CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 604/91 New Delhi, dated the 5th April, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE MR. P. SURYAPRAKASAM, MEMBER (J)

Dr. R.N. Lal,
S/o Shri Chander Has,
R/o IX-7066, Ashok Gali,
Gandhi Nagar,
Delhi-110031.
(By Advocate Shri Virender Mehta) ..... APPLICANT

VERSUS

1. The Union of India through
Secretary, Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.

2. Delhi Administration,
Through the Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.

(By Advocate Mrs. Raj Kumari Chopra) ..... RESPONDENTS

JUDGEMENT (ORAL)

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Dr. R.N. Lal has prayed that

1. He has the legal constitutional and vested right to continue in service till 28.2.93 on which date he attains the age of 60 years, and the action of the respondents in retiring him from Government service w.e.f. 28.2.91 on attaining the age of 58 years is illegal, arbitrary, unwarranted, without jurisdiction, and is unsustainable.

2. The respondents be directed to condone the break in service of 12 days from 22.7.64 to 2.8.64 and give him the benefit of past service from 9.10.61.

(2) The applicant was appointed as Civil Assistant Surgeon Grade I on 10.8.61 on ad hoc basis and was relieved on 21.7.64, but was subsequently employed again on 3.8.64 on ad hoc basis and thereafter by order dated 7.9.65 (Annexure B) was selected

on regular basis in the post of Category 'E' under the Central Health Service as Assistant Surgeon Grade I. Subsequently his service was placed as Doctor Grade II of the Central Health Service vide order dated 3.9.70, and meanwhile he was made permanent w.e.f. 9.9.68. He continued to work under Respondent No.2 (Delhi Administration) in terms of Rule 8 of the Central Health Service, 1963. The applicant admits during his employment with Delhi Admn., apart from Irwin Hospital, he was also posted at Dr. Joshi Memorial Hospital under Delhi Administration vide letter dated 25.2.71 (Annexure 3) and thereafter his services were transferred to Civil Hospital of the Delhi Administration where he was posted at the time he filedthis O.A. He states that while he was performing the duties in the Civil Hospital he was informed by the Head of Office vide impugned order dated 13.10.90 that he would stand retired from Government service w.e.f. 28.2.91 on attaining the age of superannuation.

(3) The two grounds pressed by Shri Virender Mehta, learned counsel for the applicant is that as the applicant was appointed by the Union of India, he could not be retired by the Delhi Administration. Secondly Shri Mehta has argued that the applicant is a highly skilled workman and is, therefore, entitled to the benefit of FR 56(b), according to which a workman is to retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. To buttress his arguments Shri Mehta has invited our attention to Rule 20(i) of CCS (CCA) Rules according to which in a situation where service of a Government servant are lent by one Department to another Department or to a State Govt. or to an authority subordinate to it or to a local or other authority (hereinafter called the borrowing Department)

having the power of appointing the authority for the purpose of placing such Government servant under suspension or a disciplinary authority for conducting the disciplinary proceedings against him. Shri Mehta contends that the powers specified for the subordinate authority is thus limited and cannot issue the orders of superannuating the applicant. Shri Mehta has also invited our attention to the rulings in two cases N.S. Das Behl Vz. UOI 1992 CLJ 260 and Krishankumar Vs. Divisional Assistant Electrical Engineer, Central Railway and others AIR 1979 Page 1912.

(4) FR 56(a) and 56(b) read as follows:

"FR56(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years.

(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years."

A plain reading of FR 56(a) and (b) makes it clear that every Government servant except as otherwise provided in the rules, shall retire upon attaining the age of 58 years. Exception have been made in the case of workman who will retire at the age of 60 years under FR 56(b). A further exception has been made in the case of Govt. servants in Class IV service who will retire at the age of 60 years. Thus except for workmen, and Government servants in Class IV service, all other Government servants are to retire at the age of 58 years or less. Coming to the question of whether the applicant is a workman or not it is clear that workman is an artisan, that is one who works with his hands. A doctor can by no means prescribe himself as a workman, principally for the reason that the doctor performs his functions that matters with the application of mental and cognitive skills, and not principally through

any manual skills that he possesses, merely because a doctor also in performing his tasks uses his hands does not make him a workman. Every person peforming a task to the some extent or the other uses his hands does not make him a workman. Shri Mehta invited our attention to para 16 of the Delhi High Court Full Bench decision in Khet Ram Gouri Vs. MCD 53 (1994) Delhi Law Times 18 according to which the Municipal Corporation of Delhi has to be treated as an industry. This ruling by itself does not advance the applicant's case at all. Shri Mehta has also invited our attention to para 5(3) of the O.A. wherein the case of Bangalore Water Supply case has been referred to (AIR 1979 Page 548) in which it has been held that hospital falls within the definition of industry. Even so it does not necessarily imply that every person working in a hospital is automatically entitled to be classified as a workman. As already stated, a workman is a one who earns his living by performing manual task, which may range from unskilled to highly skilled category, but it would be a complete misunderstanding of the meaning of the word workman if a doctor were also be categorised as the one.

(5) In so far as the decision in Krishankumar Vs. Divisional Assistant Electrical Engineer, Central Railway AIR 1979 SC 1912 is concerned, that relates to the removal from service by an authority subordinate to that appointing authority, whereas in the present case the applicant has not

been removed from service he has only been informed that he would be superannuating from service upon attaining the age of 58 years in accordance with FR 56(a) which is the relevant rule governing the age of retirement for persons of his grade and status. Hence this rule has no application in the present case.

(6) In so far as the ruling in N.S. Das Behl Vs. UOI 1992 CLJ 216 is concerned, it relates to an order of reversion by Deputy Secretary to the Government of India in which case the appointing authority was the Secretary to the Government of India. This ruling has also no application in the present case because no question of reversion is involved.

(7) Under the circumstances it must be held that the applicant had no vested right in continuing the service till 28.2.93 on which date he attains the age of 60 years, and the action of the respondents in issuing the impugned order informing him that he would deemed to retire upon attaining the age of 58 years on 28.2.91 was fully in order.

(8) In so far as the second prayer is concerned viz. condonation of break in service of 12 days from 22.7.64 to 2.8.64, it is clear that this prayer relates to an entirely different cause of action, and is not connected with the question of the date of applicant's superannuation.

Under the relevant provision of CAT Act each cause of action has to flow from the other and a single O.A. cannot contain a multiple, and unrelated causes of action. That apart, even this cause of action, this relates to the period 1964, which is much beyond the period three years prior to the date of inception of the Tribunal.

9. Before concluding, we may refer to the judgement dated 4.1.93 in O.A. 1384/92 D.D.S. Kulpati Vs. UOI & Others attention to which was drawn by the respondents' counsel Mrs. Raj Kumari Chopra. In that O.A. the applicant had challenged the action of the respondent in retiring him on attaining the age of superannuation i.e. 58 years. In that judgement it was categorically held that 58 years was the superannuation age for a doctor working in the Central Health Service and not 60 years.

10. In the result this application fails and is dismissed. No costs.

(P. SURYAPRAKASAM)
Member (J)

(S.R. ADIGE)
Member (A)