

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2396/94
T.A. No.

199

(7)

DATE OF DECISION 10th Feb., 1995.

<u>Padam Singh</u>	Petitioner
<u>Shri K.C. Mittal</u>	Advocate for the Petitioner(s)
Versus	
<u>UOI & Ors.</u>	Respondent
<u>Shri ^{V.K. Gupta} Krishna</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. J.P. SHARMA, MEMBER (J)

The Hon'ble Mr. S.R. ADIGE, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

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Central Administrative Tribunal
Principal Bench, New Delhi

OA No.2396/1994

New Delhi this the 10th day of February 1995.

Hon'ble Mr. J.P.Sharma, Member (J)
Hon'ble Mr. S.R.Adige, Member (A)

Padam Singh
Senior Technician
Bio-Chemistry Department
Safdarjung Hospital
New Delhi
R/o Sector-I/718
R.K.Puram, New Delhi

.....Applicant

(By Advocate: Sh.K.C. Mittal)

Versus

1. Union of India through
Secretary
Min. of Health & Family Welfare
Nirman Bhavan
New Delhi

2. Director General
Dte. of Health Services
Nirman Bhavan
New Delhi

3. The Medical Supdt.
Safdarjung Hospital
New Delhi

.....Respondents

(By Advocate: Sh. ^{M.K. Gupta} ~~Krishnan~~)

J U D G E M E N T

Hon'ble Mr. S.R.Adige, Member (A)

In this application, Shri Padam Singh, Senior Technician, Bio-Chemistry Department, Safdarjung Hospital, New Delhi, has prayed for a declaration that he is a highly skilled workman within the meaning of FR 56(b), who is entitled to continue in service upto 60 years of age and the respondents' action in retiring him w.e.f. 31.1.1995 upon his completing 58 years is illegal and unconstitutional. A prayer has also been

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made to quash the order dated 5.8.94 (Annexure A-1) setting out the duties and responsibilities of the post of Sr. Lab Technician and rejecting the applicant's representation in the background of those duties and responsibilities.

2. The applicant's case is that he is employed as Sr. Lab Technician in the Safdarjung Hospital, New Delhi and is a workman and by the nature of the duties and responsibilities discharged by him which is of highly skilled nature, he comes within FR 56(b). He claims that he undertakes physical and manual work in the discharge of his duties and responsibilities and there is the application of skill in determination and examination of samples of blood, urine etc. He contends that he is a qualified technician possessing a Diploma in Medical Laboratory Technology from State Medical Faculty, Uttar Pradesh. Furthermore, according to the applicant, the ICMR which though an autonomous institution, is governed by the Health Ministry, has certain bye laws (Ann.2) and according to condition 4, the GOI rules governing retirement of employees have been applicable to ICMR employees also and in terms of those bye laws the ICMR vide office order dated 15/20.10.1987 (Ann.3) has laid down that technical persons including lab technicians would superannuate at 60 years. It is also averred that the Labour Ministry by their notification dated 12.7.94 (Ann.4) have prescribed that compounders and staff nurses like other technicians including the applicant come within the category of highly skilled workers and are to superannuate at 60 years. Reference has also been made to the university Non-Teaching Employees Terms & Conditions of Service Rules 1971 (Ann.5) under which Delhi University Lab Technician superannuates at 60 yrs. Furthermore it is contended that the Third Pay Commission has dealt with the category of nursing staff, pharmacists etc.

as also Lab Technician in a separate chapter, according to which the applicant is entitled to superannuate only after reaching 60 years. Furthermore a reference has been made to the proceeding dated 12.1.1986 of a committee said to have been set up to examine the demands of the Med. Lab Technician, in which it was said to have been reiterated that their status continued to be that of scientific services staff.

3. The respondents in their reply deny that the applicant is an artisan employed on a monthly rate of pay in an industrial or workcharged establishment. They aver that the applicant is governed by recruitment rules notified under proviso to Articles 309 of the Constitution of India and holds a group-C post to which FR 56(a) & FR (56(b) applies. It is denied that the duties of the applicant are highly skilled in nature, or are technical. It is stated that the ICMR bye laws and rules have no application in the respondents' office, nor has the notification of 12.7.1994 referred to by the applicant. Further it is stated that there is no comparison between the 'C' group employees and those of Delhi University and the 3rd Pay Commission never suggested that the category of staff mentioned therein should superannuate at 60 years. Furthermore, it is stated that the committee referred to by the applicant had no sanction; the minutes of its proceedings were neither approved by Government nor rejected its views; and the committee had no power to take a decision on government's behalf. The GOI also did never approve the observations made by the said committee as made clear in the letter dated 18.1.85 (Ann.R-1). They therefore contend that the OA is fit to be dismissed.

4. We heard Shri Mittal for the applicant and Shri ~~M.A. Gupta~~ for the respondents. We have also perused the material on record and given the matter our careful consideration.

5. FR 56 (a) & (b) read as follows:

" Except as otherwise provided in this rule, every Govern-

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ment 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.

(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 monthly rate of pay in an industrial or workcharged establishment.

6. For the OA to succeed, the applicant has to establish that he is a workman i.e. a highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in an industrial or workcharged establishment. That the applicant receives a monthly rate of pay is not denied. In the background of the judgement dated 3.4.92 in OA No.2989/91 Sh. Jai Ram Lal Vs. UOI which discusses the development of the law on the subject including the ruling in Desh Raj Rai Vs. State of Punjab 1988 (2) SCC 537 the fact that hospitals come within the definition of industry under the Industrial Disputes Act is also not seriously challenged by the respondents. The crux of the matter is whether the applicant can be described as a workman i.e. a highly skilled, skilled, semi-skilled or unskilled artisan. It must be remembered that not all persons working in industries or industrial establishments are workmen, and to arrive at a finding a content analysis of the duties and responsibilities attached to the applicant's job is essential, as correctly pointed out by Sh. ^{Gupta} ~~Krishna~~ relying upon the rulings in Chandigarh Admn. Vs. Mohan Singh 1992 (21) ATC 840 and Chandigarh Admn. Vs Ajit Singh 1993 (23) ATC 350.

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7. The duties and responsibilities of the post of Sr. Lab Technician as contained in the impugned order dated 5.8.94 includes micro analytical and bio-chemical investigation for research and routine analysis of blood, urine, stools, cerebrospinal fluid etc.; assisting the bio-chemist in supervising work; maintenance of stores/stocks of Lab and proper maintenance of ledgers/inventories etc.; fluorescent microscopy; standardisation of reagents and solutions etc.; maintenance and repairs of lab equipments. None of these duties/responsibilities can be said to be that of a workman. Shri Mittal has emphasised that the manual labour involved in the duties and responsibilities of a Sr. Lab Technician includes ^{the} ~~the~~ ^{weight} of chemicals; standardisation of reagents and solutions etc; maintenance and minor repairs of lab equipments, sterilization of equipments; biopsy; autopsy; drawing blood and blood smears; operation of equipments and preparation of monthly statistical data of investigations done. Merely because the applicant's job content involves use of his hands and the exercise of certain skills does not make him a workman. A typist is required to feed paper into his typewriter and is also expected to maintain it properly and attend to its minor repairs, all of which require the use of his hands and the exercise of certain skills. Similar is the case in respect of a computer operator, but no one would think of calling them workmen. The Concise English Dictionary - Omega Book, 1985 Edition defines a workman as "any man employed in manual labour or operation". That same dictionary defines an ^{artisan} ~~artisan~~ as "one trained to practice a manual act, a handicraftsman; a mechanic". By no stretch can the applicant come within the definition of workman or artisan, both of which emphasise the manual aspect of the work (even if it involves the exercise of skills) as opposed to the fact the type of work done by the applicant is heavily weighted towards the knowledge ^{mental} or cerebral aspect. For that reason, the Delhi High Court judgement dated 28.2.89 in Chaye Lal Vs. MCD holding that Foremen (Case)

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working in MCD performed their duties with their hands and manual skills and the pre-dominant nature of their duties was that of skilled artisan and were therefore entitled to retire at 60 years, has no application to this case, as the facts are clearly distinguishable. Similarly, no comparison with staff car drivers, who have been held by the Hon'ble Supreme Court to be workmen in the case Prithpal Singh Vs. UOI OA No.4689 of 1990 decided on 19.9.90, can validly be made as Shri Mittal seeks to do.

8. As ¹regards ICMR bye laws, no doubt condition 4 states that GOI rules governing retirement of employees as amended from time to time shall apply to ICMR employees. However (emphasis supplied) the age of superannuation of scientific/technic personnel shall be 60 years. In other words, the difference in retirement age for lab employees and ICMR employees is recognised in the bye laws ^{themselves}, and merely because the list of technical posts in ICMR includes the post of Lab Technician therefore does not imply that the age of retirement of Lab Technician in Safdarjung Hospital is 60 years. Furthermore, the notification dated 12.7.94 relied upon by Shri Mittal has been issued by the Labour Ministry (and not the Health Ministry under which Safdarjung Hospital falls) and relates only to the revision in minimum wages payable to various categories of employees employed in scheduled employment in Mines and has no application to the facts of the present case. Similarly the rules applicable to Delhi University or the proceedings of the meeting of a committee cannot be said to be of help to the applicant unless they are accepted/approved by Govt and communicate ^{Govt orders on} the facts to us or are admitted to reflect the respondents' point of view.

9. Furthermore the point that the post held by the applicant of Sr.Lab Technician was discussed not in the chapter on para medical categories such as Nursing Staff, Health Visitors, but in chapter 15 relating to scientific services in the Third Pay Commission

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Report does not advance the applicant's case one bit ~~relating to~~^{because} ~~the age of superannuation~~^{relating to superannuation} ~~between~~^{thereof, that} chapter 19 of that Report ~~and~~^{clearly} states in para 19.8 ~~recognising~~^{that} the age of superannuation is 60 years in regard to scientific and technical personnel in the Dept of Atomic Energy & Space, and Defence Research & Dev. ~~Agency~~^{Organisation} ~~but~~^{and} 58 years in other organisations (emphasis supplied). There is a recommendation that government may look into the matter and consider whether there is a need for uniformity amongst various scientific departments in this respect, taking into account the requirements of the organisation and other relevant considerations, but these are mere recommendations, and ~~these~~^{the} Sh. Mittal has not produced any evidence to show that on the basis of these recommendations, the applicant's age of superannuation was raised from 58 to 60 years on the basis of the post held by him.

10. In his rejoinder, the applicant has submitted that in OA 2141/91 which is the case ~~for~~^{of an} X'ray Tech. Asstt., a stay was granted on 11.7.91 (Ann.1), permitting the applicant to perform his duties even after the age of retirement i.e. 58 years on his plea that he was a skilled artisan whose age of superannuation was 60 years and a similar stay was granted in CW 982/94 D.D.Sharma Vs. MCD in respect of an Operation Theatre Technician, but those were mere interim orders passed pending adjudication of the issue in the absence of the final judgements in those cases, they do not help the applicant.

11. In the result, we find ourselves unable to accept the applicant's contention that he is covered by FR 56(b) and is therefore required to superannuate only upon reaching the age of 60 years. We hold that ~~the~~^{the} applicant is squarely covered by FR 56(a). This application fails and is dismissed. The interim orders passed

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on 31.1.95 directing the respondents to keep the applicant on their rolls, and allow him to mark attendance subject to his not claiming any wages from the period 1.2.1995 till the pronouncement of this judgement are vacated. No costs.

S.R. Adige
(S.R. Adige)
Member (A)

J.P. Sharma
(J.P. Sharma)
Member (J)

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