

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2606/93

New Delhi this the 13th Day of January, 1999

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Om Prakash Chandna,
R/o A-87 Lohia Nagar,
New Gaziabad,
Uttar Pradesh. Applicant

(By Advocate: Shri Krishna Mahajan)

-Versus-

1. Union of India through
Through the Secretary,
Ministry of I&B,
Govt. of India,
Shastri Bhawan,
New Delhi-110 001.
2. The Director General,
All India Radio,
Akashwani Bhawan,
Sansad Marg,
New Delhi-110 001.
3. The Director,
All India Radio,
Akashwani Bhawan,
Sansad Marg,
New Delhi-110 001.

(By Advocate: None)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant was employed as a Sitar Player/Staff Artist vide Ministry of Information and Broadcasting in 1960. With effect from 1.10.1964, the applicant who was a 'B' Grade Artist was placed in Grade-III. Vide Ministry's Order dated 3.5.1982 all the Artists/Staff Artists were treated as "Deemed Government Servants" except those who opted out as a Government servants. The applicant was due to retire on attaining the age of 58 years on 31.12.1993. Claiming that certain other Artists similarly situated were given two years extention, he wrote a representation, Annexure E followed

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by another representation, Annexure G to the Director General of All India Radio. These representations were rejected by the respondents vide letter dated 21.9.1993, Annexure A-1. It is aggrieved by this decision that the applicant has approached this Tribunal.

2. Shri Krishna Mahajan, learned counsel appearing for the applicant has firstly argued that the applicant is entitled as a Workman Artisan for the benefit of FR 56(b) and thus had a right to continue in service till the age of 60. FR 56(b) as applicable during the relevant period, reads as follows:

" F.R.56, 1[(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.

NOTE.- In this clause, a workman means a highly skilled, skilled, semi-skilled, or unskilled artisan employed on a month rate of pay in an industrial or work-charged establishment."

3. Shri Mahajan strenuously argued that the applicant who was a Sitar Player had to be regarded as a Skilled Artisan. By a decision of the Supreme Court in Santosh Kumar & Anr. Vs. AIR in 1998(1) SCALE 538 both AIR as well as Doordarshan had been declared as 'Industries' within the meaning of Section 2(j) of the Industrial Dispute Act, 1947. According to the learned counsel, the applicant thus fully met with the requirement of FR 56(b) and consequently his date of retirement should have come on attaining the age of 60.

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4. Although none appeared on behalf of the respondents, we find from the counter-reply filed by the respondents that this issue had also come up before the Division Bench of this Tribunal in TA 94 and 152 of 1985 Kartar Singh and Kundan Singh Vs. The Union of India through the Secretary, Ministry of Information and Broadcasting and Ors. The Tribunal found that for invoking the benefit according to the exception under FR 56(b), the following points had to be considered: (i) Whether the applicant belongs to the category of highly skilled, skilled, semi-skilled or unskilled artisan; (ii) that they are employed in an industrial or work-charged establishment; and (iii) that such employment is on a monthly rate of pay. As regards the first point, the learned counsel cited the following cases:

1991 (4) SLR 313, In Mela Ram Vs. Union of India and Others (Supra), the question related to the age of retirement of Section Holders under the Controller of Printing and Stationery Department, U.T. Noting that the Oxford English Dictionary describes Artisan as one who practises or cultivates an art; an artist; One occupied in any industrial art; a mechanic, handicraftsman, artificer and in Black's Law Dictionary, this expression has been defined as One skilled in some kind of trade, craft, or art requiring manual dexterity e.g. a carpenter, plumber, tailor, mechanic, the Tribunal held that the applicant could not be considered an artisan.

5. In P. Vasudevan and Anr. Vs. Union of India and Others (Supra), the Tribunal examined the eligibility of Skilled Workers Grade II in 1991(7) SLR 667 to avail of the benefit of FR 56(b). Relying on an

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earlier decision in O.A. No. 2209/89, it was declared that the applicant came within the definition of Artisan. The observation of the Tribunal in the aforementioned O.A. No. 2209/89 reproduced in P. Vasudevan Vs. U.O.I. Cat (Ernakulam) can profitably be reproduced again since it addresses the crux of the problem.

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"These meanings require that one should not be merely doing manual work but should also be a craftsman. That imports the idea of dexterity in manual skills, which seems to be crucial to become an artisan. Thus, an artisan would be a person who is essentially and almost wholly dependent on the dexterity with which he performs manual functions, particularly with his hand or legs or both. Thus, a blacksmith, a carpenter, a potter, a goldsmith will be artisans besides the other persons mentioned in the aforesaid definitions.

All these persons no doubt perform manual work, but two characteristics can be noticed.

The first is that these types of work depend more on dexterous manual skills than intellectual attainments. Every one has a mental concept of a chair and know what it looks like, but hardly any, but a carpenter can prepare one. It is only a carpenter who can make one using the skill of his hands in cutting, drawing, chopping etc. of wood. A clerk in an office uses his hand for a full day to write notes etc. This is a manual function. That does not make him an artisan because it does not call for any skilful use of his hand. The manual work done by his follows a very active intellectual or brain work. He must know what to write for which he has to think or read. On the same ground a typist will not be an artisan. He can be a fast typist and very skilful, but this is different from dexterity in manual work. However, if instead of merely typing letters, notes or judgements which do not call for any skill other than typing--he were to use the typewriter to produce a work of art--say a map of India or alikeness of Mahatma Gandhi--he too would be an artisan as he has, in addition, used his skill with great dexterity to produce a work of art.

It would also appear that artisans are persons who produce goods on their own, which even if not made to order, are likely to sell in the market. Thus, given the resources, a

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carpenter can make chairs or a blacksmith can manufacture hammers, etc. which will be available for sale. This aspect has not been adverted in the judgement of the Hon'ble Court referred to above.

The manual work of a Vehicle Inspector is not like that of the carpenter or a blacksmith. It is more akin to that of a clerk or a typist, where the manual work follows a very active intellectual exercise. The inspection does not call for any dexterity in the use of his limbs."

6. The applicant herein is a Sitar Player. He certainly is an Artist but the question is whether he is also an 'Artisan'. Shri Mahajan submitted that the Sitar Player has exercises manual dexterity in producing musical hopes by manipulating the strings of the Sitar. The question is whether for a Sitar Player mental skills are more important than physical skills. Without some manual work intellectual prowess will most cases fail to find its expression. Similarly without some intellectual output no craftsman, however, manually skilled, will be able to make anything useful or profitable. Essentially, therefore, the difference between an 'Artisan' and an 'Artist' depends on the proportion between manual and intellectual contribution that goes into the final output or product. Viewed from this angle, the Sitar Player in our view cannot be regarded as an 'Artisan' as without the understanding of finer nuances of music a mere dexterity of fingers will be of no use. And it is understanding that elevates him to the level of an 'Artist'. We are, therefore, of the view that as a Sitar Player, the applicant cannot be included in the category of workmen who are Artisans. Hence in our view the applicant could not be covered by the definition laid down under FR 56(b).

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7. Shri Mahajan also pressed into service the argument that there is an irrational discrimination between Staff Artists and such Artists who are like the applicant now in Government service. He pointed out that Staff Artists who were given a regular scale but had not opted to be Government servants have the retirement age of 60. Thus a Sitar Player who is a Staff Artist retires at 60 while the Sitar Player who is a Government servant retires at 58.

8. We are not impressed by this argument. The Staff Artists even though they are given a scale of fees which provides for incremental increases are in the last analysis contract workers as such they are not eligible for all the other benefits which a Government servant receives. The most important of these benefits is the post retirement pension. Therefore a differentiation between the two classes cannot be regarded as irrational as the applicant cannot on one hand avail of the benefits of being a Government servant and on the other hand also claim the privilege of the contractual workers. The differentiation in the age upto which Staff Artists can be engaged can have no relationship with the age of retirement of a Government servant.

9. We also find that this Tribunal in TA No. 94 and 152 of 1985 had also held that appointment against a permanent post in a substantive capacity on a time scale of pay cannot be equated to employment on a monthly rate and that the exception of clause (b) of FR 56 has been incorporated in the Rule to cover workmen employed on a

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monthly rate of pay and not a Government servant appointed on a time scale of pay against a permanent post in a substantive capacity. The applicant being in receipt of pay in a time scale cannot thus be said to be in receipt of a monthly pay. Therefore, he also does not meet this requirement of Rule 56(b).

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10. As a result of the aforesaid discussion, we find that even though AIR has been declared as an Industry, the applicant cannot claim the benefit of FR 56(b) as he is not a skilled workman who could be categorized as an Artist in receipt of a monthly rate. Consequently, the O.A. fails and is hereby dismissed. There will be no order as to costs.

R.K. Ahooja
(R.K. Ahooja)
Member (A)

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

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