

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A. 220 /98
with
O.A./T.A. No. 221/98

Decided on: 5/11/98

Inder Mohan & AnotherApplicant(s)

(By Shri M.S. Dahiya Advocate)

Versus

U.O.I & othersRespondent(s)

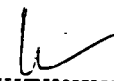
(By Shri Madhav Panikka Advocate)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? 45
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 220 of 1998

with

O.A. No. 221 of 1998

New Delhi this the 5th day of November, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

O.A. 220 of 1998

Surinder Kumar Bhalla
S/o Shri K.L. Bhalla
R/o 542/10, Krishna Colony,
Gurgaon,
Haryana.

.. Applicant

O.A. 221 of 1998

Inder Mohan
S/o Shri Ram Rakhamal
R/o WZ-35-C, Plot No.39, Vishnu Park,
New Delhi.

..Applicant

By Advocate Shri M.S. Dahiya.

Versus

1. Union of India Service
through its Secretary,
Ministry of Defence,
New Delhi-11.
2. D.G. EME,
MGC's Branch,
Army Headquarters,
DHQ P.O., New Delhi-11.
3. Commandant,
505, Army Base Workshop,
New Delhi.

.. Respondents

By Advocate Shri Madhav Panikkar.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

These two applications involve commons questions of facts and law. They were accordingly heard together and are disposed of by this common order.

2. Applicants are Senior Chargemen under the respondents in 505 Army Base Workshop, New Delhi and their grievance is that although they belong to "Workman Category" and are eligible for retirement at the age of 60 years in accordance with the provisions of the rules, the respondents have retired them from service on the completion of 58 years of service treating them as non-industrial establishment staff. It is stated that in accordance with the order passed by the Tribunal in certain OAs, namely, OA 753/88, OA 1709/89 and OA 640/88 wherein the Tribunal declared that the age of superannuation in the workshop for supervisory staff except Foreman is 60 years and not 58 years. The applicants also point out that when the aforesaid judgment of the Tribunal was appealed against in the Supreme Court, the Apex Court had dismissed the appeal on the basis of averment made in the counter for the applicants in the SLP, that the concerned officials had already retired after attaining the age of 60 years. The Review Application on the above case was also dismissed by the Apex Court on grounds of delay.

3. Applicants mainly rely on the decision of the Tribunal in O.A. 753 of 1988 - Balbir Singh Verma Vs. U.O.I. & Others and in O.A. No. 1709 of 1989 - Lal Chand and Others Vs. U.O.I. & Others. The said judgment was delivered by the Tribunal on 30.3.97. The Tribunal held that the applicants in the aforesaid OAs would continue to be part of Industrial Establishment on promotion as Chargemen/Senior Chargemen and consequently would retire from service on superannuation only after they attain the age of 60 years in accordance with CSR 459(b) and FR 56(b).

4. Respondents in their counter-reply have averred that although the applicants originally belonged to the Industrial Establishment when they were initially appointed as Tradesman, they were subsequently transferred to the non-industrial cadre when they appeared and qualified for promotion to the post of Senior Chargemen and were so promoted. The respondents maintain that as per the rules as laid down in Article 459(a) CSR and FR 56(a), the applicants had to retire on attaining the age of 58 years. Respondents on their part rely on certain other judgments of the Tribunal, namely, Shri Prakash Chand Vs. U.O.I. & Others - OA 626/90 and certain other connected OAs decided on 29.8.96 by a Division Bench of this Tribunal. They also submit that in the SLP referred to by the applicants certain incorrect information was given to the Apex Court stating that the applicants in the OAs in those cases had retired at the age of 60 years whereas in actual fact, they had retired at the age of 58 and not at 60, as state before the Supreme Court. They had annexed the necessary part II orders of the respondents annexed to the counter-reply. They, however, submit that while the SLP was dismissed, the Apex Court had left the question therein open.

5. We have heard the learned counsel for the parties and have perused the record. We have also seen the decisions referred to by the parties.

6. The provisions of FR 56(a) and FR 56(b) are reproduced below:-

"FR 56(a) Except as otherwise provided in this rules, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years.

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FR 56(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Note - In this clause, a workman means a highly skilled, skilled, semi-skilled, or unskilled artisan employed on a month rate of pay in an industrial or workcharged establishment".

7. On the promotion of the applicants to the post of Chargemen, they were transferred from the industrial category to the non-industrial establishment as per the orders issued in this behalf. It is not the case of the applicants that they were not aware of their transfer to the non-industrial establishment. Although the applicants rely on the judgment of the Tribunal in Balbir Singh Verma Vs. U.O.I. & Others and other connected cases (Supra), we find that in a subsequent case O.A. 626/90 and other connected cases - Prakash Chand Vs. U.O.I. & Others against the same respondents (as in the present case) which was decided on 29.8.96, the Tribunal relied on the Apex Court judgment in **State of Orissa and Others Vs. Adwait Charan Mohanty and Others, 1995(29) ATC 365**. The Apex Court had considered a similar question in that case. The only difference being in that case the analogous provision to FR 56 under the relevant Orissa Service Code was considered. The Apex Court observed as follows:-

" Therefore, we are of the considered view that the government employee in Class-III service shall retire on completion of 58 years of age. Even as artisan-workman who was promoted or appointed as Class-III service be it gazetted or non-gazetted shall retire on completion of 58 years of age. An artisan workman who is working in an industrial or work-charged establishment but he is on a par with Class-IV employee is to retire on attaining the age of 60 years under the second proviso to Rule 71(a) of the Code. In this view, it is not necessary to decide whether any industrial establishment in a government

department, not specified, expressly, is an industry or a factory as contended by the respondents. The Code clearly gives benefit to them. One essential condition to be satisfied is that such an artisan-workman, be it highly skilled, skilled, semi-skilled or unskilled, must, of necessity, be on monthly pay of the Government.

Thus considered, the Tribunal has committed grievous and manifest error of law in not considering the cases on hand in this perspective. It has solely and wholly concentrated on the definition of the word 'workman' and the 'industrial establishment' to give the benefit of extended superannuation of the respondents".


8. It is not disputed that the applicants belong to Group 'C' Establishment i.e. old Class III. Besides, the post of Senior Chargeman involves supervisory responsibility to some extent and they are not exactly akin to workman who are skilled or semi-skilled artisans as defined under FR 56(b). In the light of the decision of the Apex Court in the aforesaid case of State of Orissa and Others (Supra), as the applicants were transferred to non-industrial establishment and were also Group 'C' employees, we are unable to accept the contention of the applicants that they are entitled to be treated as being eligible for superannuation after attaining the age of 60 years. In an analogous case, section holders who are considered to be supervisory staff in the Punjab Government were treated as artisans in the case of **Mela Ram & Others Vs. U.O.I. & Others, 1991 (3) {CAT} AISLJ page 243**. In this case also the Senior Chargeman are stated to be supervisory staff, as stated by the applicants themselves. The law laid down by the Apex Court in State of Orissa and Others (Supra) is the current law and in the circumstances, we are unable to accept the contentions of the applicants that they are eligible for superannuation at the age of 60 years. In the circumstances,

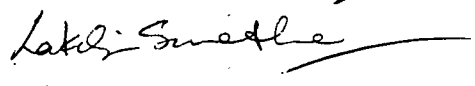
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we are unable to grant the reliefs prayed for in this application. The applicants had already retired on 31.12.97 (applicant in OA 220/98) and on 30.6.97 (applicant in OA 221/98) respectively.

9. In the light of the above, applicants are not entitled to any relief. The applications are, therefore, dismissed being devoid of any merit. No order as costs.

Let a copy of this order be placed in the other OA 221/98 also.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh