

Central Administrative Tribunal

Principal Bench

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✓ OA. 626/90, 123/90,
220/90, 1202/93
2467/95.

New Delhi, the 29th August, 1996.

Hon'ble Shri A.V. Haridasan, VC(J)
Hon'ble Shri R.K. Ahooja, M(A)

OA-626/90

Sh. Prakash Chand
S/o Behari Lal,
R/o WZ-3798/2, Hari Nagar,
New Delhi.

Applicant

(None for the applicant)

vs.

1. Union of India, Services through its Secretary, Ministry of Defence, New Delhi. 110011.
2. Director General EME, MGO's Branch, Army Hqrs. DHQ P.O. New Delhi. 110011.
3. Commandant, 505, Army Base Workshop Delhi Cantt.

Respondents

By Advocate: None

OA-123/90

A.K. Jain
S/o Sh. J.D. Jain
H. No. 419, Chiragh Delhi,
New Delhi.

Applicant

By Advocate: None

vs.

1. The Secretary, Min. of Railways
Rail Bhawan,
New Delhi.

(24)

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

3. F.A. & Chief Accounts Officer,
Northern Railway,
Baroda House,
New Delhi. .. Respondents

By Advocate: None

OA-220/90.

Jai Chand Vashisht
S/o Sh. Khumman Singh
Quarter No. 1569,
Sector-III, Pushp Vihar,
MB Road, New Delhi. ..

Applicant

By Advocate: None

vs

1. The Secretary,
Ministry of Environment
and Forests, CGO Complex,
Parivaran Bhawan,
Lodhi Road, New Delhi.

2. The Director,
National Zoological Park,
Mathura Road,
New Delhi. ..

Respondents

By Advocate: None

OA-1202/93

Sh. Satnam
S/o Sh. Parmanand
WZ-39, Shiv Nagar,
New Delhi. 110018.

Applicant

By Advocate: None

vs.

1. The Director,
EM.6, MGUs, Branch
Army Headquarters, DHQ, PO
New Delhi.

(25)

2. The Commandant,
505, Army Base workshop,
Delhi Cantt.

.. Respondents.

By Advocate: Shri VSR Krishna)

OA-2467/95

Sh. Ram Lok Singh
S/o Sh. Harbant Singh
R/o 180 Sbhash Puri
Kankar Khera,
Meerut Cantt. (UP).

.. Applicant

By Advocate: None

vs

1. The Secretary,
Min. of Defence,
Defence Bhavan,
New Delhi. 110011.

2. The Commandant,
510 Army Base Workshops
Meerut Cantt.

.. Respondents

By Advocate: Sh. VSR Krishna)

ORDER (Oral)

Hon'ble Sh. A.V. Haridasan, VC(J)

As the issue involved in all these cases
is identical, these cases can be conveniently heard
together and disposed of by a common order. Though
these are old cases none appeared for the applicants.

Therefore, we did not have the benefit of hearing the learned counsel for the applicants. However, Shri VSR Krishna, learned counsel for respondents, in OA.1202/93 and OA-2467/95, stated that the decision of the Supreme Court in State of Orissa and Others vs Adwait Charan Mohanty and Others gives a complete answer to the issue involved in these cases and therefore, the matter can be disposed of in accordance with the dictum of that ruling.

2. In all these cases, the applicants are Group 'C' employees working as chargemen. Their case is that they are entitled to the protection of FR-568 and to be retained in service till the age of 60 years as they are workmen.

3. The respondents resist the claim of the applicant on the ground that the applicants are Group 'C' employees and are not entitled to be retained in service till the age of sixty years.

4. In State of Orissa and Others vs Adwait Charan Mohanty and Others - (1995 (29) ATC 365), Hon'ble Supreme Court has considered a similar question. The only difference in the citation and the facts of the cases in hand is/that, the Supreme Court was considering the provision of Rule 7(1) of FR Orissa Service Code while in these cases,

we consider the provision of FR 56. It is pertinent

to mention that the note below Rule 71(a) of

Orissa Service Code are identical. *with that in FR 56 B* Rule 71(a)

of Orissa Service Code reads as follows:

"Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a government servant, except a ministerial servant who was in government service on 31.3.1939 and Class IV government servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in respect of the government servant in the 55th year of age in order to determine whether he/she should be allowed to remain in service upto the date of the completion of the age of 58 years or retired on completing the age of 55 years in public interest."

The second proviso of this rule reads as follows:

"Provided further that a workman who is governed by these rules shall ordinarily be retained in service upto the age of 60 years. He may, however, be required to retire at any time after attaining the age of 55 years after being given a month's notice or a month's pay in lieu thereof, on the ground of impaired health or of being negligent or inefficient in the discharge of his duties. He also may retire at any time after attaining the age of 55 years, by giving one month's notice in writing.

Note: For this purpose 'a workman' means a highly skilled, skilled or semi-skilled and unskilled artisan employed on a monthly rate of pay in any Government establishment."

This note was subsequently amended with effect from 13-10-1989 which reads as under:

"Note: For this purpose, 'a workman' means a highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in any industrial or work-charged establishment."

Abdul Tucker

5. The provision in FR-56 reads as under:

"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."

6. A comparison of the extracted portion of these two rules would show that there is no essential difference in the definition of workman contained in the notes. In State of Orissa and Others (supra) after a discussion of the facts and survey of rules, the Hon'ble Supreme Court in paragraph 13 of the judgement opined as follows:

"Therefore, we are of the considered view that the government employee in Class-III service shall retire on completion of 58 years of age. Even as artisan-workman who was promoted or appointed to Class-III service be it gazetted or non-gazetted shall retire on completion of 58 years of age. An artisan workman who is working in an industrial or work-charged establishment but he is on/par

with Class IV employee is to retire on attaining the age of 60 years under the second proviso to Rule 71(a) of the Code. In this view, it is not necessary to decide whether any industrial establishment in a government department, not specified, expressly, is an industry or a factory as contended by the respondents. The Code clearly gives benefit to them. One essential condition to be satisfied is that such an artisan-workman, be it highly skilled, skilled, semi-skilled or unskilled, must, of necessity, be on monthly pay of the Government."

"Thus considered, the Tribunal has committed grievous and manifest error of law in not considering the cases on hand in this perspective. It has solely and wholly concentrated on the definition of the word 'workman' and the "industrial establishment" to give the benefit of extended superannuation to the respondents. Since by the interpretation of the Tribunal, the respondents, until the order was stayed by this Court, remained in service and rendered the service to the State, we direct the appellant not to recover any pay and allowances paid to them till they are made to retire pursuant to the orders passed by this Court. Before parting with the case, we would like to point out that a cursory look into the Code would show existence of yawning gaps and ad hoc amendments are made from time to time. It is high time to have fresh look and revamp the Code in the light of the developments of service jurisprudence."

7. In this case also all the applicants admittedly are Group 'C' employees. Therefore, their age of superannuation is 58 years as per dictum of the rulings of Hon'ble Supreme Court judgement cited above.

8. The applicants had claimed the benefit of a judgement in Lal Chand's case to which SLP was filed and still to be disposed of on the question of issue involved in these cases. Now, the disputed question has been settled by the Hon'ble Supreme Court in the judgement cited above. We do not find any merit in the claim of the applicants. In the result, the applications are dismissed. No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

A.V. Haridasan
(A.V. Haridasan)
Vice Chairman (J)