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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1609/1989. DATE OF DECISION: 12-3-1992.

Prithpal Singh .... Applicant.

V/s.

Union of India .... Respondent.

CORAM: Hon'ble Mr. T.S. Oberoi, Member (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri Vijay Choudhary, counsel for the applicant.
Shri P.P. Khurana with Shri Arun Sharma, counsel for the respondent.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

The applicant herein was employed as Staff Car Driver in the Ministry of Surface Transport (Transport Wing), Government of India. In the O.A. filed before this Tribunal on 9.8.1989, he prayed for a direction to the respondents to allow him to continue in service till he attains the age of 60 years, i.e., upto 30.11.1991 on the grounds that he "is a workman as per definition of the word - given in fundamental rule 56(b)" and that in accordance with the said Rule 56(b), he could be retired from service only on his attaining the age of 60 years. The O.A. was dismissed vide order dated 30th November, 1989 passed by this Tribunal. The applicant filed Civil Appeal No.4689 of 1990 before the Hon'ble Supreme Court, which was disposed of by a Division Bench of the Supreme Court on 19th September, 1990. The last para of the judgement of the Supreme Court is as under: -

> " Apart from the annual report there is no material before us to show the nature of the functions performed by the said Ministry. There is nothing in the pleadings of the parties to show that the Ministry is an "industrial" or "work-charged establishment". It is not possible for us to reach such a finding on the basis of the contents of the annual report placed before us by the appellant. We are, however, of the view that the appellant be given another opportunity to produce the relevant material before

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the Tribunal to show that the Ministry of Surface Transport is an 'industry' or a 'work-charged establishment'. We, therefore, set aside the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi and remand the case for fresh decision in the light of the observations made by us. The Tribunal shall afford an opportunity to the parties to place additional material in support of their contentions. The appeal is disposed of in the above terms. There shallbe no order as to costs."

2. The Hon'ble Supreme Court has thus remanded the case to this Tribunal for fresh decision. After remand of the case by the Hon'ble Supreme Court, learned counsel for the applicant filed M.P. No.2424/1990 before this Tribunal praying that pending disposal of the O.A., the eviction proceedings against the applicant be stayed. Vide order dated 8.10.1990, a Bench of this Tribunal passed an order directing the respondents not to dispossess the applicant from the Government Quarter No. I-80, Sarojani Nagar, New Delhi subject to his liability to pay licence fee etc. in accordance with the relevant rules. The said interim order has continued since then.

3. In accordance with the directions of the Hon'ble Supreme Court, we have given adequate opportunities to both the parties to place any additional material in support of their contentions. We have also heard the learned counsel for the parties.

4. Learned counsel for the applicant filed the following three documents on 10.12.1990: -

(1) Letter dated 14.5.1984 addressed by the Deputy Secretary to the Govt. of India, Ministry of Shipping and Transport (Labour Wing), New Delhi, to the Chairmen of all Port Trusts and Deputy Chairmen of all Dock Labour Boards, on the subject of 'Revision of wages and liberalisation of terms and conditions of employment of port and dock workers at the major ports as per wage settlement dated 11-4-84.

assigned the nomenclature of an industrial or workcharged establishment.

6. In the written submissions, learned counsel for the applicant has relied on the following cases: -

(1) Randhir Singh Vs. Union of India & Ors. (1982 (3) SCR 298).

(2) Des Raj Vs. State of Punjab and Ors. (1988 (2) SCC 537).

In the case of Randhir Singh Vs. Union of India & Ors. (supra), the principal of 'Equal pay for equal work' was raised, and the Hon'ble Supreme Court held that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government and directed the respondents therein to fix the scale of pay of the driver-constables of the Delhi Police Force on par with that of the drivers of the Railway Protection Force. In the present case, the question involved is not of 'Equal pay for equal work' but of the age of superannuation. The present case has, therefore, no bearing on the case of Randhir Singh Vs. Union of India & Ors. In Des Raj Vs. State of Punjab and Ors. (supra), the Supreme Court, however, held that the Irrigation Department of the State Government of Punjab is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, as it stands at present, with the observations that though by Section 2(c) of the Amending Act 46 of 1982, Section 2(j) of the Industrial Disputes Act had been amended but the amendment has not yet been brought into force even after a lapse of 6 years. It is "appropriate that the same should be brought into force as such or with such further alterations as may be considered necessary, and the legislative view of the matter is made known and the confusion in the field is cleared up." In the event of the definition of industry being changed either by enforcement of the new definition of industry or by any other legislative change," it would

the Tribunal to show that the Ministry of Surface Transport is an 'industry' or a 'work-charged establishment'. We, therefore, set aside the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi and remand the case for fresh decision in the light of the observations made by us. The Tribunal shall afford an opportunity to the parties to place additional material in support of their contentions. The appeal is disposed of in the above terms. There shallbe no order as to costs."

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(2) Annual Report 1989-90 issued by the Government of India, Ministry of Surface Transport, New Delhi.

(3) Rajya Sabha Starred Question No.128 'To be answered on the 21st March, 1990' on Private Entrepreneurs to construct highways.

In addition to the above documents, learned counsel for the applicant also placed on record written submissions on behalf of the applicant. On 3.12.1991, when the applicant appeared in person, he affirmed that he had already filed written submissions and had nothing more to add, by way of oral arguments.

5. In their judgment dated 19.9.1990 in the Civil Appeal No.4689 of 1990 of the applicant (supra), the Division Bench of the Supreme Court have observed that "A driver of staff car is undoubtedly a skilled or semi-skilled person. He has to use his whole body specially his hands and feet to drive the vehicle. The definition of word 'artisan' is wide enough to include a driver of a car." The question whether the Ministry of Surface Transport where the applicant was working as Staff Car Driver is an 'industrial' or work-charged establishment' has, however, to be thoroughly examined. The documents placed by the applicant do not in any way support the contention of the applicant that the Ministry of Surface Transport (Transport Wing) in which he was employed is an 'industrial' or 'workcharged' establishment. A Ministry, whose principal function is to formulate policies on the subjects of its jurisdiction, has under it a number of executive bodies where the policies of Government require decentralisation of executive action and/or direction. In the implementation of the policies, some executive agencies may come in 'industrial' or 'workcharged' establishment and their activities and functions may form part of the Annual Report of the Ministry as a whole, but the Staff Car Driver working in the Ministry itself or to say more precisely in the Transport Wing of the Ministry of Surface Transport does not form part of any other executive agency so as to be

assigned the nomenclature of an industrial or workcharged establishment.

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always be open to the aggrieved Irrigation Department to raise the issue again and the present decision would not stand in the way of such an attempt in view of the altered situation."

7. As stated above, the applicant herein claims to be a workman as per definition of "workman" given in fundamental rule 56(b). As per F.R. 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 below this clause provides that "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". It is not in dispute that the applicant is governed by these rules. He is also held to be an artisan by the judgment of the Hon'ble Supreme Court in Civil Appeal No.4689 of 1990 (supra). We have now to see whether he was employed (i) on a monthly rate of pay, (ii) in an industrial establishment or (iii) in a workcharged establishment. It is not disputed that the applicant was employed on a monthly rate of pay. We have not come across any definition of an industrial or workcharged establishment in the fundamental rules. However, the CPWD Manual, Volume III, which deals with the work-charged establishments contains the following definition of workcharged establishment: -

> "Broadly speaking workcharged establishment means that establishment whose pay, allowances etc. are directly chargeable to "works". Workcharged staff is employed on the actual execution of a specific work, sub-works of a specific work, etc. The cost of entertainment of workcharged establishment should invariably be shown as a separate sub-head of the estimate for a work. In other respects the workcharged staff is quite comparable to the regular categories."

8. It is not the case of the applicant that he belongs to a workcharged establishment, nor has he produced any material to buttress his contention, if any, of such a claim.

He, however, relied on the judgment by the Chandigarh Bench of Central Administrative Tribunal in O.A. 867-CH/959-CH of 1988 decided on 28-2-1989 (Rakha Singh and Ors. Vs. Chandigarh Administration and Ors.). In that case, the respondents have, inter-alia, taken a plea that the applicants were not workmen under the Industrial Disputes Act, as they were drawing pay more than Rs.1600 per month. It was held by the Division Bench in that case that the definition of 'workman' as given in the I.D. Act was not relevant and the one given in F.R. 56(b) itself was to be considered. No such contention has been raised before us in this case. Another issue involved in the decided case was that the applicants were borne on "regular" workcharged establishment and the respondents had taken the plea that since they had been brought to the regular establishment, they could not be said to be borne on work-charged establishment. The Tribunal held that a workcharged establishment may have regular as well as others and it will not make any difference; and, therefore, the applicants were held to be borne on workcharged establishment. This issue is also not involved in the case before us. Thus, the judgments cited by the applicant do not help him.

9. As already stated, the fundamental rules do not have any definition of industrial establishment. The term "industrial establishment or undertaking" has been defined in sub-clause (ka) of Section 2 of the Industrial Disputes Act, 1947. This was inserted by Act 46 of 1982 with effect from 21.8.1984. It is reproduced as below: -

> "(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:
>
> Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then, -

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(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking.

(b) if the predominant activity or each of the predominant activities carried on in such establishment of undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unity thereof shall be deemed to be an industrial establishment or undertaking; "

From the above, it is clear that before an establishment can be treated as an industrial establishment or an industrial undertaking, it must be held that an industry is carried on in such an establishment or undertaking. The term "industry" has been defined in clause (j) of Section 2 of the Act ibid to mean "any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;". It may be stated here that the term "industrial establishment" has also been defined differently in some other chapters of Industrial Disputes Act, for the purposes of provisions in those chapters. For example, for the purpose of chapter V-B, which contains provisions relating to lay-off, retrenchment and closure in certain establishments, an "industrial establishment" means -

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948;

(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; or

(iii) a plantation as defined in clause (f) of section 2 of the Plantation Labour Act, 1951.

10. The case before us is, strictly speaking, not a case covered by the Industrial Disputes Act. In our judgment dated November 30, 1989, the claim of the applicant that he either belongs to a workcharged establishment or an industrial establishment was disallowed. While setting aside that judgment and remanding the case back to the Tribunal, the Supreme Court's observations in their judgment dated 19th September, 1990 in Civil Appeal No.4689 of 1990 (supra) have already been extracted in para 1 ante. It will be seen therefrom that the Supreme Court did not find it possible, on the basis of the contents of the Annual Report relied upon by the applicant, that the Ministry was either an industrial or a workcharged establishment. The three documents filed by the applicant after the case was remanded back to the Tribunal also do not enable us to reach a conclusive finding that the Ministry or the Transport Wing of the Ministry of Surface Transport, in which the applicant was employed, can be held to be either as an industry or an industrial establishment. The Supreme Court has throughout held that the sovereign and regal functions of the polity cannot be held to be covered within the definition of 'industry'. Legislative functions, administration of justice and maintenance of law and order are clearly held to be outside the scope of the term 'industry' as defined in Section 2(j) of the Industrial Disputes Act. These three functions are not stated to be exhaustive. In the Indian set-up, we have three main wings of the State set-up, viz., Legislative, Judiciary and Executive. Some of the features or functions of these three wings of the State might come within the principles enunciated by the Supreme Court in some judgments inasmuch as there is a relationship between employer and workman in the discharge of functions, but on this account alone, these would not make them as an industry or an industrial establishment. As a part of the functions

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entrusted to the Executive at the apex level, the Executive discharges its sovereign and regal responsibilities through the Ministries and Departments. These Ministries and Departments directly and primarily deal with formulation of policies, evolving adequate mechanism for implementation of those policies and monitoring thereof. These are done under the overall guidance and supervision of the Council of Ministers, and on behalf of the Council of Ministers, Minister-in-charge of the Ministry / Department is responsible as per the Allocation of Business to the various Ministries / Departments, and in accordance with the Conduct of Business as prescribed under the relevant provisions of the Constitution. In discharge of these functions, a Minister is necessarily assisted by a group of officers and employees and the existence of such a set-up does not itself make the functioning as that of an industry or of an industrial establishment.

11. In the light of the foregoing discussion, we are of the considered view that on the basis of the material placed before us, it is not possible for us to hold that the applicant was employed in an establishment, which was either a work-charged establishment or an industrial establishment. As such, he is not covered by the provisions of clause (b) of F.R. 56, under which he has claimed a right to be superannuated on attaining the age of 60 years rather than on attaining the age of 58 years. The applicant cannot, therefore, be allowed the relief claimed by him. O.A. is accordingly dismissed, leaving the parties to bear their own costs.

12/3/92

(P.C. JAIN)
MEMBER(A)

12.3.92

(T.S. OBEROI)
MEMBER(J)