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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No. 1583 of 1987

A.K. Mitra and others Applicants

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. S.R. Adice Member (A)

(Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicants who are five in number have approached this tribunal praying that it may be declared that they are entitled to continue in service upto the age till they attain the age of 60 years in terms of Memorandum dated 10.2.86 and the retirement of the applicants no. 4 & 5 w.e.f. 31.10.1986 and 31.12.86 be declared as illegal and void and the respondents be directed not to retire them on the attaining the age of 58 years and all the consequential benefits may be given to them. This application has filed before they could attain the age of 58 years.

2. The Ordnance Department has 15 department under ~~its~~ its control which includes Ordnance Directorates and Research and Development Directorate. The applicants who are also working in the Ordnance Directorate which is the part of Ministry of Defence and the personnel and the personnel working in this Directorate are also governed by the same set of rules as applicable to the employees/workmen of other Directorates under the respondents. The personnel holding the post of foreman are transferable to any of the Directorates under the Ministry of Defence which was done oftenly i.e. the personnel from E.M.E. to Ordnance and vice-versa. The applicant no. 1 started his service as Electric M.V. on 1.12.1948 and at the relevant point of time was working as a foreman and the applicant no. 2 started his service as Supervisor-non-Technical and at the relevant point

of time, he was working as foreman. The applicant no. 3 who are also working at the relevant point of time as foremen and the applicant no. 4 and 5 are working as foreman(Supervisory). According to the applicant as they are working in the Ordnance Directorate, the wing of the Ministry of Defence and holding Technical and Industrial posts as workmen, are entitled to continue upto the age of 60 years, even after acceptance of the post of foreman as they do not cease to be Industrial/Technical personnel. On the other hand, the applicants are equally entitled to the benefits, which has been extended to the foreman of R&D Wing of the Ministry of Defence. The foremen and Scientific & Technical posts in the Defence Research & Development Organisation(excluding those included in the Defence Research & Development Service) have also been included as a workmen. The applicants are claiming in view of the fundamental rule 56(F), they can only be retired at the age of 60 years and not 58 years. The fundamental Rule 56 reads as follows :-

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."

56(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."

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The learned counsel for the applicant contended that of course, the applicants are skilled workmen and as such a foreman is skilled workman and they these skilled workmen and they are all also workmen with the meaning of Fundamental rule 56. Their own retired age^{is} of 60 years that it could not mean the retired age of 58 years.

3. The respondents have opposed the application contending that the applicants are not workmen and the orders prevailing in Directorate of R&D are not applicable for the Government Servants working in Directorate of Ordinance services as they are governed by the Separate sets of rules, may it be so, but it is also R&D wing's part and parcel of the Ordinance Directorate itself. The note of 56(a) itself describes "that the skilled and the semi skilled person both are workmen within the meaning of fundamental Rule 56. In the case of A Sunderambal Vs. Government of Goa & Daman & Div, which is the case of a teacher, the Supreme Court observed :- that

" In order to be a workmen a person should be one who ~~sta~~ satisfied the following conditions :-

(1) He should be a person employed in industry for higher ~~a-reward~~.

(2) He should be engaged in skilled or unskilled manual supervisory technical of clerk or work and that he should not be a person falling under any of four clause as one to four m mentioned in the definition of workmen"

If any employee in industry is not a person engaged in doing work falling any any of the category i.e. skilled or unskilled manual supervisory could not be workmen at all even

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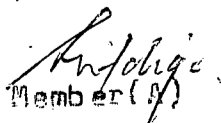
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though viz employed is an industry. Even if the Ordinance depot is not taken as industry, but within the meaning of under the Industrial Dispute Act. There is no denial of the fact that the applicants are the workmen. In the other branches, the same directorate, the foremen have been ~~xxxxxx~~ treated to be workmen, but does not so some distinguishing figure, also not to give the benefits of the same to the employees of other directorate. In the case of Chandigarh Administration Vs. Ajit Singh and another A.I.R. 1990(2)

Supreme Court page 1986. With reference to fundamental Rule 56(b) it was observed that the same provides:-

Whether the age of the employee for retirement should be 60 years in view of the rule 56(b) (nature of work performed by him), he should be remanded back to the tribunal to consider the matter afresh in accordance with law."

There may be, the contention of the applicants is also not without substance. We ourselves will not decide that question whether the duties and function performed by the foremen of R&D are similar to that of the applicants. The applicant as such will refer the matter back to the respondents who should decide this matter within a period of three months from the date of receipt of this order. In case, there is no difference between the work and taking into consideration the definition of the workmen, the applicants who will retire or will deem to have retired at the age of 60 years and will be entitled all the benefits. However, we make it clear that our judgement is confined only to the applicants of this case. No order as to costs.


Member


Vice-Chairman

Dated: 17.3.1993

(RKA)