

Central Administrative Tribunal
Principal Bench
New Delhi
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O.A. No. 726/94

New Delhi, this the 29th day of July, 1999

Hon'ble Shri S.R. ADIGE, VICE-CHAIRMAN (A)
Hon'ble Shri P.C. KANNAN, MEMBER (J)

Prabhulal s/o Sh. Rattan Lal,
Ticket No. NCU-48,
Boot Maker,
at present residing at No. 5A/90,
Karol Bagh, New Delhi.

....Applicant

(By Advocate: Shri D.K. Garg)

Versus

Union of India through:

1. Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi.
3. The Commandant,
510 Base Workshop,
Engineering Military Service (EME),
Meerut Cantt, Meerut.

...Respondents

(By Advocate: Shri V.S.R. Krishna)

ORDER

By Hon'ble Shri P.C. Kannan, Member (J):

The applicant, a Boot Maker under the Respondents, is aggrieved by the order of superannuation dated 30.01.1993 on attaining the age of 58 years. He contends that under the Rules, the applicant being an industrial worker, was entitled to be retired after attaining the age of 60 years.

2. The respondents in their reply had denied that the applicant is an industrial worker. They contend that the applicant was employed in the Military Wing to repair the boots/equipments of soldiers and Unit and that the applicant is governed by FR-56, which reads as follows:-

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- "(a) Except as otherwise provided in this rule, every Govt. servant shall retire from service on 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 work-charged establishment.

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x x x

x x x

x x x

- (c) A Government servant in class IV service or post shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years."

3. It is also stated that the classification of employee is governed by the C.C.S. (CCA) Rules, 1965, according to which an employee who is in the pay scale of Rs. 950-1500/- is categorised as Group 'C' employee and would have to retire on attaining the age of 58 years. The applicant was originally holding a group 'D' post, non-industrial in the scale of Rs. 775-1075/-. The applicant's pay scale was upgraded in pursuance of the order of Hon'ble Supreme Court in Writ Petition No. 492/91. The Hon'ble Supreme Court held that although the applicant belonged to non-industrial category, he was entitled to the scale of pay of Rs. 950-1500/- as applicable to industrial employees. Under the rules of Government, only Group 'D' employees retire at the age of 60 years. As the applicant was neither a group 'D' employee nor an industrial workman as defined in FR 56 (b), the respondents contend that he will have to retire on attaining the age of 58 years. The respondents also relied on an undertaking given by the applicant at the time of upgradation of the post on account of revised pay scales. The applicant on 16.10.89 had given the following undertaking:-

"I, Prabhu Lal also understand that my age of superannuation will be 58 years on accepting the revised pay scale provided under the provisions of Government of India, Min. of Defence letter No. 3822/DS(Q&M)/Civ-I/84 dated 15th October, 1984 (reproduced in CPRO 1085)."

4. Mr. Garg, counsel for applicant submits that the applicant was working under an industrial undertaking of the respondents as Boot Maker and in the facts and circumstances, he has to be treated as an industrial worker and, therefore,

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is entitled to retire on attaining the age of 60 years and not at the age of 58 years. With regard to the contention of the respondents that the applicant is governed by the rules framed under Article 309 including FR 56 and the undertaking given by the applicant, Shri Garg submitted that the same are not binding on him.

5. Mr. VSR Krishna, counsel for respondents stated that the terms & conditions of the service of applicant is governed by the rules framed under Article 309 and in terms of the rules governing the conditions of appointment, the applicant, a group 'C' employee is to retire on attaining the age of superannuation in terms of FR 56. He also contended that the applicant was never treated as an industrial employee. He also denied that the applicant was working under an industrial undertaking as contended by the counsel for the applicant.

6. We have heard the learned counsel on either side and examined the pleadings. The applicant is admittedly working in the Army Base Workshop, an Installation of the Defence Department. He has been assigned the task of Boot Maker to repair the boots/equipments of soldiers and the Unit. The reply of the respondents indicates that the terms & conditions of service of the applicant is governed by the rules framed under Article 309 of the Constitution. In terms of the Notification SRO 130 of 1989 (Annexure 'A' to the reply), the applicant has been treated as non-industrial-ministerial in group 'D' service. Subsequently, the applicant was granted revised pay scale and treated as Group 'C' employee. Consequently, the age of retirement of the applicant became 58 years. The applicant also had given an undertaking that his age of superannuation will be 58 years consequent to the revised pay scales. The applicant has not challenged the vires of the rules framed by the respondents with regard to the recruitment to the post of the applicant or FR 56 in terms of which the applicant is required to be

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retired on attaining the age of 58 years.

7. Counsel for the applicant mainly relied on the judgement of the Hon'ble Supreme Court in Writ Petition No. 492/91 and contended that the applicant should be treated as an industrial worker. The relevant observations of the Hon'ble Supreme Court reads as follows:-

"Counsel for the respondents, however, invited our attention to the notification Nos. SRO 1 of 1988 and SRO 130 of 1989 produced as Annexures 'A' & 'B' to the counter affidavit and submitted that boot-makers belong to two categories and since the petitioners herein belong to non-industrial category, they are not entitled to the benefit sought by them. On a plain reading of these notifications, we do not think that they have any retrospective operation. This distinction between non-industrial and industrial workmen belonging to the same trade is not shown to have existed earlier when the benefit was granted to certain employees, including the petitioners of the aforesaid two earlier cases. We, therefore, do not see any merit in this contention. We, therefore, direct a mandamus to issue to the Union of India to grant to the petitioners the benefit of the skilled grade of Rs. 260-400/- w.e.f. October 16, 1981 to those who were in service then, Arrears of salary, etc., will also be granted on that basis within three months. The rule is made absolute accordingly with no order as to costs."

8. A perusal of the above judgement shows that the Hon'ble Supreme Court has granted the scale of pay of 260-400/- w.e.f. 16.10.1981 to the category of the applicant even though the applicant belonged to non-industrial category. We are, therefore, inclined to agree with the counsel for the respondents that the applicant cannot be regarded as an industrial worker. As the applicant is governed by FR 56 read with the rules framed by the respondents under Article 309 of the Constitution (Annexure 'A'), we hold that the age of retirement of ^{the} applicant would be on attaining the age of 58 years.

9. In the facts and circumstances of the case, the O.A. is devoid of merits and is accordingly dismissed. No costs.

P. C. Kannan

(P.C. KANNAN)
MEMBER (J)

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S. R. Adige

(S.R. ADIGE)
VICE CHAIRMAN (A)