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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.434/1990

DATE OF DECISION : 27.02.1992

SHRI MADHWA NAND

...APPLICANT

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI O.P. SOOD

FOR THE RESPONDENTS

...SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, since retired, was Painter in the Army hospital, Delhi Cantt., who moved the application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order dt. 7.11.1989 retiring the applicant on 31.3.1990 at the age of 58. The applicant claims that since he is a skilled worker in the hospital, which is an industry, his age of retirement should be as per Civil Service Regulations 459(h) which provides that

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a workman who is governed by these regulations shall be retained in service till the date he attains the age of 60 years. The definition of workman given in a note under the said CSR is that a workman means a highly skilled, skilled, semi skilled and unskilled artisan employed on a monthly rate of pay in an industrial and work charge establishment.

2. The applicant has claimed the relief that the order of the army hospital dt. 7.11.1989 be quashed and set aside and it be held that the applicant, artisan worker has his retirement age of 60 years and so a direction be issued to the respondents in that regard.

3. The applicant has filed this application before his retirement on 12.3.1990, since his representation dt. 7.11.1989 and reminder dt. 11.1.1990 have not been considered at all by the DG, Medical Service, Army Headquarters.

4. The case of the applicant is that the applicant joined as a Painter and was working in a highly skilled grade-I in the pay scale of Rs.1320-2040 w.e.f. 23.12.1988 in the army hospital, Delhi Cantt. On the recommendation of the Third Pay Commission, Government of India, Ministry of Defence had appointed an expert committee which

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recommended three grade structures in the various industrial trades and among those trades, the trade of Painter was also sanctioned; grade structure as skilled, highly skilled grade-II and highly skilled grade-I. It is the case of the applicant that the trade of Painter, that the applicant is holding, is industrial and the applicant has referred to the Recruitment Rules of various departments, SRO No.1/88 dt. 30.1.1988 (Annexure A2) and SRO No.279/78 dt. 12.9.1978 (Annexure A3). However, these Recruitment Rules pertain to corps of Electronic, Mechanical Engineers (Industrial) Recruitment Rules, 1988 and Raksha Utpadan Vibhag, Directorate General of Inspection (Industrial Group 'C' & 'D' Posts) Recruitment Rules, 1978 respectively. It is further stated by the applicant that the installation where the applicant is working is a hospital employing more than 300 civilian employees of various trades which include Carpenters, Tailors, Labourers, Boot Makers, Aayas, Safaiwalas and Painters besides Clerks and other trades and the establishment is an industry under Section 2(j) of the Industrial Dispute Act, 1947. Thus in short, the applicant alleged that the trade of Painter is industrial and applicant is a worker and persons employed as Painter in other sister organisations of the Defence installations likewise EME, MES, DGI, Ord. etc. are retired at the age of 60 years, so

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the same be also applied to him.

5. The respondents contested the application and stated in the reply that the applicant is a Central Government employee and has to retire from services on the afternoon of the last day of the month in which he attains the age of 58 years. The applicant was not the workman employed on a monthly rate of pay in an industrial or in a work charge establishment. The trade of the Painter (applicant) is not considered industrial in all the Defence installations as claimed by the applicant. The respondents placed reliance on the Recruitment Rules of Corps of Signals and referred to SRO No.143/89. Since the applicant is categorised as Group 'C', non industrial employee, his age of superannuation is 58 years and not 60 years as claimed by him. Reference has been made to Medical Services (Army) AG's Branch, AHQ, DHQ, PO, New Delhi letter dt. 25.5.1987. The military hospitals are not covered under the Industrial Dispute Act, Therefore, individuals working in ^{any} capacity in the military hospitals cannot be termed as industrial employees by virtue of their trades. The authorised strength of civilian employees in Groups 'B', 'C' & 'D' is 278. Since the category of the Painter is categorised as Group 'C',

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like other employees of the said group, it will be covered by the provisions of FR 56(a) and age of superannuation will be 58 years. Ordnance and EME are treated as industry and the same rules cannot be made applicable to all the Directorates of Army.

6. We have heard the learned counsel for the parties at length and have gone through the record of the case. According to Appendix-2, CPRO 10/85 dt. 15.10.1984 on the subject of fitment of non-industrial workers of AG's branch pay scale recommended by the Third Pay Commission, the trade of Painter is included at Sl.No.4 and from the grade of Rs.210-290, the grade is revised to Rs.260-400. It goes to show that the Painters are also included in the fitment of non industrial workers. Director General of Medical Services (Army) AG's Branch issued letter dt. 25.5.1987 in which it has been specified as to the retirement age as per FR 56(a), which is quoted below :-

"A case regarding age of superannuation of semi-skilled workers who were fitted into skilled grade with the pay scale of Rs.260-400 as per Govt. orders vide 3822/DS (C&M)/Civ-I/84 dated 15 Oct.84 was taken up with Ministry of Defence, who in consultation with Deptt. of Personnel and Training and Deptt. of Administrative Reforms have now advised that unless these employees are covered under the definition of workman as given in the Note below FR 56(b), which states that "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 age of superannuation of the skilled workers, after having been categorised as Group 'C' will, like other employees of this group be governed by the provisions of FR 56(a) and shall be 58 years."

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This goes to show that the age of superannuation of the skilled workers, after having been categorised as Group 'C', like other employees of this group, be governed by the provisions of FR 56(a) and shall be 58 years.

7. . We have heard the learned counsel for the parties at length and have gone through the record of the case. The applicant by virtue of trade as Painter in the Army hospital claims that he is holding the skilled and industrial trade and in this connection relief on SRO No.1 dt.30.1.1988 and SRO No.279 dt.12.9.1978 (Annexures A2 and A3 to the application). In fact, both the above SROs. do not concern the army medical hospital. SRO No.1/88 pertains to corps of Electrical and Mechanical Engineers (Industrial) in which Painter and Decorator skilled is shown as Group 'C' non gazetted industrial post. Similarly SRO 279/78 pertains to Raksha Utpadan Vibhag, Directorate General of Inspection (Industrial Group 'C' & 'D' POSTS) and at item No.43, Painter trade is shown as industrial. Thus the applicant cannot get the benefits out of these SROs. No.1/88 and 279/78. The Ministry of Defence letter No.3822/DS (O&M)/CIR-1-84 dt. 15.10.1984 is regarding the fitment of non industrial workers of AG's branch in the pay scales recommended by the Third Pay Commission.

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At Serial No.3 and 4, the job of the Painter is shown.

Thus it clearly shows that the job of Painter is non industrial and it is only industrial in some of the commercial establishments under Ministry of Defence.

Merely because the Painters are employed in army hospital would not by itself make the trade of Painter an industrial one.

8. The learned counsel for the applicant has also referred to CSR 459-B where the age of superannuation is 60 years for a workman who is governed by these regulations and a workman means a highly skilled, skilled, semi-skilled and unskilled artisan employed on a monthly rate of pay in an industrial and work charge establishment.

) The applicant has drawn strength from the fact that he is highly skilled artisan and referred to army headquarter's letter dt. 23.12.1938 (Annexure A4). This Memo dt.23.12.1938 only shows that highly skilled Painters Grade-II have been promoted to highly skilled Painters Grade-I in the pay scale of Rs.1320-30-1560-2040. The designation by itself will not make the applicant covered by the Industrial Disputes Act. It is the nature of the service in which the applicant is working which is to be seen. The case of the applicant, therefore, that in the army hospital there are more than 300 civilian employees of various trades and so the establishment is an industrial one under Section 2(j) of the Industrial Disputes Act, 1947, cannot be said

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to cover the army hospital, which is non commercial.

9. The learned counsel for the applicant has also placed reliance on the case of Bangalore Water Supply and Sewage Board Vs. A.Rajappa, 1978 (2) SCC 213 and the judgement of the Hon'ble Supreme Court in State Hospital, State of Bombay Vs. Hospital Mazdoor Sabha, 1960 SC 610. The facts of all these cases are totally different and cannot be applied into an institution like army hospital where the primary objective is to treat army personnel exgratis by virtue of the terms and conditions of their service.

10. The learned counsel for the applicant has also from the fact drawn analogy that the Painters and other workmen working in other sister organisations in the Defence like EME, MES, DGI and Ordnance factories have a retirement age of 60 years, but all these are primarily commercial and industrial institutions and rightly the age of retirement of civilian staff is 60 years there. According to the respondents, the applicant is a Group 'C' non industrial employee and his age of retirement is governed by FR 56 where every Government servant has to retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. It is established that

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the applicant was not a workman employed on a monthly rate of pay in an industrial or a work charge establishment. The trade of Painter is not considered industrial in all the defence installations. Also it is clear that the individuals who are working in any capacity in the military hospitals cannot be termed as industrial employees by virtue of their trades. The respondents have also disputed the strength of the civilian employees working in the Groups 'B', 'C' & 'D' in the said army hospital. The mere contention of the learned counsel for the applicant that the trade of Painter is industrial irrespective of the place of posting whether it is in a commercial or non commercial installation cannot establish that the applicant is holding the industrial trade. In fact, in the army hospital, in order to provide promotion avenues, different grades are of course granted otherwise the person doing a job will stagnate at that very point. So it is meaningless to say that the applicant has been working as a highly skilled artisan.

11. Taking all these facts into account and the job the applicant was doing, it cannot be said that the nature of work performed is of industrial nature like other defence installations like EME, MES etc.

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12. In view of the above facts, the application is devoid of merit and is dismissed leaving the parties to bear their own costs.

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(J.P. SHARMA)
MEMBER (J)

27/1/92

AKS

D.K. Chakravorty

(D.K. CHAKRAVORTY)
MEMBER (A)

27/1/92

Pronounced by Hon'ble Shri J.P. Sharma, Member (J).

Jomacee

(J.P. SHARMA)
MEMBER (J)

27/1/92