

Central Administrative Tribunal
Principal Bench

O.A. No. 471 of 1993
M.A. No. 601 of 2000

New Delhi, dated this the 27th June, 2000

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HON BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON BLE MR. KULDIP SINGH, MEMBER (J)

Smt. T.R. Dogra,
W/o Shri Tirath Ram Dogra,
R/o G-33, MCD Colony,
Dhaka, Kingsway Camp,
Delhi-110009. .. Applicant

(By Advocate: Shri N.D. Pancholi)

Versus

1. Employees' State Insurance Corporation,
Pancheep Bhawan,
Kotla Road,
New Delhi-110002.
2. Union of India through
the Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110001. .. Respondents

(By Advocate: Shri G.R. Nayyar)

ORDER (Oral)

MR. S.R. ADIGE, VC (A)

Applicant impugns respondents' order dated 3.4.92 (Annexure A) and prays that she be allowed to retire on attaining the age of 60 years on 31.1.95 as per FR 56(b).

2. This O.A. initially came up for hearing on 15.2.99, but in the absence of applicant and/or her counsel it was dismissed for default on that date.

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3. Thereafter applicant filed M.A. No. 788/99 for restoration of the O.A. which came up on 26.7.99, but on that date none appeared for applicant even on the second call to press the M.A. and under the circumstances that M.A. was dismissed for default. Thereafter applicant filed another M.A. No. 2251/99 which was also dismissed. Now applicant has filed yet another M.A. No. 601/2000 seeking to explain why she could not appear on the earlier dates, and praying for restoration of the earlier M.As/O.A.

4. We have heard applicant's counsel Shri Pancholi and respondents' counsel Shri Nayyar on the M.As.

5. In the light of the submissions made on M.A. No. 601/2000 the same is allowed and the O.A. is ordered to be restored.

6. Applicant contends that on the date of the impugned order dated 3.4.92, she was working as Auxiliary Nurse-Midwife in Employees State Insurance Corporation (ESIC). She states that ESIC is an industrial establishment and claims that she is covered by FR 56 (b) and is, therefore, entitled to continue in service till she attains the age of 60 years.

7. In this connection Respondents' counsel Shri Nayyar does not deny that ESIC is an industrial establishment but contends that under Section 17(2)(a) ESIC Act, 1948 the method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scales of pay, and as per ESIC (Staff & Conditions of Service) Regulations, 1959 applicant was ⁱⁿ a scale of pay which corresponds to Class III (Group 'C') post in a Government service.

8. In this connection our attention has been invited to the Hon'ble Supreme Court's judgment dated 27.1.94 in State of Orissa & Others Vs. A.C. Mohanty J.T. 1995 (2) SC 6 wherein it has been clearly held that a Class III Government employee is required to retire on attaining the age of 58 years, and it is only a workman ^{defined as a} _{highly skilled, skilled, semi-skilled or unskilled artisan employed in an} industrial or workcharged establishment ^{who} is entitled to retire on attaining the age of 60 years.

9. Applicant's counsel has sought to distinguish the aforesaid ruling from the present case, arguing that as applicant is working in an industrial establishment (Respondents' counsel does

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not deny that ESIC is an industrial establishment), she would be entitled to continue in service till 60 years.

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10. We are unable to agree with the applicant's counsel that the aforesaid ruling in Mohanty's case (supra) is distinguishable from the present case before us.

11. Even if ESIC is an industrial establishment we have already noticed that ESIC Act itself lays down the Conditions of Service of ESIC employees shall be in accordance with orders and rules as are applicable to Central Government employees drawing corresponding pay scales and the applicant was in a pay scale which corresponds to that of a Class III (Group C) post in Government service. In Mohanty's case (supra) the Hon'ble Supreme Court has held that a Class III Government employee is required to retire on attaining the age of 58 years and that ruling is, therefore, fully applicable in the present case. Even otherwise applicant who admittedly is an Auxiliary Nurse-Midwife cannot claim the benefit of FR 56(b) because the same relates to workmen or artisans, and the Concise English Dictionary defines an artisan as one trained to practise a manual art;

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a handicraftsman, a mechanic. What comes through in this definition is the use of ones hands with or without the aid of tools and instruments, and merely because applicant uses her hands in the capacity of an Auxiliary Nurse-Midwife does not entitle her the claim to be an artisan.

13. Under the circumstances the O.A. is dismissed. No costs.

Kulay
(Kuldeep Singh)

Member (J)

Arfdige
(S.R. Adige)
Vice Chairman (A)

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