

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

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OA NO.2597/90

DATE OF DECISION:08.05.92.

K.P. PANDEY

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

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

FOR THE APPLICANT

SHRI N.RANGANATH SWAMI,
COUNSEL.

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Jugement? *yes*
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN

8.5.92.

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

In this Original Application filed by Shri K.P. Pandey, under Section 19 of the Administrative Tribunals Act, 1985 he has challenged the order of the respondents No.40/15/90-EC-V dated 11th September, 1990, rejecting his contention that he was entitled to all benefits admissible to incumbents of Work Charged Establishment.

2. The principle issue raised by the applicant is that he was appointed to the Work Charged Establishment and that he was transferred to the regular establishment without his consent. Accordingly, he is entitled to the benefit of retirement at the age of 60 years in accordance with FR 56(b), as available to employees borne on work charged establishment.

3. The necessary facts of the case are that the applicant joined Central Public Works Department (CPWD) as Mistry on 4.2.1955 in the pay scale of

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Rs.60-5/2-75 (Rs.110-155) on Work Charged Establishment vide order dated 3.2.1955. The post of Mistry was later redesignated as Work Assistant and transferred from the Work Charged Establishment to the regular classified establishment in the scale of pay of Rs.110-4-150-EB-5-180-EB-5-200. The pay of the Work Assistants in the pay scale of Rs.110-155, transferred to the regular establishment in the scale of Rs.110-200 was fixed under FR 22 (a) (ii). It is observed that the pay of the applicant in the pay scale of Rs.110-155 as on 1.4.1962 was Rs.131/- and the same was refixed at Rs.130/- plus Rs.1 as personal pay in the scale of Rs.110-200 as the two posts were carrying the same responsibilities and the duties. From Annexure-V to the counter-affidavit filed by the respondents it is also seen that Work Assistants so transferred were held to be "entitled to overtime wages at double the original rates for the duties performed on weekly days of rest..." as distinct from the other categories borne on the regular establishment. The facts, as brought out above are undisputed. As far as the form in which the options were obtained from the Work Assistants who were on the Work Charged Establishment the respondents have submitted that the original option is not available, as the concerned file has been destroyed.

4. We have heard the learned counsel for both the parties and carefully considered the matter. In the matter of **Shri Beni Prasad Vs. Union of India & Others in OA 399/86 decided on 29.5.1991 SLJ 1991 (41) 355** identical issues of law and of fact were raised and were dealt with at great length. The category of Work Assistants had come up for a

detailed review by the Categorisation Committees appointed by the respondents in 1960 and 1973. The 1973 Categorisation Committee had observed:-

"8.10. The existing recruitment rules prescribe 50% of direct recruitment matriculates with some knowledge of construction Work and 50% by promotion from the Work Charged Establishment. The latter is naturally confined to civil categories like Masons, Carpenters, Painters, Plumbers and Blacksmith with some stipulated period in the 'skilled trade'. We understand that the direct recruitment quota is very rarely utilised. We realised 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 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 will have a tendency towards specialisation on 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

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only two more increments in the whole time scale. Besides, there is yet another anomalous condition attached to this promotion. All work charged officials retired at the age of 60 years whereas the age of retirement of Class III in the Classified Regular Establishment (which class the Work Assistants belong to) is 58. It will, therefore be seen that the natural corollary 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 reached the age of 58. The main reason of 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 modifications of the scale which in effect was only a marginal revision of scale applicable to lower division clerks."

The categorisation committee 1973 thus clearly brought out that direct recruitment quota is very rarely used and that it is only the artisans like Plumbers, Masons, Carpenters, Painters and Blacksmiths who are in the stipulated trades and are promoted to undertake the minor supervisory work in addition to their own skilled work. After discussing the detailed position, including the recommendations of the Third and the Fourth Central Pay Commissions and the Categorisation Committee 1960 and 1973 observations/recommendations in **Beni Prasad** (supra) the Principal Bench observed:-

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"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 Committees, 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 and unreasonable also and consequently they even continue to perform the same skilled job in addition to doing some minor supervision work.

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 circumstances 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."

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In the light of the discussions in **Beni Prasad** (supra) case we came to the following conclusion:-

"While we have no intention of meddling with the recommendations of the Categorisation Committee 1960 and 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 also 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 expected to discharge 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 30.6.1986. The applicant would be entitled to retire on attaining the age of 60 years in accordance with FR 56(b)."

It is not disputed that the category of Work Assistants was transferred from work charged establishment to the regular establishment after obtaining their options. It has nowhere been brought on record that they were made aware of the consequences of such transfer while obtaining their options that instead of retiring at the age of 60 years they would be made to retire at the age of 58 years. The respondents have come on record further, as earlier observed, to say that the form in which the option was obtained is not available in the case of the applicant, as the relevant file has been destroyed.

In the above circumstances and as held in **Beni Prasad** (supra) case we are of the opinion that the applicant is entitled to the same reliefs, as made available to the applicants in **Beni Prasad** (supra) case. Accordingly, the applicant shall be entitled to be retired on superannuation at the age of 60 years in accordance with FR 56(b). Since the

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applicant has retired from service on 31.12.1990, we order and direct that the respondents shall reinstate the applicant in service and grant him notional increments which became due to him during the period from the date of his retirement on attaining 58 years of age to the date he is taken back on duty and fix his pay notionally. In the peculiar circumstances of the case, we do not order payment of back wages. Undoubtedly, his pension and retiral benefits shall be refixed after he attains the age of superannuation in accordance with FR 56(b) on 31.12.1992 after taking into account the pay drawn by him in the preceding 10 months actually and ^{not-} notionally.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN

SKK
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8/5/1992 May 8, 1992.