

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No. 1280/96

New Delhi this the 28th day of February, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri R.K. Ahooja, Member (A)

Shri Mukand Hari Dhulekar
son of late Sh. H.D. Dhulekar
qr. No. 359-60, E.S.I. Colony,
Basai Darapur, New Delhi-15

... Applicant

(By Advocate Shri O.P. Sood)

Vs.

1. Employees' State Insurance Corporation
service through Director General
Directorate of (Medical) E.S.I. Scheme,
Kotla Road, New Delhi.

2. Medical Superintendent,
E.S. I. Hospital,
Basai-Darapur, Delhi-15.

... Respondents

(By Advocate Sh. G.R. Nayyar)

ORDER

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant is aggrieved by the order passed by the respondents on 22.4.95 retiring him from service on 30-6-1996 on attaining the age of 58 years. According to him under Fundamental Rules 56(b), he ought to have been retired at the age of 60 years.

2. The applicant was working as Senior Operation Theatre Technician w.e.f. 1992 till the time of his retirement. Learned counsel for the applicant submits that he was workman and thus his retirement should have been made at the age of 60 years and not 58 years. The applicant has submitted that since his nature of duties as Senior Operation Theatre Technician was similar to that of Workman he should have been treated as workman under the Fundamental Rules 56(b). He has, therefore, sought a declaration that he is workman and for quashing of the impugned order and to allow him to continue to work till the age of 60 years with full service benefits i.e. 30.6.1998. Learned counsel for the applicant

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also relies on the judgment of the Delhi High Court in Het Ram Gauri v. MCD (53(1994) Delhi Law Times 18(FB) page 18.

3. The respondents have filed their reply. We have also heard Shri G.R. Nayyar, learned counsel for the respondents. They have refuted the above claims made by the applicant that he is workman in the context of FR 56(b). They have submitted that the nature of duties of a Senior Operation Theatre Technicians consists of collection of instruments, sterilisation and renders general assistance to operating surgeons in the matter of machines and instruments. They have submitted that the judgment relied upon by the applicant is not applicable. Shri G.R. Nayyar, learned counsel also relies on the judgment of the Hon'ble Supreme Court in State of Orissa and Ors. v. Adwait Charan Mohanty and Others (1995) SCC(L&) 522. Learned counsel, therefore, submits that the applicant cannot be considered as workman under the ESI Act.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for both the parties.

5. During the course of arguments, learned counsel for the applicant has submitted that so far the respondents have retired other persons who are similarly situated as the applicants at the age of 58 years. In State of Orissa v. Adwait Charan Mohanty and Others (supra), the Supreme Court has held :-

" If the interpretation sought to be put up by the counsel for the respondents are given acceptance, it would render the very object of the rules ridiculous and all classes of government servants would be brought into the vortex of artisan. Class III consists of gazetted as well as non-gazetted employees. The government servants in Class-III shall retire on completion of 58 years. If the interpretation that every artisan is a workman if he produces an article with dexterity or service with dexterity by manual or technical labour, he would be entitled to remain in service till the completion of 60 years. For example, even a Director of Town Planning or Chief Architect could be considered to be an artisan and, therefore, they too would be workmen entitled to superannuation up to the completion of 60 years of age. Similarly several officers in specified governmental activities would answer the definition of workman, in particular, the note to the proviso. It does not appear to be the object. As stated earlier, the object appears to

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be to bring artisan-workman governed by the statutory rules but on a par with Class IV employee and he alone is required to retire on completion of 60 years of age but not the gazetted or non-gazetted Class III government servants or even in Class II or I.

6. The Supreme Court further came to the conclusion that the government employee in Class III service has to retire on completion of 58 years of age. This applies even to the case of artisan workmen who was promoted or appointed to Class III service be it gazetted or non gazetted shall retire on completion of 58 years of age. Under the provisions of Sub-Section 2 of Section 17 of the ESI Act read with 2nd Schedule of ESI regulation, it is seen that the age of retirement of the employees of the corporation has to be the same as prescribed in respect of corresponding category of Central Govt. servants. It has also not been denied by the respondents that he is a Group 'C' employee. Having, therefore, regard to the aforesaid judgment of the Supreme Court in State of Orissa v. Adwait Charan Mohanty & Ors (Supra) and the facts of this case, the action of the respondents in retiring the applicant on attaining the age of 58 years on 30-6-96 cannot be faulted. He cannot be considered as workman under the relevant rules and regulations ^{as} and having regard to the facts of this case.

7. In the result, this application fails and it is accordingly rejected. No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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