

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

(ALLAHABAD THIS THE <sup>2nd</sup> DAY OF *May*, 2017)

**Present**

**HON'BLE MS. JASMINE AHMED, MEMBER (J)  
HON'BLE MR. O.P.S. MALIK, MEMBER (A)**

**Original Application No.330/00761 OF 1996**  
(U/S 19, Administrative Tribunal Act, 1985)

A.K. Jaiswal Son of Dr. R.N. Jaiswal,  
Resident of House No.396, Jaiswal Bhawan,  
Cantt Road, Namnaire. Agra Pin-282 001

.....Applicant

**V E R S U S**

1. Union of India through the Secretary, Ministry of Defence, (South Block) New Delhi.
2. Director General, E.M.E.(M.G.O.Br.), Army Headquarters, New Delhi-110 001.
3. Commander (Hq. Tech. Group), E.M.E., Delhi Cantt.
4. Commanding Officer, E.D.W., E.M.E., Agra.

..... Respondents

Advocates for the Applicant:- Shri M.K. Upadhyay  
Advocate for the Respondents:- Shri L.P.Tiwari

**ORDER**

**(DELIVERED BY HON'BLE MS. JASMINE AHMED, MEMBER (J))**

By way of this original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for the following reliefs:-

- "a). *to issue a Writ, Order, or a direction in the nature of Certiorari for quashing the impugned order dated 29.12.1995 and the*



*Retirement Order dated 30.11.1994 passed by the Respondents.*

- b). to issue a writ, Order, or a direction in the nature of Mandamus directing and commanding respondents to allow the petitioner to continue in service until he attains the age of 60 years, which is the actual age of retirement as per rules and to direct respondents to pay all the emoluments and other consequential benefits to which, the petitioner is entitled to receive treating the petitioner to have never been retired in service till the age of 60 years.*
- c). to issue a Writ of Mandamus directing and commanding respondents that the petitioner be paid complete emoluments from the date of his retirement till attaining the age of 60 sixty years of age to which, the petitioner is legally entitled to receive the same under law.*
- d) to pass any other suitable order or direction or a relief to which this Hon'ble Court may deem fit and proper in the present facts and the circumstances of the case.*
- e) to award costs of this petition to the petitioner."*

2. The brief facts of the case is that the applicant initially entered the services of the respondents as a highly skilled Telecom Mechanic (Part A) in 1958 and lateron was promoted as Senior Chargeman Part A cadre in 1987. While according to him, he was due for superannuation on attaining the age of 60 years, the respondents vide order dated 13.05.1994 informed him that he would stand superannuated on 31.05.1994 on attaining the age of 58 years and thus he stood retired on the same said date on 31.05.1994. The applicant moved



a representation dated 30.11.1995 contending that he being covered under Rule 459 of the Civil Services Regulation, his age of superannuation should be 60 years. This representation was, however, rejected by order dated 29.12.1995 which was served upon him on 30.01.1996. He had thus, filed the present OA for quashing the said order dated 29.12.1995 and also for a direction to allow him to continue in service upto the age of 60 years.

3. Respondents have contested the OA stating that though the initial entry of the applicant was in an industrial post as a Tradesman, by virtue of the fact he was promoted to the post of Chargeman in the pay scale of Rs.1400-2300, he changes over from the Industrial to non industrial category in respect of which the age of superannuation was only 58 years. Here again, option was available to such employees to remain in the lower category at least six months anterior to the attaining the age of 58 years so that the retirement date could be extended upto 60 years, which the applicant never exercised. The respondents further contended that the Senior Chargeman was not governed by the Industrial disputes Act. They have relied upon an earlier decision of the Principal Bench of this Tribunal vide its order dated



15.10.1995 in OA No.230 of 1992, in which the Tribunal has referred to a decision by the Apex Court which had upset the multiple orders of the Tribunal which allowed the OA stating that the age of retirement would be 60 years. In addition, a Full Bench judgment of the Tribunal in the case of M.S. Siddiqui had clearly held that the incumbents to the post of Chargeman amongst other category are not Workmen within the meaning of the provisions of Rule 56(b) of the FR or Rule 459 of the Civil Services Regulations.

4. Another OA no.21 of 1996 was also filed and this OA alongwith OA No.21 of 1996 were disposed of by a common order dated 8.9.2003 holding that the decision relied upon by the respondents are distinguishable. Even in the case of the Full Bench Judgment in M.S. Siddiqui, the distinction is that the same related to the Ordnance factory wherein the two posts belong to Non Industrial Cadre in Group C and D and thus distinguishable. Hence the OAs were allowed. Review application no.115 of 2003 filed by the respondents against the above said order was also dismissed by the Tribunal vide its order dated 8.2.2007. These orders were challenged by the respondents in W.P. No.16626 of 2007.





5. The Hon'ble High Court held by its order dated 12.08.2015 after examining the entire facts of the case and the reason for distinguishing the decision by the Full Bench in the case of M.S. Siddique has held that the applicants in the respective OA viz. OA no.761 of 1996 and OA No.21 of 1996 are governed by Corps of Electrical and Mechanical Engineers Recruitment Rules, 1997 as amended in the year 1992 and as such, the distinction made between the decision in the Full Bench and the present OAs etiolates and as such, both the decision in Full Bench as also the Rule of 1977 has to be kept in mind for adjudication of the two OAs. Accordingly the writ petitions were allowed remanding the matters back to the Tribunal to examine the claim of the applicants afresh in the light of the judgment of the Full Bench in the case of M.S. Siddiqui as also in the light of the statutory Rules of 1977, preferably within four months from the date of presentation of the certified copy of the said order of the Hon'ble High Court. Order in Review Petition No.115 of 2003 was also quashed.

6. The counsel for the parties had assisted the court by filing the requisite documents (Full Bench judgment and also the 1977 Rules) and also supplemented the same with their respective written submissions.



7. Arguments were heard and the documents in written submissions perused. The focal point for consideration in this case is as to whether the post of Chargeman held by the applicant would be treated as "Workman" or not? If the answer to the question is in affirmative then the applicant would be entitled to continue upto 60 years of age while if the answer is in negative, the decision of the Administrative Authorities in retiring the applicant at the age of 58 years calls for no interference.

8. As the direction of the Hon'ble High Court to this Tribunal is very specific that the cases are to be decided in the light of the Full Bench Judgment as also the 1977 Rules and GN/C-400 the same are to be first considered and the ratio in the Full Bench telescoped upon the facts of the present case.

Article 459(B) Central Civil Service Rules, which is a doppelganger of Rule 56(B) reads as under:-

*"459(B) except as otherwise provided in this Article, every government servant shall retire from service on the afternoon on the last day of the month in which he attains the age 58 years.*

*F.R. 56(B)"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 58 years”.

And Rule F.R. 56(b) reads as below:-

*F.R.56 (b) A Workman who is governed by these Rules shall be retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.*

*Note: In this clause, “A Workman” means a highly skilled, semiskilled or unskilled artisan employed on a monthly rate of pay in the industrial or a work-charged establishment.*

*In the instant case, GN/C 400 No.1 referred to by the High Court and as extracted shoulders certain functional responsibilities:-*

*DUTIES OF CIVILIAN SUPERVISORS(TECHNICAL)*

### **DUTIES**

*Supervisors(Technical)*

- i) Will take charge of a section in 4<sup>th</sup> Echelon workshops if required to do so.(This does not apply to supervisors Technical Grade III).*
- ii) Will officiate of short periods as a group/section officer if required. (This does not apply to supervisors Technical Grade III).*
- iii) Will be responsible for getting the repairs to the equipments in his section executed in accordance with D.M.E. Technical instructions and E.M.E. Regulations (India).*
- iv) Will ensure that every tradesman is employed to the best of his capabilities and will facilitate*

*the upgrading and promotion of those who are suitably qualified.*

- v) Will maintain discipline among, and general supervision of all personnel employed in his section.*
- vi) Will keep the standard of cleanliness of his section as high as conditions permit.*
- vii) Will ensure that proper safety precautions are taken by the men employed under him.*
- viii) Will be responsible for correct allocation of labour on different work orders afloat in his section.*
- ix) Will inspect the tool kits of his workmen monthly and ensure that they are complete and in good condition and take necessary action to adjust discrepancies.*
- x) Will periodically inspect the A-in-U Inventory of his section and report any deficiency to his Section officer for appropriate action.*
- xi) Will progress work in his section and report completion to his section officer.*
- xii) Will ensure that tradesman's time is correctly booked and he is himself familiar with Works Administrative Orders.*
- xiii) Will ensure that no avoidable lost time is incurred and that lost time due to break down of plant or no work is immediately reported to Group/Section Officer.*
- xiv) Will ensure that no irregular private work is undertaken in workshops.*
- xv) Will ensure that no unauthorized or unqualified person uses the machine.*





- xvi) *Will keep a constant watch on the quality and quantity of work done by the tradesmen in his section.*
- xvii) *Will bring to the notice of the Section Officer all cases of negligence or bad workmanship.*
- xviii) *Will prepare rough lists of the spares to be demanded for repairable equipments received in the section, on which firm demands will be based."*

In the above said duties some amendment took place and few others were added to it.

#### DUTIES TECHNICAL SUPERVISORY STAFF

##### Amendment No.1

Add the following after Sub Section (xviii) of para 3.

XIX) Will perform opening/closing duty of shops/sections.

XX) Will supervise mustering in/out duties.

XXI) Will perform ticket board/key board duties.

XXII) Will function as members of the stock taking board, court of inquiry, board of officers, viz. audit board, enquiry on accidents, local purchase, condemnation, trade testing, regimental property depreciation boards etc.

XXIV) Will assist paying officers on payment duties and serve as witness of disbursement of pay and allowances of industrial personnel.

XXV) Will mark attendance of the tradesman of his section and prepare TAPO 198 and daily strength chart.

XXVI) Will ensure security of the groups/Sections/Sub Section under his control and will take precautions against fire risk.

XXVII) Will constantly encourage workmen to make suggestions either for improving the working conditions or the productivity.

XXVIII) Will carry out technical training of workers.

XXIX) Will plan and forecast requirement of spares and other materials for progressing the work as per repair schedule."

9. The above functional responsibilities as shown in the duty chart clearly reveals that all are essentially and predominantly supervisory in character to train/control the junior tradesman which includes marking of attendance of tradesman, which/this function makes the functional supervisor above the post of Tradesman. It is pertinent to dispel once slight confusion that might be caused.

10. Though in the very first paragraph of GN/C 400No.1 it has been stated that "Civilian Supervisors (Technical) by reason of their technical background and experience are essentially tradesmen and they will be employed on work wherein their skill and knowledge will be used to the best advantage, and by example set a high standard of





workmanship for junior tradesman working under them to follow the term 'Tradesman' used for the civil supervisors refers to the expertise in the field and does not mean any post as Tradesman.

11. It is pertinent to refer to an order of the Hon'ble Apex Court in the case of Chandigarh Administration Vs. Mehar Singh, 1992 Supp(3) SCC 43, which refers to FR56(b) and the ingredients to be qualified as a "Workman". The order being short and crisp in its entirety is reproduced as here under:-

- "i) Leave granted.*
- ii) Chandigarh Administration, the appellant, challenges the order of the Central Administrative Tribunal, Chandigarh Bench, holding that the respondent-employee was a workman within the meaning of fundamental rule 56(b).*
- iii) The employee attain the age of 58 years on 15<sup>th</sup> April, 1988. If the age of retirement is 58, as contended by the appellant-administration, the employee had retired on 30<sup>th</sup> April, 1988. On the other hand, if the right age of his retirement is 60 years, he retired only on 30<sup>th</sup> April, 1990. The question, therefore, is whether the administration was right in superannuating the employee on*

completion of the age of 58. According to the employee, the right age for retirement being 60 years, as provided under clause (b) of FR 56 he should have been retained in service, as found by the Tribunal till 30<sup>th</sup> April, 1990.

iv) Clauses (a) and (b) of Fr 56 read as under:

*"FR 56(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 58 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 60 years.*

**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 a work charged establishment."*

v) *The Tribunal does not seem to have considered the status of the employee with reference to the nature of work performed by him. The Tribunal assumed that all employees working in an Industrial or Work charged establishment qualified as workmen within the meaning of clause (b) of FR 56, so as to get the benefit of retirement on completion of 60 years*



unlike other government employees whose age of retirement is 58 years.

- vi) *The question whether an employee is a 'Workman' within the meaning of clause (b) of FR 56 has to be considered with reference to the nature of his work. Clause (b) has to be construed with reference to the statutory note appended thereto. The note says that a workman who is an artisan employed on a monthly rate of pay in an industrial or work charged establishment qualifies for the purpose of clause (b). It does not matter whether the workman is a skilled or semi skilled or an unskilled artisan. All artisans, who are workmen, whether skilled or otherwise qualify for the benefit of clause (b), provided they are employed on a monthly rate of pay in an industrial or work charged establishment. The expression 'Artisan' has, therefore, to be understood as widely as possible and without regard to his skill. Nevertheless, he must be both a workman and an artisan of some kind. **Whether the employee in question is both a workman and an artisan within the meaning of clause (b) read with the note is a question essentially of evidence as regards the nature of his work. The Tribunal has not embarked on such an analysis.***



- vii) *In the circumstances, it is not possible to come to the conclusion as regards the status of the employee.*
- viii) *We are told that the employee has not been paid for the period subsequent to April 30, 1988; nor has he worked during that period. The right of the employee to be paid for the subsequent period of two years would depend upon his status.*
- ix) *In the circumstances, we set aside the impugned order of the Tribunal and **remit this case to the Tribunal for fresh consideration of the status of the employee, as aforesaid.** The Tribunal shall decide whether or not the employee is entitled to receive salary for the period subsequent to April 30, 1988 and pass appropriate orders.*
- x) *The appeal is allowed in the above terms. We make no orders as to costs (Emphasis supplied)."*

12. The status of the employee, as per the above order of the Apex Court is one of the criteria to ascertain whether he should be treated as a Workman. The status in turn relates to the nature of work and the group to which, the statutory provisions attachés the post that the person holds. The other criteria are the establishment in





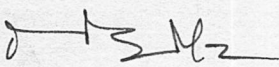
which he is working should be an industrial or work charged establishment.

13. The post held by the applicant is concerned, he was promoted to the post of Senior Chageman grade Part A cadre in 1987 and the pay scale attached to this post after the 4<sup>th</sup> pay commission was 1400-2300. Hence the case of the applicant falls within the category of non industrial centrally controlled establishment for which the age of superannuation is 58 years.

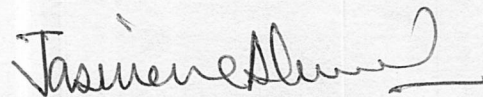
14. The Full Bench has held that M.S. Siddique a Pharmacists belongs to Civilian Defence Services non industrial Group 'C' and non Ministerial, vide paragraph 13 of the said judgment. Applicant in OA no.1812 of 1993 was also held to belong to Civilian in Defence Services class III non-Gazetted, non ministerial. Thus, he was also non-suited from the field of "Workman" to derive the benefit of 60 years of superannuation. Likewise the applicant in OA No.495 of 1993 has been held to not been able to establish that he was at the relevant time employed in an industrial establishment, vide paragraph 22 of the Full Bench judgment.



15. None of the other points canvassed either in the oral or written documents need be gone into in view of the explicit fact that the applicant being from non industrial establishment and performing supervisory duties have failed to fulfill the requisite conditions precedent to be termed as workman. Hence his retirement at the age of 58 years as decided by the respondents cannot be faulted. Hence, the OA lacks merit and the same is accordingly dismissed. No Costs.

  
(O.P.S. Malik)  
Member-A

/ns/

  
(Ms. Jasmine Ahmed)  
Member-J