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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. 437/88

Date of decision: 4.10.93

C.G.K. Nair

... Petitioner.

Versus

Union of India
through
The Secretary,
Ministry of Science and Technology,
New Delhi and anr. ... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the petitioner - None.
For the respondents - None.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

In spite of our waiting for considerable time,
none appeared either for the petitioner or for the
respondents. As this is a very old matter, we thought
it proper to look into the records and dispose of the
case on merits.

2. The petitioner has approached the Tribunal for
a direction to Respondent No. 2 to withdraw the order dated
27.8.1987 by which the petitioner has been informed that he
is due to retire on 31.3.1988, the date on which he attains
the age of 58 years. He has further challenged the order
dated 19.9.1986 regarding bifurcation of mechanical staff
into industrial and non-industrial ones. He has further

prayed for a declaration that he is a workman working in an industrial establishment in terms of FR 56(b) being an employee of Telecommunication Maintenance Unit.

3. The principal case sought to be made out by the petitioner is that he should have the benefit of higher age of 60 years which is available to the workman of the industrial establishment.

4. The respondents have taken a stand in the reply that the petitioner knowingly opted long back in favour of an non-industrial establishment. The authorities having accepted the option exercised by him have all along continued him in an non-industrial establishment which necessarily resulted in his being required to retire on attaining the age of 58 years. We find that in the year 1967, an order was made as per Annexure R-I dated 28.11.1967 to the effect that the mechanics posted in NHEAC shall be treated as non-industrial. The petitioner as is clear from Annexure R-2 dated 10.2.1975 made a request that he be posted to NHEAC as Mechanic Grade I. His request was acceded to and he continued in NHEAC, a non-industrial establishment. Though the petitioner wants us to believe that he was not aware that this option would result in his being required to retire on attaining the age of 58 years, we find from Annexure R-4 that the petitioner was quite aware of this position. Annexure R-4 is the letter dated 4.4.1985 wherein he has made a request for being transferred to DDGI establishment so that he can have the benefit of higher age

of retirement of 60 years. He has stated therein that he is now 55 years old and has only three years service more time to retire by which his children would not be able to settle themselves. He further stated that if he is transferred to DDGI establishment, he may have an extension for a period of two years which will ease his financial problems and responsibilities. This request was not acceded to. What is important to notice is that the petitioner exercised his option to remain in the non-industrial establishment. The petitioner having thus remained for several years in the non-industrial establishment thought of migrating into the industrial establishment in the year 1986 for the purpose of securing the benefit of higher age of retirement which is available for the workman of the industrial establishment, as per Annexure R-5 dated 30.9.1986. The contents of the said letter also indicate that the petitioner was quite aware that he has been all along in the non-industrial establishment for which the age of retirement is 58 years. The petitioner has no legal right to get himself transferred on the eve of his retirement from the non-industrial establishment to the industrial establishment so that he can get the benefit of higher age of retirement. The respondents have relied upon the judgement of the Tribunal in O.A.-635/86 dated 23.7.1987 wherein the conduct similar to the petitioner has been taken into account for declining relief of migrating to the industrial establishment for which higher age of 60 years is prescribed. We have no doubt on the materials placed by

both the parties before us that the petitioner having exercised his option sometime in the year 1975 in favour of the non-industrial establishment and he having continued in such an non-industrial establishment has no right to insist in his being transferred to the industrial establishment. The petitioner has not made out any case for such transfer either on the basis of a statutory provision or executive order governing his conditions of service. In that view of the matter, the petitioner cannot complain about his having been retained in the non-industrial establishment for which the age of retirement is 58 years. Consequently, he cannot be permitted to retire at the age of 60 years.

5. For the reasons stated above, this application fails and is dismissed. Parties shall bear their respective costs.

Adige
(S.R. ADIGE)
MEMBER(A)

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Malimath
(V.S. MALIMATH)
CHAIRMAN