CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

OA/021/249/2020

Date of CAV : 09.11.2020
Date of Pronouncement : 23.11.2020

Hon'ble Mr. AshishKal, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Mr.D.Chandraiah S/o Yellaiah,
Age about 58 years,
Occ : Skilled Farm Worker (TS),
TSFW No.100042, O/o Scientist-D,
Research Extension Centre, Central Silk
Board, Govt of India, Ministry of Textiles,
D.No.4-1-243, Gandhi Gunj, Alampally Road,
Vikarabad-501 101, Ranga Reddy District, T.S.

...Applicant

(By Advocate :Mr. K.Sudhaker Reddy)

Vs.

1.Union of India, Rep by its Secretary,
Ministry of Textiles, Udyog Bhavan, New Delhi.

2. Central Silk Board, Represented by its
CEO & Member Secretary, CSB Complex,
BTM Layout, Madivala, Bengaluru-560068.

3. National Silkworm Seed Organization,
Central Silk Board, IV Floor, CSB Complex,
BTM Layout, Madivala, Bengaluru-560068.

4.Scientist 'D', Research Extension Centre,
Central Silk Board, Govt. of India,
Ministry of Textiles, D.No.4-1-243, Gandhi Gunj,
Alampally Road, Vikarabad-501 101,
Ranga Reddy District, T.S. ....Respondents

(By Advocate :Mr.S.S.Varma, SC for CSB)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

2. The OA is filed in regard to the retirement age of the applicant to be enhanced to 60 years.

3. Brief facts of the case are that the applicant joined the respondents organization as casual labour and later his services were converted into a time scale farm worker w.e.f. 21.12.1993 vide order dt. 23.02.1994. The pay of the applicant under the Temporary status scheme was fixed w.e.f. 01.07.2015 with grade pay of Rs.1300. Other benefits like medical allowance, EPR, flood advance, GS LIC etc were granted. Applicant rendered more than 30 years of service and is entitled to be in service till 60 years as per the award passed by the Central Industrial Tribunal in CR No 151/2017 on 1.4.2013. Similarly placed employees approached the Central Administrative Tribunal in OA 299/2018 & 461/2019, where in interim relief was granted on 20.4.2018 and is pending final adjudication. However, respondents propose to retire the applicant on 07.04.2020 prior to attaining the age of 60 years violating the central industrial award of 1.4.2013. Aggrieved, OA has been filed.

4. The contentions of the applicant are that similarly placed employees approached this Tribunal in OA Nos.681/2019&682/2019 wherein interim relief was granted on 2.8.2019. The Central Industrial Tribunal has held that the demand for enhancement of age from 55 years to 60 years is justified. Action of the respondents to retire the applicant on 07.04.2020 violates the Central Industrial Tribunal award dated 1.4.2013 as well as Articles 14 and 21 of the Constitution of India. Similarly placed employees

of National Diary development Board, National Seeds Corporation Limited, Indian Counsel for Agricultural Research the retirement age was enhanced from 58 to 60 years.

5. Respondents state that when the applicant was granted temporary status on 1.7.2015 vide respondent Board circular dated 23.3.2016, under Grant of temporary status and regularisation scheme of G.O.I of 1993, (for short "Regularization Scheme 1993") he has accepted the conditions therein, which do stipulate that the age of retirement would be 58 years. Without challenging the memo dated 23.3.2016 the OA has been filed and hence the OA has to be dismissed. The OA is hopelessly barred by limitation as memo containing the retirement age as 58 years was issued on 23.3.2016, whereas OA is filed in 2020. Applicant is not a regular employee of the respondents' organization which is under the control of Central Govt. Respondents organization engages workers termed as Time scale farm workers whenever necessary to attend to seasonal nature of work, on a temporary basis with wages and service conditions determined by the Board. There is no cadre or recruitment rules framed for the casual labour and the applicant has, therefore, not been engaged against any sanctioned post. The award passed by the Central Industrial board has been stayed by the Hon'ble High Court of Karnataka in WP. No. 18693/2014 vide interim order dated 30.4.2014. Applicant was informed of the date of retirement and the tribunal has not granted any interim relief. Benefits like EPF, Gratuity etc are extended as applicable to industrial workers. Mere grant of temporary status to the applicant would not equate the applicant to the regular employee. Respondents organisation has no independent source

of income and is a 100% grants-in-aid organization. Hon'ble Apex Court has held that there can be no comparison in respect of pay scales, between employees of different organization and also different employees within the different wings of the same organization where management and control is different for the different wings, under the principle of equal work equal pay (AIR 2016 SC 5176 at para 42(xvii). Respondents organization has undertaken restructuring wherein the number of units have been reduced from 345 to 154 and the regular sanctioned staff from 3154 to 2504 by allotting other than core activities to the State Governments. Similarly farm workers strength would be reduced. In the context of reduction of staff, enhancement of age of the applicant would not be possible. The applicants are not regular employees to be governed by FR-2. Wages are being paid from the Budget sanctioned by the Govt. under the CSB rules as applicant does not hold any permanent post as defined by FR 9(22) and that the Hon'ble Apex Court held that there can be different retirement age for civil servants and temporary employees (2010 (10) SCC 527). Power to determine service conditions is vested with the employer as a matter of a policy (AIR 2008 SC 417). The age of retirement fixed by the Ministry of Textiles, G.O.I has been fixed as 58 years and the same is followed since 2012. Enhancement of retirement age will create a huge financial burden on the Board. The order passed by the Hon'ble Bangalore Bench of this Tribunal in OA 299/2018 has been challenged in WP No.8889/2020 before the Hon'ble High Court of Karnataka which is pending admission.

Ld. Counsel for the applicant drew our attention to the rejoinder submitted wherein it is submitted that as per the regularization scheme of

1993, applicant should have been granted temporary status after rendering an year of service. Instead it was granted after many years in 2015. Therefore, it has to be deemed that the applicant has been granted temporary status after one year as stipulated in the scheme cited. On conferring temporary status , all casual labour are to be regularized after 3 years of service and should be treated on par with temporary Group D employee for the purpose of GPF/Festival advance/Flood advance on the same conditions as are applicable to temporary Group D employees, as per the scheme referred to. Continuing the applicant in temporary status for long years is an unfair labour practice. Forcing the applicant to retire, prior to attaining the age of 60 years violates articles 14 & 16 of the Constitution of India. The work done by the applicant is of regular nature and his services are to be regularized as per Umadevi judgment and in particular when it was observed that when a temporary appointment is continued for long time the court presumes that there is need for work and warrants a regular post should direct regularization. FR-2 states that fundamental rules are applicable to those Government servants whose pay is debitable to the civil estimates and the applicant is being paid from the civil estimate after conferring temporary status. Therefore FR 56 (b) applies to the case of the applicant wherein it was stated that workman would retire on attaining the age of 60 years. Workman as per note under this FR clarifies as one who is Highly skilled, semi skilled or unskilled aritisan engaged on a monthly rate of pay in an industrial unit or work charged establishment. Respondents admitted that eligible EPF, Gratuity are applicable to the applicant and therefore the applicant who is on a monthly rate of pay is entitled to continue in service till 60 years. Hon'ble Bangalore Bench of this Tribunal

has allowed the OA 299/2018 and batch enhancing age of retirement as 60 years. Further, Tribunal has held in OA 431/2020 that to maintain judicial discipline orders of the higher judicial fora and coordinate benches are to be abided by.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about allowing the applicant to retire on attaining the age of 60 years and not at the age of 58 years. Applicant claims that since he has been granted temporary status and paid from the civil estimates, as per FR-2 fundamental rules apply to his case. Therefore, according to FR 56 (b), as workman he has to be retired only on attaining the age of 60 years. Further as per Uma Devi judgment since he has been granted temporary status for a long time, Tribunal should presume that there is a need for regular work and direct regularisation. Hon'ble Bangalore Bench has allowed the OA 299/2018 & batch for similarly placed employees and hence the said judgment is binding. Besides, in accordance with the casual labour regularisation scheme of 1993 applicant has to be granted temporary status after rendering 1 year of service whereas it was granted only in 2015. Applicant has put in 30 years of service and his services have to be deemed to be regularised after 3 years of grant of temporary status. The Central Industry Tribunal in CR No 151/2017 on 1.4.2013 has upheld the demand for retirement age to be fixed at 60 years and therefore retiring the applicant before attaining the said age is illegal and violative of the Industrial Tribunal order as well as it is infringement of Articles 14 & 16 of the Constitution.

II. In the background of the above pleas of the applicant we have examined the matter in depth. The matter pertains to the lower rung employee who was working in the respondents' organization as Time scale farm worker with temporary status granted in 2015. Applicant has put in 30 years of service and as is evident from the facts, has not been engaged against a sanctioned post to apply Uma Devi judgment nor were the recruitment rules followed in engaging him. It is true that the applicant has worked for a long time and that he should have been granted temporary status after the advent of the 1993 regularization scheme. However, it was not explained as to why the matter was not agitated at the right time.

III. Moreover, respondents have undertaken a restructuring exercise by reducing the units from 345 to 154 and the regular sanctioned staff from 3154 to 2504. They intend to reduce the work and thereby Time scale farm worker strength in the process. Therefore in the context of restructuring involving strength reduction, taken up by the respondents, the question of deemed regularization would not arise. Consequently Uma Devi too, would not apply as the work is being reduced by the respondents in order to concentrate on core areas and leaving the rest to the respective State Govts. Restructuring is a policy matter which broods no interference by the Tribunal. Similarly retirement age is a policy matter wherein the scope to interfere on behalf of the applicant is wafer thin, unless the policy itself is malafide and discriminative, which the applicant did not demonstrate with documentary evidence except seeking regularization on a deemed basis without a valid legal basis. Respondents as a policy decided to retire all those who are similarly placed at the age of 58 years in 2012

and it is the applicant who was not alert to assert and test his right for regularization and the also the retirement age at the right moment . Therefore finding fault with the respondents and seeking deemed regularization at the fag end of service with retrospective implication, is not in the realm of reason.

IV. Applicant sought parity with the employees in respect of retirement age with those working for National Diary development Board, National Seeds Corporation Limited, Indian Counsel for Agricultural Research whose age of retirement has been increased from 58 to 60 Years. Terms and conditions of service are different in different organizations and even under the same Ministry, different Research Bodies, Councils, etc. have varying service conditions. Therefore, just because others working with similar designation in other organization are retired at 60 years, it would not per se create any right for the applicant to seek similar benefit, since it is the service conditions which are intrinsic to decide the issue. It is not out of place that the respondents organization survives on grants in aid and has no independent source of income. Ld. respondents Counsel submitted that increase in retirement age would create a huge financial burden which would be difficult to meet, given the financial dependency of the respondent organization on grants-in-aid. Besides, in the order dated 23.3.2016, wherein the applicant was granted temporary status it was adduced that the age of retirement would be 58 years. The same has not been challenged. When temporary status was granted by an order in 2016 filing the OA in 2020 does attract the clause of limitation of AT Act 1985. Grant of GPF, flood advance, festival advance etc are benefits that flow for

having granted temporary status but they would on their own would not be the basis to construe that the applicant is a regular employee. Conditions have to be complied to regularise services and, if not granted, it was open to the applicant to challenge the non regularization in the appropriate forum at the proper time.

V. Applicant has pleaded that the Hon'ble Bangalore Bench of this Tribunal in OA 299/2018 & batch has allowed enhancement of retirement age to 60 years. However, respondents have filed WP No. 8889/2020 challenging the order of the Tribunal, which is pending admission before the Hon'ble High Court of Karnataka. In addition the award granted by the Central Industrial Tribunal in CR No 151/2017 on 1.4.2013, was stayed by the Hon'ble High Court of Karnataka in WP No. 18693/2014 vide interim order dated 30.4.2014, by observing as under:

> *"The Union of India-2nd respondent was not a party before the Central Industrial Tribunal, therefore notice to 2nd respondent is unnecessary. The reference of the industrial dispute and its adjudication is only as between the petitioner and the 1st respondent-Union and on that score too notice to 2nd respondent is unnecessary. 2nd respondent, at best, could have been a witness for the petitioner and not a party and therefore is not a proper and necessary party for this proceedings.*
>
> *Sri V.S.Naik, learned counsel for the caveator takes notice for the 1st respondent.*
>
> *Heard the learned counsel for the parties and perused the award impugned. There is no dispute that during the pendency of the industrial dispute, the Central Government issued a letter dt.8.8.2012 Annexure-N, permitting the petitioner to extend the benefit of retirement age upto 58 years in respect of Timescale farm workers. The order of reference also discloses that the justification for enhancement of retirement age from 55 years to 60 years, is a burden cast on the 1st respondent-Union. Prima facie what is discernible is that the 1st respondent-Union placed strong reliance on the recommendation of the Fifth Pay Commission by which the age of retirement of Central Govt. employees was enhanced from 58 to 60 years, as also the admission in the cross-examination of*

MW-1 over the enhancement of retirement age from 58 to 60 years of identical workmen in the National Dairy Development Board, National Seeds Corporation Limited and Indian Council for Agricultural Research. It is no doubt true that the petitioner asserted that policy decisions such as retirement age was required to be taken by the CentralGovernment in view of Section 11 of the Central Silk Board Act, 1948 and petitioner was bound by such a decision. Nevertheless, the question that requires to be answered is whether there was justification for enhancement of age from 55 to 60 years as the age of retirement of the Time scale farm workers.

If regard is had to the letter dt. 8.8.2012 Annexure-N, it is needless to state that there shall be an interim order staying the award impugned subject to petitioner implementing the letter dt.8.8.2012 Annexure-N for the Timescale farm workers of the Board until further orders."

Applicant has pointed out that this Tribunal in OA 431/2020 has observed that judicial discipline has to be maintained by adhering to the judgments delivered by the higher judicial fora and the coordinate benches. We agree with the submission of the applicant and in view of the interim order of a higher judicial fora, namely Hon'ble High Court of Karnataka on 30.4.2014, we have to abide by the same, as per the said principle. Besides, the verdict of the Hon'ble Bangalore Bench referred to above, is also under challenge before the Hon'ble High Court of Karnataka and hence it cannot be gainsaid that the said verdict has not attained finality to be relied upon.

VI. Moreover, in view of the interim order of the Hon'ble High Court of Karnataka, staying the industrial Tribunal award of enhancing the retirement age to 60 years, the FR provisions relied upon by the applicant would not be any assistance, to seek the relief sought. Even otherwise, for regularisation, applicant would have moved the Tribunal in 2018-19 to exercise his right but he slept over his right, which is not permissible as a well settled principle of law.

VII. After the judgment was reserved, applicant has forwarded, the decision of the Hon'ble Jammu Bench of this Tribunal in OA 43/2020, where in relief was granted based on decision of the Hon'ble Bangalore Bench of this Tribunal in OA 299/2018. We have gone through the judgment of the Jammu Bench wherein reliance was placed on the legal principle that a coordinate bench decision has to be followed. The Bangalore bench decision was mainly based on the Central Industrial Tribunal order in CR No.151/2007 which was stayed by the Hon'ble Karnataka High Court in WP No.18693/2014. Therefore, the very basis of the judgment of the Bangalore Bench has, in effect, been stayed by the Hon'ble High Court of Karnataka. Further, even the verdict of the Bangalore Bench in OA 299/2018 is under challenge before the Hon'ble High Court in WPFR No.8889/2020. The legal principle to follow Coordinate bench forcefully applies when it comes to a superior judicial fora, which, in the present case, is the Hon'ble High Court interim order dated dt.30.04.2014 has to be respected and is binding. Respondents have challenged the Bangalore Bench decision in OA 299/2018 before the Hon'ble Karnataka High Court and hence, it cannot be said that the decision in the said OA 299/2018 has become final.

VIII. Retirement age is a service condition and is a policy matter as held by Hon'ble Supreme Court in ***P.U. Joshi &Ors. Vs. The Accountant General, Ahmedabad &Ors., 2003 (2) SC ATJ 624***., the Tribunal cannot direct the Government by substituting its views in regard to policy matters relating to service conditions as under:

> *10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State subject to course, to the limitations or restriction envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/ posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.*

More or less a similar view was ventilated by the Hon'ble Supreme Court in ***K. Ananda Rao, etc. vs. Sri S.S. Rawat, IAS & Ors, etc.*** on 7 March, 2019 in Contempt Petition (Civil) No.1045-1055 of 2018 in CA No.10276 of 2017 etc. etc., while dealing with the issue of enhancement of retirement age from 58 years to 60 years. The features contained in the policy document have to be adhered to, is the essence of the judgment, the relevant portion of which is extracted hereunder.

> "*17. Thus, purely on the principle of parity the employees of the institution or entities in Schedule IX and X of 2014 Act could not demand the benefit of enhancement of the age of superannuation from 58 years to 60 years. That benefit came to be conferred under policy documents and finally by the GO dated 08.08.2017. Thus, the source was in those policy documents and naturally the extent of benefits was also spelt out in those instruments issued by the Government. The*

Circular dated 28.06.2016 which was more or less adopted in proceedings dated 11.06.2018 must be taken to be the governing criteria in respect of such employees. Unless and until that governing criteria was departed from specifically, mere expression "consequential benefits" would not entitle the concerned employees anything greater than what was contemplated in the policy documents issued by the State Government."

IX. The above judgments which are relevant to the case on hand have not been referred to by the Hon'ble Benches of Bangalore and Jammu in their judgments in OAs 299/2018 and 43/2020 respectively.

X. Therefore, under the circumstances stated as at above, we dispose of the OA by directing the applicant to pursue for appropriate remedies from the respondents based on the outcome of the WP. No. 18693/2014 filed before the Hon'ble High Court of Karnataka. With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/