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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1181/87

Date of decision: 12-1-93.

Tilak Raj

...Applicant

Versus

Union of India & Others

...Respondents

CORAM:

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

For the applicant

...Shri R.P.Oberoi, Counsel

For the respondents

...Shri P.P.Khurana, Counsel

JUDGMENT (ORAL)

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

The petitioner's case is that he joined Government service in a class II post on 18-8-75. He has been served with the notice dated 12-5-87 purported to have been issued in exercise of the powers conferred by clause (h) of Article 459 of the Central Service Regulations stating that the President gives notice to the petitioner, Defence Estates Officer, that he having already attained the age of fifty years on the 13th March, 1986 shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date following the date of service of this notice on him. The principal contention of Shri Oberoi, learned counsel for the petitioner, is that the essential condition specified in clause (h) of Article 459 of the Central Service Regulations not having been satisfied, the petitioner could not have ^{/been} retired in exercise of the said statutory power. Article 459(h) says that the power of compulsory retirement can be exercised (i) if he is in Class I or Class II service or post and had entered the

Government service before attaining the age of thirty-five years after he has attained the age of fifty years; and (ii) in any other case after he has attained the age of fifty-five years.

2. The petitioner's case is brought under the 1st clause, namely, that he has attained the age of fifty years. There is another condition to be satisfied, namely, that he should have entered Government service before attaining the age of thirty-five years. It has to be further shown that he is either in Class I or Class II service. This condition is satisfied. But, Shri Oberoi's contention is that the petitioner had not joined the Government service before attaining the age of thirty-five years. In support of this contention, he has stated that petitioner's date of birth is 14-3-36 and he joined the Central Government only on 18-8-75 in a Class II post. Thus, it is clear that on 18-8-75, he was more than 39 years of age. The condition require to be satisfied is that he should have joined service before completing thirty-five years. This argument is met by the respondents by taking the stand in the reply that before the petitioner entered Government service on 18-8-75, he was in the service of Cantonment Board, Meerut holding the post of Cantonment Overseer since 6-8-57. The petitioner's contention however, is that the service under the Cantonment Board is not service under the Central Government. Cantonment Board is a statutory body. Though it may be state for the purpose of Article 12 of the Constitution, it is not possible to take the view that he was in Government service when he was serving the statutory corporation, namely, the Cantonment Board.

3. In the reply, it is stated that for the purpose of pension under the relevant order, the service rendered in the Cantonment Board is required to be added to the service of the petitioner under the Central Government. The said order speaks of the service under the Cantonment Board being reckoned for the limited purpose of computing the said service for the purpose of pension. Hence, the scope of that notification cannot be further enlarged to treat the service under the Cantonment Board as service under the Central Government. There is no such notification relied upon by the respondents in this behalf. There is no statutory provision or an executive order to the effect that the service under the Cantonment Board shall be regarded as service under the Central Government for the purpose of taking action under the statutory provisions in question for compulsory retirement. We have, therefore, no hesitation in holding that the essential condition of entering in the Government service before attaining the age of thirty five years not being satisfied in this case, the authorities were not competent to invoke the power of compulsory retirement under Article 459 of the Central Service Regulations.

4. We should advert to another submission made by Shri Oberoi that the petitioner is governed by the corresponding Rule 56(j) of the Fundamental Rules. We need not detain ourselves to examine this contention as the provisions of Rule 56(j) are identical to the provisions of Article 459(h) of Central Service Regulations. Whether the appropriate provision is Rule 56(j) of Fundamental Rules or Article 459(h) of Central Service Regulations, there is fundamental infirmity, namely, that the essential

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condition joining service before attaining the age of thirty five years under either the statutory provisions of Rule 56(j) of Fundamental Rules or under Article 459(h) of Central Service Regulations is not satisfied. In this background, the impugned order cannot be sustained.

5. For the reasons stated above, this petition is allowed and the impugned order (Annexure I) dated 12-5-87 compulsorily retiring the petitioner from service is hereby quashed. The petitioner shall be continued in service until he attains the age of superannuation. No costs.

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

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN

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