

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 753/88
SHRI BALBIR SINGH VERMA
SHRI M.S. DAHIYA

UNION OF INDIA & OTHERS
SHRI K.C. MITTAL

DATE OF DECISION: 30 MARCH, 1990
APPLICANT
ADVOCATE FOR THE APPLICANTS
VERSUS
RESPONDENTS
ADVOCATE FOR THE RESPONDENTS

OA NO. 1709/89
SHRI LAL CHAND & OTHERS
SHRI M.S. DAHIYA

UNION OF INDIA & OTHERS
SHRI K.C. MITTAL

APPLICANT
ADVOCATE FOR THE APPLICANTS
VERSUS
RESPONDENTS
ADVOCATE FOR THE RESPONDENTS

OA NO. 640/88
SHRI HARBHAGWAN MADAN
SHRI M.S. DAHIYA

UNION OF INDIA & OTHERS
SHRI M.L. VERMA

APPLICANT
ADVOCATE FOR THE APPLICANTS
VERSUS
RESPONDENTS
ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, 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? *no*
4. To be circulated to all Benches of the Tribunal *no*

J U D G E M E N T

(Of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

These are three applications, filed by Shri Lal Chand and four others, against the impugned order No. 31 dated 13.1.1987 by Respondent No.3 retiring them on attaining the age

8

of 58 years under Section 19 of the Administrative Tribunals Act, 1985. While Applicant No. 1-4 are working as Chargemen, applicant No.5 Shri Mohan Singh is holding the position of the Foreman. The applicants have submitted that the age of superannuation for the workmen in the workshop is 60 years, but in their case the age fixed for retirement is 58 years. The action of the respondents is said to be arbitrary and unlawful as the age of retirement is fixed by only some administrative order and not under any statutory rule. The applicants have, therefore, prayed that a writ of mandamus may be issued directing the respondents to allow the applicants to continue in service until they attain the age of 60 years. By way of interim relief they prayed for staying the operation of the impugned order dated 13.1.1987.

2.1 The applicants, have contended that they are basically Tradesmen and are employed on work where their skill and knowledge is used on the shop floor even after they were promoted as Chargemen etc. In the absence of any specific rule governing the terms and conditions of service of the applicants regarding the age of superannuation, they are governed by FR 56(b) and CSR 459(b). The representations made by them seeking redressal of their grievance have been turned down by the concerned authorities (page 36 of the paper book). They have further submitted that generally with the rise in the rank in the defence organisations, the age of retirement increases but in the case of applicants, the situation is reversed as they face retirement at the age of 58 years as Chargemen, instead of at 60 years of age had they continued as Tradesmen. It has further been submitted

10

that supervisory staff in the Defence Research and Development Organisation retire at the age of 60 years. Further as Supervisor (Technical) they do not have the attributes of the managerial staff, as they neither enrol junior staff nor any disciplinary powers are vested in them. They continue to be Tradesman, but with a little higher responsibility of guiding and controlling the junior staff.

2.2 The Ld. Counsel for the applicants argued that the duties alone should form the basis of classifying industrial and non-industrial employees. He submitted that AI 1245/54 (page 14 of the paper book) listing duties of civilian technical supervisors unambiguously states that Supervisors (Technical) continue essentially to be Tradesman. The Ld. Counsel cited the judicial pronouncements listed below the margin in support of his argument.* It was submitted that Article 14 of the Constitution permits reasonable classification subject to such classification fulfilling the twin requirement. It must be founded on a intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and it must have a relationship to the objective sought to be achieved. The Ld. Counsel for the applicant submitted that the classification made in this case to retire the Chargemen etc. at the age of 58 fails in both the tests. First, there is no tangible difference between the duties and responsibilities of the Chargeman and the Tradesman as the tradesmen on promotion

*AIR 1987(74)-443-Tulsipur Sugar Co.Ltd. Vs. Government of UP & others.

AIR 1984-1462 - S.K. Verma Vs. Mahesh Chand & Others.

11

continue to work with their hands and tools like Tradesmen, with the marginal difference that Chargemen provide a little guidance to the Trademen. Secondly lowering of the age of superannuation to 58 years has also no relationship with the objective of administrative efficiency to be achieved, as the workshops lose artisans who have achieved excellence in their skills earlier by two years.

3.1 The respondents in their counter have brought out that applicants on promotion as Chargemen w.e.f. 19.10.1984 in the scale of Rs. 380-12-500-EB-15-560 cease to be workmen, as the supervisory cadre forms part of the non-industrial establishment as distinct from industrial establishment. The age for superannuation for non-industrial personnel is 58 years as prescribed in CSR 459 (a). The posts of Technical Supervisor are filled from among the Tradesmen belonging to the various trades as per recruitment rules. The applicants were fully aware about their age for superannuation at 58 years consequent to SOS (struck off strength) from industrial establishment, on promotion. Further Tradesmen are promoted as chargemen only after they give willingness to undergo training/test for promotion to the supervisory cadre. On their promotion they also enjoyed the benefits available to non-industrial staff, like pay and allowances, leave etc. Regarding the Rules/practice followed in the Defence Research Development Organisation (DRDO), it has been submitted that DRDO is altogether a separate entity, having their terms and conditions of service, relevant in that organisation only, and therefore, is not germane in this case. In EME, the

12

industrial establishment is controlled locally, the non-industrial personnel, however, form centrally controlled cadre by OIC records, Secunderabad. The action of the respondents to retire the applicants at the age of 58 years is covered by CSR 459 (a) and FR 56 (a).

3.3 The Ld. Counsel for the respondents submitted that the Tradesmen who are unwilling for promotion to supervisory posts are required to submit unwillingness certificate in the form given below:-

"Appendix 'B' to 505 Army Base Workshop Dos Part I No....Dt.....

CERTIFICATE

I, T.No.....Trade.....Name.....
would like to continue in service upto 60 years of age as an industrial tradesman and therefore render my unwillingness for promotion to Senior Chargeman (Part I Cadre)/Chargeman (Part II Cadre).

The above decision is final.

Station: Delhi Cantt 110010.

Dated

(Signature of the Individual)

COUNTERSIGNED

OIC Group/Section"

The retirement at the age of 58 years as a consequence of promotion to the higher grade was therefore in the full knowledge of the applicants when they make their choice. In view of the option exercised, the Supervisor cease to have the right

13

to retire at the age of 60. Further the age of retirement as regulated by CSR 459 is also prescribed in paragraph 18 of order No. 57 dated 23.12.1982 regulating appointments/ promotions/ resignations/retirements of centrally controlled civilian personnel of EME (non-industrial) as per the extract below:-

"Retirements - In accordance with Article 459 CSR, retirement on attaining the age of superannuation (viz. 58 years) is automatic and the Government servants under their control so retire on due dates." - Annexure R-II (Page 6).

4.1 We have heard the learned counsel for both the parties and gone through the records carefully. The ROI No. 16/80 dated 24th April, 1990 confers eligibility for the Supervisory test on Group A Tradesmen/Group B and below Tradesmen who possess the following qualifications.

- "(a) Group 'A' tradesmen for promotion to Senior - Chargemen (Part I Cadre)
 - (i) Should be QP/Permt in any trade
 - (ii) Should have a minimum of 8 years service as Group 'A' Tradesmen
 - (iii) Should pass the Supervisory test.
- (b) Group 'B' and below tradesmen for promotion to Chargemen (Part II Cadre)
 - (i) Should be QP/Permt. in any trade
 - (ii) Should have a minimum of 8 years service in Group 'B' and below trades,
 - (iii) Should pass the Supervisory Test.

After passing the Trade Test become eligible for promotion to technical supervisory cadre.

14

- (c) Tradesmen who are temporary whether belong to Group 'A' trades or Group 'B' and below trades (i.e. not QP/Permt. in any trade) to be eligible for promotion to Supervisory Cadre.
- (i) Should have a minimum of 8 years service as tradesmen.
- (ii) Must be a Matriculate.
- (iii) Must possess a recognised Degree/Diploma in Engineering"
- (iv) Should pass the supervisory test.

Technical supervisory staff in the various Directorates of Army Establishment is classified into Part-I & Part II cadres based on classification of trades; this classification, however, does not distinguish in any way the skill required for the jobs and scales of pay prescribed.

4.2 While discussing the industrial and non-industrial employees the Third Pay Commission observed:

"The Central Government employees have been classified differently for different purposes, some of the well-known classifications being gazetted and non-gazetted, ministerial and non-ministerial, industrial and non-industrial etc. In this section we discuss the varying conditions of service applicable to the industrial staff and the non-industrial staff employed under the Central Government. At the outset we are confronted with some difficulty due to lack of an authoritative or precise definition of the terms "industrial and "non-industrial" civil servants. Various Labour Acts define the term "industrial worker" in different ways. The wider

21

15

connotation of the term "industrial worker" seem to refer to those to whom the Industrial Disputes Act, 1947 applies. In this sense, it covers even office staff and operating categories in the Railways, Posts and Telegraphs, etc. who cannot be treated as industrial workers in the ordinary accepted sense of the term. However, for our purpose, we have treated as industrial workers only workshop staff governed by the Factories Act and other groups of comparable manual workers conforming to the description of artisans and working outside workshop premises such as Carriage and Wagon Depots and Loco Running Sheds, etc. on the Railways and in other premises which are not subject to the Factories Act."

4.3 The respondents have also not brought out any authoritative criteria for the classification of employees into industrial and non-industrial civil servants before us either through the counter affidavit filed by them or in the arguments during the hearing of the case. In the absence of any such criteria we are of the view that such classification should be tested on the touch-stone of

- (a) nature of the duties and responsibilities of the post;
- (b) Scale of pay attached to the higher post.

The duties of the Civilian Supervisors (Technical), in the EME workshops have been laid down in AI 245/54, at Annexure R-II of the Counter filed by the respondents. It has been stated

that:

"Civilian Supervisor (Technical) by reason of their technical background and experience are essentially tradesmen and they will be employed on work wherein their skill and knowledge will be used to the best advantage and, by example, set a high standard of workmanship for junior tradesmen working under them to follow".

Paragraph 3 thereof lists miscellaneous duties relating to taking charge of a section, if required, getting repairs to the equipment in the section in accordance with DME (Technical); to ensure that every tradesman is employed to the best of capability and to facilitate the upgrading and promotion of those who are suitably qualified; general supervision; cleanliness etc.

4.4 Even after the Tradesman is promoted as a Civilian Supervisor (Technical) he continues essentially to be a Tradesman. His duties and responsibilities are by and large related to his expertise in his particular skill and whatever little guidance he is to provide to the junior tradesman is directly related to the particular skill relevant to the trade.

The scale of pay of the post of the Civilian Supervisor (Technical) Chargeman is Rs. 380-560, which is the same as the scale of pay of highly skilled Grade-I workman in terms of pre-revised scales. The categorisation of the chargemen, who are placed in the same scale of pay, as highly skilled Grade-I Tradesmen, in terms of pre-revised scales of pay from non-

17

industrial to industrial is not justified. The fact that the cadre of the supervisors is centrally controlled is not important enough to be the basis for enforcing the categorisation just because of the mere change in the designation. The format of the option for unwillingness is also worded in such a manner as to make it difficult for a low paid employee to make up his mind and realise the full implications of exercising such an option. It is not intelligible to us as to why the employees who give their name for appearing in the promotion test are not required to give a positive option that in case he is promoted he would accept retirement on superannuation, at the age of 58 years, in accordance with the rules. The format in such options should be so worded, as brings the implication of this action into focus immediately to the concerned persons.

The the Fourth Central Pay Commission have raised the scale of pay of the lowest supervisory scale by allotting Rs. 1400-2300 as equivalent of

Rs. 380-560 - Highly skilled Gr.I/Chargemen;

Rs. 425-640 - Master Craftsman;

Rs. 425-700; Sr. Chargemen.

This has done away with the distinction between the chargeman and senior chargemen w.e.f. 1.1.1986. Both essentially perform more or less similar duties and shoulder identical supervisory responsibility.

What we have said above, however, does not cover the higher technical supervisors, i.e. Foreman, as they have comparatively much wider jurisdiction and have over-all

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responsibility for the efficient working of the Section/Sections, under their control, as a whole. They are also responsible for stores accounting and ancilliary establishment matters.

5. In the facts and circumstances of the case, we order and direct that

- i) the applicants, at Sl.No. 1 to 4 in OA 1709/89 except applicant No. 5 (who is a Foreman), and applicants in OA 753/88 and 640/88 shall continue to be part of the industrial establishment on promotion as Chargemen/Sr. Chargemen and consequently shall retire from service on superannuation only after they attain the age of 60 years in accordance with CSR 459 (b) and FR 56(b).
- ii) Applicants at S.No.1 to 4 in OA 1709/89 and applicants in OA 753 and 640/88 who have retired during the pendency of the OAs in 1989 and 1988 shall be reinstated in service forthwith subject to their refunding the terminal benefits which they may have been paid.
- (iii) They shall also be entitled to all consequential benefits including salary and wages for the period from the dates they were earlier retired.

Accordingly, the orders issued by the respondents in respect of applicants at S.No. 1 to 4 in OA No.1709/89 and applicants in OA No.753/88 & 640/88, retiring them at the age of

19

58 years are quashed; whereas orders in respect of applicant No.5 in OA No.1709/89 retiring him at the age of 58 years shall stand.

There will be no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

30/3/90

T.S. Oberoi
(T.S. Oberoi)
Member (J)

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