

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 399/86

DATE OF DECISION: 29.5.91.

SHRI BENI PRASAD

APPLICANT

VERUS

UNION OF INDIA & ORS.

RESPONDENTS.

CORAM:

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

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI T.S. AHUJA, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI, SENIOR
COUNSEL ALONG WITH SHRI A.K.
BEHRA, COUNSEL.

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 Judgment? *yes*
4. To be circulated to all Benches of the Tribunal? *no*


(I.K. Rasgotra)
Member (A)

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 399/86

DATE OF DECISION: 29.5.91.

SHRI BENI PRASAD

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS.

CORAM:

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

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI T.S. AHUJA, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI, SENIOR
COUNSEL ALONG WITH SHRI
A.K. BEHRA, COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

The issue raised for adjudication in this application is whether a Work Assistant, working in the Central Public Works Department (CPWD) should retire at the age of 58 years in accordance with Fundamental Rules (FR) 56 (a) or being an artisan should be retired from service on attaining the age of 60 years under FR 56(b) on the ground that he continues to remain an artisan even after he has been appointed as a Work Assistant.

2. Shri Beni Prasad, Work Assistant, CPWD has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging respondents' OM No. 15(737)CD/ECI/2309 dated 5.11.1985 (Annexure B) and OM No. 27(4)/86-EC-V dated 7.3.1986 (Annexure D) rejecting his representation requesting for retirement on attaining the age of 60 years instead of 58 years.

d

The applicant joined the CPWD as a Mason in 1947 and was promoted as Work Assistant on 29.5.1985 in the grade of Rs. 330-480 (Annexure A). He was drawing the basic pay of Rs. 410/- immediately prior to his promotion and his basic pay was fixed at the same level after his promotion. Vide the impugned OM dated 5.11.1985 he was advised that he would attain superannuation on 30.6.1986 as according to the date of birth recorded in the service book, i.e. 1.7.1928 he would attain the age of superannuation w.e.f. 30.6.1986. The applicant submitted a representation on 14.1.1986 to the Director General of Works (DG(W) CPWD through proper channel protesting against the wrongful and illegal superannuation of the applicant. He submitted that he was an industrial worker and he would be due to retire only on attaining the age of 60 years. The representation of the applicant, however, was rejected by the respondents vide their second impugned OM dated 7.3.1986 (Annexure-D). The applicant's claim and respondents' response are based on FR 56 (a) and (b) which are reproduced below with the note appearing thereunder:

"F.R. 56(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years.

(b) A workman who is governed by these rules shall retire from service on the afternoon of the last date 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."

The applicant further alleges that respondents have been retiring Works Assistants only on attaining the age of 60 years, e.g. Shri S.C. Chhotrey, Works Assistant retired vide DG(W)'s OM dated 5.3.1986. He contends that CPWD is an industrial/work charged establishment as per definition of 'Establishment' given under Section 2(g) of the Payment of Wages Act, 1936 and the Schedule Part-I given under the Minimum Wages Act, 1948 and Section 2(ka) of the Industrial Disputes Act, 1947 and that he being a workman comes within the purview of the definition of highly skilled artisan as given in the Notification published by Government of India Gazette dated 19th October, 1983, Ministry of Labour and Rehabilitation, Department of Labour. He further submits that the promotion to the post of Works Assistant is necessarily made from the artisans like Carpenters, Masons, Black-Smiths, Plumbers and Painters who have put in 10 years of service or more as skilled artisan in the Department. He garners support for his slant and refers to the Notification dated 25.2.1971 calling Skilled Artisans for the trade test for promotion to the post of Work Assistants (Annexure I). He further states that the syllabus laid down for the trade-test for the post of Works Assistant also supports his contention. Another contention of the applicant is that the duties of the Works Assistant include doing the work of Mason or Carpenter or Black-Smith or Plumber as the case may be, besides advising other Masons etc. in such technical work.

By way of relief he has, prayed that appropriate writ/order/direction be issued to the respondents directing them to retire the applicant on attaining the age of 60 years as per FR 56(b) and not on attaining the age of 58 years as stipulated in FR 56 (a). He further prays that the impugned OM dated 5.11.1985 informing him that he would retire on 30.6.1986 be quashed. (2)

3. The respondents' stand is that the CPWD comprises the work charged establishment and regular establishment. The work charged estbalishment has artisans who are categorised unskilled, semi-skilled, skilled and highly skilled workmen. They further submit that the Government had appointed a Categorisation Committee in 1960 to classify the artisan borne in the work charged establishment. The report of the Categorisation Committee was accepted by the Government in 1962 and the Work Assistants were not included in any of the categories of the artisans on the ground that they perform job of "supervisory nature". Some extracts relevant to the issues from Chapter 6 of the report of the Committee (Annexure R-I) relating to Works Assistants are reproduced below:-

"Conflicting opinions about the usefulness of such agency, were expressed but it had been established that this category is essential for the purpose of field supervision over the artisans, of course, if the number of Section Officers is increased this category can be abolished; but then that will be a much costilier proposal.

Having conceded the necessity of this category both in maintenance and construction, the next question which arises is whether they should be in the workcharged establishment or in the regular cadre. The recent tendency of Government has been to identify the workcharged establishment of C.P.W.D. with the industrial workers only. It could not be ascertained that the Works Assistants are industrial workers. No doubt, a few of the Works

(22)

Assistants have been "promoted" from skilled artisans like masons but this was an anomaly and has been discussed elsewhere. We may, therefore, ignore these isolated cases. **It is also equally difficult to categorise the Work Assistants as either clerical or technical. Their duties are essentially supervisory but there is hardly any solid technical knowledge behind such supervision, nor is their work dependent on any vocational skill which they might possess or even acquire in course of time.** It will, therefore, be seen that although it is difficult to classify them as either clerical or technical, they certainly do not belong to the industrial categories. **Hence, the only course open is to classify them as 'non-industrial' supervisory category.**" (emphasis supplied).

The Committee also noted that Government had undertaken to impart systematic technical training to competent Work Mistries in order to train them to hold minor sectional charges. The experiment was however given up abruptly. Discussing the matter further the Committee observed:-

"To the suggestion that all the Work Mistries should belong to the regular establishment there had been some opposition from some officers of the department. The reason given was somewhat flimsy. It seems that creation of posts in work charged establishment is much easier and expeditious in comparison to posts in the regular establishment. The posts in the Workcharged Establishment have also been exempted from the recent ban on creation of fresh posts.

2

(23)

On the other hand, the Chief Engineer and many other senior Officers who were interviewed by the Committee were of the definite opinion that for the purpose of administrative convenience and discipline, it would be better if the supervisory categories are in the Regular Establishment. This, in addition to the fact that Work assistants cannot be categorised as industrial, tend to the conclusion that it would be better on the whole to transfer this category to the Regular Establishment and the Committee recommends to this effect.

The Committee is aware that there will be certain difficulties about such transfers on the grounds of age of retirement in the regular establishment being 55 as against 60 in the work charged establishment. For non-industrial categories, such a concession is rather incongruous in workcharged establishment and in any case such difficulties may be over come by suitable administrative orders issued by Government."

.....

"The anomaly of the pay scales of the Work Assistants had been brought separately to the notice of the Committee. The present pay scales are exactly those which are applicable to the skilled categories. **There is some force in the argument that these supervisory categories over skilled artisans should be remunerated adequately.** As the Committee recommends that this category should be in the regular establishment, strictly speaking, the question

2

(21)

of remuneration is no longer within the purview of the Committee. The Committee, however, recommends to Government that the fact of Work Assistants supervising the work of skilled artisans should not be lost sight of and their remuneration should be suitably adjusted." (emphasis supplied).

4. In accordance with the above recommendations of the Categorisation Committee the respondents gave an option to the Work assistants to come over to the regular establishment or to remain in the work charged establishment vide letter dated 30th May, 1962 (Annexure R-II). The pay scale of those incumbents who opt for regular establishment will be Rs. 110-4-150-EB-4-170-5-180-EB-5-200 while those who opt to remain in the work charged establishment shall continue to work in the existing scale of Rs. 110-3-131-EB-4-155. It was also laid down in paragraph 5 of the said letter that no fresh appointment will be made in the work charged establishment in the categories of the posts mentioned therein. As such those Work Assistants who opted for the regular establishment and those who were appointed after May, 1962 are governed by the FRs and other normal rules applicable to the Regular Government servants.

In 1971 the respondents also framed Recruitment Rules under the proviso of Article 309 of the Constitution called the CPWD (subordinate officers, Work Assistants and Road Inspectors) Recruitment Rules, 1970. According to them, the Works Assistants were treated as General Central Service Class III (now group 'C') and recruitment was to be made 50% by way of transfer

2

(25)

of carpenters, masons, electricians, plumbers etc. who had put in at least 10 years' service or more as skilled artisans in CPWD and the remaining 50% by direct recruitment. The rules also indicate that the duties of the Work Assistants are supervisory in character.

In 1973 the government appointed another Categorisation Committee. This Committee too did not categorise the Work Assistants who had chosen to remain in the work charged establishment, as unskilled, skilled, semi-skilled or highly skilled artisans. Instead the Committee felt that they are "minor supervisors" who were to assist the Section Officers and Junior Engineers. The relevant portions of the Committee's report are extracted below:-

"8.8. We now come to the very difficult problem of the Work Assistants who are actually located in the Regular Classified Establishment but are virtually a part and parcel of the Workcharged Establishment which is their sole sphere of supervision.

8.9. We have already noted the observations of the First Categorisation Committee regarding the Work Assistants. We also generally agreed with those observations. It is, however, noted that very little direct recruitment is actually made to the grade of Work Assistants nor has the scheme for training of raw direct recruits for this post materialised. It is, therefore, necessary to review the position in the light of the existing conditions.

8.10. The existing recruitment rules prescribe 50% of direct recruitment of matriculates with some knowledge of construction Work and 50% by promotion from the Workcharged Establishment. The latter is naturally confined to civil categories like Masons, Carpenters, Painters, Plumbers and

d

26

Blacksmiths with some stipulated period in the 'skilled' trade. We understand that the direct recruitment quota is very rarely utilized. We realise the difficulties of the Department in having a matriculate with necessary background for this job. Hence great reliance has to be given to the promotion quota. Here again the position is not so easy. Ordinarily a skilled artisan of ten years experience in a skilled trade is only eligible for such promotion. In a time span of ten years in the skilled trade, any skilled artisan will have a tendency towards specialisation in that trade. To promote him as Work assistant and ask him to supervise the work of other skilled artisan in trades other than on which he was himself engaged is somewhat unreasonable. The pay scale assigned to the Work Assistant, ordinary grade, will virtually mean extending the pay scale of skilled category of Rs. 260-400 which will be applicable to the category eligible for promotion as Work Assistant only marginally. In fact on promotion to the grade of Work Assistant a skilled artisan will be mostly in the stage of Rs. 410/- and will earn only two more increments in the whole time scale. Besides, there is yet another anomalous condition attached to this promotion. All workcharged officials retire at the age of 60 whereas the age of retirement of Class III in the Classified Regular Establishment (which class the Work Assistant belongs to) is 58. It will, therefore be seen that the natural corolarry will/ that no promoted Work assistant will be willing to be confirmed

2

in the Regular Classified Establishment and will seek automatic reversion as soon as he reached the age of 58. The main reason for this peculiar situation is the original revision of the scale in the Regular Establishment for the Work Assistant. We note that the previous categorisation committee has suggested suitable modification of the scale which in effect was only a marginal revision of scale applicable to lower division clerks.

8.11 Imagining for a moment that the Work Assistants were located in the Work Charged Establishment instead of the Regular Classified Establishment, and are performing the same duties as they are assigned today, they would have clearly been eligible for the skilled Supervisory grade, the minimum of which is Rs. 330-480.

8.12 The Pay Commission, however, has assigned the scale of Rs. 330-480 to the Work assistants (Selection Grade) which is actually a dying cadre. This grade was created in order to make the Work Assistants a useful appendage to the minor supervisory grade. The scheme, however, was hastily dropped for no apparent good reason. As a result, we have got 8 posts of Selection Grade as against nearly 900 posts in the ordinary grade.

8.13 From the above, it will be apparent that the low pay scale granted to the Work Assistant has created some complications. What is worse, the raising of the salary of the skilled workers, as a result of the Arbitrator's award referred to earlier, has further narrowed down the gap between the Work Assistant's and the skilled categories in general.

(2)

28

8.14 As strictly speaking the existing Work Assistants are all in the Regular Classified Establishment, we cannot suggest any modification of the pay scale. We are, however, drawing attention of Government to this glaring anomaly as this category is directly or intimately connected with the workcharged Establishment."

The respondents submit that both the Categorisation Committees viz. 1960 and 1973, determined that the duties of Works Assistants are basically of supervisory character, they supervise not only the trades in which they were experts but also the employees belonging to other trades. They did not do any manual work themselves and therefore they cannot be regarded as 'artisans' within the definition of workmen given in the note under FR 56 (b). Hence, the retirement age in their case is 58 years and not 60 years as contended.

Regarding Shri S.C. Chhotrey, Works Assistant who was retired at the age of 60, the respondents submit that Shri Chhotrey was one of those Work assistants who had opted to remain in the work charged establishment on the terms and conditions applicable to them. He was, therefore, rightly retired at the age of 60 years in terms of the conditions of service applicable to him. The case of the applicant on the other hand is different as he was promoted as Work Assistant only from 7.6.1985 on the regular establishment and that his appointment was regulated in accordance with Ministry of Works, Housing and Supply (WHS)'s letter dated 30.5.1962. Regarding the Labour Ministry's notification the respondents have stated that the category has been referred to both as skilled and highly skilled. But the two successive Categorisation Committee appointed by the

2

(29)

Government in 1960 and 1973 had not classified the Work Assistant as 'Skilled' or 'Highly Skilled' artisans after considering the work, nature of function and duties of the Work Assistant in CPWD. In fact both the Committees categorised them as performing duties of supervisory nature.

5. The applicant has filed a rejoinder and has enclosed a copy of the decision of the Authority under Minimum Wages Act, 1948, Kanpur in the case of Ravinder Pal, Motor Lorry Driver, CPWD who was ordered to be paid wages due to highly skilled category to indicate that the artisans are working both in the work charged establishment and regular and that his being on the regular establishment cannot deprive him of the benefit of retiring at the age of 60.

6. We have heard Shri T.S. Ahuja, learned counsel for the applicant and Shri P.H. Ramchandani, Senior Counsel along with Shri A.K. Behra, Counsel for the respondents and given deep thought to their respective submissions and the records placed before us. We wish to observe that the 1960 Categorisation Committee visualised the difficulties of transfers of Works Assistants from the work charged establishment to regular establishment as the age of retirement in the former case was 60 years while in the latter was 58 years. The Committee observed:

"for non-industrial categories such a concession is rather incongruous in work charged establishment and in any case such difficulties may be overcome by suitable orders issued by the government."

The respondents had earlier transferred 35 categories from work charged establishment to the regular establishment vide Ministry of WH&S's order dated 26.3.1958. But the 35 categories did not include the Works Assistants. The second Categorisation Committee noted that the Works Assistants are actually located in the regular classified establishment but are virtually a part and parcel of the work charged establishment which is their sole sphere of supervision. Regarding the 50% direct recruitment of matriculates with some knowledge of construction work to the category of Work Assistants, the Committee noted that:

"We understand that the direct recruitment quota is very rarely used" (emphasis supplied)

It will thus be apparent that the category of the Work assistants has been manned by the promotees from the categories like Masons, Carpenters, Black-Smiths, Plumbers etc. who had put in stipulated period in the skilled trade and have passed the prescribed trade test for the post of Work Assistants. The Committee also observed that:

"ordinarily a skilled artisan with 10 years experience in a skilled trade is only eligible for such promotion."

In a time span of 10 years in the skilled trade, any skilled artisan would have attained high level of specialisation in that trade. To promote him as Works Assistant and ask him to supervise the work of other skilled artisan in trades other than on which he was himself engaged is somewhat unreasonable. Again the pay scale assigned to the Work Assistant (ordinary grade) is the same as that attached to the post of skilled category, viz.

2

(31)

Rs 260-400/- and in fact "on promotion to the grade of Work Assistant, a skilled artisan will be mostly in the stage of Rs. 410/- and will earn 2 more increments in the wholetime scale."

Coming to the problem which is before us the Committee observed:

"besides there is yet another anomalous condition attached to this promotion.

All work charged officials retire at the age of 60 years whereas the age of retirement of Class-III in the classified regular establishment (to which class the Work Assistants belong to) is 58. It will therefore be seen that the natural corolarry will be that no promoted Work assistant will be willing to be confirmed in the regular classified establishment and will seek automatic reversion as soon as he has reached the age of 58 years. The main reason for this peculiar situation is the oriiginal revision of the scale in the Regular Establishment for the Work Assistant."

From the above following conclusions emerge:

(a) The Work Assistants are mostly promoted from the category of skilled artisan

viz. Mason, Carpenter, Black-smith, Plumbers etc. The direct recruitment quota of 50% is rarely used.

(b) their promotion to the Work assistant merely means extension of the skilled grade of Rs. 260-400/-; Only 10% of these posts were given the grade of Rs. 330-480 as selection grade.

d

(32)

(c) The Work Assistant on the regular establishment are retired at the age of 58 years but those who chose to continue on the work charged establishment in 1962 are retired only at the age of 60 years which is an anomalous situation.

(d) the main reason for this peculiar situation is the non-provision of commensurate scale of pay.

The Committee's "drawing the attention of the Government to the anomaly as this category is directly or indirectly connected with the work charged establishment" did not produce the desired result in upgrading them suitably.

There is candid admission of fact that even though the Work Assistant may have been transferred to the regular establishment, they are directly and intimately connected with the work charged establishment. That being so, it will be unfair to deny them the benefit of retirement at 60 years of age under FR 56 (b) merely because they have been transferred from the work charged establishment to the regular establishment, without allowing them higher scale of pay, as observed by the Categorisation Committees.

The Categorisation Committee, 1973 also observed that transferring such skilled workers to Regular Establishment as supervisors after specialisation over a long period of time in a particular trade is not only unfair but unreasonable also and consequently they even continue to perform the same skilled job in addition to doing some minor supervision work.

2

The nexus of the Work Assistants as said earlier continues to remain with the work charged establishment. They in essence remain skilled workers while performing minor supervisory functions. In this circumstance it is anomalous to retire them at the age of 58 years merely because they have been transferred from the work charged establishment to the regular establishment.

Our attention has also been drawn to the case of J.P. Shukla Vs. UOI & Ors. 1990 (1) CAT Allahabad SLJ 83 where the Tribunal had observed that when one has been absorbed as per his option he cannot claim parity with those who had opted for other categories. The facts of the case, however, are not germane to the issues before us as the matter relates to trifurcation of the Defence science service in 1979 into three units and subsequent absorption of the officers in the three services on the basis of suitability in the respective service. The tribunal also distinguished the case before them from the case of **Union of India Vs. K.T.S. Shastri, AIR 1990 SC 598.**

We find that somewhat similar problem was obtaining in the Railways, Defence and P & T Workshops where the lowest wing of supervisors was designated as Mistries in the mechanical, electrical, civil engineering, signal and telecom department in the grade of Rs. 150-240/- and Rs. 130-212/-.

The Third Pay Commission in Chapter 19, paragraph 32, page 216 observed:

"This category constitutes the base of the supervisory grade. The posts of Mistries are filled by promotion of the artisan staff in the skilled or highly skilled grade II. The Mistries are in turn eligible for promotion along with artisans in highly skilled Grade I, to 20 per cent of the

(3y)

vacancies of Chargemen 'C'. The Mistries are in charge of sub-section and are responsible for supervision and guidance of the artisan staff working under them, for allocation of duties to them, for distribution of work and for proper outturn."

Accordingly the Third Pay Commission recommended for the Mistries the scale of pay applicable to highly skilled workers Grade-I, i.e. Rs. 380-560. The Pay Commission further observed:

"We are informed that there are some Mistries in the scale of Rs. 130-212 who are skilled artisans and in addition are responsible for supervising a certain number of staff. They are, however, classified as Supervisory but are treated as skilled artisan staff for the purpose of eligibility for overtime under the Factories Act and other matters unlike Mistries in Rs. 150-240 grade who are treated as wholly supervisory".

To the lower category of Mistries the Pay Commission allotted the scale of Rs. 330-480. The categories of Mistries came up for specific recommendation in the Report of the Fourth Central Pay Commission vide paragraph 11.27 which is reproduced below:

"11.27 Posts in the scale of Rs. 380-560 from the lowest supervisory level. Direct recruitment of diploma holders is resorted to a limited extent in certain defence units. Since Rs. 380-560 is also the scale of highly skilled grade I employees, a request has been made for upgradation of posts at this level. Of the major departments, railways alone have a lower supervisory scale of Rs. 330-480 for mistris. We understand that mistris working in certain selected areas like loco and electric

(2)

(BS)

multiple unit car sheds, where they are in independent charge and supervise highly skilled artisans, are given special pay of Rs. 35/- per month. Taking note of these facts, we are of the view that in all departments the lowest supervisory level should be in the scale of Rs. 1400-2300. The work content of mistris in the scale of Rs. 330-480 should be reviewed by raiwlays. Those who are basically workers should be placed in the highly skilled grade (Rs. 1200-1800) and the others who can be clearly identified as supervisors may be given the scale of Rs. 1400-2300."

The important point to be observed from the above recommendation is that the Pay Commission were of the view that work content of the mistries in the scale of Rs. 330-480 should be reviewed. Those who are basically workers should be placed in the highly skilled grade of Rs. 1200-1800 (Rs. 330-480 pre-revised) while the others who can clearly be identified supervisory may be given the scale of Rs. 1400-2300. Incidentally, the pay scale recommended for allotement to the master craftsman (pre-revised Rs. 425-640) i.e. above the level of highly skilled Grade-I is also Rs. 1400-2300.

In conclusion it is obvious that the Pay Commission considered that those who are supervisors they should command the authority over employees whose work they have to supervise and for this purpose recommended the scale of pay higher than that recommended for highly skilled Grade-I. In the CPWD the anomaly seems to have been perpetuated as the Works Assistants have been continued in the scale of Rs. 330-480 (pre-revised) while admittedly they are required, to supervise the

2

work of the skilled and highly skilled workers in addition to performing work in their own trade in view of their expertise. The anomalous position is further aggravated by the fact that those who had opted to remain in the work charged establishment are retired at the age of 60 while the others who opted to come over to the regular establishment in 1962 or were promoted after 1962 are retired at the age of 58 years.

Work Assistants as earlier observed are mostly promoted from the categories of artisans i.e. unskilled, semi-skilled, and skilled categories. They are persons who have specialised in a particular trade over a period of 10 years to become eligible for promotion as Work Assistants. The Categorisation Committee, 1973 observed that it is unreasonable to expect such staff to supervise the work of other trades.

In the case before us the applicant joined the CPWD as a Mason in 1947 and was promoted as Works assistant on 29.5.1985 after he had put in 38 years of service. He retired on 30.6.1986 on attaining the age of superannuation. He was thus promoted as Work Assistant when he was on the last leg of his career. It was at this stage that he was transferred to the regular establishment in the pay scale of Rs. 330-480/- (pre-revised). This promotion did not give him any substantial material benefit instead he was retired at the age of 58 years instead of 60 years. At the same time the job content would not have undergone any material change for him at the fag end of his career. All that happened was that he continued to do the work of a Mason and in addition became a minor supervisor.

While we have no intention of meddling with the recommendations of the Categorisation Committee 1960 and

2

(37)

1973, we cannot ignore the recommendation of the 1973 Committee who observed that the Work Assistants even after transfer to the regular classified establishment virtually remain a part and parcel of the work charged establishment. They also noted that the 50% direct recruitment quota in the grade of Work Assistants has rarely been used. They further considered it unreasonable to expect an employee who is given a particular trade, to exercise supervision on different trades without improving their pay scale. The Committee further observed that the Government would have to take a view on this matter, more so in view of the anomaly created by the reduction in the age of retirement. There is/a great deal of merit in the recommendation of the Fourth Pay Commission relating to the work mistries. They recommended that the work content of the mistries in the scale of Rs. 330-480 should be reviewed and those who are basically workers should be placed in the highly skilled grade of Rs. 1200-1800 while the others who are clearly identified as supervisory may be given the scale of Rs. 1400-2300.

In conclusion we are of the view that the Work Assistants even after transfer to the regular establishment virtually continue to remain part of the workcharged establishment. The job content of their duties also does not undergo such a change as to deprive them of the age of retirement which would be their entitlement under FR 56(b). They continue to remain artisans in the highly skilled grade-I and highly skilled grade-II although they are to discharge expected/minor supervisory functions.

In the facts and circumstances of the case we allow the application and quash the impugned OM dated 5.11.1985 contemplating retirement of the applicant on

d

30.6.1986. The applicant would be entitled to retire on attaining the age of 60 years in accordance with FR 56 (b).

The applicant was granted interim relief directing the respondents not to retire the petitioner from service pending further orders on 23.6.1986. The interim order was not vacated during the pendency of the OA. He would have thus retired on attaining the age of 60 years and would not be entitled to any back-wages except the increments for the two years he worked and the consequent differential amount of dearness allowance on the additional amount of salary, if any.

We, therefore, direct that the applicant is entitled to retire ~~only~~ at the age of 60 years in accordance with FR 56 (b) and not FR 56 (a). We order accordingly. We further direct that the applicant shall be entitled to and paid consequential benefits including increments and differential in the amount of dearness allowance, if any, for the service rendered between the age of 58 and 60 years. He shall also be paid revised pensionary benefits as per the age of retirement which would be 60 years in modification of our order in MP No.330/89

dt. 20.2.1985.

Subhash
(I.K. Rassgotra)
Member(A)

Subhash 29.5.91
(T.S. Oberoi)
Member(J)