

Central Administrative Tribunal, Principal Bench

O.A. Nos. 1116 and 1117 of 1998

New Delhi, this the 13th day of November, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

O.A. 1116/1998

Shri Khem Singh S/o Shri Thakur Singh
R/o WZ-220/J-51, Vishnu Garden,
New Delhi.

- Applicant

Versus

1. The Delhi Fire Service
Govt. of National Capital Territory of Delhi
Headquarters Connaught Circus, New Delhi
through its Chief Fire Officer.

2. Govt. of National Capital Territory of Delhi
5, Sham Nath Marg, Delhi
through its Chief Secretary.

3. The Secretary (Services)
Govt. of National Capital Territory of Delhi
5, Sham Nath Marg, Delhi. .. Respondents

O.A. 1117/98

Shri Shubh Singh S/o Shri Khem-Ram
R/o Village & P.O. Jafarpur Kalan,
New Delhi-73.

- Applicant

Versus

1. Delhi Fire Service
Govt. of National Capital Territory of Delhi
Headquarters Connaught Circus, New Delhi
through its Chief Fire Officer.

2. Govt. of National Capital Territory of Delhi
5, Sham Nath Marg, Delhi
through its Chief Secretary.

3. The Secretary (Services)
Govt. of National Capital Territory of Delhi
5, Sham Nath Marg, Delhi. .. Respondents

Counsel:

Shri B.S. Charya for the applicant in both the OAs.

Shri Rajinder Pandita for the respondents in both the OAs.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

By this order we will dispose of two OAs

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bearing No. 1116/98 and 1117/98 which involve a common question of law.

2. In both these OAs applicants challenge their order of retirement superannuating them at the age of 58 years instead of 60 years in terms of FR56(a) although other incumbents working with the respondents are superannuated at the age of 60 years. The applicants also claim that they were working as Drivers with respondent No.1 and as per FR 56(a) they could not have been superannuated at the age of 58 years rather they should be allowed to continue till the age of 60 years.

3. It is further stated that when the Delhi Fire Service (hereinafter referred to as DFS) was under the Municipal Corporation of Delhi (hereinafter referred to as MCD) the service conditions of the applicants were governed by the Delhi Municipal Service Regulations 1959 and as per those circulars issued by the Central Government including Fundamental Rules and Supplementary Rules shall apply mutatis mutandis to the employees of MCD including the DFS.

4. It is further pleaded that the Driver is described as an Artisan within the purview of FR 56(a) and the Hon'ble Supreme Court as well as Delhi High Court has ruled that the Drivers are entitled to continue till 60 years of age.

5. It is further pleaded that since the DFS is now under the administrative control of the National Capital Territory of Delhi, the provisions of FR56(a) is

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fully attracted as these rules are applied in the case of all the employees of the National Capital Territory of Delhi.

5. It is also pleaded that now there is no doubt that Drivers are being retired at the age of 58 years of service. However, it is an admitted fact that the incumbents appointed prior to 10.11.1994 in DFS were the employees of MCD and the employees of MCD are covered under the Industrial Disputes Act and are getting the benefits accordingly.

6. It is also pleaded that one Shri Ram Pher Singh, a Driver of DFS has got the relief in OA 463/97. Soon thereafter, the applicants and others represented but still the respondents have adopted the evasive attitude so the applicants have been compelled to file these OAs and as such it is prayed that the order of retirement be set aside and also that the applicants are entitled to continue in service under FR 56(a) till they attain the age of 60 years.

7. Respondents have contested the OAs and the plea of the respondents is that the applicants became the employees of the National Capital Territory of Delhi w.e.f. 10.11.1994 as such they had been rightly retired at the age of 58 years under FR 56(a).

8. It is further pleaded that the claim of the applicants is with regard to the age of retirement at 60 years in accordance with FR 56(b) because the applicants are neither workmen nor artisans employed on a monthly rate

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of pay in an industrial or work charged establishment rather the applicants are Government servants and as such they are not entitled to benefits of FR 56(b). It is also submitted that all other similarly placed Drivers in the DFS had been retired at the age of 58 years. As regards the cases of other employees who had been treated as workman earlier, it is stated that they were earlier working with the MCD and not with NCT of Delhi and when the employees were under the MCD they could be considered as an industrial employee under the Industrial Dispute relating to the workman as the personnel of Delhi Fire Service were treated as workman prior to 10.11.1994 when the personnel of DFS were ceased to be workman and that is why the applicants have not approached the Labour Tribunal for the purpose of retirement but approached this Hon'ble Tribunal being employees of NCT of Delhi, therefore, the provisions of FR 56(b) are not applicable to the present application at all. It is also pleaded that the Drivers working with the Hon'ble Supreme Court, High Court and this Tribunal itself have not held to be workman for the purpose of FR 56(b) and are being treated as Government servants and as such they are retired at the age of 58 years and similar is the case with the Drivers working in the offices and departments of the Union of India and are never treated as workman under FR 56(b).

9. We have heard the learned counsel for the parties and have gone through the records of the case.

10. At the outset we may mention that earlier a similar matter had come before another Bench in which one of us (Hon'ble Mr. Kuldip Singh) was a party, i.e., OA No.

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1150/98 :- Shri Bhim Singh Vs. Delhi Fire Service and Others wherein this Court while relying upon the judgment of the Hon'ble Supreme Court in the case of State of Orissa and Others Vs. Sadhu Charan Pradhan had held that an artisan in Government service is not entitled to work upto the age of 60 years and since similar relief was claimed therein and that OA was dismissed.

11. However, the learned counsel appearing for the applicant tried to distinguish this case and stated that since under the Industrial Disputes Act, the Fire Services are described as an industry attached to the schedule to the Industrial Disputes Act and the Drivers have also been described as workman so this court should treat the applicants as industrial workers and not Government servants. Since DFS is being run by Delhi Government, that alone will not make the applicants Government servants as the Fire Service have been specifically mentioned in the Schedule to the Industrial Disputes Act as an industry and the applicants continued to be workman as they were earlier described when the DFS was under the administrative control of MCD. The learned counsel appearing for the applicant also pleaded that since this very court had earlier given a judgment in the case of Shri Bhim Singh (OA No.1150/98) rejecting the claim of the similarly placed driver but that judgment can be distinguished since in that case the matter regarding the status of the applicant being a workman and Delhi Fire Service being an industry was not taken note of, so either the matter may be referred to the Full Bench or the contentions raised now that the applicants may be continued till the age of 60 years as a workman is and the OAs be allowed.

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12. In reply to this the learned counsel for the respondents stated that the case of the respondents is that the Drivers are also Government employees like any other drivers and the benefit of Rule 56(b) cannot be extended to them and they are to retire at the age of superannuation, i.e., at the age of 58 years as it was applicable at the relevant time and in view of the Hon'ble Supreme Court's judgment in the case of State of Orissa Vs. Sadhu Charan Pradhan, AISLJ 1991 (1) SCC 68. The ratio of the same judgment was applied in the earlier OA by this very same Court and the same should be applied to the present cases also and the OAs should be dismissed.

13. As regards the plea of the applicants that they are to be treated as workman and the DFS is an industry, then the dispute raised by the applicants will be covered under the definition of the Industrial Disputes as defined under the Industrial Disputes Act and then an efficacious remedy was available to the applicants and they could have approached the Industrial Tribunal in their case.

14. We have considered the rival contentions raised by the parties counsel.

15. The fact that DFS was taken over by the National Capital Territory of Delhi shows that these Drivers had become employees of Delhi Government and in view of the judgment of the Hon'ble Supreme Court in the case of State of Orissa Vs. Sadhu Charan Pradhan, they are

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... not entitled to get the benefit of FR 56(b) as it was so decided by another Bench of this Tribunal in OA No. 1150 of 1998.

16. As regards the second argument of the learned counsel for the applicant is concerned we may mention that the applicants in their rejoinder have also stated that DFS is an industry and even if Delhi Fire Service has come under the administrative control of the Government of National Capital Territory of Delhi, it does not lose its identity and recently awards had also been passed by the Industrial Tribunals after transfer of Delhi Fire Service to the NCT of Delhi. Thus in a way the applicants admit that another efficacious remedy of approaching the Industrial Tribunal was available to the applicants and when an alternate remedy is available then the Tribunal cannot entertain the petition which was the subject matter of the Industrial Tribunal. The Administrative Tribunal does not exercise the concurrent jurisdiction with those authorities in regard to matters which are covered by that I.D. Act. All matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. In this regard we may also refer to ATC 1190 Vol. 14 page 914 - A. Padmavally and Others. Vs. CPWD wherein it was held as follows:-

" (1) The Administrative Tribunals constituted under the Administrative Tribunals ACT are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that ACT.

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Hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia which lays down a contrary interpretation is, in our opinion, not correct".

17. We may also refer to 1993 (4) SCC 357 - U.O.I. and Others Vs. S.L. Abbas and 1996 (1) SCC 69 - Krishna Prasad Gupta Vs. Controller, Printing & Stationery, wherein it was observed as follows:-

" 22. It is, therefore, apparent that in spite of Section 14 of the Act, the jurisdiction of the Industrial Tribunal, Labour Courts or other authorities, under the Industrial Disputes Acts or Authority created under any other corresponding law remains unaffected. The original, or for that matter, the appellate authority under the Payment of Wages Act is neither an Industrial Tribunal nor a Labour Court nor are they 'Authorities' under the Industrial Disputes Act, 1947 but if the Payment of Wages Act is ultimately found to be a "corresponding law", the jurisdiction of the authorities under the Payment of Wages Act would also be saved".

18. In view of the above, we do not find any merit in the contention of the learned counsel for the applicant to refer the matter to the Full Bench since as a Government employee the benefit of FR 56(b) cannot be extended to the applicants as they are Government servants, so the OAs have to be dismissed. However, before parting with the judgment we may also mention that if at all the applicants want to agitate their matter before the Industrial Tribunal claiming themselves to be workmen and the Delhi Fire Service to be an industry run by the Delhi Government, then the applicants may approach the Industrial Tribunal in

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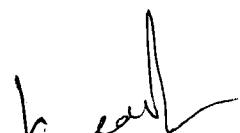
accordance with law.

19. In the result, OAs have no merit and are accordingly dismissed. No costs.

20. Let a copy of this order be placed in both the OA files (OA No. 1116 and 1117 of 1998).

S.A.T.Rizvi

(S.A.T.Rizvi)
Member (A)



(Kuldip Singh)
Member (J)

/Rakesh/