrs.) Shyamllha Pappu

**The Law Commission is located in ILI Building,
2nd Floor, Bhagwan Das Road,
New Delhi-110 001**

Law Commission Staff

Member-Secretary

Dr. Brahm A. Agrawal

Research Staff

Shri Sushil Kumar	: Joint Secretary & Law Officer
Ms. Pawan Sharma	: Additional Law Officer
Shri J. T. Sulaxan Rao	: Additional Law Officer
Shri A. K. Upadhyay	: Deputy Law Officer
Dr. V. K. Singh	: Assistant Legal Adviser
Dr. R. S. Shrinet	: Superintendent (Legal)

Administrative Staff

Shri Sushil Kumar	: Joint Secretary & Law Officer
Shri D. Choudhury	: Under Secretary
Shri S. K. Basu	: Section Officer
Smt. Rajni Sharma	: Assistant Library & Information Officer

**The text of this Report is available on the Internet at:
<http://www.lawcommissionofindia.nic.in>**

**© Government of India
Law Commission of India**

The text in this document (excluding the Government Logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Government copyright and the title of the document specified.

Any enquiries relating to this Report should be addressed to the Member-Secretary and sent either by post to the Law Commission of India, 2nd Floor, ILI Building, Bhagwan Das Road, New Delhi-110001, India or by email to lci-dla@nic.in

Dr. Justice AR. Lakshmanan
(Former Judge, Supreme Court of India),

Chairman, Law Commission of India

ILI Building (IInd Floor)

Bhagwandas Road,

New Delhi – 110 001

Tel. 91-11-23384475

Fax. 91-11 – 23383564

D.O. No. 6(3)/173/2009-LC (LS)

August 22, 2009

Dear Dr Veerappa Moily ji,

Subject: Retirement Age of Chairpersons and
Members of Tribunals – Need for Uniformity

I am forwarding herewith the 232nd Report of the Law Commission of India on the above subject.

2. It is noticed that the longevity or life expectancy of our citizens is now nearly comparable to that in the developed countries and, therefore, fresh proposals on the subject generally envisage enhanced age of retirement but in the absence of clear-cut guidelines for prescribing retirement age of Chairpersons or Members of various Tribunals in the country, different Ministries of the Government adopt different yardsticks. The practice being followed in fixing the age of retirement of Chairpersons and Members of various Tribunals functioning in the country reveals that there exists no rationale in fixing different retirement age-limits.

3. We have, therefore, recommended that the age of retirement of Chairpersons should be uniformly fixed at 70 years for all the Tribunals. Likewise, the age of retirement of Members of all the Tribunals should be fixed uniformly at 65 years.

With warm regards,

Yours sincerely,

(Dr AR. Lakshmanan)

Dr M. Veerappa Moily,
Union Minister of Law and Justice,
Government of India,
Shastri Bhawan, New Delhi – 110001.

RETIREMENT AGE OF CHAIRPERSONS AND
MEMBERS OF TRIBUNALS –
NEED FOR UNIFORMITY

CONTENTS

I.	INTRODUCTION	8 – 12
II.	RECOMMENDATION	13
	APPENDIX	14 - 25

I. INTRODUCTION

1.1 There is a general trend to provide for enhanced age of retirement of Chairpersons and Members of various Tribunals constituted by the Government in the country and also of the employees in various spheres e.g. Universities and government undertakings etc. vis-à-vis the normal age of retirement of judges and government servants. It is noticed that the longevity or life expectancy of our citizens¹ is now nearly comparable to that in the developed countries and, therefore, fresh proposals on the subject generally envisage enhanced age of retirement but in the absence of clear-cut guidelines for prescribing retirement age of Chairpersons or Members of various Tribunals in the country, different Ministries of the Government adopt different yardsticks.

1.2 It needs no mention that enhanced age of retirement is prescribed in the higher echelons of the administrative and judicial services because the professional experience gained by those working in them needs to be fully tapped for the good of the society. It may be pointed out that the Government incurs a lot of expenditure on orientation-training of its employees, especially, at the senior level, and, therefore, their enriched professional experience in running the affairs of the government could be utilized for the good of the common man. In the present liberalized economic era, the experience gained by government employees after their retirement is being fruitfully tapped by many multinational companies. These private enterprises pay hefty salaries to the retired government employees because their valuable professional experience

¹ According to the “2006 World Population Data Sheet”, life expectancy of Indians reached to 63 years which was about 50 years three decades ago. There are now available better health care facilities and health standards of our citizens have improved.

gained during their service in the government is put to profitable use. In such a scenario, the government should utilize the services of their retired employees to the fullest extent possible.

1.3 The practice being followed in fixing the age of retirement of Chairpersons and Members of various Tribunals functioning in the country reveals that there exists no rationale in fixing different retirement age-limits. A chart indicating the names of the Tribunals, the Acts under which they have been established, eligibility criteria adopted for appointment of their Chairpersons and Members, their tenures and the different ages of their retirement, has been prepared which is at Appendix. It may be seen that there is neither any uniformity in the age of retirement, nor any cogent reasons have been given in the respective Acts justifying the criteria adopted for the purpose.

1.4 The question of increasing the retirement age of Judges of the higher judiciary i.e. High Court and Supreme Court Judges from 62 to 65 and from 65 to 70 years, respectively, has also been a matter of serious discussion/consideration at different levels of the Government. Retirement age in many government departments/disciplines, particularly, educational and scientific/research institutions, has already been increased.

1.5 A High Court Judge is normally considered for appointment as a Member of the Central Administrative Tribunal (CAT) on his retirement at the age of 62. After the amendment of the Administrative Tribunals Act 1985 by Act 1 of 2007, a retired High Court Judge if appointed as Chairman of CAT he can hold office as such till the age of 68 years, but

if appointed as its Judicial Member then he holds office until attaining the age of 65 years.

1.6 There is an imperative need to fix the age of retirement of Chairpersons and Members of various Tribunals up to the age of 70 and 65, respectively.

1.7 It may be recalled that the retirement age of Central and State Government employees was first increased from 55 to 58 years and then from 58 to 60 years. For Judges of High Courts the retirement age was increased only once from 60 to 62 and for the Supreme Court Judges the retirement age since inception has been 65 years. Judges of High Courts and the Supreme Court retiring at the age of 62 and 65, respectively, need to have a substantial tenure in various Tribunals to which they are appointed after their retirement as in that event only they would be able to substantially improve upon the system. If an incumbent is to retire within two-three years of his joining a Tribunal, then by the time he might have full acquaintance of its working he would be retired, surely then he shall not be able to contribute much in advancing and improving upon the working of the Tribunal.

1.8 For selection and appointment in Tribunals, a set procedure is prescribed where the time spent in inviting applications up to the selection and then clearance from the Government at various levels, is six months to a year. The past experience clearly shows that whenever eligibility for appointment as Chairpersons and Members of Tribunals includes former or sitting Judges of High Courts or the Supreme Court or Chief Justices of such Courts, there may be not more than 5-7 instances where the sitting Judges may have, during their tenure of service, opted

to become Chairpersons or Members of Tribunals. They seek consideration for such appointments either on the eve of their retirement or after their retirement, and if the period of selection and appointment would take time, they might not serve for more than 2 – 2½ years, where the retirement age is 65 or 68 years.

1.9 A perusal of Appendix would manifest that by and large eligibility for appointment as Chairperson is of those who are or have been Judges of the Supreme Court, Chief Justices of High Courts or Judges of High Courts, but the retirement age in different Tribunals is different viz. 65 years, 67 years, 68 years, and in some it is 70 years. There is no uniform prescription of age of retirement. Judges and Chief Justices of High Courts have the same retirement age i.e. 62 years. It is too well known that functions and duties carried out by the Judges at any level are the same. There has already been a lot of debate as to whether the retirement age of the Supreme Court and High Court Judges should be the same for the precise reason that the functions and duties carried out by them are of the same nature and, therefore, if the age of retirement of a Supreme Court Judge is 65 years, the same should be so with regard to High Court Judges. If the Judges or Chief Justices of the High Courts, who retire at the age of 62 years, wish to take up assignment in Tribunals, which is, as mentioned above, taken by them after their retirement, their work-period in Tribunals may be 2-3 years. Obviously, when Judges of the Supreme Court are appointed in any Tribunal, their retirement age must at the least be 70 years, their date of retirement as a Supreme Court Judge being 65 years. A view has been expressed that there should also be no difference in the retirement ages for Chairpersons and Members, who come from the judicial stream i.e. High Courts or the Supreme Court, and it should uniformly be 70 years. A distinction may be made insofar as Members

are concerned from another perspective. Members in Tribunals have two streams – judicial and administrative. The retirement age from the government, of those who join the administrative stream is 60 years and the term of 5 years as a Member of Tribunal may be sufficient in their case. However, no distinction can be made in the retirement age of the Members – whether coming from judicial stream or administrative stream. Irrespective of the stream, the retirement age needs to be uniformly fixed. It may also be mentioned that whereas Judges are so many, Chief Justices of High Courts are few. On number of occasions, appointments of Chairpersons had to wait for want of availability of the Chief Justices or Judges of the Supreme Court, but insofar as Judges of High Courts are concerned, there has been no problem of that kind. It would thus be expedient and in the fitness of things to have a uniform retirement age of Chairpersons of Tribunals as 70 years and uniform age of retirement of Members as 65 years.

II. RECOMMENDATION

2.1 It is felt that the age of retirement of Chairpersons should be uniformly fixed at 70 years for all the Tribunals. Likewise, the age of retirement of Members of all the Tribunals should be fixed uniformly at 65 years.

2.2 We recommend accordingly.

(Dr Justice AR. Lakshmanan)
Chairman

(Prof. Dr Tahir Mahmood)
Member

(Dr Brahm A. Agrawal)
Member-Secretary

APPENDIX

TRIBUNAL – ACT	SECTIONS	DESIGNATION	ELIGIBILITY	TENURE/ RETIREMENT AGE
1. <i>Administrative Tribunal</i> under the Administrative Tribunals Act 1985	6 and 8	a) Chairman b) Member	a) Is, or has been, a Judge of a High Court. b) Is, or qualified to be, a Judge of a High Court or has for at least two years held the post of a Secretary in the Department of Legal Affairs etc. or held the post of Additional Secretary to GOI in the Dept. of Legal Affairs etc. for at least five years.	a) 05 years from the date on which he enters upon his office, provided that no Chairperson shall hold office as such after he has attained the age of 68 years. b) 05 years from the date on which he enters upon his office; extendable by one more term of 05 years, provided that no Member shall hold office as such after he has attained the age of 65 years.

<p>3. <i>Debts Recovery Tribunal</i> under the Recovery of Debts Due to Banks and Financial Institutions Act 1993</p>	<p>5 and 6</p>	<p>Presiding Officer</p>	<p>Is, or has been, or is qualified to be, a District Judge.</p>	<p>05 years from the date on which he enters upon his office or until he attains the age of 62 years, whichever is earlier.</p>
<p>4. <i>National Commission</i> under the Consumer Protection Act 1986</p>	<p>20</p>	<p>a) President b) Member</p>	<p>a) Is, or has been, a Judge of the Supreme Court. <i>b) A person of ability, integrity and standing, and having adequate knowledge and experience of at least ten years in dealing with problems relating to, inter alia, law.</i></p>	<p>a) 05 years or up to the age of 70 years, whichever is earlier. b) 05 years or up to the age of 70 years, whichever is earlier; a Member shall be eligible for re-appointment for another term of 05 years or up to the age of 70 years, whichever is earlier.</p>

<p>5. <i>State Commission</i> under the Consumer Protection Act 1986</p>	<p>16</p>	<p>a) President</p> <p>b) Member</p>	<p>a) Is, or has been, a Judge of a High Court.</p> <p>b) A person of ability, integrity and standing, and having adequate knowledge and experience of at least ten years in dealing with problems relating to, <i>inter alia</i>, law.</p>	<p>a) 05 years or up to the age of 67 years, whichever is earlier.</p> <p>b) 05 years or up to the age of 67 years, whichever is earlier; a Member shall be eligible for re-appointment for another term of 05 years or up to the age of 67 years, whichever is earlier.</p>
--	-----------	--------------------------------------	---	--

<p>6. <i>Appellate Authority for Industrial and Financial Reconstruction</i> under the Sick Industrial Companies (Special Provisions) Act 1985</p>	<p>5 and 6</p>	<p>a) Chairman</p> <p>b) Member</p>	<p>a) Is or has been a Judge of the Supreme Court or a Judge of a High Court for not less than five years.</p> <p>b) Is or has been a Judge of a High Court or an officer not below the rank of a Secretary to the Government of India or a Member of the Board for not less than three years.</p>	<p>a) 05 years; eligible for re-appointment, but not after attaining the age of 65 years.</p> <p>b) 05 years; eligible for re-appointment, but not after attaining the age of 65 years.</p>
--	----------------	-------------------------------------	--	---

<p>8. <i>Press Council of India</i> under the Press Council Act 1978</p>	<p>5 and 6</p>	<p>a) Chairman b) Member</p>	<p>a) Nominated by a Committee. b) Nominated in accordance with the prescribed procedure.</p>	<p>a) 03 years. b) 03 years.</p>
<p>9. <i>Industrial Tribunal</i> under the Industrial Disputes Act 1947</p>	<p>7A and 7C</p>	<p>Presiding Officer</p>	<p>Is, or has been, a Judge of a High Court; or has, for a period of not less than three years, been a District Judge or an Additional District Judge.</p>	<p>Till attaining the age of 65 years.</p>
<p>10. <i>National Industrial Tribunal</i> under the Industrial Disputes Act 1947</p>	<p>7B and 7C</p>	<p>Presiding Officer</p>	<p>Is, or has been, a Judge of a High Court.</p>	<p>Till attaining the age of 65 years.</p>

<p>11. Appellate Tribunal for Electricity under the Electricity Act 2003</p>	<p>113 and 114</p>	<p>a) Chairperson</p> <p>b) Member</p>	<p>a) Is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court.</p> <p>b) Is, or has been, or is qualified to be, a Judge of a High Court; or is, or has been, a Secretary for at least one year in the Ministry or Department of the Central Government dealing with economic affairs or matters or infrastructure; or is, or has been, a person of ability and standing, having adequate knowledge or experience in dealing with the matters relating to electricity generation, transmission and distribution and regulation or economics, commerce, law or management.</p>	<p>a) 03 years from the date on which he enters upon his office; eligible for reappointment for a second term of 03 years, provided that no Chairperson shall hold office as such after he has attained the age of 70 years.</p> <p>b) 03 years from the date on which he enters upon his office; eligible for reappointment for a second term of 03 years, provided that no Member shall hold office as such after he has attained the age of 65 years.</p>
---	--------------------	--	--	--

<p>12. Appellate Tribunal for Foreign Exchange under the Foreign Exchange Management Act 1999</p>	<p>21 and 22</p>	<p>a) Chairperson</p>	<p>a) Is, or has been, or is qualified to be, a Judge of a High Court.</p>	<p>a) 05 years from the date on which he enters upon his office, provided that no Chairperson shall hold office as such after attaining the age of 65 years.</p>
		<p>b) Member</p>	<p>b) Is, or has been, or is qualified to be, a District Judge.</p>	<p>b) 05 years from the date on which he enters upon his office, provided that no Member shall hold office as such after attaining the age of 62 years.</p>

<p>13. National Environment Tribunal under the National Environment Tribunal Act 1995</p>	<p>10 and 12</p>	<p>a) Chairperson</p>	<p>a) Is, or has been, a Judge of the Supreme Court or a High Court; or has, for at least two year, held the office of Vice-Chairperson.</p>	<p>a) 05 years from the date on which he enters upon his office; eligible for re-appointment for another term of 05 years, provided that no Chairperson shall hold office after he has attained the age of 70 years.</p>
		<p>b) Vice – Chairperson</p>	<p>b) Is, or has been, a Judge of a High Court; or has, for at least two years, held the post of a Secretary to the Government of India etc.; or has, for at least three years, held office as a Member.</p>	<p>b) 05 years from the date on which he enters upon his office; eligible for re-appointment for another term of 05 years, provided that no Vice-Chairperson shall hold office after he has attained the age of</p>
		<p>c) Judicial Member</p>	<p>c) Is, or has been, or is qualified to be, a Judge of a High Court; or has been a member of the Indian Legal Service and has held a post in grade I of that Service for at least three years.</p>	<p>b) 05 years from the date on which he enters upon his office; eligible for re-appointment for another term of 05 years, provided that no Vice-Chairperson shall hold office after he has attained the age of</p>

<p>21. <i>Central Information Commission</i> under the Right to Information Act 2005</p>	<p>12 and 13</p>	<p>a) Chief Information Commissioner</p> <p>b) Central Information Commissioner</p>	<p>Persons of eminence in public life with wide knowledge and experience in law etc.</p>	<p>05 years from the date on which he enters upon his office, but not after he has attained the age of 65 years.</p>
---	------------------	---	--	--