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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Registration No. O.A. 1770 of 4988

Date of order 8.2.1991

Uggar Sain

..

Applicant

- versus -

The Union of India and others..

Respondents

CORAM: Hon'ble Shri G.Sreedharan Nair, V.C.

Hon'ble Shri P.C. Jain, Member(A)

Counsel for the applicant : Shri M.C. Juneja

For the respondents : None.

O R D E R

Hon'ble Shri G.Sreedharan Nair, V.C.: -

The applicant while filing this application was holding a Class III post of Graining Machine Operator in the Printing Press run by the Directorate of Publications, Customs and Central Excise, New Delhi. He filed the application being aggrieved by the order dated 16/12-12-1987 under which it was ordered that consequent upon completion of 58 years of age, he will retire from Government service on superannuation with effect from 30.9.1988. According to the applicant like the Government of India Presses, the Printing Press run by the Directorate of Publications, Customs and Central Excise, is a factory under the Factories Act, 1948 and he being a workman can be retired from service only on the attainment of the age of 60 years in view of clause (b) of FR-56. He has prayed for quashing the order dated

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10/14-12-1987 and to direct the respondents 1 to 3 to let him continue in service till 30.9.1990.

2. In the reply filed on behalf of the respondents, it is contended that the Printing Press is not a factory and no order declaring the same as a factory is in force. It is also contended that the Directorate of Publications, Customs and Central Excise is not an industrial establishment and its employees cannot be treated as workmen. According to the respondents, the applicant is governed by clause (a) of FR-56 and as such the impugned order does not require interference.

3. When this application was heard, there was no representation for the respondents. We heard counsel of the applicant and have also perused the records.

4. The short point that arises for determination is whether the applicant is governed by clause (b) of FR-56 which is extracted hereunder:-

"(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."

5. On the evidence on record we have to uphold the plea of the applicant.

6. Admittedly, proceedings have been initiated against the departmental press by the Chief Inspector of Factories, Delhi Administration, for violation of the provisions of the Factories Act. No doubt, the respondents

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have contended that they have questioned the proceedings and the matter is pending. Any way it is prima facie evidence in support of the plea of the applicant. Besides, the applicant has also produced copy of the letter dated 28.11.1988 from the Inspector of Factories to the Departmental Press which discloses that while the factory was inspected on 20.5.1988 more than nine workers were found on work who were engaged in manufacturing process carried on with the aid of power. According to clause (m) of section 2 of the Factories Act, 1948, any premises where 10 or more workers are working, or were working on any day of the preceding 12 months, and in any part of it a manufacturing process is being carried on with the aid of power is a factory for the purposes of the Factories Act. The only ground that is stressed in the reply filed by the respondents to resist the plea of the applicant is that no order declaring the Printing Press as a factory or as an industrial establishment is in force. Even accepting the contention, we are of the view that it is not sufficient to repel the case put forward by the applicant.

7. In the absence of any concrete evidence to the contrary we have to hold that the applicant ^{is a} workman, and is

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governed by clause (b) of FR-56 as regards his date of retirement.

8. It follows that the order dated 10/14-12-1987 has to be quashed and we do so.

9. Since, according to the date of birth of the applicant, he is to retire on superannuation with effect from 30.9.1990, there is no scope for the issue of any direction for reinstatement of the applicant. The applicant shall be deemed as having been in service from 1.10.1988 till 30.9.1990 and shall be deemed as having been retired on superannuation with effect from 30.9.1990. He shall be allowed the consequential benefits on that basis.

10. This order shall be complied by the respondents within a period of three months from the date of receipt of copy of the same.

Recd
(P.C.Jain) 8/2/91
Member(A)

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(G.Sreedharan Nair)
Vice-Chairman
8.2.1991

C.MAHTO
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