

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1220 1987
T.A. No.

DATE OF DECISION 28.10.1987

Shri Jhabbar Singh Petitioner

Shri P.T.S. Murthy Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Shri B.C. Mathur, Vice-Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

[Handwritten signatures and initials]

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Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. O.A. 1220 of 1987 Date of decision 28.10.1987

Shri Jhabbar Singh Applicant

Vs.

Union of India Respondents

PRESENT

Shri P.T.S. Murthy ... Advocate for the applicant.

Shri M.L. Verma ... Advocate for the respondents.

CORAM


Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, against the impugned order No. 129/19/66-Ests.II dated 19th August, 1987, passed by the Registrar, Forest Research Institute & Colleges, Dehradun, regarding retirement of the applicant at the age of 58 years instead of 60 years.

2. The applicant worked as a daily rated labour from January 1948 to February, 1952. He worked as a Khalasi (Class IV) between 1952 and 1960. He was promoted as Assistant Foreman in the scale of Rs. 130-300 from 14.4.60 and worked as such till 9.2.1979 when he was promoted as Head Paper Machine Man in the scale of Rs. 425-700, the post which he is still occupying. According to the applicant, he is engaged in the production and manufacture of various types of papers out of cellulose and other ingredients for consumption of the Forest Research Institute & Colleges which is treated as a factory within the meaning of the Factory Act, 1948 and the applicant is a workman of the factory. To establish that the applicant is a workman, it has been stated that the respondents submit a return in form 11 under Rules 77 and 79 periodically to the State Factory Authorities (Chief Inspector of Factories)

in which the post of Head Paper Machineman is shown as a permanent post. The Cellulose and Paper Branch of the respondents has been registered as a factory. The employees who are workmen under the Factories Act are industrial workers and enjoy protection under FR 56(b) for the purpose of age of superannuation which is 60 years in their case against 58 years in the case of others who are non-industrial employees. It has been stated that one such industrial worker, Shri Shambu Singh, who was also Assistant Foreman and recruited as a Khalasi earlier, almost simultaneously alongwith the applicant, retired in June, 1985, after attaining the age of 60 years. Similarly, one Shri Shyam Lal, Assistant Foreman (Service Branch), and another Shri Raghubir, Assistant Foreman Wood Work Section, both Research Assistants Grade-II, were retired on attaining the age of 60 years. The respondents in their statement before filed in another case pending /the Industrial Tribunal, New Delhi, have included the C & P Branch, where the applicant is working, as a part of the Unit of the F.R.I. & Collēges.

3. According to the applicant, the duties of the Head Paper Machineman are to operate and look after the operations of the equipment in stock preparation, paper machine and finishing sections of the paper pilot plant under the overall supervision of the Research Officer/Senior Research Officer and as such he is only a "workman". The respondents have discriminated against the applicant and have chosen to retire him at the age of 58 years whereas the others similarly placed have been allowed to retire at the age of 60 years. No notice, statutory or otherwise, had been issued to the applicant either one year before the date of superannuation nor was he asked to complete formalities of filing up pension papers 6 months before the proposed date of superannuation. His GPF contribution was also not stopped three months prior to the date of superannuation as required under the rules. The applicant prays that he should retire on 31.8.89 on attaining the age of 60 years and not on 31.8.87



as ordered by the respondents. This court has already given interim stay orders against the retirement of the applicant till the decision of this court on 28.10.1987.

4. In the reply filed by the respondents, it has been claimed that the applicant is working in a supervisory capacity and he has been drawing a pay more than Rs. 1600/- per mensem and as such he is not a 'workman' under Section 2 (s) of the Industrial Disputes Act and that the provisions of FR 56(b) are not applicable in this case and, therefore, the applicant must retire at the age of 58 years. The relevant points to consider in this case are primarily whether the applicant is a workman or a supervisor and whether the fact that his salary had exceeded Rs. 1600/- with effect from 1.1.1986 as a result of the recommendations of the Pay Commission, would take away his right as a 'workman' for the purpose of retirement at the age of 60 years. It is not in dispute that at present the applicant is drawing total emoluments of Rs. 2638/- p.m. and his basic salary is Rs. 2100.00. According to the learned advocate *main and only* for the respondents, their point is that since the applicant is drawing a salary exceeding Rs. 1600.00, he is not covered under the definition of 'workman' who get the retirement benefit to superannuate at the age of 60 years. According to him, the F.R.I. & Colleges is not a factory but a Research Institute. According to him, even the salary is not a main consideration. In I.L.R. 1976 (Vol.II), Delhi, it has been laid down that it is the nature of work which is important and not the salary and that the applicant was working in a supervisory capacity. Under the Industrial Disputes Act, Section 2(s), a 'workman' means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purpose of any proceeding under this Act....., but does not include a person who being employed in a supervisory capacity draws wages exceeding Rs. 1600.00 per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested

in him, functions mainly of a managerial nature.

5. The duties of the Head Paper Machineman are to operate and look after the operations of equipment in stock preparation, paper machines and finishing sections of the paper pilot plant under the overall supervision of the Senior Research Officer and maintain the log book of the Paper Mill. From this it would appear that the nature of work is primarily of a workman even though he may be helped by other persons. The work of a supervisor would be primarily supervisory and he should be in a position of command or take a decision and should be authorised to act within his jurisdiction without the sanction of any other supervisor. According to the Supreme Court ruling in AIR 1958 - S.C. 130 - even a manager of a hotel is considered a workman although he may supervise the work of many persons. The learned advocate^{for} for the applicant has argued that by the very nature of work, the applicant cannot be considered as a supervisor but a workman and FR 56 (b) lays down that a workman who is governed by the FRs shall retire from service on attaining the age of 60 years and there is no mention of pay scale under FR 56.

6. It appears that the respondents themselves were not clear whether the applicant should retire_{him} at the age of 60 years or not. It appears that they were treating/as a workman because similarly placed persons, namely, Shri Shambu Singh, Shri Shyam Lal and Shri Raghubir, Assistant Foremen in the F.R.I. & Colleges, were retired at the age of 60 years. That perhaps explains why no action was taken to send pension papers to the applicant at least six months before his superannuation or for not stopping his G.P.F. contribution three months before the date of retirement as required under the rules. The notice of retirement appears to have been given when it was found that the salary of the applicant had crossed Rs. 1600/- retrospectively with effect from 1.1.86 whereas the earlier grade of the Head Paper Machineman was only Rs. 425-700. The fact that the returns have been filed under the Factories Act to the

State Factories Authorities (Chief Inspector of Factories) and that the name of the applicant was intimated in the returns show that the respondents treated the applicant as a workman under the Factories Act.

7. It could not be the intention of the 4th Pay Commission to take away the benefits enjoyed by the workmen in lower grades by enhancing their pay scales. Perhaps there has always been time lag in amending the rules and the limit of Rs. 1600.00 for the supervisory staff in the old scales needs also a change. To avoid all future confusion, Government may consider this matter early and take an appropriate decision. In this case, however, the applicant has been treated as a workman and as similarly placed persons in the organisation have been retired at the age of 60 years, there cannot be any discrimination in the case of the applicant. It is, therefore, held that the applicant should superannuate on 31.8.1989 on attaining the age of 60 years. The application is, therefore, allowed. There will be no orders as to costs.



(B.C. Mathur)

Vice-Chairman